UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF KENTUCKY
LOUISVILLE DIVISION

IN RE:	)	
	)	
MD2U MANAGEMENT, LLC, et al.	)	CHAPTER 11
	)	
Debtors	)	CASE NO. 17-32761
	)	(JOINTLY ADMINISTERED)[1]
	)	

EXPEDITED MOTION FOR AN ORDER (I) APPROVING (A) THE SALE OF SUBSTANTIALLY ALL OF THE DEBTOR'S ASSETS, (B) BIDDING PROCEDURES IN CONNECTION WITH THE SALE, AND (C) BREAK-UP FEE AND BIDDING PROTECTIONS IN CONNECTION THEREWITH, (II) AUTHORIZING SALE OF ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES, AND INTERESTS, (III) AUTHORIZING THE ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (IV) GRANTING RELATED RELIEF

* * * * *

Comes now MD2U Management, LLC ("MD2U Management"), MD2U Kentucky, LLC ("MD2U Kentucky"), MD2U Indiana, LLC ("MD2U Indiana"), and MD2U North Carolina, LLC ("MD2U North Carolina" and, with MD2U Management, MD2U Kentucky, and MD2U Indiana, collectively, the "Debtor"), by counsel, and moves (the "Motion") the Court to approve the bidding and sale procedures for Debtor's assets, subject to final confirmation of the sale and in support hereof respectfully shows the Court as follows:

I. FACTUAL BACKGROUND

1. On August 29, 2017 (the "Petition Date"), the Debtor filed their voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code"). Pursuant

[1] MD2U Management, LLC, Case No. 17-32761, MD2U Kentucky, LLC, Case No. 17-32762, MD2U Indiana, LLC, Case No. 17-32763, and MD2U North Carolina, LLC, Case No. 17-32764 are administered under MD2U Management, LLC, Case No. 17-32761.

to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtor continues to operate their businesses and manage their property as debtors in possession.

2. No trustee, examiner, or creditors' committee has been appointed in this case.

3. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

4. The statutory predicates for relief are sections 105, 363, 365, 1107, and 1108 of the Bankruptcy Code and Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules").

5. The Debtor provides primary care for home-bound or home-limited patients across Kentucky, Indiana, and North Carolina. The Debtor provides services including adult primary care, comprehensive in-home services, medication management, post discharge visits, and mental and behavioral healthcare.

6. The Debtor's primary payors are Medicare and Medicaid although it receives some payments from third party providers.

7. The structure of Debtor is such that MD2U Kentucky, MD2U Indiana, and MD2U North Carolina receive payments and those net funds, after payroll, flow into MD2U Management. MD2U Management then assumes sole responsibility for payments to creditors.

8. MD2U Florida, LLC ("MD2U Florida") was a lucrative affiliate of the Debtor. However, on June 29, 2016, First Coast Service Options, Inc., a CMS contractor, issued a notice that MD2U Florida's Medicare billing privileges had been revoked because it had determined that MD2U Florida was not operational any longer. This determination was made based upon an on-site visit to MD2U Florida's principal office wherein no one was present at the office. As the

business model for MD2U is ***in home primary care***, it is expected and anticipated that the office would be vacant on any given week day. MD2U Florida appealed that decision and was ultimately vindicated. However, the erroneous notice had already caused direct and irreparable harm to the Debtor in that approximately 1500 patients, 14 providers, and back office support staff were lost due to the revoked billing privileges. The Debtor was ultimately never able to recover that source of income.

9. As a result of the cash flow problems created in large part by the erroneous notice sent to MD2U Florida, the Debtor was forced to seek out additional financing which could only be obtained at usury interest rates. These predatory lenders not only charged exorbitant interest rates but effectively required the Debtor to continuously take out loans simply to pay off the existing predatory loan. This became a never-ending cycle that the Debtor could not get out from under.

10. In addition to the usurious interest rates, these lenders were able to obtain first lien positions on collateral that the Debtor thought to be encumbered by their SBA backed loan with Byline Bank. Consequently, the receivables received by each of the affiliate debtors are encumbered by liens from the predatory lenders while the receivables of MD2U Management are encumbered by liens from Byline Bank. Due to the structure of the Debtor's businesses, the receivables do not reach MD2U Management until they have passed through the Debtor affiliates with their attendant lien encumbrances.

11. In 2016, the Debtor, their related companies, and certain of its executives, J. Michael Benfield, Chief Executive Officer, Greg Latta, Chief Information Officer, and Karen Latta, Chief Operations Officer (collectively referred to as "Chief Executives") entered into a settlement agreement with the United States regarding several allegations which resulted in an agreement to pay $3.3 million and a percentage of the Debtor's net income for five years (the

"Settlement Agreement"). The Debtor and their executives also entered into a five-year corporate integrity agreement ("CIA") with HHS-OIG.

12. As the cash flow problems continued to compound with the predatory lenders, the Debtor was also under the obligation to make payment to the United States under the Settlement Agreement on July 30, 2017. When the Debtor was unable to make its payment, the United States issued its default notice on August 1, 2017, which gave the Debtor up through and including August 22, 2017 to cure its default and remit payment under the Settlement Agreement.

13. Prior to the default, Debtors engaged a broker to market its business for sale in an attempt to honor its obligations to Byline Bank, the predatory lenders, and the U.S. government. In addition, Debtors began meeting with Byline Bank and the U.S. Attorney's Office for the Western District of Kentucky to come up with a strategy to maximize the return to secured lenders and the United States through the resignation of the Chief Executives, and chapter 11 liquidation proceedings that would sell the Debtor's assets and maximize the return to creditors.

14. Debtor engaged Stoneridge Partners pre-petition to market its assets and has sought Court approval to approve the continued retention of Stoneridge Partners. Stoneridge located the prospective purchaser of Debtor's assets.

15. The Debtor's assets are comprised primarily of the Debtor's equipment, fixtures, inventory, tangible and intangible property. The overwhelming value of the Debtor is its value as a going concern, performing services to patients. Debtor desires to conduct an expedited asset sale ("Asset Sale") with the goal of keeping the business in operation. Stoneridge continues to provide assistance to Debtor in its continued marketing effort and in aiding due diligence being provided to potential purchasers.

16. The Debtor has selected a stalking horse bidder for the purchase of Debtor's assets for the purpose of establishing a minimum acceptable bid with which to begin bidding at the auction. A copy of the Asset Purchase Agreement (the "APA") is attached hereto as Exhibit "A." Terms used but not defined herein shall have the meanings ascribed to them in the APA or Sale Order (as defined herein), as applicable.

17. The stalking horse bidder will be National Health Industries, Inc. or its designees ("NHI"). NHI and its Affiliates are leading providers of home health nursing, rehabilitation and personal care services.

18. Debtor's financial condition has been precarious during the course of the bankruptcy cases. Debtor reasonably believes that they can continue to operate in their current financial state for approximately 13 weeks.

19. Debtor believes that an auction ("Auction") utilizing the APA from NHI as the stalking horse bid and offering certain protections to NHI as the stalking horse bidder for an Asset Sale of Debtor is in the best interest of its estate and creditors. Debtor also believes the expedited sale is in the best interest of the Debtor's patients.

II. RELIEF REQUESTED

20. By this Motion, Debtor requests that the Court enter an Order (the "Procedures Order") (i) approving the bidding procedures ("Bidding Procedures") for the Auction, including the requirements for a competing bid to be deemed a Qualified Bid (defined below), setting the deadline by which competing bids must be received (the "Bid Deadline"), and setting the Auction Date (defined below), (ii) approving the bidding protections (the "Bidding Protections"), including a break-up fee of $180,000 and reimbursement of all of NHI's costs and expenses related to pursuing, negotiating, and documenting the transactions contemplated by the APA, each to be paid

to NHI under certain circumstances, including but not limited to, the sale of the Purchased Assets to a party other than NHI, (iii) setting a hearing to authorize and approve the Asset Sale, including the assumption and assignment of the Assumed Contracts (the "Sale Hearing"), and (iv) approving the form of notice of the Auction and Sale Hearing (the "Notice of Auction and Sale Hearing"). The Debtor requests an expedited hearing on the Procedures Order (the "Bidding Procedures Hearing").

21. Debtor further requests that at the Sale Hearing, the Court enter an order (the "Sale Order") authorizing Debtor to (i) sell the Purchased Assets on substantially the terms set forth in the APA, free and clear of all interests, including all liens, claims (including those that constitute a "claim" as defined in Section 101(5) of the Bankruptcy Code), rights, liabilities, encumbrances, rights of recoupment and setoff, and all other interests of any kind or nature whatsoever against the Debtors or the Purchased Assets, including, without limitation, liens, claims, encumbrances, or interests arising under capital leases, whether arising prior to or subsequent to the commencement of these Chapter 11 Cases, whether known or unknown, accrued or contingent, and whether imposed by agreement, understanding, order, law, regulation, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors' interests in the Purchased Assets, the operation of any Debtor's business before the effective time of the Closing pursuant to the Asset Purchase Agreement, or the transfer of any Debtor's interests in the Purchased Assets to the Buyer, including all Excluded Liabilities (but excluding the Assumed Liabilities) (collectively, the "Claims"); (ii) assume certain of the executory contracts and unexpired leases associated with Debtor's business (the "Assumed Contracts"); (iii) assign the Assumed Contracts to NHI or the Successful Bidder (as defined below); and (iv) authorize the

Debtor to pay the amounts, if any, necessary to cure existing defaults under the Assumed Contracts.

III. BASIS FOR RELIEF

A. Background

22. NHI has performed and will continue to perform due diligence regarding the purchase. The parties have negotiated, in good faith and at arm's length, the terms of a definitive agreement, and NHI and Debtor desire to enter into the APA.

23. The APA contemplates a sale of substantially all of the Debtor's assets to NHI. Debtor believes the Asset Sale is the best way to preserve the value of Debtor's businesses, and is in the best interest of Debtor's estates and creditors, including their employees, customers, vendors, and subcontractors. Accordingly, Debtor seeks approval of the Procedures Order and the subsequent approval of the APA at the Sale Hearing.

B. The Asset Purchase Agreement and Bidding Procedures

24. Pursuant to the APA, Debtor will (i) sell the Purchased Assets, which are substantially all of the Debtor's assets, free and clear of all Claims (defined below) and (ii) assume and assign to NHI the Assumed Contracts.

25. The APA was negotiated at arm's length and in good faith by Debtor and NHI, after meeting with the Debtor's largest creditor, following thorough consideration of Debtor's possible restructuring alternatives. Debtor believes the consideration to be received from the Asset Sale as set forth in the APA, subject to the ability of Qualified Bidders (defined below) to submit competing proposals for the Purchased Assets, will result in the highest and best value for Debtor's estates, creditors, and interest holders.

26. The executed APA generally provides the following:

a) Purchase Price. On the Closing Date, NHI will (i) pay to Debtor $4,000,000 (including a credit bid of the outstanding principal amount of the indebtedness owed by the Debtor to NHI under that certain Debtor-In-Possession Credit and Security Agreement, dated as of September 22, 2017 (the "DIP Credit Agreement"), and related DIP Loan Documents (as defined in the DIP Credit Agreement) and subject to certain adjustments as more fully set forth in the APA), and (ii) assume certain liabilities of Debtor.

b) Purchased Assets. The proposed sale will include the Purchased Assets, which comprise substantially all of the assets of Debtor. For the avoidance of doubt, the Purchased Assets shall include assets that are subject to the capital leases, which assets shall be transferred free and clear of, among other things, all Claims related to such capital leases.

c) Sale Free and Clear. The Purchased Assets are to be transferred free and clear of all Claims, other than the Assumed Liabilities (as defined in the APA), pursuant to section 363(f) of the Bankruptcy Code.

d) Assumption of Executory Contracts and Leases. Seller shall assume and assign to NHI all of Debtor's rights under, title to, and interest in the Assumed Contracts.

e) Conditions to Closing. Conditions to consummation of the Asset Sale under the APA will include, among other things (i) entry of the Procedures Order, (ii) approval by this Court of the APA and the transactions contemplate therein, including the Asset Sale, no later than November 29, 2017; (iii) closing of the transactions contemplated in the APA no later than November 30, 2017; and (iv) receipt of necessary third-party approvals.

f) Break-Up Fee. The APA provides for payment of a break-up fee in the amount of $180,000 (the "Break-Up Fee"), plus reimbursement of all of NHI's costs and expenses related to pursuing, negotiating, and documenting the transactions contemplated by the APA (the "Expense Reimbursement"), each payable to NHI in certain circumstances, including, without limitation, in the event the Court authorizes the sale of the Purchased Assets (or any of them) to an entity other than NHI.

This summary of the APA is intended to be for convenience only. To the extent the summary differs from the actual terms of the APA, the terms of the APA shall be controlling.

27. Other than NHI, no purchaser willing to execute a definitive purchase agreement has emerged during the course of the bankruptcy cases, but the Debtor has received interest from other potential purchasers. Debtor has determined the proposed structure for the Bidding Procedures is the one most likely to maximize the realizable value of the Purchased Assets for the benefit of Debtor's estate and creditors and other interested parties. In addition, the APA requires Debtor to obtain the Procedures Order as a means of implementing the Asset Sale to NHI. Accordingly, Debtor seeks approval of the Bidding Procedures set forth below.

28. Under the Bidding Procedures, only a qualified bidder ("Qualified Bidder") may submit bids for the Purchased Assets or otherwise participate in the Auction. A Qualified Bidder is a person who (i) has delivered to Debtor an executed confidentiality agreement in form and substance substantially the same as the one executed by NHI and Debtor, (ii) has delivered to Debtor a Qualified Bid (as defined below) (including an indication of the assets sought to be acquired and a purchase price) that Debtor's board of directors determines, in good faith, would result in a transaction more favorable to Debtor's estates than the Asset Sale to NHI, and (iii) is

reasonably likely (based on availability of financing, experience, and other considerations) to be able to consummate a transaction based on the Qualified Bid if it is selected as the Successful Bidder (as defined below).

29. Any Qualified Bidder who desires to make a competing offer for all of the Purchased Assets must submit a written copy of its bid to the undersigned counsel, who shall then distribute copies of the bid(s) to counsel for NHI. A qualified competing bid (a "Qualified Bid") is a competing proposal (a) the value of which must be greater than $6,500,000; (b) that has substantially the same terms and conditions as the APA and proposes to purchase the Purchased Assets; (c) is accompanied by satisfactory evidence of committed financing or other ability to perform, and (d) that is received by the undersigned counsel by the Bid Deadline. For all purposes, the transaction contemplated by the APA is a Qualified Bid and NHI is a Qualified Bidder.

30. If Debtor receives a Qualified Bid by the Bid Deadline in addition to the APA, Debtor will conduct the Auction at the offices of Kaplan & Partners LLP, 710 W. Main Street, 4th Floor, Louisville, Kentucky 40202, on the date determined by the Court at the Bidding Procedure Hearing (the "Auction Date"). Bidding at the Auction will commence with the highest Qualified Bid and continue in increments of not less than $100,000 until each Qualified Bidder makes its final offer. At the conclusion of the Auction, Debtor will announce its determination as to the person or entity (the "Successful Bidder") submitting highest and best bid for the Purchased Assets (the "Successful Bid"). In making that determination, Debtor will consider, among other things, the total consideration to be received by their estates.

31. If Debtor does not timely receive any Qualified Bids other than the APA, Debtor will report same to the Court at the Sale Hearing and proceed with the Asset Sale with NHI under

the APA. If, however, Debtor receives one or more Qualified Bids in addition to the APA, and the Auction is conducted, Debtor will notify the Court of the results of the Auction and proceed with the sale of the Purchased Assets with the Successful Bidder.

