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**ASSET PURCHASE AGREEMENT**

**BY AND BETWEEN**

**MOORE MEDICAL CENTER, L.L.C.**

**AND**

**NORMAN REGIONAL HOSPITAL AUTHORITY**

**February 26, 2007**

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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (the “**Agreement**”) is made and entered into as of February 26, 2007, by and between **MOORE MEDICAL CENTER, L.L.C.**, an Oklahoma limited liability company (“**Seller**”), and **NORMAN REGIONAL HOSPITAL AUTHORITY**, a public trust (“**Buyer**”).

### RECITALS:

**A.** Seller owns and operates Moore Medical Center, a forty-five (45) bed general medical surgical hospital (“**Hospital**”), two (2) medical office buildings and related assets in Moore, Oklahoma.

**B.** Seller is currently operating as a debtor in possession under Chapter 11 of the Bankruptcy Code in Case No. 06-12867 (the “**Bankruptcy Case**”) pending before the United States Bankruptcy Court for the Western District of Oklahoma (the “**Bankruptcy Court**”).

**C.** Subject to Bankruptcy Court approval, Seller desires to sell to Buyer and Buyer desires to purchase all of the assets of Seller which are directly or indirectly related to, necessary for, or used in connection with, the operation of the Hospital, together with certain related businesses including medical office buildings, physician practices and ancillary services (collectively with the Hospital, the “**Facilities**”), (free and clear of all liens, claims, encumbrances and other interests to the fullest legal extent of 11 U.S.C. § 363 other than the Excluded Assets, if any) on the terms and conditions set forth in this Agreement.

### AGREEMENT:

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

#### 1. PURCHASE OF ASSETS.

**1.1 Assets.** Subject to the terms and conditions of this Agreement and the Sale Order (as defined herein), as of the Closing, Seller agrees to sell, convey, transfer, assign and deliver to Buyer and Buyer agrees to purchase at the Closing (as defined herein), free and clear of all liens, claims, encumbrances and other interests to the fullest legal extent of 11 U.S.C. § 363, all of the assets owned or used by Seller in connection with the operation of the Facilities, other than the Excluded Assets, which assets shall include, without limitation, the following (the “**Assets**”):

(a) fee simple title to the real property described on **Schedule 1.1(a)(i)** hereto, together with all improvements, any construction in progress, any other buildings and fixtures thereon, and all rights, privileges and easements appurtenant thereto (collectively, the

“Owned Real Property”) and leasehold title to the real property that is leased by Seller and described on **Schedule 1.1(a)(ii)** (collectively, the “Leased Real Property”; the Owned Real Property and the Leased Real Property being referred to collectively herein as the “Real Property”);

(b) all tangible personal property, including, without limitation, all major, minor or other equipment, vehicles, machinery, fixtures, signage, furniture and furnishings of Seller (or of any of its Affiliates to the extent such property is related to the Facilities or owned or used in connection with their operation);

(c) all supplies and inventory used or held for use in respect of the Facilities, whether medical, office, janitorial, maintenance or otherwise;

(d) assumable deposits and prepaid expenses;

(e) all claims of Seller (or of any of their Affiliates to the extent related to the Facilities or their operations) against third parties to the extent such claims relate to the condition of the Assets and, to the extent assignable, all warranties (express or implied) and rights and claims assertable by (but not against) Seller or its Affiliates related to the Assets except all claims and causes of action of Seller against third parties under Bankruptcy Code §§ 509-510 and 544-550, inclusive;

(f) to the extent legally transferable, all right, title and interest in the financial, patient, medical staff and with respect to personnel being hired by Buyer, personnel records relating to the Facilities (including, without limitation, equipment records, medical administrative libraries, medical records, patient billing records, documents, catalogs, books, records, files, operating policies and procedures, manuals and current personnel records) though Buyer assumes no obligation to use and is no way bound by said manuals, policies or procedures, but Seller and its successors in interest shall have reasonable access to such books and records as necessary for its operation or administration of its Bankruptcy Case;

(g) pursuant to 11 U.S.C. § 365, all rights and interests in the contracts, commitments, leases, licenses and agreements listed on **Schedule 1.1(g)** hereto entered into in connection with the operation of the Facilities (the contracts being assigned are referred to herein as the “Assumed Contracts”). It is Buyer’s intention to negotiate new contracts with each vendor prior to the Closing, or as soon as practicable thereafter. Nothing herein shall prevent Buyer from changing its intent before or after Closing and Buyer reserves the right to file an Amendment to Schedule 1.1(g) should it desire to assume more contracts.

(h) to the extent legally assignable, all licenses and permits held by Seller or its Affiliates relating to the ownership, development, and operation of the Facilities (including, without limitation, any pending or approved governmental approvals);

(i) all intellectual property, goodwill associated therewith, licenses and sublicenses granted in respect thereto and rights thereunder, remedies against infringements thereof and rights to protection of interests therein;

(j) all trade names, trade marks, service marks and logos owned or used in connection with the Assets or operation of the Facilities;

(k) all policy and procedure manuals and standard operating procedures, amendments to or revised versions thereof, including the right to use, modify and publish the same though Buyer assumes no obligation to use and is no way bound by said manuals, policies or procedures;

(l) all goodwill associated with the Facilities and the Assets;

(m) the name Moore Medical Center and all variations thereof;

(n) all telephone number and internet domain registrations; and

(o) all other property of every kind, character or description owned, leased, licensed, used or held for use in the business of the Facilities or the Assets by Seller or its Affiliates.

**1.2 Excluded Assets.** Those assets of Seller described below, together with any assets described on **Schedule 1.2** hereto, shall be retained by Seller (collectively, the "**Excluded Assets**") and shall not be conveyed to Buyer:

(a) cash, investments (to the extent specifically identified or described for exclusion on **Schedule 1.2(a)**), cash equivalents and marketable securities;

(b) any accounts receivable of any kind and from any source, including, but not limited to, accounts receivable arising out of the Seller's rendition of medical, surgical, behavioral, diagnostic or other professional health care services, including without limitation, any Medicare, Medicaid, CHAMPUS/TRICARE or third party payments, or the sale of medical products and any claim or remedy or other right of any of the foregoing. Seller or its successors shall have reasonable access to such books and records as necessary for the billing of such accounts receivable.

(c) all Medicare, Medicaid and other governmental and non-governmental payor provider numbers;

(d) any reimbursement from Medicare, Medicaid and other governmental and non-governmental payor as a result of any loss by Seller on the disposal of any of the Assets for purposes of Medicare, Medicaid reimbursement or other governmental or nongovernmental payor;

(e) any interest in actions, causes of action and proceeds therefrom arising out of or relating to any claims under Bankruptcy Code §§ 509-510 and 544-550, inclusive, together with any claims of Seller against third parties to the extent that such claims relate to the Excluded Assets or Excluded Liabilities;

(f) to the extent with respect to the following clauses (i) and (ii) that Buyer does not need the same in connection with the operation of the Facilities, all Seller records relating to (i) litigation files and records, cost report records relating to periods of time prior to Closing, tax returns and minute books, and (ii) all records which by law Seller is required to maintain in their possession (provided that Seller will provide access and, upon request, copies of any and all such records pursuant to other provisions of this Agreement);

(g) prepaid insurance, prepaid assets dedicated to Seller's benefit plans and any reserves or prepaid expenses related to Excluded Assets and Excluded Liabilities (such as prepaid legal expenses);

(h) receivables from or obligations with Seller or its Affiliates;

(i) except as provided for in Section 12.25(a) hereof, Seller's insurance proceeds arising from pre-Closing incidents (including all insurance proceeds related to the interruption of business at the Facilities prior to Closing) and Seller's assets held in connection with any self-funded insurance programs and reserves, if any;

(j) any asset pertaining to any Benefit Plan;

(k) all Tax refunds and other Tax benefits with respect to periods prior to the Closing Date;

(l) all rights of Seller under (i) this Agreement, (ii) any tax sharing agreement, intercompany debt or corporate overhead services or other contract, commitment, lease or license between any Seller and any of its affiliates, and (iii) any other contract, commitment, lease or license, except and excluding those identified or described on **Schedule 1.1(g)**, as it is the parties' intent that Buyer only acquires rights in those assumed contracts shown on **Schedule 1.1(g)**; and

(m) warranty or other claims, if any, of the Seller against Oscar H. Boldt Construction.

**1.3 Assumed Liabilities.** Buyer shall not assume nor be responsible for, and shall not be deemed to have assumed under any theory of successor liability or otherwise, any liability, obligation, tax, assessment, claim, expense, mortgage, wage, compensation or other burden of the Seller unless expressly assumed in writing in this Agreement. Any ambiguity regarding any liability shall be strictly construed against assumption of any liability or obligation of any nature. Buyer's purchase of the Assets shall be free and clear of all liens, claims, encumbrances and interests to the fullest extent allowable under the Bankruptcy Code. In connection with the conveyance of the Assets hereunder, Buyer shall assume, as of the Closing, the future payment and performance of the following liabilities (the "**Assumed Liabilities**") of Seller:

(a) with respect to the Assumed Contracts, all cure cost approved or ordered by the Bankruptcy Court and all obligations accruing from and after the Closing;

(b) all obligations and liabilities as of the Closing Date in respect of accrued vacation and paid time off of employees at the Facilities who are hired by Buyer as of the Closing Date.

**1.4 Excluded Liabilities.** Buyer shall not assume and under no circumstances shall Buyer be obligated to pay or assume, and none of the assets of Buyer shall be or become liable for or subject to any liability, indebtedness, commitment, or obligation of Seller, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising or otherwise (collectively, the “**Excluded Liabilities**”), including, without limitation, the following Excluded Liabilities:

(a) any debt, obligation, expense or liability that is not an Assumed Liability;

(b) claims or potential claims for medical malpractice or general liability relating to acts or omissions asserted to have occurred prior to the Closing;

(c) any liabilities or obligations associated with or arising out of any of the Excluded Assets;

(d) liabilities and obligations of Seller in respect of periods prior to the Closing Date arising under the terms of the Medicare, Medicaid, CHAMPUS/TRICARE, Blue Cross, or other third party payor programs, and any liability arising pursuant to the Medicare, Medicaid, CHAMPUS/TRICARE, Blue Cross, or any other third party payor programs as a result of the consummation of any of the transactions contemplated under this Agreement;

(e) all Tax liabilities or obligations of Seller in respect of periods (or portions thereof) ending prior to the Closing Date or resulting from the consummation of the transactions contemplated herein (except as provided in Section 12.9) including, without limitation, any income tax, any franchise tax, any tax recapture, any sales and/or use tax, any state and local recording fees and any other transfer taxes which may arise upon consummation of the transactions contemplated herein, and any FICA, FUTA, workers’ compensation, and any and all other taxes or amounts due and payable as a result of the exercise by the employees at the Facilities of such employees’ right to vacation, sick leave, and holiday benefits accrued while in the employ of Seller. In the case of any tax period beginning before and ending after the Closing Date, the Tax liabilities or obligations in respect of the portion of such period beginning before and ending on the day prior to the Closing Date shall be determined (i) in the case of real property, personal property, ad valorem and other similar taxes, on a pro rata basis, based on the number of days in the portion of the applicable tax period beginning before and ending on the day prior to the Closing Date relative to the total number of days in such tax period, and (ii) in the case of any other Tax liabilities or obligations, based upon a closing of the books as of the day prior to the Closing Date;

(f) liability for any and all claims by or on behalf of Seller’s employees or in respect of any Benefit Plans relating to periods prior to or after the Closing including, without limitation, liability for any compensation-related payments, pension, profit

sharing, deferred compensation, equity or equity-related compensation, incentive compensation, fringe benefit, tuition reimbursement, healthcare reimbursement, severance, termination pay, change in control or retention payments, bonuses or any other employee benefit plan of whatever kind or nature or any employee health and welfare benefit plans, liability for any EEOC claim, ADA claim, FMLA claim, wage and hour claim, unemployment compensation claim, or workers' compensation claim, and any liabilities or obligations to former employees of Seller, under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, if applicable ;