32. Debtor will be deemed to have accepted the Successful Bidder only when the Court has approved such Successful Bid at the Sale Hearing. Upon failure to consummate the Asset Sale because of a breach or failure on the part of the Successful Bidder, Debtor may select, in its business judgment, the next highest and best Qualified Bid to be the Successful Bid without further order of the Court. By making a Qualified Bid, a Qualified Bidder shall be deemed to have agreed to keep its highest and best offer open until the Successful Bid is approved by this Court at the Sale Hearing.

33. Debtor may: (a) determine, in its business judgment, which Qualified Bid is the highest and best offer; and (b) reject at any time before entry of an order of the Court approving a Qualified Bid, any bid other than the APA that, in Debtor's sole discretion, is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the APA, or (iii) contrary to the best interests of Debtor, its estate, and/or its creditors.

C. Bidding Protections

34. NHI has expended, and likely will continue to expend, considerable time, money, and energy pursuing the Asset Sale and has engaged in extended arm's length and good faith negotiations. In recognition of this expenditure of time, energy, and resources, and the benefits of securing a stalking-horse or minimum bid, Debtor has agreed to provide the Bidding Protections to NHI. Specifically, the Bidding Protections: (i) require Court approval of the Break-Up Fee and the Expense Reimbursement, (ii) provide that NHI's claim to the Break-Up Fee and Expenses

Reimbursement shall be entitled to superpriority administrative claim treatment in Debtor's case, senior to all other superpriority claims and shall be payable at closing from the proceeds of the sale of the Purchased Assets or any of them to any Qualified Bidder other than NHI, (iii) establish the Bid Deadline, (iv) establish the Auction Date and the procedures for the Auction if any competing Qualified Bids are timely received, at which only Qualified Bidders who have timely submitted a Qualified Bid may bid, (v) set the initial overbid protection and minimum incremental bid amount at the Auction at $500,000 and $100,000, respectively, (vi) require Debtor to promptly provide a copy of any Qualified Bid to NHI and to any Qualified Bidder who has submitted a Qualified Bid, (vii) provide that notwithstanding the definition of "Qualified Bidder," no secured creditor other than NHI may credit bid, and (v) set the Sale Hearing to approve the Successful Bid.

35. The Bidding Protections were a material inducement for, and a condition of, NHI's entry into the APA. Debtor believes they are fair and reasonable in view of, among other things: (a) the intensive analysis, due diligence investigation, and negotiation undertaken by NHI in connection with the Asset Sale, and (b) the fact that the efforts of NHI have increased the chances Debtor will receive the highest and best offer for the Purchased Assets, to the benefit of the Debtor, their estates, their creditors, and all other parties in interest.

36. NHI is unwilling to commit to hold open its offer to purchase the Purchased Assets under the terms of the APA unless the Procedures Order authorizes the Bidding Protections. Thus, absent entry of the Procedures Order and approval of the Bidding Protections, Debtor may lose the opportunity to obtain what it believes to be the highest and best, and perhaps the only, available offer for the Purchased Assets.

37. Debtor thus requests that the Court authorize the Bidding Protections, including payment of the Break-Up Fee and Expense Reimbursement, pursuant to the terms and conditions of the APA.

38. As set forth more fully below, Debtor believes that the Bidding Procedures and Bidding Protections are fair and reasonable and, combined with NHI's offer to acquire the Purchased Assets, will work to maximize the value realized by Debtor's estates.

D. Notice of Sale Hearing

39. Debtor will serve a copy of this Motion upon Debtor's secured creditors, the twenty largest unsecured creditors, and all creditors having requested notice, and all governmental units that are creditors of the Debtor.

E. Assumption and Assignment of Contracts

40. As part of the Motion, Debtor also seeks authority to assume and assign the Assumed Contracts to NHI or the Successful Bidder. For the avoidance of doubt, capital leases shall not be treated as executory contracts or unexpired leases, as those terms are used under section 365 of the Bankruptcy Code, and the capital leases will, therefore, not be included as Assumed Contracts or Excluded Contracts. Assets that are subject to capital leases shall be sold as Purchased Assets, free and clear of, among other things, all Claims related to such capital leases. The capital leases include, **but are not limited to**, leases from Hewlett-Packard Financial Services Company, De Lage Landen Financial Services, Inc., and Dell Financial Services L.L.C.

41. With respect to the Assumed Contracts, Debtor will file with the Court and serve on each party to an Assumed Contract notice of Debtor's intention to assume and assign that party's contract to NHI or the Successful Bidder (the "Assignment Notice"). Debtor will mail the Assignment Notice and the Motion no later than October [__], 2017. The Assignment Notice will

set forth the monetary amount Debtor believes to be necessary to cure any and all monetary defaults with respect to the Assumed Contract pursuant to section 365 of the Bankruptcy Code (the "Cure Amount") and provide the contracting parties with an opportunity to object to (i) the assumption and assignment, (ii) the Cure Amount, or (iii) both. If an objection is not filed with the Court on or before the Business Day before the Sale Hearing, the Cure Amount set forth in the Assignment Notice will be controlling notwithstanding anything to the contrary in any Assumed Contract or other document, and the non-Debtor party to the Assumed Contract will be forever barred from asserting any other claim arising prior to the assignment against Debtor or NHI or the Successful Bidder as to such Assumed Contract. If an objection to the assumption and assignment is made, such objection will be heard at the Sale Hearing. If an objection by the non-Debtor contracting party is made only with respect to the Cure Amount, a hearing to fix the Cure Amount will be set contemporaneously with the Sale Hearing; *provided*, *however*, that Debtor reserves its right to reject any executory contract until such time as the Cure Amount is fixed and accepted and NHI reserves the right to designate any Assumed Contract as an Excluded Contract until the closing of the Asset Sale.

42. The effective date of any assumption and assignment of any Assumed Contract shall be the date on which the Asset Sale closes. Accordingly, any Cure Amounts to be paid under any Assumed Contract will also be paid upon the closing of the Asset Sale from the proceeds of the Purchase Price if NHI is the Successful Bidder and as otherwise agreed by Debtor if another Qualified Bidder is the Successful Bidder.

IV. APPLICABLE AUTHORITY

A. The Asset Sale is Within Debtor's Sound Business Judgment.

43. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part: "The trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate…" 11 U.S.C. § 363(b)(1). Section 105(a) of the Bankruptcy Code provides in relevant part: "The court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a).

44. A sale of a debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for doing so. *See Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063 (2nd Cir. 1983); *Myers v. Martin (In re Martin)*, 91 F.3d 389 (3rd Cir. 1996).

45. Courts have applied four factors in determining whether a sound business justification exists: (i) whether a sound business reason exists for the proposed transaction; (ii) whether fair and reasonable consideration is provided; (iii) whether the transaction has been proposed and negotiated in good faith; and (iv) adequate and reasonable notice is provided. *See*, *Lionel*, 722 F.2d at 1071 (setting forth the "sound business purpose" test); *In re Abbotts Dairies of Pa. Inc.*, 788 F.2d 143, 145-147 (3rd Cir. 1986) (adding "good faith" requirement to *Lionel*'s test).

46. Debtor believes the Asset Sale is the best way to preserve the enterprise value of their assets and maximize the value of Debtor's estates for the benefit of Debtor's creditors and other parties in interest.

i) The Sale of the Assets Satisfies the Sounds Business Purpose Test.

47. There is more than adequate business justification to sell the Purchased Assets to NHI or the Successful Bidder. As set forth above, Debtor believes the proposed Asset Sale in accordance with the procedures set forth in the Bidding Procedures maximizes recovery to the Debtor's estates. *See In re Tempo Technology Corp.*, 202 B.R. 363 (D. Del. 1996), *aff'd*, 141 F.3d

1155 (3rd Cir. 1998) (sale of substantially all of a chapter 11 debtor's assets pursuant to a section 363(b) motion where the debtor "faced a severe cash shortfall and had no readily available source of investment capital or loans," and would shortly have run out of cash absent the debtor-in-possession financing provided by the prospective purchaser); *see also In re Del. & Hudson Ry. Co.*, 124 B.R. 169, 177 (D. Del. 1991) (affirming bankruptcy court's approval of sale of substantially all assets where debtor would have been "in liquidation mode if required to delay a sale until after filing a disclosure statement and obtaining approval for a reorganization plan"); *Titusville Country Club v. Pennbank (In re Titusville Country Club)*, 128 B.R. 396 (Bankr. W.D. Pa. 1991) (bankruptcy court granted expedited hearing on 363(b) motion based on "deterioration" of debtor's assets); *Coastal Indus., Inc. v. IRS (In re Coastal Indus., Inc.)*, 63 B.R. 361, 366-69 (Bankr. N.D. Ohio 1986) (approving expedited 363(b) sale five weeks postpetition to buyer with "the name recognition required by [the debtor's] customers" where debtor was suffering operating losses and lacked financing to continue its operations).

48. Based upon an analysis of Debtor's ongoing and future business prospects, and given the company's continuing cash losses, its inability to obtain additional financing, and the declining number of employees, Debtor's management and board of directors have concluded that the best way to maximize the value of Debtor's estates is to sell immediately their assets as a going business concern, thereby preserving the substantial goodwill of the business.

49. NHI has offered substantial value for the assets and is willing to close on or before November 30, 2017, and thereby enable Debtor to reduce the risk that the Debtor's value will further deteriorate. Moreover, by selling the Purchased Assets now, Debtor will relieve themselves of certain ongoing costs and expenses, thereby minimizing administrative expenses and maximizing creditor recoveries. Accordingly, well-articulated business reasons exist for

approving the Asset Sale, such that the "business purpose" test under section 363 of the Bankruptcy Code is met. *See Lionel*, 722 F.2d at 1071 ("[M]ost important [] perhaps, [is] whether the asset is increasing or decreasing in value.").

ii) The Consideration Offered by NHI is Fair and Reasonable.

50. Debtor submits that a sale of the Purchased Assets pursuant to the APA will provide fair and reasonable consideration to Debtor's estates. The APA requires NHI to pay $4,000,000 (including a credit bid of the outstanding principal of the indebtedness owed by the Debtor to NHI and subject to certain adjustments as more fully set forth in the APA) for the Purchased Assets as well as to assume certain liabilities. Debtor respectfully submits that such consideration in exchange for the Purchased Assets is both fair and reasonable.

51. Moreover, to dispel any doubt, the Asset Sale is subject to the solicitation of competing bids, thereby ensuring Debtor will receive the highest and best value for the Purchased Assets. Consequently, the fairness and reasonableness of the consideration to be received by Debtor will ultimately be demonstrated by a "market check" and auction process – the best means for establishing whether a fair and reasonable price is being paid. Accordingly, the consideration to be paid for the Purchased Assets will be both fair and reasonable and should be deemed to have satisfied the strictures of section 363(n) of the Bankruptcy Code.

iii) The APA was Negotiated in Good Faith.

52. The APA is the product of extensive arm's length negotiations between NHI and Debtor. These negotiations have involved substantial time and energy by the parties and their professionals, and the APA reflects give-and-take and compromises by both sides.

53. Moreover, the Bidding Procedures ensure a prospective purchaser will not be able to exert any undue influence over Debtor. Under the circumstances, this Court should therefore

find that: (i) the sale of the Purchased Assets is the result of good faith arm's length negotiations, and (ii) NHI or the Successful Bidder is entitled to all of the protections of sections 363(m) and (n) of the Bankruptcy Code.

iv) Adequate Notice of the Asset Sale is Being Provided.

54. The final element for approval of a sale under section 363 of the Bankruptcy Code is the requirement that interested parties receive adequate notice. Debtor intends to serve this Motion or notice of this Motion on all secured creditors, all governmental units that are creditors, the top 20 largest unsecured creditors, all creditors having requested notice, and any other interested party not otherwise included in the bankruptcy cases which has expressed an interest in purchasing the Debtor's assets.

B. The Bidding Protections are Warranted.

55. To compensate NHI for serving as a "stalking-horse" whose bid will be subject to higher and better offers, Debtor seeks authority for Debtor to provide NHI with the Bidding Protections in the event it is not the Successful Bidder. Debtor believes the Bidding Protections are reasonable, given the benefits to the estate of having a definitive APA and the risk to NHI that a third-party offer ultimately may be accepted, and that the Bidding Protections are necessary to preserve and enhance the value of Debtor's estates.

56. Bidding incentives encourage a potential purchaser to invest the requisite time, money, and effort to negotiate with a debtor and perform the necessary due diligence attendant to the acquisition of a debtor's assets, despite the inherent risks and uncertainties of the chapter 11 process. Historically, bankruptcy courts have approved bidding incentives similar to the Bidding Protections under the "business judgment rule," which proscribes judicial second-guessing of the actions of a corporation's board of directors taken in good faith and in the exercise of honest judgment. *See In re*

Integrated Res., 147 B.R. 650, 657 (S.D.N.Y. 1992), *appeal dismissed*, 3 F.3d 49 (2nd Cir. 1993) (establishing three basic factors for determining whether to permit such fees in bankruptcy: (1) whether relationship of parties who negotiated break-up fee is tainted by self-dealing or manipulation; (2) fee hampers, rather than encourages, bidding; and (3) amount of fee is unreasonable relative to purchase price).

57. The Court should apply the established standards for determining the appropriateness of bidding incentives in the bankruptcy context. In *Calpine Corp. v. O'Brien Envtl. Energy, Inc. (In re O'Brien Envtl. Energy, Inc.)*, 181 F.3d 527 (3rd Cir. 1999), the court held that even though bidding incentives are measured against a business judgment standard in nonbankruptcy transactions, the administrative expense provisions of section 503(b) of the Bankruptcy Code govern in the bankruptcy context. Accordingly, to be approved, bidding incentives must provide some benefit to the debtor's estate. *See Id*. at 533.

58. The *O'Brien* court identified at least two instances in which bidding incentives may provide benefit to the estate. First, benefit may be found if "assurance of a break-up fee promoted more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." *Id*. at 537. Second, where the availability of bidding incentives induce a bidder to research the value of the debtor and submit a bid that serves as a minimum or floor bid on which other bidders can rely, "the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." *Id*.

59. Under the "business judgment rule" the Bidding Protections pass muster. The APA and the Bidding Protections are the product of extended good faith, arm's length negotiations between Debtor and NHI. They are fair and reasonable in amount, particularly in view of NHI's

efforts to date, the risk to NHI of being used as a "stalking-horse," and the stabilizing effect that the execution of the APA is expected to have on Debtor's businesses (thereby preserving value for creditors and increasing the likelihood of additional bidding). The Bidding Protections thus have "induc[ed] a bid that otherwise would not have been made and without which bidding would [be] limited." *Id*. at 537. Similarly, NHI's offer, which was formulated only after an expedited but substantial due diligence review of the Purchased Assets and their value, provides a minimum bid on which other bidders can rely, thereby increasing the likelihood that the price at which the "[Purchased Assets will be] sold will reflect [their] true worth." *Id*. Finally, the mere existence of the Bidding Protections permits Debtor to insist that competing bids for the Purchased Assets be materially higher or otherwise better than the offer set forth in the APA, a clear benefit to Debtor's estates.

60. In sum, Debtor's ability to offer the Bidding Protections enables it to ensure the sale of the Purchased Assets to a contractually-committed bidder at a price it believes to be fair while, at the same time, providing the potential of even greater benefit to the estates. Accordingly, the Bidding Protections should be approved.