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

(h) any civil or criminal obligation or liability accruing, arising out of, or relating to any acts or omissions of Seller, its Affiliates or, to the extent related to their services to Seller, their directors, officers, employees and agents claimed to violate any constitutional provision, statute, ordinance or other law, rule, regulation or order of any Governmental Entity;

(i) liabilities or obligations arising out of any breach by Seller prior to the Closing of any Contract;

(j) liabilities or obligations arising as a result of any breach by Seller at any time of any contract or commitment that is not expressly assumed by Buyer in this Agreement;

(k) any debt, obligation, expense, or liability of Seller arising out of or incurred solely as a result of any transaction of Seller occurring after the Closing;

(l) any liability of Seller, including fines, penalties or assessments, relating to privacy or security of protected health information, including but not limited to the Federal Health Insurance Portability and Accountability Act and any amendments thereto, or relating to violation of federal or state laws regulating fraud, including but not limited to the federal Anti-Kickback Law (42 U.S.C. § 1320(a)-7(b) et seq.) (the “**Anti-Kickback Law**”), the Ethics in Patient Referrals Act (42 U.S.C. § 1395mm et seq.) (the “**Stark Law**”), and the False Claims Act (31 U.S.C. § 3729 et seq.) (the “**False Claims Act**”) and any rule or regulation promulgated thereunder;

(m) all liabilities and obligations relating to any oral or written agreements, oral or written contracts or oral or written understandings with any referral sources including, but not limited to, physicians, unless identified on **Schedule 1.1(g)** hereto, provided to Buyer and expressly assumed as part of the Assumed Contracts; and

(n) any liability of Seller to third parties (including, without limitation, any fines or awards imposed by any judicial or other Governmental Entities) in respect of environmental liabilities and costs arising out of any act, omission or condition at or prior to



Closing which constitutes a violation of or gives rise to liability under any Environmental Law, and without limit as to point of time, knowledge or amount (including, without limitation, any liability or obligation of Seller to remediate any chemical substance, (i) generated, used, stored, disposed of or released at any property or facility owned or leased by Seller or its Affiliates at any time prior to the Closing Date, (ii) released from or in connection with any property or facility owned or leased by Seller or its Affiliates at any time prior to the Closing Date or (iii) generated, used, stored, disposed of or released in connection with past or present operations).

**1.5 Purchase Price.** The purchase price (the “**Purchase Price**”) for the Assets shall be THIRTY-FOUR MILLION TWO HUNDRED FIFTY THOUSAND and no/100 Dollars (\$34,250,000.00), inclusive of the Good Faith Deposit described below). The Purchase Price shall be due and payable at the Closing by wire transfer of immediately available funds. This Purchase Price may hereafter be increased, but not decreased, as a result of bidding conducted in connection with bidding procedures filed in the Bankruptcy Case on or about February 19, 2007.

**1.6 Deposit.** Buyer shall deposit \$1,000,000.00 (the “**Good Faith Deposit**”) in trust with counsel for Seller, which shall be distributed by Seller’s counsel as follows: (i) if Closing shall occur, the Good Faith Deposit shall be delivered to Seller as partial payment of the Purchase Price for the Assets at Closing; or (i) the Good Faith Deposit shall be refunded to Buyer if: (a) Buyer is not approved pursuant to the Sale Order; or (b) if this Agreement is terminated for any reason other than Buyer’s failure to fulfill any of its obligations under this Agreement, including under Sections 10.2(a)(i), 10.2(a)(ii), 10.2(a)(iv), 10.2(a)(v) or 10.2(a)(vi)

**1.7 [Intentionally Omitted]**

**1.8 [Intentionally Omitted]**

## **2. CLOSING.**

**2.1 Closing.** Subject to the satisfaction or waiver by the appropriate party of all of the conditions precedent to Closing specified in Sections 7 and 8 hereof, the consummation of the transactions contemplated by and described in this Agreement (the “**Closing**”) shall take place at the offices of Fuller Tubb, PLLC, 201 Robert S. Kerr Ave., Suite 1000 Oklahoma City, Oklahoma 73102 at 10:00 a.m. local time, on or before February 28, 2007, or at such other date or at such other location as the parties may mutually designate in writing (the date of consummation is referred to herein as the “**Closing Date**”).

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

(a) Deeds containing general warranty of title, fully executed by Seller in recordable form, conveying to Buyer fee title to the Owned Real Property described in **Schedule 1.1(a)(i)**, subject only to the Permitted Encumbrances;

(b) A General Assignment, Conveyance and Bill of Sale (“**Bill of Sale**”), fully executed by Seller, conveying to Buyer all of Seller’s right, title and interest in the Assets, free and clear of all claims, liabilities, security interests, liens, pledges, charges, escrows, options, proxies, rights of first refusal, preemptive rights, mortgages, hypothecations, prior assignments, title retention agreements, indentures, security agreements or any other limitation, encumbrance or restriction of any kind to the fullest legal extent of 11 U.S.C. § 363;

(c) An Assignment and Assumption Agreement (the “**Assignment and Assumption Agreement**”), fully executed by Seller, conveying to Buyer the Seller’s interest in the Assumed Contracts ;

(d) An Assignment and Assumption of Leases (the “**Lease Assignment**”), fully executed by Seller, conveying to Buyer the Seller’s interest in any leases pursuant to which Seller (i) leases the Leased Real Property, or (ii) leases any portion of the Real Property to a third party if such lease is an Assumed Contract;

(e) All Certificates of Title and other documents evidencing an ownership interest conveyed as part of the Assets;

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

(a) An amount equal to the Purchase Price in immediately available funds less the Good Faith Deposit;

(b) The Assignment and Assumption Agreements, fully executed by Buyer, pursuant to which Buyer shall assume the future payment and performance of the Assumed Contracts as provided in this Agreement; and

(c) The Lease Assignments, fully executed by Buyer, pursuant to which Buyer shall assume the future payment and performance of any leases pursuant to which Seller leases the Leased Real Property and Seller leases any portion of the Real Property to a third party if such lease is an Assumed Contract;

**2.4 Allocation of Closing Costs.** The costs of Closing shall be allocated as follows:

(a) Buyer shall pay on the Closing Date (i) any documentary stamps required; (ii) Seller’s recording fees, if any; and (iii) any state, county and local transfer taxes, required as a result of the transfer of the Assets hereunder to Buyer.

(b) Buyer shall be responsible for the cost of: (i) recording fees of the Warranty Deed, and (ii) recording fees for any Buyer’s financing documents.

(c) Buyer shall pay (i) any escrow fees in connection with the Closing; and (ii) any additional premium for an owner's Policy of Title insurance, the cost of any required endorsements, and the cost for any simultaneously issued Lender's Title Policy.

(d) Except as otherwise set forth herein, Buyer and Seller shall each bear their own costs and expenses in connection with the negotiation, purchase and approval of the purchase of the Assets and any transaction related thereto, including costs and fees associated with the retention of counsel, and neither Buyer nor Seller will have any obligation with respect to costs and expenses incurred by the other in connection therewith.

**2.5 Prorations.** The following shall be prorated as of the Closing Date and shall be settled by a credit or addition to the Purchase Price, as applicable, at the closing:

(a) Accrued general real and other ad valorem and special taxes and assessments affecting the Real Estate Assets ("**Real Estate Taxes**") and any other real and personal property taxes, including sales taxes, if any, for the dates up to and including the Closing Date on the basis of the most recent available tax information.

(b) Charges and deposits for water, fuel, gas, oil, heat, electricity and other utility and operating charges (including telephone service charges) and prepaid service contracts, all based upon the last available invoice. Seller will obtain final utility meter readings as close as possible to the Closing Date. Upon receipt of the final bills, an appropriate adjustment shall be made so that Seller pays all utility bills through the Closing Date. Any underpayment by Buyer shall be promptly remitted to Seller, and any Overpayment by Buyer will be paid out of the Post-Closing Fund (defined in Section 10.13).

(c) Rents received from the medical office buildings pursuant to written lease and/or license agreements shall be prorated as of the date of Closing.

**3. REPRESENTATIONS AND WARRANTIES OF SELLER.** As of the date hereof and when read in light of any Schedules which have been updated in accordance with the provisions of Section 12.1 hereof, as of the Closing Date, Seller represents and warrants to Buyer the following:

**3.1 Existence and Capacity.**

(a) Seller is a limited liability company, duly organized and validly existing in good standing under the laws of its formation. Seller has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to conduct its business as now being conducted.

(b) Except as set on **Schedule 3.1(b)**, Seller has good, marketable and indefeasible title to its ownership interest in the Assets. Pursuant to the Sale Order, on the Closing Date, Seller will have the absolute right to sell, assign, transfer and deliver the Assets to Buyer, free and clear of all liens, claims, encumbrances and other interests identified on **Schedule 3.1(b)** pursuant to 11 U.S.C. § 363(b) and (f).

**3.2 Powers; Consents; Absence of Conflicts With Other Agreements, Etc.**

Pursuant to the Sale Order, Seller will be authorized to execute, deliver and perform this Agreement and all other agreements referenced herein, or ancillary hereto, to which Seller is a party, and the consummation by Seller of the transactions contemplated by this Agreement and the documents described herein, as applicable:

(a) are within its corporate powers, are not in contravention of corporate law or of the terms of its organizational documents, and have been duly authorized by all appropriate corporate action;

(b) except for the entry of the Sale Order or as provided in Sections 5.4 and 5.5 or **Schedule 8.2**, do not require any order, approval or consent be obtained by Seller of, or filing required to be made by Seller with, any court or Governmental Entity or the regulations of any such agency or authority;

(c) to Seller's knowledge, will not violate any statute, law, rule, or regulation of any Governmental Entity to which it or the Assets may be subject; and

(d) to Seller's knowledge, will not violate any judgment, decree, writ or injunction of any court or Governmental Entity to which it or the Assets may be subject.

**3.3 Binding Agreement.** Subject to the entry of the Sale Order, this Agreement and all agreements to which Seller will become a party pursuant hereto are and will constitute the valid and legally binding obligations of Seller and are and will be enforceable against it in accordance with the respective terms hereof or thereof, including any successors of the Seller such as any reorganized debtor, any Chapter 11 Trustee, any Chapter 7 Trustee or any other person or entity that might be appointed to control or manage the Seller.

**3.4 Financial Statements; No Material Undisclosed Liabilities.** Seller has delivered to Buyer copies of the following financial statements of Seller ("**Financial Statements**"), which Financial Statements, copies of which are attached hereto as **Schedule 3.4(a)**:

(a) Unaudited Balance Sheet dated as of September 30, 2006 (the "**Balance Sheet Date**");

(b) Unaudited Income Statement for the nine-month period ended on the Balance Sheet Date; and

(c) Unaudited Balance Sheet and Income Statement for the fiscal year ended December 31, 2005.

The financial statements are prepared on a monthly basis and are for use by management of the Company for business and decision making purposes. These financial statements have not been prepared in accordance with GAAP and do not include cash flow statements. The financial statements do not include all GAAP entries.

The financial statements are not designed to be utilized and relied upon by persons other than management of the Company and those having substantial knowledge of the Company's business operations and internal accounting and financial reporting practices and are provided to Buyer solely for informational purposes.

**3.5 Absence of Certain Changes.** Except for the Chapter 11 filing, automatic defaults under the Assumed Contracts and acceleration of indebtedness as a direct result of such filing and except as set forth in **Schedule 3.5** hereto, since December 27, 2006, (i) Seller, to Seller's knowledge, has conducted the businesses of the Facilities in the ordinary course of business, consistent with past custom and practice ("**ordinary course of business**") and (ii) there has not been any:

(a) subject to Section 12.25, material damage, destruction, or loss (whether or not covered by insurance) affecting the Facilities, taken as a whole;

(b) threatened employee strike, work stoppage, or labor dispute pertaining to the Facilities;

(c) amendment, modification, termination or cancellation of any of the Assumed Contracts;

(d) sale, assignment, transfer, or disposition of any of the Assets, except: (i) sales and use of supplies and inventory in the ordinary course of business with replacement thereof in the ordinary course of business, (ii) sales of obsolete equipment to purchasers other than Seller and its Affiliates having a fair value of not more than \$1,000 individually nor more than \$25,000 in the aggregate and (iii) other dispositions of property to parties other than the Seller and its Affiliates in the ordinary course of business;

(e) acquisitions of equipment or other tangible personal property, or cancellation of orders or plans to acquire equipment or other tangible personal property, in each case except in the ordinary course of business;

(f) purchase of real property, plant or capital assets or costs incurred in respect of construction-in-progress in excess of \$50,000 in the aggregate;

(g) changes in the accounting methods or practices employed by the Seller, or changes in depreciation or amortization policies;

(h) adjustments to accounts receivable or changes in allowances for accounts receivable outside the ordinary course of business;

(i) increase, modification or change in the compensation of employees of the Facilities, or institution, increase, modification or change of any bonus, insurance, pension, profit-sharing or other employee benefit plan, remuneration or arrangements made to, for or with such employees (other than increases, modifications or changes made in the ordinary course of business);

(j) changes in the rates charged by the Facilities for their services, other than those made in the ordinary course of business or required by an applicable law or regulation;

(k) any other change in the pricing, billing, collection, reimbursement or discount policies, practices and procedures for the Facilities or their operations, other than in the ordinary course of business;

(l) material transaction outside the ordinary course of business pertaining to any of the Facilities by Seller or any of its Affiliates or to the Assets, other than the transactions under this Agreement or as approved by the Bankruptcy Court;

(m) assumption or rejection under 11 U.S.C. § 365 of any executory contract or unexpired lease of the Seller in the Bankruptcy Case; or

(n) obligation entered into or commitment made by Seller to do any of the foregoing.

**3.6 Licenses.** To Seller's knowledge, the Seller is duly licensed pursuant to the applicable laws of the state in which it is located and is in compliance in all material respects with all state and local licensure rules and regulations. To Seller's knowledge, the pharmacies, laboratories, and all other ancillary departments owned or operated by Seller and located at the Facilities or operated for the benefit of the Facilities which are required to be specially licensed are duly licensed by the appropriate licensing agency (the "**State Health Agency**"). To Seller's knowledge, Seller has all material licenses, registrations, permits, and approvals which are needed to operate the businesses owned or operated by it at the Facilities. To Seller's knowledge Seller has delivered to Buyer an accurate list (**Schedule 3.6**) of all such licenses, registrations, permits and approvals owned or held by Seller relating to the ownership, development, or operation of the Facilities or the Assets, all of which, except as noted on **Schedule 3.6**, are now and as of the Closing shall be in good standing and not subject to meritorious challenge.

**3.7 Medicare Participation/Accreditation.** To Seller's knowledge, Hospital is qualified for participation in the Medicare, Medicaid and CHAMPUS/TRICARE programs, has current and valid provider contracts with such programs, is in compliance in all material respects with the conditions of participation in such programs, and has received all approvals or qualifications necessary for capital reimbursement for the Hospital. To Seller's knowledge, neither Seller nor any of its officers, directors, managing employees, service providers or controlling shareholders are excluded from participation in the Medicare, Medicaid or CHAMPUS/TRICARE programs, nor to Seller's knowledge is any such exclusion threatened. Except as set forth on **Schedule 3.7**, Seller has not received any written notice from any of the Medicare, Medicaid or CHAMPUS/TRICARE programs, or any other third party payor programs of any pending or, to Seller's knowledge, threatened investigations or surveys relating to the Facilities. To Seller's knowledge, all billing and coding practices of Seller (or of any of its Affiliates and relating in whole or in part to the Facilities or their operations) with respect to the Medicare, Medicaid and CHAMPUS/TRICARE programs are and have been in compliance in all material respects with all applicable laws, regulations and policies of such programs.

**3.8 Regulatory Compliance.** Except as set forth on **Schedule 3.8** hereto, to Seller's knowledge the operations of the Facilities are and have at all times since August 29, 2005 (and in the case of Medicare and Medicaid, September 23, 2005) been in compliance in all material respects with all applicable statutes, rules, regulations, and requirements of the Government Entities having jurisdiction over the Facilities and the operations of the Facilities. As used herein, "**Government Entity**" means any government or any agency, authority, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local. To Seller's knowledge, Seller (and, to the extent relating to the Facilities, Seller and its Affiliates) have timely and accurately filed all reports, data, and other information required to be filed with the Government Entities. To Seller's knowledge, neither Seller nor any of its employees (nor, to the extent relating to the Facilities, Seller and its Affiliates or any of their respective employees) have violated in any material respect any federal or state laws regulating fraud, including but not limited to the federal Anti-Kickback Law, the Stark Law, and the False Claims Act. To Seller's knowledge, the contracts of Seller (and the contracts of Seller and its Affiliates, to the extent relating to the Facilities or the physicians employed, admitted or otherwise practicing at the Facilities) with physicians are and have at all times since August 1, 2005 been in compliance in all material respects with all applicable state corporate practice of medicine and fee-splitting laws and regulations. To Seller's knowledge, Seller (and, to the extent relating to the Facilities, Seller and its Affiliates) are in compliance in all material respects with the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and all rules and regulations promulgated pursuant to HIPAA with respect to which final rules have been promulgated and are in effect and as to which the regulatory compliance dates have occurred and, to the knowledge of Seller (and, to the extent relating to the Facilities, Seller and its Affiliates) have been in compliance in all material respects with such rules and regulations since such regulatory compliance dates occurred.

**3.9 Equipment.** Seller has delivered to Buyer a depreciation schedule as of the Balance Sheet Date which takes into consideration all the material equipment associated with, or constituting any part of, the Facilities and the Assets (**Schedule 3.9**). Except as otherwise disclosed on **Schedule 3.9**, all machinery, equipment, and other tangible personal property located at the Facilities is either owned by Seller and will be transferred to Buyer at Closing or is leased by Seller under a lease listed on **Schedule 1.1(i)**.

**3.10 Real Property.**

(a) The Real Property listed on **Schedules 1.1(a)(i)** and **1.1(a)(ii)** constitutes all of the real property that is owned or leased in connection with the operation of the Facilities. Seller owns and at the Closing, pursuant to the Sale Order, will convey good, valid and marketable fee simple title (in the case of Owned Real Property) or a valid and subsisting leasehold interest (in the case of Leased Real Property) to the Real Property to Buyer, free and clear of all liens, claims, encumbrances and other interests, subject only to (i) any lien for taxes not yet due and payable as of the Closing Date, (ii) any capital lease obligations related to Real Property included in Assumed Contracts that are assumed by Buyer, (iii) any leases or subleases listed on **Schedule 3.10(b)** and included in the Assumed Contracts assumed by Buyer, (iv) rights-of-way, restrictions, defects and other non-monetary encumbrances of record that do not

materially interfere with the operations of the Facilities in a manner consistent with the current use by Seller or materially impair the value of the Real Property, and (v) with respect to the Leased Real Property, any leases, security interests, rights-of-way, restrictions and other encumbrances which encumber the fee interest in such Leased Real Property but which do not interfere with the operations of such Leased Real Property in a manner consistent with the current use by Seller or materially impair the value of the Real Property (collectively, the “**Permitted Encumbrances**”).

(b) Except for the leases and subleases listed in **Schedule 3.10(b)**, none of the Real Property is subject to any lease, sublease, license or similar arrangements granting to any party or parties the right to use or occupy any portion of the Real Property.

(c) Seller and its Affiliates have not received during the past five (5) years written notice from any Government Entity of a violation of any applicable ordinance or other law, order or regulation with respect to the Real Property, and have not received written notice of any lien, assessment or the like relating to any part of the Real Property or the operation thereof nor that any zoning, building or similar law, code, ordinance, order or regulation is or will be violated by the continued maintenance, operation or use of any buildings or other improvements on any of the Real Property or by the continued maintenance, operation or use of the related parking area and other Facilities. Seller and its Affiliates have not received during the past five (5) years written notice from any Government Entity of any existing, proposed or contemplated plans to modify or realign any street or highway, or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of any part of the Real Property or any other condemnation or rezoning proceedings, pending or threatened, with respect to any of the Real Property or Facilities.

**3.11 Title to Other Assets.** As of the Closing, Seller owns and holds good and valid title or leasehold interests, as the case may be, to all of the tangible Assets other than the Real Property, and at the Closing Seller will assign and convey to Buyer such title or leasehold interests, as the case may be, to all of such Assets, subject only to the Permitted Encumbrances.

**3.12 Employee Benefit Plans.**

(a) **Schedule 3.12** contains a true and complete list of each material “**employee benefit plan**”, as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974 (“**ERISA**”), each employment, severance or similar contract, plan arrangement or policy (whether formal or informal) and each other plan or arrangement (whether formal or informal) providing for compensation, bonuses, profit-sharing, stock option or other stock related rights or other forms of incentive or deferred compensation, vacation benefits, paid-time off, health or medical benefits, disability or sick leave benefits, severance benefits and post-employment welfare or retirement benefits which is maintained, administered or contributed to by Seller or any other corporation or trade or business controlled by, controlling, or under common control with Seller (within the meaning of Section 414 of the United States Internal Revenue Code of 1986, as amended (the “**Code**”), or Sections 4001(a)(14) or 4001(b) of ERISA) (“**ERISA Affiliate**”), or has been maintained or contributed to in the last twelve months by



Seller or any ERISA Affiliate, in which any employee employed at the Facilities participates or participated or with respect to which Buyer has or may have any material liability. Such plans are referred to collectively herein as the “**Benefit Plan.**”

(b) Seller has made available to Buyer copies of the material plan documents of all Benefit Plans together with the most recent summary plan descriptions (where applicable), IRS determination letters (where applicable), employee handbooks, and other written communications within the last six (6) months regarding each Benefit Plan currently in effect.

(c) The Assets are not subject to a lien imposed under the Code, ERISA, or any other laws governing the Plans.

**3.13 Litigation or Proceedings.** Seller has delivered to Buyer an accurate list and summary description (**Schedule 3.13**) of all currently pending litigation or legal proceedings with respect to Seller, the Facilities and the Assets. To Seller’s knowledge, except to the extent set forth on **Schedule 3.13**,

(a) there are no claims, actions, suits, proceedings or investigations pending, or to the knowledge of Seller, threatened, against Seller, the Facilities or the Assets (or against Seller or any of its other Affiliates and relating, in whole or in part, to the Facilities or the Assets), at law or in equity, or before or by any federal, state, municipal, or other governmental department (including The Centers for Medicare and Medicaid Services, and the Office of Civil Rights), commission, board, bureau, agency, or instrumentality wherever located, and

(b) there are no judgments, orders, decrees, citations, fines or penalties heretofore assessed against Seller or its Affiliates (including the Seller) affecting the Assets, the Assumed Liabilities or the operation of the Facilities under any federal, state or local law that will not be finally resolved as a result of the Chapter 11 proceeding without liability or obligation to Buyer and will not adversely affect any of the Assets.

**3.14 Environmental Laws.** To Seller’s knowledge, except as set forth on **Schedule 3.14** hereto, (i) the Real Property is not subject to any material environmental hazards, risks, or liabilities arising out of any act or omission of Seller or any of its Affiliates occurring during or after the period during which Seller owned, leased or operated facilities on the Real Property or, to the knowledge of Seller or any of its Affiliates, any other act, omission, condition or event, (ii) Seller has not violated any federal, state or local statutes, regulations, laws or orders pertaining to the protection of human health and safety or the environment (collectively, “**Environmental Laws**”), including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, as amended (“**CERCLA**”), and the Resource Conservation and Recovery Act, as amended (“**RCRA**”), and (iii) Seller has not received any notice alleging or asserting either a violation of any Environmental Law or an obligation to investigate, assess, remove, or remediate any property, including but not limited to the Real Property, under or pursuant to any Environmental Law. No “**Hazardous Substances**” (which for purposes of this Section 3.14 shall mean and include polychlorinated biphenyls, asbestos, and

any substances, materials, constituents, wastes, or other elements which are included under or regulated by any Environmental Law, including, without limitation, CERCLA and RCRA) have been disposed of on or released or discharged from or onto, or threatened to be released from or onto, the Real Property (including groundwater) by Seller or, to the Seller's knowledge, any third party, in violation of or which could give liability under any applicable Environmental Law. Seller (or, to the Seller's knowledge, any prior owners, operators or occupants of the Real Property) has not allowed any Hazardous Substances to be discharged, possessed, managed, processed, released, or otherwise handled on the Real Property in a manner which is in violation of or which could give liability under any Environmental Law, and Seller has complied with all Environmental Laws applicable to any part of the Real Property.