C. The Sale Satisfies the Requirements of Section 363(f) of the Bankruptcy Code for a Sale Free and Clear of Liens, Encumbrances, and Interests.

61. Under section 363(f) of the Bankruptcy Code, a debtor in possession may sell property of the estate free and clear of any interest of an entity in such property if, among other things:

> (1) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
> (2) such entity consents;
> (3) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
> (4) such interest is in bona fide dispute; or

> (5) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f).

62. Because section 363(f) of the Bankruptcy Code is drafted in the disjunctive, satisfaction of any one of its five requirements will suffice as justification to approve the sale of the Purchased Assets free and clear of all Claims. *See* 11 U.S.C. § 363(f); *Mich. Employment Sec. Comm'n v. Wolverine Radio Co. (In re Wolverine Radio Co.)*, 930 F.2d 1132, 1147 n.24 (6th Cir. 1991) (section 363(f) written in disjunctive; court may approve sale "free and clear" provided at least one of the subsections is met); *Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343 (E.D. Pa. 1988) (same).

63. Debtor believes that the only entities holding a lien on the Purchased Assets are: U.S. Government, Byline Bank, De Lage Landen Financial Services, Inc., Dell Financial Services, LLC, FirstLease, Inc., Merchant Funding Services, LLC, NEC Financial Services, LLC, PW Funding, LLC, Small Business Financial Solutions, LLC, Kalamata Capital, LLC, On Deck Capital, Inc., Saturn Funding, Pearl Beta Capital, LLC, Everest Business Funding, and New Era Lending, LLC. The APA would provide for partial payment to the secured lenders only upon consent of the secured lenders, thereby satisfying section 363(f)(2) of the Bankruptcy Code. Moreover, to the extent there exist other possible holders of Claims, Debtor submits that one of the subsections of section 363(f) of the Bankruptcy Code applies, and that any such Claim will be adequately protected by having it attach to the net proceeds of the sale, subject to any claims and defenses Debtor, NHI, or any other Successful Bidder may possess with respect thereto.

64. Accordingly, the sale should be approved under section 363(f) of the Bankruptcy Code.

D. The Assumption and Assignment of Executory Contracts and Unexpired Leases Should Be Authorized.

65. Section 365(f)(2) of the Bankruptcy Code provides, in pertinent part, that:

> The trustee may assign an executory contract or unexpired lease of the debtor only if:
>
> (A) the trustee assumes such contract or lease in accordance with the provisions of this section; and
> (B) adequate assurance of future performance by the assignee of such contract or lease is provided, whether or not there has been a default in such contract or lease.

11 U.S.C. § 365(f)(2).

66. Under section 365(a) of the Bankruptcy Code, a debtor, "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). Section 365(b)(1) of the Bankruptcy Code, in turn, codifies the requirements for assuming an unexpired lease or executory contract of a debtor. This subsection provides:

> (b)(1) If there has been a default in an executory contract or unexpired lease of the debtor, the trustee may not assume such contract or lease unless, at the time of assumption of such contract or lease, the trustee—
>
> (A) cures, or provides adequate assurance that the trustee will promptly cure, such default other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;
>
> (B) compensates, or provides adequate assurance that the trustee will promptly compensate, a party other than the debtor to such

> contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b)(1).

67. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, and should be given practical, pragmatic construction. *See EBG Midtown S. Corp. v. McLaren/Hart Envtl. Eng'g. Corp. (In re Sanshoe Worldwide Corp.)*, 139 B.R. 585, 593 (S.D.N.Y. 1992); See *In re Prime Motor Inns, Inc.*, 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994); *Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.)*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988).

68. Among other things, adequate assurance may be provided by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. *See In re Bygaph, Inc.*, 56 B.R. 596, 605–06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance is present when prospective assignee of lease from debtor has financial resources and has expressed willingness to devote sufficient funding to business in order to give it strong likelihood of succeeding).

69. As set forth in the APA, to the extent any defaults exist under any executory contract or unexpired lease that is assumed and assigned, the Debtor will cure any such default in connection with the assumption and assignment.

70. Moreover, Debtor will adduce facts at the Sale Hearing to show the financial wherewithal of either NHI or the Successful Bidder, experience in the industry, and willingness and ability to perform under the contracts to be assumed and assigned to it.

71. The Sale Hearing will therefore provide the Court and other interested parties the opportunity to evaluate and, if necessary, challenge the ability of NHI or the Successful Bidder to provide adequate assurance of future performance under the contracts to be assumed, as required under section 365(b)(1)(C) of the Bankruptcy Code. The Court should therefore authorize the Debtor to assume and assign contracts as set forth herein.

V. CONCLUSION

WHEREFORE, Debtor respectfully requests that this Court enter an order approving (a) the Bidding Procedures; (b) the Bidding Protections; and (c) the form of the Notice of Auction and Sale Hearing. In addition, Debtor respectfully requests that this Court, at the Sale Hearing, enter an order (a) approving the APA; (b) authorizing Debtor to (i) sell the Purchased Assets free and clear of all Claims; and (ii) assume and assign the Assumed Contracts; and (c) granting such other and further relief as is just and proper.

A proposed Order is tendered herewith.

Respectfully submitted,

/s/ James E. McGhee III

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CERTIFICATE

It is hereby certified that on October 26, 2017, a true and correct copy of the foregoing was (a) mailed electronically through the U.S. Bankruptcy Court's ECF system at the electronic addresses as set forth in the ECF system to the U.S. Trustee and all other persons receiving electronic notifications in this case, and (b) mailed, first-class, postage prepaid, to those persons, if any, identified in the Court's Notice of Electronic Filing who do not receive electronic notice but are entitled to be served.

/s/ James E. McGhee III
James E. McGhee III

ASSET PURCHASE AGREEMENT

by and between

NATIONAL HEALTH INDUSTRIES, INC.

and

MD2U MANAGEMENT, LLC,

MD2U KENTUCKY, LLC,

MD2U INDIANA, LLC

AND

MD2U NORTH CAROLINA, LLC

Dated as of _____, 2017

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of _____, 2017, by and between National Health Industries, Inc., a Kentucky corporation ("Buyer") and a wholly-owned, indirect subsidiary of Almost Family, Inc. ("Almost Family"), and MD2U Management, LLC, a Kentucky limited liability company ("MD2U Management"), MD2U Kentucky, LLC, a Kentucky limited liability company ("MD2U Kentucky"), MD2U Indiana, LLC, a Kentucky limited liability company ("MD2U Indiana") and MD2U North Carolina, LLC, a Kentucky limited liability company ("MD2U North Carolina") (MD2U Management, MD2U Kentucky, MD2U Indiana and MD2U North Carolina are each referred to herein as a "Seller" and collectively as "Sellers").

W I T N E S S E T H:

WHEREAS, Sellers own and operate a business that provides physician and nurse practitioner services in the homes of patients in the States of Indiana, Kentucky and North Carolina (the "Business");

WHEREAS, Sellers filed voluntary petitions (the "Bankruptcy Cases") for relief under chapter 11 of the Bankruptcy Code on August 29, 2017 (the "Petition Date") in the United States Bankruptcy Court for the Western District of Kentucky (the "Bankruptcy Court");

WHEREAS, pursuant to that certain Order of the Bankruptcy Court Approving (1) Bidding Procedures in Advance of Auction, (2) Approving Form and Manner of Notice of Proof of Proposed Cure Amounts, (3) Auction, (4) Stalking Horse Hearing and Final Hearing and (5) Granting Related Relief (Dkt. No. [__]) (the "Sale Procedures Order"), Seller has designated the Buyer as the Stalking Horse Bidder (as defined in the Sale Procedures Order);

WHEREAS, Sellers desire to sell and assign to Buyer, and Buyer desires to purchase and assume from Sellers, all of the Purchased Assets and Assumed Liabilities, in each case on the terms and conditions set forth herein, and, as applicable, free and clear of all Liens in accordance with Sections 105, 363 and 365 and other applicable provisions of the Bankruptcy Code;

WHEREAS, Buyer intends to distribute the assets of the Business immediately at Closing (as defined below) to its following wholly-owned subsidiaries NP Services of IN, LLC, an Indiana limited liability company, NP Services of KY, LLC, a Kentucky limited liability company, and NP Services of NC, LLC, a North Carolina limited liability company (each an "Operating Subsidiary" and collectively, the "Operating Subsidiaries"), and each of the Sellers hereby consents to Buyer distributing the assets of the Business to the Operating Subsidiaries at Closing.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy all of which are forever acknowledged and confessed, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

1.1 Definitions. Capitalized terms used in this Agreement have the following meanings:

"Accounts Receivable" means all accounts and notes receivable of the Business existing at the Effective Time, including any accounts and notes receivable that have been charged off as bad debts, and any other evidence of indebtedness and rights to receive payments from any Person arising from the rendering of services to patients on the Business, billed and unbilled, recorded and unrecorded, with collection agencies or otherwise.

"Affiliate" means, with respect to an applicable Person, any Person controlling, controlled by or under common control with such Person.

"Agreement" has the meaning set forth in the Preamble.

"Allocation" has the meaning set forth in Section 7.4.

"Almost Family" has the meaning set forth in the Preamble.

"Alternative Transaction" means a transaction or series of related transactions pursuant to which Sellers accept a bid for all or a substantial portion of the Purchased Assets, or any group of assets that includes all or a substantial portion of the Purchased Assets, from any Person other than Buyer or an Affiliate of Buyer, in accordance with the Sale Procedures Order or otherwise.

"Assigned Causes of Action" means Causes of Action with respect to or arising out of any of the Assumed Contracts, Assumed Liabilities or Purchased Assets.

"Assignment and Assumption Agreement" has the meaning set forth in Section 3.2.

"Associate" means any officer or director of a Seller or any member of the immediate family of such Person.

"Assumed Contracts" means all Contracts listed in Schedule 4.12 other than those designated as Excluded Contracts.

"Assumed Liabilities" has the meaning set forth in Section 2.3.

"Bankruptcy Cases" has the meaning set forth in the Recitals.

"Bankruptcy Code" means Title 11 of the United States Code, 11 U.S.C. §§ 101 *et. seq*.

"Bankruptcy Court" has the meaning set forth in the Recitals.

"Benefit Plans" means "employee benefit plans," as defined in Section 3(3) of ERISA, all benefit plans as defined in Section 6039D of the Code and the rules and regulations promulgated thereunder, and all other stock purchase, stock option, equity-based, retention bonus, bonus, incentive compensation, deferred compensation, profit sharing, severance, change in control, supplemental unemployment, layoff, salary continuation, retirement, pension, health, life insurance, disability, group insurance, vacation, holiday, sick leave, fringe benefit, welfare and other employee benefit plans (whether oral or written, qualified or non-qualified) and employment agreements, programs, policies or other arrangements and any trust, escrow or other funding arrangement related thereto.

"Bill of Sale" has the meaning set forth in Section 3.2(d).

"Break-Up Fee" has the meaning set forth in Section 6.7.

"Business" has the meaning set forth in the Recitals.

"Business Associate Agreement" shall have the meaning set forth in Section 4.26.

"Business Day" means any day of the year on which national banking institutions in New York are open to the public for conducting business and are not required or authorized to close.

"Buyer" has the meaning set forth in the Preamble.

"Causes of Action" means any and all claims, demands, rights, defenses, counterclaims, suits or actions and all other claims of any value whatsoever, whether known or unknown, in law, equity or otherwise, against any third party and the proceeds or benefits thereof.

"Claim" has the meaning set forth in Section 101(5) of the Bankruptcy Code.

"Closing" has the meaning set forth in Section 3.1.

"Code" means the Internal Revenue Code of 1986, as amended.

"Confidential Information" means all information of Sellers concerning the Business, furnished to Buyer from Sellers in connection with the transactions contemplated by this Agreement, except information that is (a) ascertainable or obtained from public or published information, (b) received from a third party not known by Buyer to be under an obligation to Sellers to keep such information confidential, (c) which is or becomes known to the public (other than through a breach of this Agreement), or (d) which was in Buyer's possession prior to disclosure thereof to Buyer in connection herewith.

"Consent Order" means the Stipulation and Order, dated July 8, 2016, and Consent Judgment, dated July 8, 2016, in each case entered in Civil Action No. 3:16-cv-00440-GNS in the United States District Court for the Western District of Kentucky.

"Contracts" means all commitments, contracts, leases, subleases, licenses, sublicenses and other agreements of any kind relating to the Business, the Purchased Assets or the operation thereof to which a Seller or any of its Affiliates is a party or by which any of the Purchased Assets are bound, including, but not limited to, any provider agreements with Medicare, Medicaid, TRICARE or other federal, state or local government or commercial Program.

"Cure Amounts" means the amounts, if any, determined by the Bankruptcy Court to be necessary to cure all defaults and to pay all actual losses that have resulted from such defaults under the Assumed Contracts.

"Effective Time" has the meaning set forth in Section 3.1.

"Environmental Claim" means any claim, action, cause of action, investigation or notice by any Person alleging potential liability (including potential liability for investigatory costs, cleanup costs, governmental response costs, natural resources damages, property damages, personal injuries, or

penalties) arising out of, based on or resulting from: (a) the presence, or release or threat of release into the environment, of any Materials of Environmental Concern at any location, whether or not owned or operated by the Business or a Seller; or (b) circumstances forming the basis of any violation or alleged violation of any Environmental Law.

"Environmental Laws" means, as they exist on the date hereof and as of the Effective Time, all applicable Laws relating to pollution or protection of human health (as relating to the environment or the workplace) and the environment (including ambient air, surface water, ground water, land surface or sub-surface strata), including Laws relating to emissions, discharges, releases or threatened releases of Materials of Environmental Concern, or otherwise relating to the use, treatment, storage, disposal, transport or handling of Materials of Environmental Concern, including, but not limited to Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601 et seq., Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., Occupational Safety and Health Act, 29 U.S.C. § 651 et seq. ("OSHA"), the Clean Air Act, 42 U.S.C. § 7401 et seq., the Clean Water Act, 33 U.S.C. § 1251 et seq., each as may have been amended or supplemented, and any applicable environmental transfer statutes or Laws.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended and the rules and regulations promulgated thereunder.

"ERISA Affiliate" means (a) any related company or trade or business that is required to be aggregated with a Seller under Code Sections 414(b), (c), (m) or (o); (b) any other company, entity or trade or business that has adopted or has ever participated in any Benefit Plan related to a Seller; and (c) any predecessor or successor company or trade or business of a Seller.

"Excluded Assets" has the meaning set forth in Section 2.2

"Excluded Contracts" means all Contracts set forth on Schedule 2.3(c).

"Excluded Liabilities" has the meaning set forth in Section 2.4.

"Federal Privacy Regulations" means the regulations contained in 45 C.F.R. Parts 160 and 164, as amended.

"Federal Transaction Regulations" means the regulations contained in 45 C.F.R. Parts 160 and 162, as amended.

"Final Order" means an order or judgment, the operation or effect of which is not stayed, and as to which order or judgment (or any revision, modification or amendment thereof), the time to appeal or seek review or rehearing has expired, and as to which no appeal or petition for review or motion for re-argument has been taken or been made and is pending for argument.

"Financial Statements" has the meaning set forth in Section 4.4(a).

"GAAP" means generally accepted account principles as adopted in the United States.

"Governmental Authority" means the government of the United States and any government of a state or other political subdivision thereof, any entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including any government authority, agency,

department, board, commission or instrumentality of the United States, any state of the United States or any political subdivision thereof, any tribunal or arbitrator(s) of competent jurisdiction and any self-regulatory organization.

"Healthcare Regulatory Consents" means such consents, approvals, authorizations, waivers, Orders, licenses or Permits of any Governmental Authority as shall be required to be obtained and such notifications to any Governmental Authority as shall be required to be given in order for the parties hereto to consummate the transactions contemplated herein and for Buyer to operate the Business, including the assignment of any provider agreements with Medicare, Medicaid, TRICARE or other federal, state or local government Program and the Accounts Receivable, in compliance with all applicable Law relating to health care or healthcare services of any kind.

"HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. Sections 1320d through d-8.

"Inventory" means inventories of usable supplies, drugs, food, janitorial and office supplies and other disposables and consumables existing at the Effective Time.

"Key Employees" means the clinical practitioners working for the Business and such other employees of the Business identified by Buyer at any time at least three (3) Business Days prior to the Sale Hearing (as defined in the Sale Procedures Order), which employees shall be listed by the parties on Schedule 1.1 hereto and updated by the Buyer from time to time.

"Law" means any statute, rule, regulation, code, ordinance, resolution, Order, writ, injunction, judgment, decree, ruling, promulgation, policy, treaty directive, interpretation, or guideline adopted or issued by any Governmental Authority.

"Legal Requirements" means all applicable Laws, corporate integrity agreements, the Consent Order and other requirements of or agreements with all Governmental Authorities having jurisdiction over the Business, the Sellers or the operations of the Business or Sellers.

"Licenses" means all rights, to the extent assignable or transferable pursuant to applicable Laws (including the Bankruptcy Code), to all licenses, certificates of need, certificates of exemption, franchises, accreditations and registrations, permits, approvals, consents and all applications thereof and waivers of any requirements pertaining thereto, if any, and other licenses or permits issued in connection with the ownership, operation or development of any portion of the Business or Purchased Assets.

"Lien" means any mortgage, pledge, encumbrances, Claim, occupancy agreement, covenant, encroachment, burden, title defect, right of first refusal, charge, assessment, security interest, lease, sublease, lien, right of set-off, right of recoupment, adverse claim, levy, charge, easement, restriction, license or other interest of any kind, or any conditional sale contract, title retention contract, or other contract to give or to refrain from giving any of the foregoing.

"Material Adverse Effect" means any event, occurrence, fact, condition, change or effect that (i) is, or is reasonably likely in the future to be, individually or in the aggregate, materially adverse to the business, operations, prospects, results of operations, condition (financial or otherwise), properties (including intangible properties), rights, obligations or Purchased Assets of a Seller, or the Business or (ii) materially impairs or delays, or is reasonably likely to materially impair or delay, the ability of Sellers to

consummate the transactions contemplated by this Agreement or to perform their respective obligations under this Agreement.

"Materials of Environmental Concern" means chemicals, pollutants, contaminants, hazardous materials, hazardous substances and hazardous wastes, medical waste, toxic substances, petroleum and petroleum products and by-products, asbestos-containing materials, PCBs, and any other chemicals, pollutants, substances or wastes, in each case so defined, identified, or regulated under any Environmental Law.

"Operating Subsidiary" or "Operating Subsidiaries" has the meaning set forth in the Recitals.

"Order" means a judgment, order, writ, injunction, decree, determination, or award of any Governmental Authority.

"PCBs" means polychlorinated biphenyls.

"Person" means an individual, corporation, company, corporate body, association, partnership, firm, joint venture, limited liability company, trust or other legal entity or governmental entity, authority or agency.

"Personal Property" means all tangible and intangible personal property of Sellers, including all equipment, furniture, fixtures, machinery, vehicles, office furnishings, instruments, leasehold improvements, spare parts, and, to the extent assignable or transferable by a Seller (or its affiliates), all rights in all warranties of any manufacturer or vendor with respect thereto.

"Petition Date" has the meaning set forth in the Recitals.

"Prepaid Expenses" means expenses that are paid in cash and recorded as assets before they are used or consumed, excluding deposits.

"Proceeding" means any arbitration, audit, hearing, investigation, litigation suit or other similar action by or before a Governmental Authority.

"Programs" has the meaning set forth in Section 4.8(a).

"Purchase Price" has the meaning set forth in Section 2.5(a).

"Purchase Price Adjustments" has the meaning set forth in Section 2.5(a).

"Purchased Assets" has the meaning set forth in Section 2.1.

"Real Property" means a fee, leasehold and other interests in real property, together with all buildings, improvements and fixtures and construction in progress located thereupon and all appurtenances, rights of way and air, mineral or other rights related thereto.

"Sale Order" means a Final Order of the Bankruptcy Court approving the sale of the Purchased Assets to Buyer free and clear of any Liens, Excluded Liabilities or interests, in substantially the form attached as Exhibit A; provided that any such modifications thereto a satisfactory to the Buyer in its sole discretion.

"Sale Procedures Order" has the meaning set forth in the Recitals.

"Seller" or "Sellers" has the meaning set forth in the Preamble.

"Sellers' Knowledge" means the knowledge of Sellers upon reasonable inquiry or investigation conducted by a prudent person under the circumstances, including Sellers' officers and directors.

"Tail Policies" have the meaning set forth in Section 6.10.

"Tax Return" means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Taxes" means (a) any and all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, unclaimed property, transfer, franchise, profits, license, lease, rent, service, service use, withholding, payroll, employment, excise, severance, privilege, stamp, occupation, premium, property, windfall profits, alternative minimum, estimated, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (b) any liability for payment of amounts described in clause (a) as a result of transferee liability or otherwise through operation of law, and (c) any liability for the payment of amounts described in clauses (a) or (b) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

"Transaction Documents" means this Agreement, and all other agreements and instruments executed and delivered by the respective parties in connection with this Agreement.

"Transfer Taxes" means recording fees, transfer fees, transfer taxes, sales taxes, documentary or stamp taxes and regulatory filing fees.

"WARN Act" means the Worker Adjustment and retraining Notification Act, 29 U.S.C. §§2101-2109.

ARTICLE II
SALE OF PURCHASED ASSETS

2.1 Sale of Purchased Assets. Subject to the terms and conditions set forth in this Agreement and the Sale Order, at the Closing, Sellers shall sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase from Sellers, all assets, properties, rights and interests of the Sellers related to the Business, whether real, personal or mixed, tangible or intangible, and all of Sellers' rights, title and interest therein and thereto, other than and excluding the Excluded Assets (collectively, the "Purchased Assets"), in each case free and clear of all Liens, Excluded Liabilities and interests. The Purchased Assets include, but are not limited to, all of the following assets of the Sellers (other than the Excluded Assets): **[Note: Still need to determine what, if any, equipment leases and real estate leases will be assumed.]**

(a) all Personal Property;

(b) all Assumed Contracts;

(c) all Assigned Causes of Action;

(d) all Accounts Receivable;

(d) all Prepaid Expenses and deposits relating to Assumed Contracts;

(e) all Inventory;

(f) all documents, records, operating manuals, files, patient records, medical records, personnel records, financial records, equipment records and other books and records, in each case (i) used in or related to the Purchased Assets or Assumed Liabilities and (ii) excluding the Excluded Documents;

(g) all intellectual property owned or licensed by Sellers, including all patents, patent applications, trademarks, service marks, trade secrets, copyrights and trade names, including the name "MD2U" and all variations thereof, if any, and all of Sellers' licenses of or rights to use any of such intellectual property of other Persons, and all goodwill associated therewith or otherwise; and

(h) all Licenses.

2.2 Excluded Assets. Notwithstanding anything to the contrary herein, the Purchased Assets shall not include any of the following (collectively, the "Excluded Assets"):

(a) cash and cash equivalents (other than, for the avoidance of doubt, Prepaid Expenses and deposits relating to Assumed Contracts);

(b) all personnel records of Sellers' employees that Sellers are required by Law to retain and are prohibited by Law from providing a copy thereof to Buyer;

(c) all assets, rights and funds in connection with any Benefit Plan;

(g) all of Sellers' insurance proceeds arising in connection with the Business prior to the Closing;

(h) the Excluded Contracts [**Note: Excluded Assets may include some or all of the equipment leases and real estate leases.**];

(i) Sellers' Causes of Action other than Assigned Causes of Action; and

(j) Sellers' rights pursuant to this Agreement.

2.3 Assumption and Assignment of Contracts.

(a) Assumed Liabilities. At the Closing, Sellers shall assign to Buyer, and Buyer shall assume from Sellers, the future payment and performance of Sellers' obligations arising after the Closing under the Assumed Contracts (collectively, the "Assumed Liabilities"), excluding any Cure Amounts (which shall be satisfied by Sellers pursuant to Section 365 of the Bankruptcy Code) or other uncured defaults or unpaid amounts that arose prior to the Closing. The assumption and assignment of the Assumed Liabilities as provided in this Section 2.3 shall be evidenced by the execution and delivery of the Assignment and Assumption Agreement (as defined below).

(b) Determination of Cure Amounts. Schedule 2.3(b) hereto sets forth Sellers' good faith estimate of the Cure Amount for each Assumed Contract. Prior to the Sale Hearing, Sellers shall commence appropriate proceedings before the Bankruptcy Court and otherwise take all necessary actions to determine the actual amount of the Cure Amounts, including by resolving any disputes as to Cure Amounts prior to or at the Sale Hearing (or Sellers shall deliver into escrow on terms acceptable to Buyer amounts sufficient to pay any claim for Cure Amounts that remains disputed as of the Closing or such amount as the Bankruptcy Court may determine) at or before the Closing, such that all Assumed Contracts may be assumed by Sellers and assigned to Buyer in accordance with section 365 of the Bankruptcy Code. Buyer shall, in no event, have any liability for any Cure Amount, and the payment of all Cure Amounts shall be the sole responsibility of Sellers (except for Buyer's obligation to pay any Cure Amounts from the Purchase Price directly to applicable Contract counterparties at the Closing pursuant to written instructions provided by Sellers as set forth in Section 2.5(b)(ii)).

(c) Buyer's Option to Exclude Contracts. Notwithstanding anything to the contrary herein, at any time (and from time to time) prior to the Closing, Buyer may designate any Contract as one that Buyer no longer desires to have assigned to Buyer, in which case such Contract shall be deemed an Excluded Contract and listed on Schedule 2.3(c) hereto. To the extent that (i) the assignment to Buyer of any Assumed Contract (including, for the avoidance of doubt, any participation or enrollment agreements with Medicare or other Programs set forth on Schedule 4.12) is not permitted by Law or is not permitted without the consent of another Person, and such restriction cannot be effectively overridden or canceled by the Sale Order or other related order of the Bankruptcy Court prior to the Closing, then, at Buyer's option, Buyer may designate any such Assumed Contract (or purported Assumed Contract, if determined not to be assignable) as an Excluded Contract and, in such event, Sellers shall use commercially reasonable efforts to obtain any such consents to assign such Assumed Contracts. This Section 2.3(c) does not (i) require Sellers to provide any financial accommodation to a Contract counterparty in order to obtain its consent, other than Cure Amounts, (ii) prohibit Sellers from ceasing operations or winding up their affairs following the Closing, nor (iii) constitute a waiver, if any, of any closing condition of Buyer, including with respect to the assignment of Assumed Contracts.

2.4 Excluded Liabilities. Except for the Assumed Liabilities, Buyer does not assume and the parties agree that Buyer shall not be or become liable for or obligated to pay or assume any liability whatsoever of Sellers or their Affiliates, whether fixed or contingent, recorded or unrecorded, known or unknown, or otherwise, including, but not limited to, any of the following liabilities (collectively, the "Excluded Liabilities"):

(a) any obligation or liability accruing, arising out of, or relating to acts or omissions of any Person in connection with the Purchased Assets (including the Assumed Contracts) or the operation of the Business prior to the Closing;

(b) any obligation or liability accruing, arising out of, or relating to any act or omission by a Seller, any of its respective affiliates or any of its respective employees, medical staff, agents, vendors or representatives, before or after the Closing;

(d) any obligation or liability accruing, arising out of, or relating to any Excluded Contract or Excluded Asset;

(e) any liability or obligation for severance with respect to employees or leased employees of a Seller or its affiliates;

(f) any obligation or liability accruing, arising out of, or relating to any federal, state or local investigations, claims or actions with respect to acts or omissions (or suspected or alleged acts or omissions) of a Seller, any of its affiliates or any of their respective employees, medical staff, agents, vendors or representatives prior to the Closing;

(g) any civil or criminal obligation or liability accruing, arising out of, or relating to any acts or omissions of a Seller, any of its affiliates or any of their respective directors, officers, employees and agents claimed to violate any Laws;

(h) any liabilities of a Seller or any of its affiliates for (i) capital lease obligations and other similar liabilities or guarantees of a Seller, (ii) indebtedness for borrowed money, (iii) credit balances, (iv) escheat obligations or (v) accounts payable or other current liabilities;

(i) any liabilities or obligations of a Seller or any of its affiliates of every kind and nature, known and unknown, arising under the terms of the Medicare, Medicaid, TRICARE or any other third-party payor programs or health insurers, in respect of, arising out of or as a result of (i) periods prior to and up to the Closing, or (ii) the consummation of the transactions contemplated hereby, including claims, setoffs or recoupments for overpayments or other excessive reimbursement or non-covered services or any penalties or sanctions relating thereto and (iii) any liability of a Seller under, arising prior to or relating to any period prior to the Closing from any risk pools and other risk sharing agreements established in connection with any managed care contract that is an Assumed Contract;

(j) all liabilities or obligations for (i) Taxes of or assessments against any Seller or its Affiliates in respect of any period (or portion thereof) ending on or prior to the Closing Date or resulting from the consummation of the transactions contemplated hereby, (ii) Taxes relating to the operation of the Business or the ownership of the Purchased Assets for any period (or portion thereof) ending on or prior to the Closing Date, or (iii) Transfer Taxes, if any, relating to the sale and the transactions provided for hereby;

(k) any liability (i) with respect to any Seller's employees or leased employees relating to periods prior to the Closing, including liability for (A) any compensation, benefits, pension, profit sharing, deferred compensation, or any other employee health and welfare benefit plans, paid time off, liability for any EEOC claim, wage and hour claim, unemployment compensation claim or workers' compensation claim or personnel policy, including those relating to any termination of employment, and all employee wages and benefits, or (B) any payroll taxes; or (ii) arising under the WARN Act;

(l) any liabilities for expenses incurred by a Seller incidental to the preparation of this Agreement, the preparation or delivery of materials or information requested by Buyer, or the consummation of the transactions contemplated hereby, including all broker, counsel and accounting fees or any account payable which is attributable to legal and accounting fees and similar costs incurred by a Seller which are directly related to the sale of any of the Purchased Assets;

(m) any liabilities or obligations arising from or in connection with or relating to (i) any Order, (ii) the violation of any Law, (iii) the violation of any Medicare, Medicaid or TRICARE program integrity or compliance agreement involving any Seller, its affiliates, or relating to or arising in connection with the use, operation, ownership or possession of the Purchased Assets or the Business; and

(n) any liabilities or obligations arising from or in connection with or relating to the Consent Order or the matters governed thereby.

2.5 Purchase Price.

(a) The aggregate consideration for the Purchased Assets shall be the sum of Four Million Dollars ($4,000,000) (the "Purchase Price").