**3.15 Taxes.** Except as set forth on **Schedule 3.15**, Seller has timely filed all federal, state and local Tax Returns required to be filed by it (all of which are true, correct and complete in all material respects) and has duly paid or made provision for the payment of all Taxes (including any interest or penalties and amounts due state unemployment authorities) which are owed by it (whether or not shown on any Tax Return) to the appropriate tax authorities. Except as set forth on **Schedule 3.15**, Seller is not the beneficiary of any extension of time within which to file a Tax Return. Except as set forth on **Schedule 3.15**, no deficiencies for any of such Taxes have been asserted or to the knowledge of Seller threatened, and no audit or other administrative proceedings or court proceedings with respect to Taxes is currently pending or under way or to the knowledge of Seller, threatened. Except as set forth on **Schedule 3.15**, there are no outstanding agreements by Seller for the extension of time for the assessment of any Taxes. There are no tax liens on any of the Assets and no basis exists for the imposition of any such liens. No claim has even been made by an authority in a jurisdiction where Seller does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There is no dispute or claim concerning any Tax liability of Seller either (a) claimed or raised by a tax authority in writing or (b) as to which any of the directors and officers of Seller has knowledge. As used in this Agreement, "**Tax**" or "**Taxes**" means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental (including taxes under Code § 59A), customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, relating to the Assets, the Facilities or the operation of the Facilities, including any interest, penalty or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other person. "**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.

**3.16 Employee Relations.**

(a) Except as set forth on **Schedule 3.16**, all employees of the Facilities, including physician employees, are employees of Seller ("**Business Employees**"). There has not been within the last three (3) years, and there is not presently pending or, to

Seller's knowledge, threatened employee strike, slowdown, picketing, work stoppage, or labor dispute pertaining to the Facilities. Except as set forth on **Schedule 3.16**, no union representation question exists respecting (i) any employees of Seller or (ii) any other employees at the Facilities. No collective bargaining agreement exists or is currently being negotiated by Seller (or by any of its Affiliates relating to the Facilities), no written demand has been received for recognition by a labor organization by or with respect to any employees of Seller or of any of its Affiliates relating to employees who work at the Facilities, no union organizing activities by or with respect to any such employees are, to the knowledge of Seller, taking place, and none of the employees of Seller (or of any of its Affiliates who work at the Facilities) is represented by any labor union or organization. To Seller's knowledge there is no written unfair practice claim against Seller before the National Labor Relations Board, nor any strike, dispute, slowdown, or stoppage pending or threatened against or involving the Facilities, and none has occurred within the last three (3) years.

(b) Except as set forth in **Schedule 3.13**, to Seller's knowledge, Seller (and any of its Affiliates relating to employees who work at the Facilities) have complied in all material respects with all legal requirements relating to employment; employment practices; terms and conditions of employment; equal employment opportunity; nondiscrimination; immigration; wages; hours; benefits; payment of employment, social security, and similar taxes; occupational safety and health; and plant closing. Seller is not (nor is Seller or any of its Affiliates to the extent related to the Facilities or their operations) liable for the payment of any compensation, damages, taxes, fines, penalties, interest, or other amounts, however designated, for failure to comply with any of the foregoing legal requirements. Except as set forth in **Schedule 3.13**, there are no pending or, to the knowledge of Seller, threatened claims before the Equal Employment Opportunity Commission (or any comparable state civil or human rights commission or other entity), complaints before the Occupational Safety and Health Administration (or any comparable state safety or health administration or other entity), wage and hour claims, unemployment compensation claims, workers' compensation claims, internal human resources complaints, or the like.

(c) **Schedule 3.16** contains an accurate and complete list of the following information for each Business Employee, including each individual on leave of absence or layoff status: name; job title or position; date of hire (including adjusted date of hire for benefit purposes); current hourly base rate of pay; status as part-time or full-time; extended illness benefits balance; bonuses and incentive pay; and paid time off that is accrued or credited but unused or unpaid. Seller will also provide information reasonably necessary to waive waiting periods with respect to Transferred Employees under Section 10.10(g) herein and to determine Transferred Employees' deductibles, co-insurance, and maximum out-of-pocket requirements under Section 10.10(h) herein. **Schedule 3.16** also provides an accurate and complete list of each employment, consulting, independent contractor, bonus, or severance agreement to which Seller (or, to the extent related to employees employed at the Facilities, any of its Affiliates) is a party.

(d) **Schedule 3.16** states or will state the number of employees terminated by Seller within ninety (90) days prior to the Closing Date, laid off by Seller within

the six (6) months prior to the Closing Date, or whose hours of work have been reduced by more than fifty percent (50%) by Seller in the six (6) months prior to the Closing Date, and contains a complete and accurate list of the following information for such employees: (i) the date of termination, layoff, or reduction in work hours; (ii) the reason for termination, layoff, or reduction in work hours; and (iii) the location to which the employee was assigned. In relation to the foregoing, Seller has not violated the Worker Adjustment and Retraining Notification Act (the “**WARN Act**”) or any similar state or local legal requirements.

(e) No officer, director, agent, employee, consultant, or independent contractor of Seller (or, to the extent related to employees employed at the Facilities, any of their Affiliates) is bound by any contract that purports to limit the ability of such officer, director, agent, employee, consultant, or independent contractor (i) to engage in or continue or perform any conduct, activity, duties or practice in furtherance of the business of Seller; or (ii) to assign to Seller or to any other person any rights to any invention, improvement, or discovery. To the knowledge of Seller, no former or current employee of Seller (or, to the extent related to employees employed at the Facilities, any of their Affiliates) is a party to, or is otherwise bound by, any contract that in any way adversely affected, affects, or will affect the ability of Seller or Buyer following Closing to conduct the business as heretofore carried on by Seller.

**3.17 The Contracts.** To Seller’s knowledge, Seller has delivered to Buyer true and correct copies of the Assumed Contracts (other than the Immaterial Contracts), and has given, and will give, the agents, employees and representatives of Buyer access to the originals or true and correct copies of the Assumed Contracts (including the Immaterial Contracts). The Assumed Contracts (with the exception of Immaterial Contracts) are listed on **Schedule 1.1(g)**. “**Immaterial Contracts**” are commitments, contracts, leases and agreements which individually involve future payments, performance of services or delivery of goods or materials, to or by any Seller Entity of any amount or value less than Ten Thousand Dollars (\$10,000) on an annual basis, and that are not with physicians or other referral sources and that do not involve the lease of real property.

(a) To Seller’s knowledge, **Schedule 3.17** specifically identifies any and all contracts, commitments, leases, licenses and agreements (other than Immaterial Contracts) of the following types that relate (in whole or in part) to Seller, to the Facilities or to any of their respective operations, and clearly indicates for each whether it is to be assigned to (and assumed by) Buyer or whether it is to be retained by Seller or its Affiliates from and after Closing (Buyer is not assuming, and shall not be deemed to have assumed, any contract, commitment, lease, license or agreement of any type that is not expressly listed on **Schedule 1.1(g)**):

(i) any agreement for the lease of personal property to or from any person providing for lease payments in excess of \$10,000 in any year;

(ii) any agreement for the purchase or sale of materials, commodities, supplies, products, or other personal property, or for the furnishing or receipt of services, which (A) is not by its terms terminable within one year and is reasonably likely to

involve over \$10,000 in consideration over the life of such agreement or (B) is reasonably likely to involve consideration in excess of \$10,000 in any year for such agreement;

(iii) any agreement concerning a partnership or joint venture that relates (in whole or in part) to any of the Facilities or their respective operations;

(iv) any agreement (or group of related agreements) under which Seller has created, incurred, assumed, or guaranteed any capital lease obligations or indebtedness or under which any security interest, lien or encumbrance has been imposed on any Asset;

(v) any profit sharing, stock option, stock purchase, stock appreciation, deferred compensation, severance, stay pay, success fee or other plan or arrangement for the benefit of any of the current or former directors, officers, or employees of Seller or the Facilities that could become payable, accelerated, triggered or otherwise affected by the transactions contemplated by this Agreement;

(vi) any agreement providing for the employment or consultancy with any individual on a full-time, part-time, consulting or other basis or providing severance or retirement benefits and that could provide for payments in excess of \$10,000 in any year;

(vii) any agreement under which the Seller or any of its Affiliates has advanced or loaned any money to (or guaranteed any loan of) any directors, executive, officer or senior level employee of Seller (or any directors, executive, officer or senior level employee of Seller or any of its other Affiliates whose primary job responsibilities relate to Seller or the Facilities);

(viii) any agreement (including, without limitation, any income guarantee, loan or other commitment) directly or indirectly with any physician, any physician group or organization or any physician-owned entity or with any referral sources; and

(ix) any agreement under which the consequences of a default or termination would be reasonably likely to have an adverse effect on the business, financial condition, operations, or results of operations of the Facilities (taken as a whole) or which are, individually or in the aggregate, material to the Facilities and their operations taken as a whole.

**(b)** Seller represents and warrants to Buyer with respect to the Assumed Contracts that:

(i) to Seller's knowledge the Assumed Contracts constitute legal, valid and binding obligations of Seller, enforceable against Seller and enforceable against the other parties thereto, in each case in accordance with their terms; and

(ii) to Seller's knowledge each Contract constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter thereof.

**3.18 Termination of Services Under Seller's Tax Identification Number and Provider Numbers.** To facilitate the termination of services under Seller's tax identification number and provider numbers, Seller shall administratively discharge all patients as of 11:59 p.m. on the Closing date. To facilitate the initiation of services under Buyer's tax identification number and provider numbers, Buyer shall administratively admit said patients as of 12:00 a.m. on the date following Closing. This procedure shall be administrative in nature only, shall not involve the physical movement of patients receiving care at the Facilities. It will be performed to facilitate a break in the billing cycle of Seller, and to accommodate a commencement of billing by Buyer for purposes of division of receivables. Patients shall not experience any delay or cessation of care on account of this administrative function. Seller shall have reasonable access to such medical records, billing records, books and records as necessary for the billing of services provided prior to the Closing date.

**3.19 Supplies.** To Seller's knowledge, all the inventory and supplies constituting any part of the Assets are substantially of a quality and quantity usable and salable in the ordinary course of business of the Facilities. The inventory levels are based on past practices of Seller at the Facilities.

**3.20 Insurance.** Seller has delivered to Buyer an accurate schedule (**Schedule 3.20**) listing the current insurance policies covering the ownership and operations of the Facilities and the Assets, which Schedule reflects the policies' numbers, identity of insurers, amounts, and coverage. To Seller's knowledge, all of such policies are in full force and effect with no premium arrearage. To Seller's knowledge, Seller has given in a timely manner to its insurers all notices required to be given under their insurance policies with respect to all of the claims and actions covered by insurance, and no insurer has denied coverage of any such claims or actions. To Seller's knowledge, Seller has not failed to give any written notice or present any claim which is still outstanding under any of such policies with respect to the Facilities or any of the Assets.

**3.21 [Intentionally Omitted]**

**3.22 Medical Staff Matters.** To Seller's knowledge, Seller has provided to Buyer true, correct, and complete copies of the bylaws and rules and regulations of the medical staff of Hospital, as well as a list of all current members of the medical staff of Hospital. Except as set forth on **Schedule 3.22** hereto, (i) there are no adverse actions with respect to any medical staff members or any applicant thereto for which a medical staff member or applicant has requested a judicial review hearing which has not been scheduled or has been scheduled but has not been completed; (ii) there are no pending or, to the knowledge of Seller, threatened disputes with applicants, staff members, or health professional affiliates; (iii) all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired; and (iv) since August 29, 2005, Seller or its Affiliates have not received written notice

from any physician who was, at any time on or after August 29, 2005, employed by or admitted at any of the Facilities of plans to terminate employment or medical staff privileges with Seller, relocate such physician's medical practice or cease providing professional services to patients of the Facilities.

**3.23 Condition of Assets.** Other than with respect to the representations and warranties herein provided, Seller shall transfer the Assets to Buyer and Buyer shall accept the Assets from Seller AS IS WITH NO WARRANTY OF HABITABILITY OR FITNESS FOR HABITATION, WITH RESPECT TO THE LAND, BUILDINGS AND IMPROVEMENTS, AND WITH NO WARRANTIES, INCLUDING WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT, INVENTORY, AND SUPPLIES, AND ANY AND ALL OF WHICH WARRANTIES SELLER HEREBY DISCLAIMS. Notwithstanding the foregoing provision and disclaimer of warranties, nothing in this Section 3.23 is intended or shall be construed to limit, negate or otherwise affect any of the express representations and warranties provided in this Agreement or any other written agreement delivered pursuant to this Agreement. All of the Assets shall be further subject to normal wear and tear on the land, buildings, improvements and equipment and normal and customary use and disposal of inventory and supplies in the ordinary course of business up to the Closing Date.

**3.24 Compliance Programs.**

(a) Except as set forth on **Schedule 3.24**, to Seller's knowledge, Seller (a) has not been subject to any Corporate Integrity Agreement ("CIA") with the Office of Inspector General of the Department of Health and Human Services ("OIG"), (b) does not have reporting obligations pursuant to any settlement agreement entered into with any Governmental Entity, (c) to Seller's knowledge, has not been the subject of any government payer program investigation conducted by any federal or state enforcement agency related to the operations of Seller or the Facilities, (d) has, to the Seller's knowledge, not been a defendant in or the subject of any qui tam/False Claims Act litigation related, (e) has not been served with or received any search warrant, subpoena, civil investigative demand, contact letter, or (to the Seller's knowledge) telephone or personal contact by or from any federal or state enforcement agency related to the operations of the Seller or the Facilities or (f) has not received any written (or, to the Seller's knowledge, any other) complaints from any person that would indicate that Seller (or the Seller or any of its other Affiliates, to the extent related to the Facilities) has violated any law or regulation. **Schedule 3.24** includes a description of each audit and investigation conducted by or with respect to Seller or the Facilities since August 29, 2005, pursuant to its compliance programs. For purposes of this Agreement, the term "**compliance program**" refers to provider compliance programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services for hospitals and other health care providers, including the Facilities' policies and procedures related thereto.

(b) Except as provided on **Schedule 3.24**, Seller has not, and, to Seller's knowledge, none of its respective officers, directors, employees or agents (or stockholders, representatives or other persons acting on the express, implied or apparent

authority of such entities) is currently, or has been within the last six (6) years, with respect to any state or federal agency, criminal enforcement unit, or program (including Medicare, Medicaid, or any other state or federal health care program): (i) the subject of any audit, inquiry, or investigation, or (ii) party to any consent decree, judgment, order, or settlement that in either case (A) requires, or could reasonably be expected to require, the payment of money by Seller or its Affiliates to any state or federal agency, program, or fiscal intermediary, or (B) requires or prohibits any activity by Seller or its Affiliates; and which, in the case of either (A) or (B) of this sentence, is either punitive in nature, or serves as a civil penalty.

**3.25 Intellectual Property.** Schedule 3.25 lists all trademarks, service marks, trade names, registered, copyrights and applications therefor currently owned by Seller and used in connection with the Facilities (collectively, the “**Intellectual Property**”). Seller does not hold any patents or patent applications or is a licensee under an express patent or trademark license. No proceedings have been instituted or are pending or, to the knowledge of Seller, threatened which challenge the validity of the ownership by Seller of such Intellectual Property, and Seller knows of no basis therefor. Seller has not licensed anyone to use such Intellectual Property and Seller has no knowledge of the use or the infringement of any such Intellectual Property by any other person. Seller owns (or possesses adequate and enforceable licenses or other rights to use) all intellectual property, including computer software programs and similar systems, used in the conduct of its business and the Facilities. Seller will transfer to Buyer or license to Buyer all such intellectual property, including software, other than (x) as disclosed on **Schedule 3.25**, and (y) off-the-shelf, shrink-wrap licensed software (such as Microsoft Word or Office, Excel, etc.) that is not customized and is generally available from the vendor of such software.

**3.26 Related Party Transactions.** Schedule 3.26 contains an accurate and complete list of all agreements, contracts, arrangements, understandings, transfers of assets or liabilities or other commitments or transactions relating to the business, whether or not in the ordinary course of business, to or by which Seller, on one hand, and any of its Affiliates or employed physicians on the other hand, are or have been a party or otherwise bound or affected. Except as disclosed on **Schedule 3.26**, each agreement, contract, arrangement, understanding, transfer of assets or liabilities or other commitment or transaction set forth or required to be set forth on **Schedule 3.26** is on terms and conditions equivalent to the terms that would have been obtainable in a comparable arm’s-length transaction with a person other than the Affiliate or employed physician.

**3.27 Offsets.** No payor, including Medicare, Medicaid or any other third party, has sought or, to Seller’s knowledge, has threatened to seek any recovery of past reimbursements for services provided at the Facilities or to offset any claims of such payor against reimbursements for future services provided at the Facilities.

**3.28 Sufficiency of Assets.** The Assets transferred at Closing (including the Assumed Contracts assigned at Closing) and the Excluded Assets comprise substantially all of the assets, properties, contracts or other rights of any type used in the operation of the Facilities.



**3.29 Copies.** Copies. Copies of all contracts, commitments, leases, licenses, plans and agreements listed in Schedule 1.1(g) and Schedule 3.17 hereto have been delivered or were included in the materials made available to Buyer for review and, to Seller's knowledge, constitute true, correct and complete copies thereof and include all amendments, exhibits, schedules, appendices, supplements or modifications thereto or waivers hereunder. Excluding agreements with TSG Equipment, Inc. and agreements with XTRIA regarding the AS400, there are no assets, properties, contracts or other rights of any type used in the operation of the Facilities, other than the Excluded Assets, that are owned or controlled by any Affiliate that will not be transferred at Closing to the Buyer.

**4. REPRESENTATIONS AND WARRANTIES OF BUYER.** As of the date hereof, and, when read in light of any Schedules which have been updated in accordance with the provisions of Section 12.1 hereof, as of the Closing Date, Buyer represents and warrants to Seller the following:

**4.1 Existence and Capacity.** Buyer is an Oklahoma public trust, duly created and existing under the Constitution and laws of the State of Oklahoma. Buyer has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to conduct its business as now being conducted.

**4.2 Powers; Consents; Absence of Conflicts With Other Agreements, Etc.** The execution, delivery, and performance of this Agreement by Buyer and all other agreements referenced herein, or ancillary hereto, to which Buyer is a party, and the consummation by Buyer of the transactions contemplated by this Agreement and the documents described herein, as applicable:

(a) are within its corporate powers, are not in contravention of corporate law or of the terms of its organizational documents, and have been duly authorized by all appropriate corporate action;

(b) except as provided in Sections 6.1 and 6.2, do not require any approval or consent required to be obtained by Buyer of, or filing required to be made by Buyer with, any governmental agency or authority bearing on the validity of this Agreement which is required by law or the regulations of any such agency or authority;

(c) will neither conflict with, nor result in any breach or contravention of, or the creation of any lien, charge or encumbrance under, any indenture, agreement, lease, instrument or understanding to which it is a party or by which it is bound;

(d) will not violate any statute, law, rule, or regulation of any governmental authority to which it may be subject; and

(e) will not violate any judgment, decree, writ, or injunction of any court or governmental authority to which it may be subject.

**4.3 Binding Agreement.** This Agreement and all agreements to which Buyer will become a party pursuant hereto are and will constitute the valid and legally binding obligations of Buyer and are and will be enforceable against it in accordance with the respective terms hereof and thereof.

**5. COVENANTS OF SELLER PRIOR TO CLOSING.** Between the date of this Agreement and the Closing:

**5.1 Information.** Seller shall afford to the officers and authorized representatives and agents (which shall include accountants, attorneys, bankers, and other consultants) of Buyer full and complete access to and the right to inspect the plants, properties, books, and records of the Facilities, and will allow Buyer reasonable access to medical staff and other personnel for general diligence review and to confirm and establish relationships with physicians, other medical staffs and other personnel of the Facilities, and will furnish Buyer with such additional financial and operating data and other information as to the business and properties of Seller which pertains to the Facilities or their operations as Buyer may from time to time reasonably request. Buyer's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of the Facilities or any of Seller's Affiliates. Buyer agrees that no inspections shall take place and no employees or other personnel of the Facilities shall be contacted by Buyer without Buyer first providing reasonable notice to Seller and coordinating such inspection or contact with Seller. Seller will also notify Buyer promptly before proposing, adopting or entering into any stay-pay agreements or arrangements, change of control severance programs, success bonus or other similar arrangements that relate to the transactions contemplated by this Agreement or to operations through the closing of the transactions contemplated hereby.

**5.2 Operations.** Seller will not engage in any practice, take any action, or enter into any transaction outside of the ordinary course of business. Without limiting the generality of the foregoing, Seller shall, with respect to the Assets and the Facilities:

(a) carry on its business pertaining to the Facilities in substantially the same manner as presently conducted and not make any material change in personnel, operations, finance, accounting policies, or real or personal property pertaining to the Facilities;

(b) use commercially reasonable efforts to maintain the Facilities and all parts thereof in good operating condition, ordinary wear and tear excepted;

(c) use commercially reasonable efforts to perform all of its obligations under agreements relating to or affecting the Facilities or the Assets;

(d) use commercially reasonable efforts to keep in full force and effect present insurance policies or other comparable insurance pertaining to the Facilities; and

(e) use commercially reasonable efforts to maintain and preserve its business organizations intact, retain its present employees at the Facilities and maintain its

relationships with physicians, suppliers, customers, and others having business relations with the Facilities.

**5.3 Negative Covenants.** Seller shall not, with respect to the business or operation of the Facilities or otherwise regarding the Assets, without the prior written consent of Buyer (or deemed approved as provided in clause (a) (iii) below of this Section 5.3):

(a) amend, modify, terminate or cancel any of the Assumed Contracts, or enter into any new Contract or commitment, except (i) as required under this Agreement, (ii) Assumed Contracts amended, modified, terminated, cancelled or entered into in the ordinary course of business where the effect of such amendment, modification, termination, cancellation or new obligations would not exceed \$10,000 in any year and (iii) other ordinary course amendment, modification, termination, cancellation or new Contract with respect to which Seller has requested Buyer's consent (which request includes copies of all relevant documents in final execution draft form) and to which Buyer has not notified Seller of its objection within three (3) business days of Buyer's actual receipt of such request;

(b) increase, modify or change the compensation of employees of the Facilities, or institute, increase, modify or change any bonus, insurance, pension, profit-sharing or other employee benefit plan, remuneration or arrangements made to, for or with such employees, except in the ordinary course of business in accordance with its existing personnel policies;

(c) sell, assign, lease, or otherwise transfer, or dispose of any property, plant or equipment (including without limitation any assets or rights of types described in the definition of "Assets" in Section 1), except transfers to persons or entities other than Seller or its other Affiliates in the ordinary course of business with comparable replacement thereof in the ordinary course of business;

(d) acquire any property, plant, or equipment except in the ordinary course of business;

(e) purchase capital assets or incur costs in respect of construction-in-progress in excess of Fifty Thousand Dollars (\$50,000) in the aggregate;

(f) create any lien, security interest or encumbrance upon any of the Assets, except for mechanics liens incurred in the ordinary course of business securing payment for goods or services rendered;

(g) change any accounting methods or practices employed by Seller, or change the depreciation or amortization policies;

(h) adjust or reduce accounts receivable or change allowances for accounts receivable outside the ordinary course of business;

(i) change the composition of the medical staff of the Hospital, other than in the ordinary course of business;

(j) change the rates charged by any of the Facilities for their services, other than in the ordinary course of business, or make any other change in the pricing, billing, collection, reimbursement or discount policies, practices and procedures for the Facilities or their operations, other than in the ordinary course of business;

(k) take any material action outside the ordinary course of business;

(l) take any other action that would have been required to be listed on **Schedule 3.5** had it been taken after October 28, 2006 and prior to the date this Agreement was executed;

(m) permit any voluntarily vacating of the Facilities or ceasing to conduct operations at the Facilities consistent with past ordinary course of business at the Facilities;

(n) assume or reject, under 11 U.S.C. § 365, any executory contract or unexpired lease of the Seller in the Bankruptcy Case other than the Assumed Contracts as required by this Agreement; or

(o) enter into any obligation or commitment to do any of the foregoing.