(b) The Purchase Price shall be disbursed as follows at Closing in accordance with written instructions to be provided by Sellers at least three (3) Business Days prior to Closing:

(i) To payment of the principal amount outstanding on that certain Debtor-In-Possession Credit and Security Agreement, dated as of September ___, 2017, as amended, including by Amendment No. 1 to Debtor-In-Possession Credit and Security Agreement, by and among Buyer and the Seller (the "DIP Financing"), through allowance of a credit bid against the Purchase Price equal to the outstanding principal balance of the DIP Financing;

(ii) To all Cure Amounts or claimed Cure Amounts which have not been satisfied in full prior to the Closing, to be paid to the applicable counterparties to the Assumed Contracts or an escrow agent acceptable to Buyer to hold pending resolution of any disputed Cure Amounts; and

(iii) With the balance of the Purchase Price to be paid to Debtor's estate to be disbursed first, to (a)(i) the allowed professional fees of and disbursements to professionals retained pursuant to orders of the Bankruptcy Court through the date of a confirmed plan, conversion or dismissal of the Bankruptcy Cases; and (ii) the United States Trustee and Clerk of Court for all amounts payable in connection with the Chapter 11 case pursuant to 28 U.S.C. § 1930(a)(6) and any fees payable to said Clerk; and second, as further ordered by the Court. The "Closing Payment" shall be an amount equal to the Purchase Price minus the amounts paid out of the Purchase Price as set forth in this Section 2.5..

2.6 Proration. Within ten (10) days following the Closing Date, Sellers and Buyer shall prorate as of the Effective Time, any amounts which become due and payable after the Effective Time with respect to (i) all utilities servicing any of the Purchased Assets, including without limitation, water, sewer, telephone, electricity and gas service, and (ii) any ad valorem or personal property taxes.

ARTICLE III
CLOSING

3.1 Closing. The consummation of the sale and purchase of the Purchased Assets and the other transactions contemplated by and described in this Agreement (the "Closing") shall take place at such location as agreed by the parties within three (3) Business Days following the satisfaction or waiver by the applicable party of the conditions precedent to Closing set forth in Articles VIII and IX hereof or at such later date and/or at such other location as the parties hereto may mutually designate in writing (the "Closing Date"). The Closing shall be deemed to occur at 12:01 a.m., Eastern Time, on the Closing Date, or at such other time as shall be mutually agreed upon in writing by the parties hereto (the "Effective Time").

3.2 Actions of Sellers at Closing. At the Closing and unless otherwise waived in writing by Buyer, Sellers shall deliver to Buyer the following:

(a) the Sale Order, which shall be a Final Order and in form and substance acceptable to Buyer and which shall authorize the sale of the Purchased Assets and the assumption and

assignment of all Assumed Contracts free and clear of all Liens, Excluded Liabilities and interests, and shall provide a waiver of any stay of the effective date of the Sale Order;

(b) a Bill of Sale and Assignment, duly executed by Sellers, in substantially the form attached as Exhibit B hereto (the "Bill of Sale"), conveying to Buyer good and marketable title to all Purchased Assets free and clear of all Liens, Excluded Liabilities and interests;

(c) an assignment and assumption agreement, duly executed by Sellers, in substantially the form attached as Exhibit C hereto (the "Assignment and Assumption Agreement"), with respect to the assignment and assumption of the Assumed Contracts and Assumed Liabilities;

(d) a non-compete agreement, duly executed by each Seller and Benfield, in substantially the form attached as Exhibit D;

(e) **[a DEA power of attorney, duly executed by each applicable Seller; in substantially the form attached as Exhibit E;]**

(f) certificates of the President or a Vice President of each Seller in form and substance satisfactory to Buyer certifying that each and all of the conditions set forth in Article VIII to be satisfied by such Seller has been satisfied;

(g) certificates of incumbency for the officers of each Seller executing this Agreement or making certifications for Closing or executing agreements or instruments contemplated hereby dated as of Closing;

(h) certificates of existence and good standing of each Seller from its state or organization dated the most recent practical date prior to Closing;

(i) to the extent Buyer designates any Affiliate Real Property Lease as an Excluded Contract, then either a new lease agreement with respect to the applicable premises or an agreement to assign and amend such Affiliate Real Property Lease (in which case such Affiliate Real Property Lease, as so amended, shall be deemed an Assumed Contract), duly executed by the landlord party thereto, in form and substance acceptable to Buyer; and

(j) such other instruments and documents as are reasonably necessary to satisfy the conditions precedent to Buyer's obligations hereunder and such other instruments and documents as Buyer reasonably deems necessary to effect the transactions contemplated hereby.

3.3 Actions of Buyer at Closing. At the Closing and unless otherwise waived in writing by the Sellers, Buyer shall deliver to Sellers the following:

(a) the Closing Payment;

(b) the Bill of Sale, duly executed by Buyer; and

(c) the Assignment and Assumption Agreement, duly executed by Buyer.

3.4 Further Assurances. From time to time after Closing, Sellers shall: (a) execute and deliver such other instruments of conveyance and transfer, and take such other actions as Buyer reasonably may request, to convey and transfer more effectively full right, title and interest to, vest in, and place Buyer in legal and actual possession of any and all of the Purchased Assets; (b) furnish Buyer with

such information and documents in its possession or under its control, or which Sellers can execute or cause to be executed, as will enable Buyer to prosecute any and all petitions, applications, claims and demands relating to or constituting a part of the Purchased Assets; and (c) cooperate with and use commercially reasonable efforts to have Sellers' former and present directors, officers and employees cooperate with Buyer upon reasonable request in furnishing information, evidence, testimony and other assistance in connection with any action, Proceeding, arrangement or dispute of any nature with respect to matters pertaining to all periods prior to Closing in respect of the items subject to this Agreement.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF SELLERS

As of the date hereof and as of the Closing Date, each Seller represents and warrants to Buyer the following:

4.1 Capacity. Each Seller is a limited liability company duly organized, validly existing and in good standing under the laws of the State of its organization. Except for such authorization required by the Bankruptcy Court, each Seller has the requisite power and authority to enter into this Agreement and the Transaction Documents to which it is a party, to perform its obligations thereunder, to conduct the business of Business as now being conducted and to own, operate and lease its properties.

4.2 Consents; Absence of Conflicts. Sellers are not required to obtain any consent, waiver, approval, Order, Permit or authorization of, or to make any declaration or filing with, or to give any notification to, any Person in connection with the execution and delivery of this Agreement or any Transaction Document to which any Seller is a party, the compliance by Sellers with any of the provisions hereof or thereof, the consummation of the transactions contemplated herein or therein or the taking by Sellers of any other action contemplated hereby or thereby, except for (a) the entry of the Sale Order, (b) the entry of the Bidding Procedures Order with respect to Sellers' obligations under Section 6.7(e), (c) the Healthcare Regulatory Consents, and (d) such other consents, waivers, approvals, Orders, Permits, authorizations, declarations, filings or notices set forth on Schedule 4.2.

4.3 Binding Agreement. Subject to the entry of the Sale Order, this Agreement and the Transaction Documents to which any Seller is a party, are or will be duly executed and delivered by each Seller, and will be the valid and legally binding obligation of such Seller, enforceable in accordance with their respective terms.

4.4 Financial Statements. Attached as Schedule 4.4 are true, correct and complete copies of the Sellers' financial statements (the "Financial Statements") prepared as of and for the twelve (12) months ended December 31, 2015 and 2016, and **[**__**]** (**[**__**]**) months ended **[**_____**]**, 2017 ("Reference Balance Sheet Date"). The Financial Statements fairly present the financial condition and results of operations of the Sellers and the Business at the respective dates thereof and for the periods referred to. Such unaudited Financial Statements have been prepared on an **[**accrual basis in accordance with GAAP**]**, applied on a consistent basis throughout the periods indicated.

4.5 Accounts Receivable. A true, correct and complete aging schedule of the accounts receivable of the Companies as of **[**_____**]**, 2017 ("Aging AR Date") is attached hereto as Schedule 4.5. Since the Aging AR Date, the Sellers have not taken any action that has or would reasonably be expected to have the effect of accelerating the collection of or discount of any accounts receivable or notes receivable prior to the Closing, or otherwise made any changes in Sellers' practices with respect to collection of accounts receivable, assigned, sold, factored or written off any accounts receivable or provided discounts in excess of standard payment terms for early payment of accounts receivable, or

agreed to take any such action. The accounts receivable of the Sellers, whether or not reflected in the Financial Statements or Schedule 4.5, represent bona fide transactions made in the ordinary course of business, have not been assigned or pledged to any Person (other than hereunder to Buyer), are not subject to any dispute, contest, refusal to pay or right of set-off, and are collectible in accordance with their terms.

4.6 [Reserved]

4.7 Licenses. The Sellers and the Business are duly licensed in each state in which the Business operates. Schedule 4.7 contains a true, correct and complete list and summary description of all Licenses, all of which are in good standing and not subject to any pending or threatened challenge. Sellers have provided Buyer with a true, correct and complete copy of each License.

4.8 Programs. Schedule 4.8(a) sets forth a true, correct and complete list of each third party payor program, including Medicare, Medicaid, TRICARE or other applicable federal, state or local healthcare programs and any insurance company, managed care organization, health or medical plan or program or other third party payor, with which any of the Sellers and the Business participates or bills for healthcare goods or services (the "Programs"). Except as set forth in Schedule 4.8(b), each physician and other healthcare provider employed or engaged by the Sellers to provide services in connection with the Business is qualified for participation and in compliance in all material respects with the conditions for participation in, and has all requisite provider numbers and other required licenses, permits and authorizations and is a party in good standing to a valid provider/supplier agreement to participate in and bill, the Medicare program, and all other Programs for which the Company participates or bills for healthcare goods or services rendered by such provider. The Sellers and the Business are duly qualified for participation in each of the Medicare, Medicaid, TRICARE, or any other governmental payor program (the "Programs"). Sellers have provided Buyer with a true, accurate and complete copy of each provider agreement or other Contract with each Program.

4.9 Regulatory Compliance. Sellers and the Business are in compliance with all Legal Requirements. Except for the Consent Order or as set forth on Schedule 4.9, Sellers do not have any agreements with any Governmental Authority which apply to or are relevant to the transactions contemplated by this Agreement or the Purchased Assets. No employee or independent contractor of the Business (whether an individual or entity), or any Clinician performing services for the Business has been excluded from participating in the Programs or any other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)) during the last five years, nor, to Sellers' Knowledge, is any such exclusion threatened or pending. None of the officers, directors, agents or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)) of any Seller has been excluded from the Programs or any other federal health care program (as defined in 42 U.S.C. § 1320a-7b(f)), been subject to sanction pursuant to 42 U.S.C. § 1320a-7a or 1320a-8, or been convicted of a crime described at 42 U.S.C. § 1320a-7b, nor, to Sellers' Knowledge, is any such exclusion, sanction or conviction threatened or pending. No Seller has been excluded from the Programs or any other federal health care program (as defined in 42 U.S.C. §1320a-7b(f)).

4.10 Legal Proceedings; Orders. Except for the Bankruptcy Cases and as set forth in Schedule 4.10(a), there is no Proceeding pending or, to Sellers' Knowledge, threatened by or against a Seller or any of its affiliates or that otherwise relates to or may materially affect the Business, or any of the Purchased Assets or that challenges, or that may have the effect of preventing, delaying, making illegal or otherwise interfering with, any of the transactions contemplated by this Agreement. Except as set forth on Schedule 4.10(b), there is no Order against any Seller, the Business or any of their Affiliates.

4.11 Clinical Staff. Schedule 4.11 sets forth a complete and accurate list of each name, address, telephone number and medical specialty of the current members of the clinical staff of the Business.

4.12 Contracts. Schedule 4.12 includes a complete and accurate list of all Contracts and, with respect to each Contract, a listing or description of the parties thereto and the remaining term thereof. Sellers have delivered or otherwise made available to Buyer true and complete copies of all Contracts. The Contracts constitute valid and legally binding obligations of the Sellers and, to Sellers' Knowledge, the other parties thereto and are enforceable in accordance with their terms. Each party to each Contract is in compliance with the terms of the applicable Contract, and no condition exists or event has occurred (or failed to occur) which, alone or with the giving of notice, the lapse of time or both would constitute a default under any of the Contracts.

4.13 Inventory. Substantially all Inventory is of a quality and quantity usable and salable in the ordinary course of business of the Business. The inventory level of the Business is and at Closing will be maintained at normal levels in accordance with the past practices of the Business.

4.14 Personal Property. Except as disclosed on Schedule 4.14, since the Reference Balance Sheet Date, no Seller has sold or otherwise disposed of any item or items of plant, property or equipment having a value (individually or in the aggregate) in excess of $50,000 (other than Inventory items sold, used or disposed of in the ordinary course of business).

4.15 Real Property. Schedule 4.15 sets forth each real property lease to which any Seller is a party (the "Real Property Leases"), and identifies each Real Property Lease for which the landlord party thereto is an Affiliate of any Seller (the "Affiliate Real Property Leases"). Sellers do not own any fee simple title to any real property other than, as applicable, the premises leased under the Affiliate Real Property Leases. Sellers have provided Buyer with true, correct and complete copies of each Real Property Lease. Each Seller has a valid and enforceable leasehold interest under each of the Real

Property Leases to which it is a lessee. Each of the Real Property Leases is in full force and effect. There is no default under any Real Property Lease by Seller, by any other party thereto, and no event has occurred that with the lapse of time or the giving of notice or both would constitute a default thereunder. No party to any of the Real Property Leases has exercised any termination rights with respect thereto. None of the premises leased under the Real Property Leases have been subleased by any Seller, nor have any Sellers agreed to share such premises with any other Person.

4.16 Intellectual Property, Computer Software. Except as set forth on Schedule 4.16, each Seller has the right to use, free and clear of any royalty or other payment obligations, claims of infringement or Liens, (a) all marks, names, trademarks, service marks, patents, patent rights, assumed names, logos, trade secrets, copyrights, trade names and service marks used in the conduct of the business of the Business and (b) all computer software, programs and similar systems used in the conduct of the business of the Business. Neither the Sellers nor the Business is in violation or infringement of, nor has a Seller or any of its Affiliates received any notice of any claim or assertion thereof by any other Person with respect to, any intellectual property.

4.17 Assets. Except as set forth on Schedule 4.17, the Purchased Assets constitute all of the personal and intangible property of every kind and nature whatsoever owned, leased, held or used by Seller in connection with the operation of the Business. The Purchased Assets constitute all of the assets that are held or used by Sellers or any of their Affiliates and are necessary for the conduct of the Business substantially in the manner conducted as of the date of this Agreement and consistent with past practice.

4.18 Insurance. Schedule 4.18 includes a complete and accurate list and description of the insurance policies covering the ownership and operations of the Purchased Assets and the Business, which Schedule reflects the policies' numbers, terms, identity of insurers, amounts and type of coverage. Sellers maintain their professional liability coverage on a claims-made basis. All of such policies are in full force and effect with no premium arrearages. Sellers have delivered to Buyer true, correct and complete copies of all such insurance policies.

4.19 Benefit Plans. Neither any Seller nor any ERISA Affiliate have failed to contribute to any Benefit Plan that, as a result of the consummation of the transactions contemplated hereby or otherwise, may result in any liability to Buyer or its Affiliates, or participate in or have any obligation to any defined benefit pension plan or any employee pension plan which is a multiemployer plan as defined in Section 3(37) of ERISA or has been subject to Sections 4063 or 4064 of ERISA. Schedule 4.19 lists all Benefit Plans maintained by any Seller or to which any Seller contributed or is obligated to contribute thereunder for current or former employees; and all "employee pension plans", as defined in Section 3(2) of ERISA, subject to Title IV of ERISA or Section 412 of the Code, maintained by Seller in which any current or former employees participate or participated.

4.20 Employees. Schedule 4.20(a) sets forth a true, correct and complete list of all of Sellers' employees, including their position, current annual rate of compensation or current hourly wage rate or other basis of compensation, and date of hire. Except as described in Schedule 4.20(b), in connection with Sellers' operation of the Business, (i) Sellers are not party to any labor, collective bargaining, employee association or other agreement which contains provisions governing the terms and conditions of employment of any employee of any Seller or its Affiliate, and (ii) no labor union or employee association has been certified as exclusive bargaining agent for any group of employees of any Seller or its Affiliate.

4.21 Labor. Each Seller is in compliance in all material respects with all Laws respecting employment and employment practices, terms and condition of employment, and wages and hours, labor relations, safety and health.

4.22 Taxes. Each Seller has filed all Tax Returns required to be filed by it (all of which are true and correct) except as otherwise noted in Schedule 4.22(a). All Taxes due and owing by each Seller (whether or not shown on any Tax Return) have been paid except to the extent precluded by the Bankruptcy Code. There are no liens for Taxes on any of the Purchased Assets except as otherwise noted in Schedule 4.22(b). No Seller has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a tax assessment or deficiency. No Seller is currently the beneficiary of any extension of time within which to file any Tax Return. Each Seller has withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, or other third party, and all Internal Revenue Service Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed except as otherwise noted in Schedule 4.22(c). All Persons who have provided services to Sellers and have been classified by Sellers as independent contractors for Tax purposes were properly classified. There is no dispute or claim concerning any Tax liability of any Seller either (i) claimed or raised by any Governmental Authority or (ii) to Sellers' Knowledge, threatened. None of the Purchased Assets is an ownership interest in a joint venture, partnership or other arrangement or contract that could be treated as a partnership for federal income tax purposes.

4.23 Payments. Except in compliance with applicable Legal Requirements, none of the Sellers, nor any director, officer or employee of any of the foregoing or any agent acting on behalf of or for the benefit of any of the foregoing, has directly or indirectly (a) offered, paid or received any remuneration, in cash or in kind, to or from, or made any financial arrangements with, any past, present or potential customers, suppliers, patients, physicians, contractors, third-party payors or any other Person in exchange for business or payments from such Person; (b) given or agreed to give, received or agreed to receive, or is aware that there has been made or that there is any agreement to make, any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any past, present or potential customers, suppliers, physicians, contractors, third-party payors or any other Person in exchange for business or payments from such Person; (c) made or agreed to make, or is aware that there

has been made or that there is any agreement to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent;(d) established or maintained any unrecorded fund or asset for any improper purpose or made any misleading, false, or artificial entries on any of its books or records for any reason; (e) made, or agreed to make, or is aware that there has been made or that there is any agreement to make, any improper payment to any Person; (f) made any payment for or agreed to make any payment for any goods, services, or property in excess of fair market value; (g) made or caused to be made a false statement or representation of a material fact in any application for any benefit or payment; (h) made or caused to be made any false statement or representation of a material fact for use in determining rights to any benefit or payment; (i) presented or caused to be presented a claim for reimbursement for services under the Programs or other healthcare programs that is for an item or service that is known or should be known to be not provided as claimed, not provided in accordance with applicable Law, or false or fraudulent; (j) failed to disclose knowledge by a claimant of the occurrence of any event affecting the initial or continued right to any benefit or payment; (k) offered, paid, solicited, or received any remuneration (including any kickback, bribe or rebate), overtly or covertly, in cash or in kind in return for referring an individual to a Person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by the Programs or other healthcare programs or in return for purchasing, leasing or ordering any good, facility, service, or item for which payment may be made in whole or in part by the Programs or other healthcare programs; (l) made or caused to be made or induced or sought to induce the making of any false statement or representation (or omitted to state a material fact required to be stated therein) in order that Sellers may qualify for Program or other healthcare program certification; or (m) charged for any Program service, money or other consideration in excess of the rates established or permitted by applicable Legal Requirements.

4.24 Affiliate Transactions. Except as set forth in Schedule 4.23 or 4.24:

(a) no Associate of a Seller, directly or indirectly (i) owns any interest in any corporation, partnership, proprietorship or other entity which sells products or services to or purchases products or services from the Business; or (ii) holds a beneficial interest in any contract or agreement relating to the Business to which a Seller is a party or by which a Seller or any of the Purchased Assets is bound; and

(b) no Affiliate of Seller is indebted to any Seller.

4.25 Environmental. Except as set forth in Schedule 4.25:

(a) the operations and properties of each of the Business and Sellers are and at all times have been in compliance with the Environmental Laws, which compliance includes but is not limited to the possession by each of the Business and each Seller of all permits and governmental authorizations required under applicable Environmental Laws, and compliance with the terms and conditions thereof.

(b) each of the Business and each Seller has not treated, stored, managed, disposed of, transported, handled, released, or used any Materials of Environmental Concern except in the ordinary course of its business and in compliance with all Environmental Laws;

(c) there are no Environmental Claims pending or, to Sellers' Knowledge, threatened against any of the Business or any Seller, and to Sellers' Knowledge, no circumstances exist which could reasonably be expected to lead to the assertion of an Environmental Claim against any of the Business or any Seller;

(d) there are no off-site locations where any of the Business or any Seller has stored, disposed or arranged for the disposal of Materials of Environmental Concern, and none of the Business or any Seller has been notified in writing that it is a potentially responsible party at any such location under any Environmental Laws;

(e) neither the Business nor any Seller has assumed or undertaken or otherwise become subject to any liability or corrective, investigatory or remedial obligation of any other person relating to any Environmental Law; and

(f) there are no underground storage tanks located on property owned, leased or operated by any of the Business or any Seller or on any property adjacent to property owned, leased or operated by any of the Business or any Seller; there is no asbestos-containing material (as defined under Environmental Laws) contained in or forming part of any building, building component, structure or office space owned, leased or operated by any of the Business or any Seller; and there are no PCBs or PCB-containing items contained in or forming part of any building, building component, structure or office space owned, leased or operated by any of the Business or any Seller.

4.26 HIPAA Matters.

(a) No Seller has received notice of any violation of the administrative simplification section of the HIPAA, the Federal Privacy Regulations, the Federal Transaction Regulations or applicable state privacy laws.

(b) To the extent a Seller directly or indirectly conducts Transactions (as defined in the Federal Transaction Regulations) using Electronic Media (as defined in the Federal Transaction Regulations) with another covered entity, such Transactions use and will use the standards mandated by the Federal Transaction Standards (as defined in the Federal Transaction Regulations).

(c) Complete and accurate copies of Sellers' policies relating to the privacy of its patient's Protected Health Information (as defined in the Federal Privacy Regulations) have been provided to Buyer. Each such policy relating to the privacy of patient's Protected Health Information complies with the Federal Privacy Regulations and applicable state privacy laws. Seller has provided its patients with a privacy notice that contains all of the requirements of 45 C.F.R. Section 164.520(b) at the times required by 45 C.F.R. Section 164.520(c) and has documented compliance with the foregoing requirements. An accurate copy of Sellers; privacy notice and any policy relating thereto, or the most recent draft thereof, has been furnished to Buyer. Each Seller and its employees, volunteers, trainees, and other persons whose conduct, in the performance of work for Seller, is under the direct control of such entity (collectively, the "Workforce") has only Used (as defined in the Federal Privacy Regulations) or Disclosed (as defined in the Federal Privacy Regulations) Protected Health Information in accordance with its privacy notices, and privacy policies relating to Protected Health Information and the Federal Privacy Regulations. An accurate and complete list of all HIPAA-related complaints filed against or with Sellers is provided in Schedule 4.26.

(d) To Sellers' Knowledge, each Seller has provided its patients the right to inspect, obtain a copy of, amend, receive an accounting of the disclosures, request an alternative means of disclosure and alternative locations for disclosure of Protected Health Information in accordance with the Federal Privacy Regulations. To the extent that a Seller has agreed to additional restrictions on the use or disclosure of Protected Health Information requested by a patient, such Seller has complied with such requests.

(e) Complete and accurate copies of all the form of agreements (collectively, "Business Associate Agreements") between a Seller and a Business Associate (as defined in the Federal Privacy Regulations) have been furnished to Buyer. No Seller is aware of any breach by a Business Associate of any Business Associate Agreement or any violation by a Business Associate of HIPAA, the Federal Transaction Regulations, the Federal Privacy Regulations, or the Federal Security Regulations.

(f) No Seller has had a Breach of Unsecured Protected Health Information, as such term is defined in 45 C.F.R. Section 164.402 and excluding trivial incidents that occur on a daily basis, such as scams, "pings", or unsuccessful attempts to penetrate computer networks or servers. No Seller has received any written complaints alleging a violation of any Law relating to the privacy and security of personal information, including HIPAA and the regulations promulgated thereunder, received during the 24 month preceding the date hereof.

4.27 Brokers and Finders. Other than Stoneridge Partners, who is to be paid by Seller out of the proceeds of this transaction and not by Buyer, no Seller nor any Affiliate thereof nor any employee, officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereby.

4.28 Sellers as Debtors in Possession; No Trustee. From the Petition Date through the date hereof, each Seller has been at all times in its Bankruptcy Case a debtor-in-possession pursuant to Section 1107 of the Bankruptcy Code, and no trustee or examiner has been appointed in such Bankruptcy Case.

4.29 Statements True and Correct. No Seller has withheld from Buyer any material facts or information relating to the Company, the Business or the Company's assets, liabilities or operations. No representation or warranty made by Sellers in this Agreement or in any statement, certificate or instrument to be furnished to Buyer pursuant to this Agreement or other agreements or documents delivered in connection herewith contains or will contain any untrue statement of material fact or omits or will omit to state a material fact necessary to make these statements contained herein and therein not misleading.

ARTICLE V
REPRESENTATIONS AND WARRANTIES OF BUYER

As of the date hereof and as of the Closing Date, Buyer represents and warrants to Sellers the following:

5.1 Capacity. Buyer is a Kentucky corporation duly incorporated, validly existing and in good standing under the laws of its state of incorporation. Buyer has the requisite power and authority to enter into this Agreement and the Transaction Documents to which it is a party, perform its obligations hereunder and to conduct its businesses as now being conducted.

5.2 Consents; Absence of Conflicts. Except as described on Schedule 5.2, Purchaser is not required to obtain any consent, approval, authorization, waiver, Order, license or Permit of or from, or to make any declaration or filing with, or to give any notification to, any Person (including any Governmental Authority) in connection with the execution and delivery of this Agreement or the Transaction Documents to which Buyer is party, the compliance by Buyer with any of the provisions hereof or thereof, the consummation of the transactions contemplated herein or the taking by Buyer of any other action contemplated hereby or thereby, except for compliance with the Healthcare Regulatory Consents.

5.3 Binding Agreement. This Agreement has been and, at the Effective Time, all of the agreements and documents to which Buyer is a party in connection with this Agreement will have been duly executed and delivered by Buyer, and will be the valid and legally binding obligation of Buyer, enforceable in accordance with their respective terms except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

5.4 Legal Proceedings. There is no Proceeding or Order pending or, to the actual knowledge of Buyer, threatened against or affecting Buyer or any of its properties or rights that challenges or seeks to prevent, delay, make illegal or otherwise interfere with any of the transactions contemplated by this Agreement.

5.5 Brokers and Finders. Neither Buyer nor any Affiliate thereof nor any employee, officer or director thereof has engaged any finder or broker in connection with the transactions contemplated hereby.

ARTICLE VI
COVENANTS OF SELLERS

6.1 Information. Between the date of this Agreement and the earlier of the Closing Date or the termination of this Agreement, to the extent permitted by applicable Legal Requirements, Sellers shall afford to the officers and authorized representatives and agents of Buyer full and reasonable access to and the right to inspect the properties, books and records of Sellers relating to the Business and the Purchased Assets; shall furnish Buyer with such additional financial and operating data and other information as to the business and properties of Sellers relating to the Purchased Assets as Buyer may from time to time reasonably request and will furnish to Buyer's officers, directors, employees, agents, counsel, accountants, financial advisors, consultants and other representatives full access, upon reasonable prior notice and during normal business hours, to the officers, employees and agents of Sellers who have responsibility for the business of the Business and to the Purchased Assets.

6.2 Operations. From the date hereof until the Closing Date, Sellers will:

(a) carry on the business of the Business in substantially the same manner as conducted heretofore and confer with Buyer concerning operational matters of a material nature;

(b) maintain the Purchased Assets and all parts thereof in as good working order and condition as at present, ordinary wear and tear excepted;

(c) perform all of Seller's obligations under the Assumed Contracts;

(d) take all actions which will be necessary and appropriate to (i) vest good and marketable title to all tangible assets and valid title to all intangible assets associated with or employed in the business of the Business in Buyer (other than Excluded Assets) and (ii) render title to the Purchased Assets free and clear of all Liens, Excluded Liabilities and interests and to obtain appropriate releases, consents, estoppels and other instruments as Buyer may reasonably request;

(e) keep in full force and effect present insurance policies or other comparable insurance;

(f) use commercially reasonable efforts to maintain and preserve the Business and its business intact, retain Sellers' present employees and maintain relationships with clinicians, suppliers, customers and others having relations with the Business and to take such actions as are necessary to cause the smooth, efficient and successful transition of such business operations and employee and other relations to Buyer as of Closing; and

(g) permit and allow reasonable access by Buyer to make offers of post-Closing employment to any Business personnel, which personnel shall be allowed to accept such offers without penalty, competing offer or interference, and to establish relationships with physicians and others having business relations with the Business.

6.3 Negative Covenants. From the date hereof to the Closing Date, Sellers will not:

(a) amend or terminate any of the Assumed Contracts, enter into any new Contract, or incur or agree to incur any liability, except in the ordinary and regular course of business;

(b) increase compensation payable or to become payable or make a bonus payment to or otherwise enter into one or more bonus agreements with any employee, except in the ordinary course of business in accordance with existing policies;

(c) create, assume or permit to exist any new Lien upon any of the Purchased Assets whether now owned or hereafter acquired other than Liens incurred in connection with any debtor in possession financing in the Bankruptcy Cases to the extent that such financing (and related Liens) will be discharged and released at the Closing;

(d) sell, assign or otherwise transfer or dispose of any property, plant or equipment (other than supplies), except in the ordinary and regular course of business with comparable replacement thereof; or

(e) take any action outside the ordinary and regular course of business.

6.4 Notice. Sellers shall promptly notify Buyer in writing of any Material Adverse Effect suffered by Seller after the date hereof and prior to the Closing and any unexpected emergency or other unanticipated adverse change in the Business and of any Governmental Authority complaints, investigations or adjudicatory proceedings (or communications indicating that the same may be contemplated) or of any other such matter and shall (a) keep Buyer fully informed of such events and (b) permit Buyer's representatives to participate in all discussions relating thereto.

6.5 Regulatory Approvals. Between the date of this Agreement and the Closing Date, each Seller shall (a) use its commercially reasonable efforts to obtain as promptly as practicable, all approvals, authorizations and clearances of Governmental Authorities, required to consummate the transactions contemplated hereby; (b) provide such other information and communications to such Governmental Authorities as they may reasonably request; and (c) cooperate with Buyer in obtaining, as soon as practicable, all approvals, authorizations and clearances of Governmental Authorities required of Buyer to consummate the transactions contemplated hereby, including Healthcare Regulatory Consents.

6.6 Assignment of Omitted Contracts. No later than three (3) Business Days prior to the Sale Hearing, Sellers will prepare and deliver to Buyer a list of Contracts into which it has entered between the date of this Agreement and the Closing Date and a true, correct and complete copy of each such Contract, which Contracts Buyer may elect to assume or treat as Excluded Contracts at its option.