**5.4 Governmental and Court Approvals.** Seller shall (i) use reasonable efforts to obtain all governmental approvals (or exemptions therefrom) necessary or required to allow Seller to perform its obligations under this Agreement; and (ii) assist and cooperate with Buyer and its representatives and counsel in Buyer obtaining all governmental consents, approvals, and licenses which Buyer deems necessary or appropriate and in the preparation of any document or other material which may be required by any governmental agency as a predicate to or as a result of the transactions contemplated herein, including without limitation the approval of the Bankruptcy Court.

**5.5 FTC Notification.** Seller shall, if and to the extent required by law, file all reports or other documents required or requested by the Federal Trade Commission (“**FTC**”) or the United States Department of Justice (“**Justice Department**”) under the Hart-Scott-Rodino Antitrust Improvements Act of 1976 (“**HSR Act**”), and all regulations promulgated thereunder, concerning the transactions contemplated hereby, and comply promptly with any requests by the FTC or Justice Department for additional information concerning such transactions, so that the waiting period specified in the HSR Act will expire as soon as reasonably possible after the execution and delivery of this Agreement. Seller agrees to furnish to Buyer all information concerning Seller as Buyer needs to perform its obligations under Section 6.2 of this Agreement.

**5.6 Additional Financial Information.** Until the Closing Date, concurrent with the filing with the Bankruptcy Court, Seller shall deliver to Buyer true and complete copies of the monthly operating reports filed in the Bankruptcy Court.

5.7 *[Intentionally Omitted]*

5.8 *[Intentionally Omitted]*

5.9 *[Intentionally Omitted]*

5.10 **Physician Relations.** Seller shall notify Buyer promptly in the event that any physician notifies Seller or its Affiliates in writing of plans to terminate employment or medical staff privileges with Seller, relocate such physician's medical practice or cease providing professional services to patients of the Facilities.

6. **COVENANTS OF BUYER PRIOR TO CLOSING.** Between the date of this Agreement and the Closing:

6.1 **Governmental Approvals.** Buyer shall (i) use reasonable efforts to obtain all governmental approvals (or exemptions therefrom) necessary or required to allow Buyer to perform its obligations under this Agreement; and (ii) assist and cooperate with Seller and its representatives and counsel in obtaining all governmental consents, approvals, and licenses which Seller deems necessary or appropriate and in the preparation of any document or other material which may be required by any governmental agency as a predicate to or as a result of the transactions contemplated herein.

6.2 **FTC Notification.** Buyer shall, if and to the extent required by law, file all reports or other documents required or requested by the FTC or the Justice Department under the HSR Act, and all regulations promulgated thereunder, concerning the transactions contemplated hereby, and comply promptly with any requests by the FTC or Justice Department for additional information concerning such transactions, so that the waiting period specified in the HSR Act will expire prior to the Closing Date as soon as reasonably possible after the execution and delivery of this Agreement. Buyer agrees to furnish to Seller all information concerning Buyer as Seller needs to perform its obligations under Section 5.5 of this Agreement. Buyer shall pay all costs associated with compliance with the HSR Act under this Agreement.

6.3 **Title Commitment and Survey.**

(a) **Title Commitment.** As soon as practical after the date hereof, Buyer, at its expense, shall obtain a current title commitment with respect to the Owned Real Property (the "**Title Commitment**"), issued by a title insurance company selected by Buyer (the "**Title Company**"), together with legible copies of all exceptions to title referenced therein, sufficient for the issuance of an owner's policy of title insurance for the Owned Real Property (the "**Title Policy**"). Buyer shall promptly upon its receipt provide a copy of the Title Commitment and exception documents to Seller.

(b) **Survey.** As soon as practical after the date hereof, Buyer may, at its expense, obtain a current as-built survey of the Real Property (the "**Survey**") or such portions thereof as Buyer elects. Buyer shall promptly upon its receipt furnish a copy of the Survey to Seller.

(c) **Title Defects and Cure.** The Title Commitment and the Survey are collectively referred to as “**Title Evidence**”. Buyer shall notify Seller by 9:00 a.m., Central Time, February 16, 2007 of any liens, claims, encroachments, exceptions or defects disclosed in the Title Evidence which do not constitute Permitted Encumbrances (collectively, “**Defects**”). Buyer and Seller will reasonably cooperate to assure any holder of any lien, claim or other encumbrance receives notice of the hearing to enter the Sale Order and the Sale Order shall provide the sale of Real Property is free and clear of Defects.

## 7. CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER.

Notwithstanding anything herein to the contrary, the obligations of Buyer to consummate the transactions described herein are subject to the fulfillment, on or prior to the Closing Date, of the following conditions precedent unless (but only to the extent) waived in writing by Buyer at the Closing:

**7.1 Representations/Warranties.** The representations and warranties of Seller contained in this Agreement shall be true when made and, when read in light of any Schedules which have been updated in accordance with the provisions of Section 12.1 hereof, true and correct in all material respects as of the Closing Date as though such representations and warranties had also been made on and as of such Closing Date. Each and all of the terms, covenants, and conditions of this Agreement to be complied with or performed by Seller on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects. On the Closing Date, Seller shall have delivered to Buyer a certificate certifying that it has satisfied the conditions set forth in this Section 7.1.

**7.2 Pre-Closing Confirmations.** Buyer shall have obtained documentation or other evidence satisfactory to Buyer in its reasonable discretion that Buyer has:

(a) Received approval from all Government Entities which are listed on **Schedule 7.2(a)**, including, without limitation, (i) the Sale Order (ii) termination or expiration of applicable waiting periods under the HSR Act and (iii) all other necessary approvals from any state or federal regulatory body governing the transferred properties and operations, or the change of ownership thereof;

(b) Received confirmation from all applicable licensure agencies that upon the Closing all licenses required by law to operate the Facilities as currently operated will in due course be transferred to, or issued or reissued in the name of Buyer, as the case may be, except for any documents required to be filed or consents, authorizations, orders or approvals required to be issued, only after the Closing Date.

**7.3 Title Policy.** At the Closing, the Title Company shall be ready, willing and able to issue a pro forma of the Title Policy (or marked Title Commitment containing no additional exceptions to title to the Real Property) to Buyer. The Title Policy shall be issued in an amount equal to the portion of the Purchase Price being allocated to the Owned Real Property and shall insure to Buyer good and marketable title to the Owned Real Property subject only to: (i) current real estate taxes and assessments not yet due and payable, and (ii) the Permitted Encumbrances.

#### 7.4 *Actions/Proceedings.*

(a) No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated.

(b) All actions required pursuant to the Sale Order have occurred and the Bankruptcy Court has entered the Sale Order confirming the transactions contained in this Agreement.

7.5 *Adverse Change.* Except for the Chapter 11 filing, automatic defaults under the Assumed Contracts and acceleration of indebtedness as a direct result of such filing and as set forth in **Schedule 3.5** hereto, since December 27, 2006, there shall not have occurred any event, change or development that, individually or in the aggregate, has had or would reasonably be expected to have a material adverse effect on the Assets and the Facilities (taken as a whole) or on the business, financial condition, operations or results of operations of the Facilities (taken as a whole). A material adverse change shall include an event described in Section 3.5(a), (b) (f), (i) or (l) and Section 5.3(m). Notwithstanding anything to the contrary contained in this Agreement, the following will be presumed not to give rise to a “**material adverse effect**” for purposes of this Agreement: (a) changes or proposed changes to any law, reimbursement rates or policies of governmental agencies or bodies that are generally applicable to hospitals or health care facilities and do not have, and are not reasonably likely to have, a disproportionate affect on the Facilities and their operations relative to similar hospitals and health care facilities, or (b) requirements, reimbursement rates, policies or procedures of third party payors or accreditation commissions or organizations that are generally applicable to hospitals or health care facilities and do not have, and are not reasonably likely to have, a disproportionate affect on the Facilities and their operations relative to similar hospitals and health care facilities.

7.6 *[Intentionally Omitted]*

7.7 *[Intentionally Omitted]*

7.8 *Required Consents.* All consents, waivers, and estoppels of third parties which are listed on **Schedule 7.8** shall have been obtained and are in form and substance reasonably satisfactory to Buyer. Any order of the Bankruptcy Court authorizing Seller’s assumption and assignment of any Assumed Contract, if any, pursuant to 11 U.S.C. § 365 shall be deemed to be satisfactory to Buyer in lieu of consent under this Section.

7.9 *[Intentionally Omitted].*

7.10 *Vesting/Recordation.* Seller shall have furnished to Buyer, in form and substance reasonably satisfactory to Buyer, assignments or other instruments of transfer necessary or appropriate to transfer to and effectively vest in Buyer all right, title, and interest in and to the Assets, in proper statutory form for recording if such recording is necessary or appropriate.

**7.11 Seller Actions.** All actions required of Seller to be taken at or prior to Closing shall have been taken.

**7.12 Environmental Reports.** Buyer shall use its best efforts to have completed prior to Closing and been reasonably satisfied with the scope, findings and conclusions of the Phase I environmental investigation of the Facilities. Seller shall provide reasonable access to and/or copies of any existing environmental reports to assist Buyer with its review of environmental matters.

**7.13 [Intentionally omitted]**

**8. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER.** Notwithstanding anything herein to the contrary, the obligations of Seller to consummate the transactions described herein are subject to the fulfillment, on or prior to the Closing Date, of the following conditions precedent unless (but only to the extent) waived in writing by Seller at the Closing:

**8.1 Representations/Warranties.** The representations and warranties of Buyer contained in this Agreement shall be true when made and, when read in light of any Schedules which have been updated in accordance with the provisions of Section 12.1 hereof, true and correct in all material respects as of the Closing Date as though such representations and warranties had also been made on and as of such Closing Date. Each and all of the terms, covenants, and conditions of this Agreement to be complied with or performed by Buyer on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all material respects. On the Closing Date, Buyer shall have delivered to Seller a certificate certifying that it has satisfied the conditions set forth in this Section 8.1.

**8.2 Governmental and Court Approvals.** All material consents, authorizations, orders (including the entry of the Sale Order) and approvals of (or filings or registrations with) any Government Entity, court or other party which are listed on **Schedule 8.2** shall have been obtained or made by Seller when so required, except for any documents required to be filed, or consents, authorizations, orders or approvals required to be issued, after the Closing Date.

**8.3 Actions/Proceedings.** No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated.

**8.4 Insolvency.** Buyer shall not (i) be in receivership or dissolution, (ii) have made any assignment for the benefit of creditors, (iii) have admitted in writing its inability to pay its debts as they mature, (iv) have been adjudicated a bankrupt, or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against Buyer.



## 9. BANKRUPTCY COURT APPROVAL.

**9.1 Agreement Subject to Higher and Better Offer.** Buyer acknowledges Seller's obligation to close under this Agreement is subject to Seller's receipt of a higher and better offer received prior to entry of the Sale Order. Buyer acknowledges that Seller shall seek to protect the stalking horse buyer by Seller's inclusion in the motion for Court approval of the contemplated sale, a provision seeking a \$50,000.00 break-up fee to compensate the stalking horse buyer (covered in the motion to sell substantially all assets filed in the Bankruptcy Case on February 12, 2007) in the event the Bankruptcy Court approves purchase of the Assets by any entity or person other than the stalking horse buyer, which shall include a purchase of the Assets by Buyer. Further, Buyer has no objection to Seller obtaining Bankruptcy Court approval that any bids accepted other than bids of the Buyer or the stalking horse buyer, as the case may be, or others, are least \$50,000.00 higher than a previous bid of Buyer, the stalking horse buyer or others, with those funds in excess of the amount offered by the stalking horse buyer (in connection with the referenced motion in the Bankruptcy Case of February 12, 2007) to be paid as the break-up fee to the stalking horse buyer.