6.7 Bankruptcy Court Approval; Executory Contracts; Sale Procedures; and Stalking Horse Provisions.

(a) Sellers shall use their best efforts to gain approval by the Bankruptcy Court of the purchase and sale of the Purchased Assets and the assumption and assignment of all Assumed Contracts contemplated hereby to the fullest extent required by Sections 363 and 365 and all other applicable provisions of the Bankruptcy Code within the terms of the Sale Procedures Order and Sale Order. The Sale Procedures Order shall only be amended with the approval of Buyer, which approval may be granted or withheld in Buyer's sole discretion.

(b) This Agreement is subject to approval by the Bankruptcy Court and the consideration by Sellers of higher or better competing bids pursuant to the Sale Procedures Order. Following completion of the **[**Auction (as defined in the Sales Procedure Order)**]**, Sellers shall not initiate contact with, solicit or encourage submission of any inquiries, proposals or offers by, any Person in connection with any sale or other disposition of the Purchased Assets. In addition, unless otherwise directed by the Bankruptcy Court, Sellers shall not, after completion of the Auction, respond to or pursue any proposed Alternative Transaction or perform any other acts related thereto.

(c) The Sale Procedures Order shall provide, *inter alia*, that in the event (i) the Bankruptcy Court approves a sale of all or some of the Purchased Assets with a buyer other than the Buyer, or (ii) all or some of the Sellers file a plan of reorganization that does not contemplate a sale of the Purchased Assets to the Buyer, the Sellers shall be required to pay the Buyer a fee in the amount of $180,000 (the "Break-Up Fee") and reimburse the Buyer for all of its costs and expenses related to pursuing, negotiating, and documenting the transactions contemplated by this Agreement (the "Expense Reimbursement" and, with the Break-Up Fee, collectively, the "Bid Protections"). The Bid Protections shall be allowed superpriority administrative expense claims under Sections 503(b) and 507 of the Bankruptcy Code, and, if it is earned pursuant to subsection (i) above, shall be paid at closing from the sale proceeds prior to the payment of any other amounts. The Sale Procedures Order shall provide for an initial overbid protection in an amount equal to $500,000 and minimum bid increments thereafter of $100,000.

(d) The Sale Order shall contain the following provisions:

(i) the sale of the Purchased Assets by the Sellers to Buyer shall vest Buyer will all right, title, and interest of the Sellers to the Purchased Assets free and clear of all Liens, Excluded Liabilities and interests pursuant to Section 363(f) of the Bankruptcy Code;

(ii) a finding that the Buyer has acted in good faith within the meaning of Section 363(m) of the Bankruptcy Code, the transactions contemplated by this Agreement have been undertaken by the Sellers and the Buyer at arm's length and without collusion, and the Buyer is entitled to the protections of Section 363(m) of the Bankruptcy Code;

(iii) all persons and entities shall be enjoined from taking any actions against Buyer, any Affiliate or assignee of Buyer, or the Purchased Assets to recover any Claim that such person has against the Sellers;

(iv) Buyer shall have no successor liability on account of the purchase or sale of the Purchased Assets, except on account of Assumed Liabilities, or with respect to the Consent Order;

(v) due notice of the Sale Procedures Order, the Sale Order, and this Agreement shall have been provided;

(vi) there shall be sufficient cause to lift the stay contemplated by Rules 6004(h) and 6006(d) of the Federal Rules of Bankruptcy Procedure with regards to the transactions contemplated by this Agreement; and

(vii) the Bankruptcy Court retains exclusive jurisdiction to interpret and enforce the provisions of this Agreement and the Sale Order in all respects.

6.8 Financial Statements. Within twenty (20) Business Days following the end of each calendar month prior to the Closing Date, Sellers shall deliver to Buyer true and complete copies of Seller's Monthly Operating Reports. Such financial statements shall be true, correct and complete in all material respects, shall have been prepared from and in accordance with Sellers' books and records, shall fairly present the financial position and results of operations of the Business as of the date and for the period indicated.

6.9 Closing Conditions. Between the date of this Agreement and the Closing Date, Sellers shall use commercially reasonable efforts to cause the conditions specified in Articles VIII and IX hereof over which any Seller or any of its Affiliates have control to be satisfied as soon as reasonably practicable, but in all events on or before the End Date.

6.10 Tail Insurance. Sellers, at their sole cost and expense, will obtain supplemental insurance policies (the "Tail Policies") providing for extended reporting periods for claims made after the Closing in respect of events occurring prior to or as of the Closing, in form and substance reasonably acceptable to Buyer, to insure against professional and general liabilities of Sellers and directors and officers liabilities of the officers and directors of the Sellers relating to all periods prior to the Closing and to have the effect of converting Sellers' current directors and officers, professional and general liability insurance into "occurrence based" coverage. Buyer shall be named an additional insured under all such Tail Policies. Such "tail coverage" shall extend for a period of at least three (3) years immediately following the Closing and shall provide minimum coverage per occurrence and in the aggregate acceptable to Buyer and for no less than such coverage as in effect as of immediately prior to the Petition Date. Sellers shall deliver to Buyer evidence of Sellers' purchase of the Tail Policies at least five (5) Business Days prior to the Closing.

6.11 Change of Name. As of the Closing Date, each Seller shall take all action necessary to change its name to a name that is not similar to, or confusing with, the fictitious names identified in Section 2.1 and terminate its right to use such trade names so as to permit Buyer to use such trade names as of Closing. Additionally, each Seller shall take such actions and execute such document as may be necessary for Buyer to make appropriate assumed name filings in order to evidence and protect Buyer's right to use such trade names in connection with the operation of the Business after Closing.

6.12 Property Taxes. To the extent required by applicable Law, Sellers shall pay all property taxes and assessments due on the Purchased Assets for all calendar years prior to Closing from the Purchase Price. Any property taxes for the Purchased Assets not yet due shall be prorated to the Effective Time pursuant to Section 2.8.

6.13 Non-Solicitation. Between the date hereof and the date of the Bankruptcy Court's entry of the Sale Procedures Order (the "Non-Solicitation Period"), Sellers shall not, nor shall they authorize or permit any officer, director, manager or employee of, or any investment banker, attorney or other advisor,

agent or representative of, any Seller or Affiliate thereof (collectively, "Seller Representative") to, solicit or otherwise proactively encourage any Person with respect to the submission of an Alternative Transaction or negotiate the terms of an Alternative Transaction; provided, however, that during the Non-Solicitation Period, so long as Sellers are not otherwise in breach of this Agreement, this Section 6.13 does not prohibit Sellers or Seller Representatives from entering into confidentiality agreements with any Person or furnishing to any Person any information relating to the Purchased Assets with respect to any proposal or expression of interest that constitutes, or which may lead to, a Qualified Bid; and provided, further, that Sellers shall not execute any Alternative Transaction prior to the Bankruptcy Court's entry of the Sale Procedures Order. Within twenty-four (24) hours following Sellers' receipt of any offer for an Alternative Transaction, Sellers shall deliver to Buyer, in writing, true and correct copies of any such Alternative Transaction.

ARTICLE VII
COVENANTS OF BUYER; ADDITIONAL AGREEMENTS

7.1 Confidentiality. Buyer shall not disclose any Confidential Information to any Person, except as (i) required by Law or requested by applicable regulatory authorities, or (ii) as may be reasonably necessary to carry out the transactions contemplated by this Agreement.

7.2 Regulatory Approvals. Between the date of this Agreement and the Closing Date, Buyer (a) shall use its commercially reasonable efforts to obtain as promptly as practicable all approvals, authorizations and clearances of Governmental Authorities required of it to consummate the transactions contemplated hereby; (b) shall provide such other information and communications to such Governmental Authorities as they may reasonably request; and (c) shall cooperate with Seller in obtaining, as soon as practicable, all approvals, authorizations and clearances of such Governmental Authorities required of Seller to consummate the transactions contemplated hereby; provided, however, in no event shall Buyer be required to make any undertaking which it reasonably believes would be burdensome to it, any of its Affiliates or any of their respective businesses or operations (including the Business).

7.3 Closing Conditions. Between the date of this Agreement and the Closing Date, Buyer will use commercially reasonable efforts to cause the conditions specified in Articles VIII and IX hereof over which Buyer has control to be satisfied as soon as reasonably practicable, but in all events before the End Date, provided that nothing herein requires Buyer to incur any expense or pay any amounts (or agree to incur any expense or pay any amounts except as otherwise expressly provided herein) prior to the Closing.

7.4 Allocation of Purchase Price. As soon as reasonably practicable and in no event later than sixty (60) days after the Closing Date, Buyer shall provide Sellers with an allocation of the Purchase Price for federal, state and local income tax purposes (the "Proposed Allocation"). Within fifteen (15) days following Sellers' receipt of the Proposed Allocation, Sellers shall deliver a written notice (the "Allocation Objection") to Buyer, setting forth in reasonable detail those items in the Proposed Allocation that Sellers dispute. If prior to the conclusion of such 15-day period, Sellers notify Buyer in writing that they will not provide any Allocation Objection or if Sellers do not deliver an Allocation Objection within such 15-day period, then Buyer's Proposed Allocation shall be deemed final, conclusive and binding upon each of the Parties. Within fifteen (15) days following Sellers' delivery of the Allocation Objection, Sellers and Buyer shall attempt to resolve in good faith any disputed items and failing such resolution, the unresolved disputed items shall be referred for final binding resolution to a certified public accounting firm jointly selected by the parties (the "Arbitrating Accountant"). The fees and expenses of the Arbitrating Accountant shall be paid fifty percent (50%) by Buyer and fifty percent (50%) by Sellers. Such determination by the Arbitrating Accountant shall be in writing, furnished to

Buyer and Sellers as soon as practicable (and in no event later than thirty (30) days after the items in dispute have been referred to the Arbitrating Accountant), and non-appealable and incontestable by Buyer and Sellers. As used herein, the "Allocation" means the allocation of the Purchase Price as finally agreed between Buyer and Sellers or ultimately determined by the Arbitrating Accountant, as applicable, in accordance with this Section 7.4. The Allocation shall be prepared in accordance with Section 1060 of the Code and the Treasury Regulations thereunder (and any similar provision of state, local or foreign Law, as appropriate). Buyer and Sellers shall each report the federal, state and local income and other Tax consequences of the transactions contemplated hereby in a manner consistent with the Allocation, including, if applicable, the preparation and filing of Forms 8594 under Section 1060 of the Code (or any successor form or successor provision of any future Tax Law) with their respective federal income Tax Returns for the taxable year which includes the Closing Date, and neither will take any position inconsistent with the Allocation on any Tax Return, before any Governmental Authority or in any tax proceeding, in each case unless otherwise required under applicable Law. Sellers shall provide Buyer and Buyer shall provide Sellers with a copy of any information required to be furnished to the Secretary of the Treasury under Section 1060 of the Code. Each of the Parties shall notify the other if it receives notice that any Governmental Authority proposes any allocation different than that set forth on the Allocation.

7.5 Post-Closing Access to Information. Seller and Buyer acknowledge that subsequent to Closing each party may need access to information or documents in the control or possession of the other party for the purposes of concluding the transactions herein contemplated, audits, compliance with governmental requirements and regulations, and the prosecution or defense of third-party claims. Accordingly, Seller and Buyer agree that until the later of the fifth anniversary of the Effective Time or the expiration of any applicable statute of limitations pertaining to Medicare, Medicaid, TRICARE or tax matters, to the extent permitted by Law each will make reasonably available to the other's agents, independent auditors and/or governmental agencies upon written request and at the expense of the requesting party such documents and information as may be available relating to the Purchased Assets for periods prior and subsequent to Closing to the extent necessary to facilitate concluding the transactions herein contemplated, audits, compliance with governmental requirements and regulations and the prosecution or defense of claims for so long as Sellers remain in existence (but not to exceed five years). In addition, Sellers shall make available to Buyer, at Buyer's cost and expense, upon reasonable notice and during normal business hours, Seller's books and records to the extent not transferred to Buyer but necessary or of assistance to Buyer in the preparation of cost reports, financial records, Tax Returns or like matters, for so long as Sellers remain in existence.

7.6 Misdirected Payments. Sellers and Buyer covenant and agree to remit to the other within five (5) Business Days of receipt any payments received, which payments are on or in respect of accounts or notes receivable owned by (or are otherwise payable to) the other. In addition, in the event of a determination by any Program that payments to Sellers or the Business resulted in an overpayment or other determination that funds previously paid by any Program must be repaid, Sellers shall be responsible for the repayment of all such monies (and defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Effective Time. In the event that, following the Closing, Buyer suffers any offsets against reimbursement under any Programs due to Buyer relating to amounts owing under any such programs by Sellers or any Affiliate of Sellers, Sellers shall, jointly and severally, within five (5) Business Days following written demand by Buyer, pay to Buyer the amounts so billed or offset.

7.7 Employees. By no later than **[three (3) Business Days prior to the Closing]**, Buyer shall identify to Sellers any employees, including Key Employees, which it intends to hire as of Closing Date ("Target Employees"). Sellers shall use commercially reasonable efforts to cause all such employees to become employees of Buyer as of the Closing Date. Sellers shall terminate all such

employees as of the Closing Date and shall retain and be solely responsible for any unpaid compensation, benefits, retirement contributions or other obligations to such employees (including, for the avoidance of doubt, any severance, bonus or other obligations payable upon or following such termination) and all related taxes.

7.8 Seller's Existence Post Closing. **[The Seller intends to file a plan of liquidation following the Closing.]** As such, its existence post-Closing is limited. In the event that Seller seeks to destroy or otherwise dispose of records, Sellers shall provide at least 10 days' notice to Buyer of the intent and, to the extent Buyer desires to delay or prevent such disposal, Buyer may, at its sole expense, take possession of such records to be used solely as provided in this Article VII.

ARTICLE VIII
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

The obligations of Buyer hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Buyer:

8.1 Representations/Warranties. The representations and warranties of Seller contained in this Agreement which are qualified as to materiality shall be true and correct in all respects, and those not so qualified shall be true and correct in all material respects, in each case when made and on and as of the Closing Date as though such representations and warranties had been made on and as of such Closing Date; and each and all of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller prior to or as of Closing pursuant to this Agreement which are qualified as to materiality shall have been duly complied with and performed in all respects, and those not so qualified shall have been duly complied with and performed in all material respects.

8.2 Consents. Buyer shall have obtained documentation or other evidence reasonably satisfactory to Buyer that:

(a) Sellers and the Buyer have received approval from all Governmental Authorities whose approval is required to complete the transactions herein contemplated;

(b) Sellers and the Buyer have received the consents or approvals required by Schedule 4.2 and all of the Healthcare Regulatory Consents;

(c) Sellers and the Buyer have obtained such other consents and approvals as may be legally or contractually required for Buyer's consummation of the transactions described herein; and

(d) All Target Employees whose base salary is at least $90,000.00 annually, and substantially all Key Employees, have accepted employment or agreed to be employed by Buyer as of the Closing.

8.3 Action/Proceeding. No court or any other Governmental Authority shall have issued an order restraining or prohibiting the transactions herein contemplated; and no Governmental Authority 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 herein contemplated. Neither the United States Department of Justice nor the Federal Trade Commission shall have requested in writing that Buyer or Sellers delay or postpone the Closing.