**9.2 [Intentionally Omitted]**

**9.3 [Intentionally Omitted]**

**9.4 Sale Order.** The Sale Order shall be substantially in the form attached as Exhibit A and any material changes thereto shall permit Buyer to unilaterally terminate this Agreement and thereupon Seller shall return any Good Faith Deposit to Buyer. Notwithstanding the foregoing, Buyer may request and Seller shall not unreasonably object to changes to the Sale Order in order to meet the requirements of Buyer's title insurer in order that a title policy may be issued to Buyer without any noted exceptions for liens, claims and encumbrances of which the Assets are being sold free and clear as provided in Section 1.1.

## 10. ADDITIONAL AGREEMENTS.

**10.1 Allocation of Purchase Price.** If the parties cannot otherwise agreed by the Closing Date as to determine the appropriate allocation of all amounts constituting consideration within the meaning of, and for purposes of, Section 1060 of the Code and the Treasury Regulations promulgated thereunder among (i) the various classes of Asset in accordance with and as provided by Code Section 1060 and the Treasury Regulations promulgated thereunder, (ii) the Assets (or portion thereof) constituting real property or interests therein for U.S. federal income tax purposes and (iii) each class of Assets which has its own depreciation or amortization period for U.S. federal income tax purposes (the determination with respect to the items described in clauses (i), (ii) and (iii), collectively, the "**Allocation**"), the parties shall select an appraiser agreeable to both parties (the "**Appraiser**") to determine the Allocation. For the avoidance of doubt, the Allocation shall be based upon the fair market value of such Assets. The Allocation shall be delivered to the parties by the Appraiser no later than thirty (30) days after selection. All determinations of the Appraiser shall be final and binding on the parties. The parties agree that any Tax Returns or other tax information they may file or cause to be filed (including any Internal Revenue Service Form 8594 and any supplement

thereto) with any governmental agency shall be prepared and filed consistently with the Allocation, and neither party shall take any position (whether in Tax Returns, Tax audits, or other Tax proceedings) that is inconsistent with the Allocation unless (i) pursuant to a “**determination**” within the meaning of Code Section 1313 or similar provision of applicable state or local law or Internal Revenue Service Form 870-AD (or any successor forms thereto) or similar form under applicable state or local law or (ii) the other party has given its prior written consent to the taking of such position. Buyer shall pay all the fees and expenses of the Appraiser. Seller and Buyer shall cooperate with each other and the Appraiser in connection with the matters contemplated by this Section 10.1, including by furnishing such information and access to books, records, personnel and properties as shall be reasonably requested.

### **10.2 Termination Prior to Closing.**

(a) Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time:

(i) on or prior to the Closing Date by mutual, written consent of Seller and Buyer;

(ii) by Buyer by written notice to Seller if any event occurs or condition exists which causes Seller to be unable to satisfy one or more conditions to the obligations of Buyer to consummate the transactions contemplated by this Agreement as set forth in Section 7;

(iii) by Seller by written notice to Buyer if any event occurs or condition exists which causes Buyer to be unable to satisfy one or more conditions within its control, to the obligation of Seller to consummate the transactions contemplated by this Agreement as set forth in Section 8;

(iv) by Seller or Buyer if the Closing shall not have taken place on or before 5:00 p.m. central time on February 28, 2007 (which date may be extended by mutual agreement of Seller and Buyer), provided the terminating party is not then in default of any obligation required of it herein;

(v) by the Buyer or the Seller pursuant to Section 12.1; or

(vi) by Buyer pursuant to Section 6.3, Section 9.4 or Section 12.25 hereof;

(b) If this Agreement is terminated by Buyer pursuant to Section 10.2(a)(ii) or by Seller pursuant to Section 10.2(a)(iii) or by either party pursuant to Section 10.2(a)(iv) (provided that the terminating party has not failed to comply in all material respects with its obligations under this Agreement or such failure is not a material cause of the failure of the transactions contemplated hereby to have been consummated by the date specified in clause

(iv)) or by Buyer or the Seller pursuant to Section 6.3, Section 12.1 or Section 12.25 hereof, then no party shall have any right to indemnification hereunder or otherwise with respect to the failure of the transactions contemplated hereby to have been consummated.

**10.3 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, Seller's Bankruptcy Case, Buyer's operation of the Facilities, audits, compliance with governmental requirements and regulations, and the prosecution or defense of Third Party Claims. Accordingly, Seller and Buyer agree that for a period of six (6) years after Closing each will, unless prohibited by law or regulation or otherwise ordered by the Bankruptcy Court, make reasonably available to the other's agents, successors in interest, independent auditors, counsel, 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 Assets for periods prior and subsequent to Closing to the extent necessary to facilitate concluding the transactions herein contemplated, the Buyer's operation of the Facilities, audits, compliance with governmental requirements and regulations, and the prosecution or defense of claims. For a period of ten (10) years after the Closing, each party agrees that, prior to the destruction or disposition of any such books or records, it shall provide not less than forty-five (45) days' prior written notice to the other party of such proposed destruction or disposal. If such other party desires to obtain any of such documents or records, it may do so by notifying the first party in writing at any time prior to the date scheduled for such destruction or disposal. In such event, the first party shall not destroy such documents and the parties shall then promptly arrange for the delivery of such documents to the other party, its successors or assigns. All reasonable documented out-of-pocket expenses associated with the delivery of the requested documents shall be promptly paid by a requesting party to the other party.

**10.4 Preservation and Access to Records After the Closing.** After the Closing, Buyer shall, in the ordinary course of business and as required by law and Sections 10.3 and 10.4, keep and preserve in their original form all medical and other records of the Facilities existing as of the Closing, and which constitute a part of the Assets delivered to Buyer at the Closing. For purposes of this Agreement, the term "**records**" includes all documents, electronic data and other compilations of information in any form. Buyer acknowledges that as a result of entering into this Agreement and operating the Facilities it will gain access to patient and other information which is subject to rules and regulations regarding confidentiality. Buyer agrees to abide by any such rules and regulations relating to the confidential information it acquires and Seller agrees to abide (and to cause its Affiliates to abide) by all such rules and regulations. Buyer agrees to maintain the patient and personnel records delivered to Buyer at the Closing at the Facilities after Closing in accordance with applicable law (including, if applicable, Section 1861(v)(i)(I) of the Social Security Act (42 U.S.C. § 1395(v)(1)(i)), the privacy requirements of HIPAA and applicable state requirements with respect to medical privacy, and requirements of relevant insurance carriers and JCAHO standards, all in a manner consistent with the maintenance of patient and personnel records generated at the Facilities after Closing. Upon reasonable notice, during normal business hours, at the sole cost and expense of Seller and upon Buyer's receipt of any legally required consents and authorizations, Buyer will afford to the

representatives of Seller, including its counsel and accountants, full and complete access to, and copies of, the patient records transferred to Buyer at the Closing (including, without limitation, access to patient records in respect of patients treated by Seller at the Facilities). Upon reasonable notice, during normal business hours and at the sole cost and expense of Seller, Buyer shall also make its officers and employees available to Seller at reasonable times and places after the Closing. In addition, Seller shall be entitled, at Seller's sole risk, to receive copies of any such patient records, but only for purposes of pending claims or litigation involving a patient to whom such records refer, as certified in writing prior to receipt by counsel retained by Seller in connection with such litigation and only upon Buyer's receipt of any legally required consents and authorizations. Any copy of a patient record so received from the Facilities shall be promptly returned to Buyer following its use by Seller. Any access to the Facilities, their records or Buyer's personnel granted to Seller in this Agreement shall be upon the condition that any such access be consistent with applicable law and not materially interfere with the business operations of Buyer.

**10.5 Tax and Medicare Effect.** Except for the explicit representations contained in this Agreement, none of the parties (nor such parties' counsel or accountants) has made or is making any representations to any other party (nor such party's counsel or accountants) concerning any of the tax or Medicare effects of the transactions provided for in this Agreement as each party hereto represents that each has obtained, or may obtain, independent tax and Medicare advice with respect thereto and upon which it, if so obtained, has solely relied.

**10.6 Reproduction of Documents.** This Agreement and all documents relating hereto, including, without limitation, (a) consents, waivers and modifications which may hereafter be executed, (b) the documents delivered at the Closing, and (c) financial statements, certificates and other information previously or hereafter furnished to Seller or to Buyer, may, subject to the provisions of Section 12.10 hereof, be reproduced by Seller and by Buyer by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and Seller and Buyer may destroy any original documents so reproduced. Seller and Buyer agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial, arbitral or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by the Seller or Buyer in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

**10.7 Cooperation on Tax Matters.** Following the Closing, the parties shall cooperate reasonably with each other and shall make available to the other, as reasonably requested and at the expense of the requesting party, and to any taxing authority, all information, records or documents relating to tax liabilities or potential tax liabilities of Seller for all periods on or prior to the Closing and any information which may be relevant to determining the amount payable under this Agreement, and shall preserve all such information, records and documents (to the extent a part of the Assets delivered to Buyer at Closing) at least until the expiration of any applicable statute of limitations or extensions thereof.

**10.8 Cost Reports.** Seller, at its expense, shall prepare and timely file all terminating and other cost reports required or permitted by law to be filed under the Medicare and Medicaid or other third party payor programs and the State Health Agency for periods ending on or prior to the Closing Date, or as a result of the consummation of the transactions described herein (“**Seller Cost Reports**”). Seller shall have reasonable access to such books and records as necessary for the completion of the Seller Cost Reports. Seller shall retain all rights to the Seller Cost Reports including any amounts receivable or payable in respect of such reports or reserves relating to such reports and all liabilities relating thereto. Such rights shall include the right to appeal any Medicare or Medicaid determinations relating to the Seller Cost Reports. Seller shall retain the originals of the Seller Cost Reports, correspondence, work papers and other documents relating to the Seller Cost Reports. Seller will furnish copies of such Seller Cost Reports to Buyer upon filing.

**10.9 Misdirected Payments, Etc.** Seller and Buyer covenant and agree to remit, with reasonable promptness (within five (5) business days after receipt) to the other 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, and without limitation, in the event of a determination by any governmental or third-party payor that payments to the Seller or the Facilities resulted in an overpayment or other determination that funds previously paid by any program or plan to the Seller or the Facilities must be repaid, Seller shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Closing Date and Buyer shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered after the Closing Date. In the event that, following Closing, Buyer suffers any offsets against reimbursement under any third-party payor or reimbursement programs due to Buyer relating to amounts owing under any such programs by Seller or any of its Affiliates, Seller shall within five (5) business days after notice from Buyer pay to Buyer the amounts so billed or offset.

**10.10 Employee Matters.**

(a) **Employment by Buyer.** Buyer shall offer to temporarily retain all Business Employees who are actively employed by Seller as of the Closing Date and are in good standing for a period of thirty (30) days. During this thirty (30) day period, Buyer shall determine in its sole discretion which Business Employees to retain with the understanding that their employment is at will; provided, however, that in the event Buyer terminates that number of Business Employees after 30 days of the Closing Date, which number, in the aggregate, is sufficient to trigger the provisions of the WARN Act and if it is otherwise applicable, Buyer shall be responsible for all WARN Act liabilities resulting therefrom. Any terminations made by Buyer during the 30 day transition period shall not be subject to severance pay. While Buyer shall not be legally obligated to offer employment to any specific number of Seller’s Business Employees or to any Business Employee, it is Buyer’s present intent to offer employment to substantially all the full time Business Employees, on terms acceptable to Buyer and any Business Employees that Buyer might employ, so long as such Business Employees meet reasonable minimum employment criteria established by Buyer (which criteria, including

without limitation, Buyer's standard drug testing procedures, shall be consistent with the criteria used by Buyer in hiring new employees in Buyer's existing hospital operations). Notwithstanding the foregoing, this Agreement is being entered into solely for the benefit of the parties hereto, and the parties do not intend that any Business Employee or any other person shall be a third-party beneficiary of the covenants of the Buyer or Seller hereunder.