8.4 Adverse Change; Diligence; State of the Business. No Material Adverse Effect shall have occurred since the Reference Balance Sheet Date, and no Seller shall have suffered any material change, loss or damage to the Purchased Assets or the Business, whether or not covered by insurance. Buyer shall be satisfied, in its sole and reasonable discretion, with the results of its regulatory, legal and operational due diligence related to the Purchased Assets and the Business. Buyer shall also be satisfied, in its sole and reasonable discretion, with the results of operations of the Business as of the Closing Date, including the number of patients, number of professional staff and the number of managed care contracts existing as of the Closing Date.

8.5 Assumed Contracts. Any and all Cure Amounts shall have been paid by Sellers from the Purchase Price pursuant to Section 365 of the Bankruptcy Code and any Order of the Bankruptcy Court, or will be paid in full at the Closing pursuant to Section 2.5(b)(ii).

8.6 Sale Order. The Sale Order shall (a) have been entered by the Bankruptcy Court, (b) be a Final Order and not stayed, reversed, modified or amended by any Order, and (c) in form and substance acceptable to Buyer in its sole discretion.

8.7 Closing Documents. Seller shall have executed and delivered to Buyer all of the items required to be executed by Seller as contemplated by Section 3.2 or otherwise pursuant to any term or provision of this Agreement.

8.8 Insurance. Sellers shall have purchased the Tail Policies and Sellers shall have delivered certificates evidencing the same to Buyer.

8.9 FIRPTA. Each Seller shall have delivered to Buyer a non-foreign affidavit dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under the Treasury Regulations issued pursuant to Section 1445 of the Code stating that such Seller is not a "foreign person" as defined in Section 1445 of the Code.

8.10 Governmental Consents and Releases; IRO Report. Buyer shall have received written confirmation from all applicable Governmental Authorities that Buyer shall not assume any obligations or liabilities of Seller related to Sellers' Pre-Closing operations, including without limitation, any corporate integrity agreements or repayment obligations or other liabilities related to that certain Consent Order. Specifically, Buyer shall have received written confirmation from the United States Attorney's Office for the Western District of Kentucky that Buyer shall not be liable for any payment obligations under the Consent Order, and written confirmation from the United States Department of Health and Human Services, Office of the Inspector General ("HHS-OIG") that Buyer shall not be assume any obligations under the Corporate Integrity Agreement dated July 8, 2016 between HHS-OIG and MD2U Management, LLC, MD2U Florida, LLC, MD2U Indiana, LLC, MD2U Kentucky, LLC, MD2U North Carolina, LLC, MD2U Ohio, LLC, Jerry Michael Benfield, MD, Gregory Latta and Karen Latta. Additionally, the Sellers shall have delivered to Buyer a report from the Sellers' independent review organization (the "IRO Report") that is reasonably satisfactory to Buyer and that has been accepted by the HHS-OIG without any post-closing ramifications to Buyer, the Business or the Purchased Assets.

8.11 Attachments. All Schedules and Exhibits shall be in final form and substance acceptable to Buyer in its sole discretion.

8.12 Termination of Retirement Plans. Sellers shall have terminated all retirement benefit plans maintained by the Sellers at least one business day prior to the Closing.

ARTICLE IX
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller hereunder are subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived in writing by Seller:

9.1 Representations/Warranties. The representations and warranties of Buyer contained in this Agreement which are qualified as to materiality shall be true and correct, and those not so qualified shall be true and correct in all material respects, in each case when made and as of the Closing Date as though such representations and warranties had been made on and as of such Closing Date; and each and all of the terms, covenants and conditions of this Agreement to be complied with or performed by Buyer prior to or as of the Closing pursuant to this Agreement which are qualified as to materiality shall have been duly complied with and performed, and those not so qualified shall have been duly complied with and performed in all material respects.

9.2 Closing Documents. Buyer shall have executed and delivered to Seller all of the items required to be executed by Buyer as contemplated by Section 3.4 or otherwise pursuant to any term or provision of this Agreement.

9.3 Action/Proceeding. No court or any other Governmental Authority shall have issued an order restraining or prohibiting the transactions herein contemplated; and no Governmental Authority 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 herein contemplated. Neither the United States Department of Justice nor the Federal Trade Commission shall have requested in writing that Buyer delay or postpone the Closing.

9.4 Pre-Closing Confirmations. Sellers shall have obtained documentation or other evidence reasonably satisfactory to it that it has:

(a) received approval from all Governmental Authorities whose approval is required to complete the transactions herein contemplated;

(b) obtained such other consents and approvals as may be legally or contractually required for their consummation of the transactions described herein; and

(c) entry by the Bankruptcy Court of the Sale Order.

ARTICLE X
TERMINATION

10.1 Termination. This Agreement may be terminated at any time prior to the Closing as follows:

(a) by mutual written consent of Buyer and Seller;

(b) by Buyer or Seller by providing written notice to the other parties at any time on or after November 30, 2017 (the "End Date") if the Closing shall not have occurred by the End Date; provided, however, that the right to terminate this Agreement pursuant to this Section 10.1(b) shall not be available to any party whose failure to fulfill any obligation under this Agreement or breach of any representation or warranty under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by the End Date;

(c) by Buyer or Sellers if a final non-appealable Order permanently enjoining, restraining or otherwise prohibiting the Closing shall have been issued by a Governmental Authority of competent jurisdiction (provided that such party may not terminate this Agreement under this Section 10.1(c) if it sought or consented to the entry of such Order);

(d) by Buyer by providing written notice to Sellers at any time prior to the Closing:

(i) if any of the conditions to the obligations of Sellers set forth in Article IX shall have become incapable of fulfillment other than as a result of a breach by Buyer of any covenant or agreement contained in this Agreement, and such condition is not waived by Buyer;

(ii) if any Seller breaches any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Article VIII, and which breach cannot be cured or has not been cured by the earlier of (A) ten (10) Business Days after Buyer delivers written notice of such breach to Sellers or (y) the End Date;

(iii) if any secured creditor of any Seller obtains relief from the automatic stay or is otherwise permitted to foreclose on any of the Purchased Assets;

(iv) if the Sale Procedures Order is not entered by **[_____]**, 2017;

(v) if the Sale Order is not entered by **[_____]**, 2017;

(vi) if any of the Bankruptcy Cases are dismissed or converted to a case under Chapter 7 of the Bankruptcy Code; or

(vii) if (A) Sellers enter into a definitive agreement with respect to an Alternative Transaction, (B) Sellers seek or support approval of an Alternative Transaction, (C) the Bankruptcy Court approves an Alternative Transaction or (D) Sellers accept an Alternative Transaction as the winning bid at Auction.

(e) by Sellers by providing written notice to Buyer at any time prior to the Closing:

(i) if any of the conditions to the obligations of Buyer set forth in Article VIII shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers;

(ii) if Buyer breaches any representation or warranty, or any covenant or agreement contained in this Agreement which would result in a failure of a condition set forth in Article IX, and which breach cannot be cured or has not been cured by the earlier of (A) ten (10) Business Days after Sellers deliver written notice of such breach to Buyer or (y) the End Date; or

(iii) if Sellers accept and the Bankruptcy Court approves an Alternative Transaction and such other transaction closes, and the Bankruptcy Court's order approving such Alternative Transaction requires payment in full of the Break-Up Fee and Expense Reimbursement at such closing.

10.2 Effect of Termination. In the event that this Agreement shall be terminated pursuant to Section 10.1, the parties shall be relieved of all obligations under this Agreement following such termination without further liability of any party to another; provided, however, the obligations of the parties contained in Section 6.7(e), including Sellers' obligation to pay the Break-Up Fee and Expense Reimbursement, in this Section 10.2 and in Article XI (General) shall survive such termination. A termination of this Agreement under Section 10.1 shall not relieve any party of any liability for a breach of, or for any misrepresentation under, this Agreement, or be deemed to constitute a waiver of any available remedy (including specific performance if available) for any such breach or misrepresentation. The damages recoverable by the non-breaching party shall include all attorneys' fees reasonably incurred by such party in connection with the negotiation and execution of this Agreement and its efforts to satisfy the closing conditions and otherwise to consummate the transactions contemplated herein.

ARTICLE XI
GENERAL

11.1 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 and telex) or when delivered by overnight courier, or five days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested to the following address:

Buyer:	National Health Industries, Inc. c/o Almost Family, Inc. 9510 Ormsby Station Road Suite 300 Louisville, KY 40223 Attn: President Facsimile: (502) 891-8067
with copies to:	Almost Family, Inc. 9510 Ormsby Station Road Suite 300 Louisville, KY 40223 Attn: President Facsimile: (502) 891-8067
with copies to:	Waller Lansden Dortch & Davis, LLP 511 Union Street, Suite 2700 Nashville, Tennessee 37219-1760 Attention: Brent Hill, Esq. Facsimile: (615) 244-6804
Sellers:	MD2U Management, LLC 9200 Shelbyville Road, Suite 530 Louisville, Kentucky 40222 Attention: President

Facsimile: (855) 632-8329

with a copy to:

Kaplan & Partners, LLP
710 W. Main Street, 4th Floor
Louisville, Kentucky 40202
Attention: Michael Abate, Esq.
Facsimile: (502) 540-8282

or to such other address or number, and to the attention of such other Person or officer, as any party may designate, at any time, in writing in conformity with these notice provisions.

11.2 Public Announcements. Each of the parties hereto mutually agrees that no party shall release, publish or otherwise make available to the public in any manner whatsoever any information or announcement regarding the transactions contemplated hereby without the prior written consent of the other party except as required in connection with the Bankruptcy Cases, information and filings reasonably necessary to be directed to Governmental Authorities to fully and lawfully effect the transactions contemplated hereby or required in connection with securities and other Laws. Nothing herein shall prohibit either party from responding to questions presented by the press or media without first obtaining prior consent of the other party.

11.3 Public Relations. The parties hereto shall cooperate, each with the other, to effectively communicate to the public and to Governmental Authorities with jurisdiction over the transactions contemplated hereby, the nature of the transactions contemplated hereby and the benefits that shall accrue to the community by reason of the transactions contemplated hereby. Seller and Buyer shall each provide the other with the name, address and phone number of those individuals who will be responsible for communicating with the media and the public and for developing public relations plans.

11.4 Expenses; Legal Fees and Costs.

(a) Except as otherwise expressly set forth in this Agreement, all expenses of the preparation of this Agreement and of the purchase of the Purchased Assets set forth herein, including counsel fees, accounting fees, investment advisor's fees and disbursements, shall be borne by the respective parties incurring such expense, whether or not such transactions are consummated.

(b) Sellers shall pay all documentary stamps, Transfer Taxes, recording fees and similar closing costs.

(c) In the event any party elects to incur legal expenses to obtain a third-party enforcement or interpretation of any provision of this Agreement, the prevailing party will be entitled to recover such legal expenses, including attorney's fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.5 No Third-Party Beneficiary. The terms and provisions of this Agreement are intended solely for the benefit of the parties hereto and their respective successors or assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other Person or entity.

11.6 Choice of Law. The parties agree that this Agreement shall be governed by and interpreted, construed and enforced in accordance with the Laws of the State of Delaware, excluding any

conflicts of law rules or principles that would refer the governance or the interpretation, construction or enforcement of this Agreement to the Laws of another jurisdiction.

11.7 Benefit/Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns (including the Operating Subsidiaries); provided, however, that no party may assign this Agreement without the prior written consent of the other party, which consent shall not be unreasonably withheld; provided, further, that notwithstanding the foregoing, Buyer shall be entitled to assign this Agreement and benefits under this Agreement and the Sale Order, without obtaining Seller's consent, to any Affiliate of Buyer (including the Operating Subsidiaries) or Almost Family.

11.8 Waiver of Breach. The waiver by either party of breach or violation of any provision of this Agreement shall not operate as, or be construed to constitute, a waiver of any subsequent breach of the same or other provision hereof.

11.9 Severability. If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law, and if the rights or obligations of Buyer or Seller under this Agreement will not be materially and adversely affected thereby, (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this agreement a legal, valid and enforceable provision as similar in terms (including duration, area or amount) to such illegal, invalid or unenforceable provision as may be possible.

11.10 Divisions and Headings. The divisions of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

11.11 Drafting. No provision of this Agreement shall be interpreted for or against either party hereto on the basis that such party was the draftsman of such provision, both parties having participated equally in the drafting hereof, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement.

11.12 Entire Agreement/Amendment. This Agreement supersedes all previous contracts and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties representing the within subject matter and no party shall be entitled to benefits other than those specified herein. As between or among the parties, no oral statement or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein are superseded hereby and no amendments or modifications hereto shall be binding unless and until made in writing and signed by all parties hereto. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

11.13 Time of Essence. Time is of the essence in the performance of this Agreement.

11.14 Waiver of Jury Trial. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL RIGHTS TO TRIAL BY JURY IN CONNECTION WITH ANY PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

11.15 Interpretation. In this Agreement, unless the context otherwise requires:

(a) references to this Agreement are references to this Agreement and to the Schedules;

(b) references to Articles and Sections are references to articles and sections of this Agreement;

(c) subject to the provisions of Section 11.7, references to any party to this Agreement shall include references to its respective successors and permitted assigns;

(d) the terms "hereof," "herein," "hereby," and derivative or similar words will refer to this entire Agreement;

(e) the gender of all words herein shall include the masculine, feminine and neuter, and the number of all words herein shall include the singular and plural;

(f) references to any document (including this Agreement) are references to that document as amended, consolidated, supplemented, novated or replaced by the parties from time to time in accordance with Section 11.12;

(g) the word "including" shall mean including without limitation;

(h) nothing in the Schedules shall be deemed adequate to disclose an exception to a representation or warranty made herein unless the Schedule identifies the exception with reasonable particularity and describes the relevant facts in reasonable detail and without limiting the generality of the foregoing, the mere listing, or inclusion of a copy, of a document or other item shall not be deemed adequate to disclose an exception to a representation or warranty made herein (unless the representation or warranty involves the existence of the document or other item itself);

(i) each representation, warranty and covenant contained herein shall have independent significance and, if any party hereto has breached any representation, warranty or covenant contained herein in any respect, the fact that there exists another representation, warranty or covenant relating to the same subject matter (regardless of the relative levels of specificity) which such party has not breached shall not detract from or mitigate the fact that the party is in breach of the first representation, warranty or covenant; and

(j) references to time are references to local Louisville, Kentucky time.

11.16 Exclusive Jurisdiction. The parties acknowledge and agree that the Bankruptcy Court shall have exclusive jurisdiction to hear and determine any claims or disputes between the parties hereto or any of Sellers' creditors or other parties in interest in the Bankruptcy Cases affected hereby pertaining directly or indirectly to this Agreement or to any matter arising herefrom or related hereto; provided, however, that if the Bankruptcy Court determines that it lacks or abstains from exercising such jurisdiction the parties or creditors agree that the United States District Court for the Western District of Kentucky shall have exclusive jurisdiction. Each party hereby submits and consents in advance to such

jurisdiction and venue in any action or proceeding either commenced by, or brought against any such party, in such court, hereby waiving personal service of the summons and complaint, or other service of process or papers issued therein, and agreeing that service of such summons and complaint or other process or papers may be made by registered mail or certified mail, return receipt requested, addressed to such party at the address to which notices are to be sent or delivered pursuant to Section 11.1 hereof.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed in multiple originals by their authorized officers, all as of the date and year first above written.

SELLERS:

MD2U MANAGEMENT, LLC

By:_____

Title:_____

MD2U KENTUCKY, LLC

By: _____

Title: _____

MD2U INDIANA, LLC

By:_____

Title:_____

MD2U NORTH CAROLINA, LLC

By:_____

Title:_____

BUYER:

NATIONAL HEALTH INDUSTRIES, INC.

By: _____

Title: _____