**(b) *Employee Benefits.*** Following the Closing Date, Buyer will credit each retained Business Employee the amount of accrued and unpaid time off applicable to each such Business Employee as of the day of Closing. Seller will retain all other liabilities, debts and obligations under and with respect to Seller's employee benefit plans and will remain responsible for any and all employee benefits and any amounts due and payable under any such plans and obligations, including (without limitation) medical expenses incurred by Business Employees prior to Closing but not processed by Seller as of Closing, and all bonuses, overtime, commissions, contributions and severance payments (other than Buyer's WARN Act liability as provided in subparagraph (a) above) if any, earned or accrued by Business Employees up to and including the Closing Date, and all liabilities relating to post-retirement medical benefits and to Business Employees on long-term disability as of the Closing Date. Seller shall be solely responsible for informing the Business Employees and other applicable parties of their rights and options with respect to Seller's employee benefit plans (both in connection with the execution of this Agreement and independent of this Agreement), and shall continue to be solely responsible for all aspects of the administration and management of the Seller's employee benefit plans as a result of or independent of the transactions under this Agreement, regardless of the date and timing of any such matter, whether it be before, on or after the Closing Date; provided, however, neither Seller nor any officer, director, agent or employee of Seller shall make any statement or representation, whether oral or in writing, to the effect that Buyer will continue, maintain, sponsor or adopt any of Seller's employee benefit plans. As an example, without limitation, of the foregoing sentence, Seller shall be completely responsible for the termination and/or all other actions that may or may not be taken with respect to Seller's employee benefit plans on, before or after the Closing Date. The Buyer shall not accept or incur any liability, debt or obligation relating to or arising under any employee benefit plan of Seller, regardless of whether such liability, debt or obligation arises or is asserted before, on or after the Closing Date. The Buyer shall not assume, sponsor, adopt or continue any Seller employee benefit plan. For periods after the Closing Date, each Business Employee who accepts Buyer's offer of employment in accordance with Section 10.10(a) shall be eligible to participate in employee benefit plans, arrangements, programs and policies maintained from time to time by Buyer in accordance with the terms thereof so long as they meet the criteria for eligibility.

**(c) *Non-Solicitation of Business Employees.*** For a period of two (2) years from the Closing Date, Seller will not solicit, offer to employ or retain the services of or otherwise interfere with the relationship of Buyer with any Business Employee employed by, or otherwise engaged to perform services for Buyer in connection with the operation of the Facilities.

**(d) *Workers' Compensation Claims.*** Seller shall remain solely responsible for liability arising from workers' compensation claims which are based on injuries

occurring on or prior to the Closing Date with respect to the Business Employees, regardless of when such claim(s) may be filed. Buyer shall be solely responsible for any such claim based on injuries occurring after the claiming Business Employee's hire date with Buyer.

**10.11 Use of Controlled Substance Permits.** Only to the extent permitted by applicable law, Buyer shall have the right, for a period not to exceed forty-five (45) days following the Closing Date, to operate under the licenses and registrations of Seller relating to controlled substances and the operations of pharmacies and laboratories, until Buyer is able to obtain such licenses and registrations for itself. In furtherance thereof, Seller shall execute and deliver to Buyer at or prior to the Closing limited powers of attorney in a form agreed to by Buyer and Seller. Buyer shall apply for all such licenses and permits as soon as reasonably possible before and after the Closing and shall diligently pursue such applications. Buyer shall fully indemnify and hold Seller harmless from and against all losses incurred, paid or required to be paid by Seller, resulting in whole or in part from the use of such licenses and permits by Buyer.

**10.12 Medical Staff Matters.** While Buyer shall not be legally obligated to do so, it is Buyer's present intent, as a result of the acquisition of the Assets, that there will be no change or modification to the current staff privileges for physicians on the medical staff of the Hospital for a period of six (6) months following the Closing.. While Buyer shall not be legally obligated to do so, it is Buyer's present intent to adopt the current medical staff bylaws of the Hospital as the medical staff bylaws of the Hospital following the Closing, except that Buyer reserves the right to modify those bylaws to be consistent with Buyer's current form of bylaws used for Buyer's hospital facility in Norman, Oklahoma. Nothing herein shall prevent Buyer from changing its intent as to these matters before or after Closing.

**10.13 Post-Closing Funding of Seller.** Buyer has no objection if the Sale Order contains a provision that the Seller (or any successor in interest to Seller) shall retain at closing, free and clear of all liens, a mutually acceptable sum to the Seller and any committees appointed by the Bankruptcy Court solely for purposes of funding post-closing obligations which shall include but not be limited to salaries of employees of the Seller, professional fees of professionals to the Seller and the amounts payable to the Seller as necessary and related to perform hereunder, to Seller under Section 2.4 and Section 10 of this Agreement. This provision shall have no economic effect as to the Buyer since a portion of the Purchase Price will be used as the funding source for this fund.

**10.14 [Intentionally Omitted].**

## 11. INDEMNIFICATION.

**11.1 Indemnification by Buyer.** Subject to the limitations set forth in Section 11.3 hereof, Buyer shall defend, indemnify and hold harmless Seller and its Affiliates, and its and their respective officers, directors, employees, agents or independent contractors (collectively, “**Seller Indemnified Parties**”), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal) and expenses (including, without limitation, reasonable attorneys’ fees and fees of expert consultants and witnesses) that such Seller Indemnified Party incurs as a result of, or with respect to (i) any misrepresentation or breach of warranty by Buyer under this Agreement, (ii) any breach by Buyer of, or any failure by Buyer to perform, any covenant or agreement of, or required to be performed by, Buyer under this Agreement, (iii) any of the Assumed Liabilities, or (iv) any claim made by a third party with respect to the operation of the Facilities on or following the Closing Date.

**11.2 Indemnification by Seller.** Subject to the limitations set forth in Section 11.3 hereof, Seller shall defend, indemnify and hold harmless Buyer and its Affiliates, and its and their respective officers, directors, employees, agents, or independent contractors (collectively, “**Buyer Indemnified Parties**”), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal) and expenses (including, without limitation, reasonable attorneys’ fees and fees of expert consultants and witnesses) that such Buyer Indemnified Party incurs as a result of, or with respect to (i) any misrepresentation or breach of warranty by Seller under this Agreement; (ii) any breach by Seller of, or any failure by Seller to perform, any covenant or agreement of, or required to be performed by, Seller under this Agreement, (iii) any of the Excluded Liabilities, or (iv) any claim made by a third party with respect to the operation of the Facilities prior to the Closing Date.

**11.3 Limitations.** Buyer and Seller shall be liable under Section 11.1(i) or Section 11.2(i) (i.e., for misrepresentations and breaches of warranties), as applicable, only when total indemnification claims exceed One Hundred Thousand Dollars (\$100,000) (the “**Basket Amount**”), after which Buyer or Seller, as applicable, shall be liable only for the amount in excess of the Basket Amount. If this Agreement is terminated on the basis of any of the grounds specified in the final sentence of Section 10.2, no party will have any right to indemnification hereunder. No party will be liable for indemnification pursuant to Section 11.1(i) or Section 11.2(i), as applicable, to the extent that the misrepresentation and/or breach of warranty giving rise to such indemnity obligation is waived pursuant to the initial paragraph of Section 7 or Section 8, as applicable. The liability of Seller for indemnification under Section 11.2 shall be limited to \$250,000.

### **11.4 [Intentionally Omitted]**

**11.5 Notice and Control of Litigation.** If any Third Party Claim is asserted in writing by a third party against a party entitled to indemnification under this Section 11 (the “**Indemnified Party**”) which would give rise to a claim under this Section 11, the Indemnified Party shall notify the person giving the indemnity (the “**Indemnifying Party**”) in writing of the



same within ten (10) Business Days of receipt of such written assertion of a Third Party Claim. The Indemnifying Party shall have the right to defend a claim and control the defense, settlement, and prosecution of any litigation; provided that the Indemnified Party may, at its sole cost and expense, file any motion, answer or other pleadings that the Indemnified Party may deem necessary or appropriate to protect its interests. If the Indemnifying Party, within five (5) business days after receipt of such written notice of such Third Party Claim, fails to agree to defend such Third Party Claim by providing written notice to the Indemnified Party, the Indemnified Party shall (upon further written notice to the Indemnifying Party) have the right to undertake the defense, compromise, or settlement of such Third Party Claim on behalf of and for the account and at the risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such Third Party Claim at any time prior to settlement, compromise, or final determination thereof. Anything in this Section 11.5 notwithstanding, (i) the Indemnified Party shall have the right, at its own cost and expense, to defend, and, subject to the proviso below, settle or compromise such Third Party Claim (A) if the Indemnifying Party fails to provide the Indemnified Party with written notice to the Indemnified Party that it will defend such Third Party Claim, (B) if there is a commercially reasonable probability that such Third Party Claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, (C) if the Indemnified Party has been advised by its counsel that an actual or potential conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of the Third Party Claim; or (D) if the Indemnifying Party fails to conduct the defense of the Third Party Claim in a manner that a party conducting such defense entirely for its own account would reasonably be expected to conduct such defense; provided in all cases under this clause (i) that the Indemnified Party shall not, without the written consent of the Indemnifying Party, settle or compromise any Third Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant to the Indemnifying Party of a release from all liability in respect of such Third Party Claim, (ii) in the event that a proposed settlement requires the Indemnified Party to admit any wrongdoing or take or refrain from taking any action, then the proposed settlement shall not be entered into unless it is reasonably acceptable to both the Indemnifying Party and the Indemnified Party, and (iii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any Third Party Claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant to the Indemnified Party of a release from all liability in respect of such Third Party Claim. The foregoing rights and agreements shall be limited to the extent of any requirement of any third-party insurer or indemnitor. All parties agree to cooperate fully as necessary in the defense of such matters. Should the Indemnified Party fail to notify the Indemnifying Party in the time required above, the indemnity with respect to the subject matter of the required notice shall be limited to the damages that would have resulted absent the Indemnified Party's failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party. "**Third Party Claim**" shall mean any suit, proceeding, claim or demand by a person or entity other than a person or entity from which indemnification may be sought under this Section 11.

**11.6 Notice of Claim.** If an Indemnified Party determines that there has been a breach of the representations or warranties of the Indemnifying Party hereunder or any other basis for indemnification under this Section 11, the Indemnified Party shall notify the Indemnifying Party in writing of the same within thirty (30) days after making such determination, specifying in detail the circumstances and facts which give rise to a claim under this Section 11. Should the Indemnified Party fail to notify the Indemnifying Party within the time frame required above, the indemnity with respect to the subject matter of the required notice shall be limited to the damages that would have nonetheless resulted absent the Indemnified Party's failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party.

**11.7 Mitigation.** The Indemnified Party shall take such steps as may be reasonably required to mitigate damages for which that party may seek indemnification hereunder and each party shall take commercially reasonable steps to respond to any Third Party Claims that may be subject to indemnification hereunder, all in a manner that is substantially similar to the manner in which it would mitigate such damages or respond to such Third Party Claim in the absence of indemnification hereunder; provided that no failure to mitigate or otherwise act in accordance with this Section 11.7 shall constitute a breach of this Agreement and instead shall simply serve to diminish the amount recoverable by the Indemnified Party from the Indemnifying Party by only such amount of loss or liability as would have been avoided had mitigation efforts of the type set forth above been employed by the Indemnified Party. Any request for indemnification of such specific costs shall include invoices or supporting documents containing reasonably detailed information about the costs for which indemnification is being sought.

**11.8 Exclusive Remedy.**

(a) The representations and warranties contained in or made pursuant to this Agreement shall be terminated and extinguished upon (a) the end of the applicable survival period specified in Section 12.17 or (b) any earlier termination of this Agreement by Buyer pursuant to clause (ii) of Section 10.2(a) or by Seller pursuant to clause (iii) of Section 10.2(a) or by either party pursuant to clause (iv) of Section 10.2(a) (provided that such parties failure to comply in all material respects with its obligations under this Agreement is not a material cause of the failure of the transactions contemplated hereby to have been consummated by the date specified in clause (iv)) or by Buyer or the Seller pursuant to Section 6.3, Section 12.1 or Section 12.25. Thereafter, none of Seller, Buyer or any shareholder, partner, officer, director, principal or Affiliate of any of the preceding shall be subject to any liability of any nature whatsoever with respect to any such representation or warranty. Moreover, the sole and exclusive remedy for any breach or inaccuracy, or alleged breach or inaccuracy, of any representation and warranty made by Seller shall be the remedies provided by this Section 11.

(b) At Closing Seller shall deposit \$250,000 (“**Indemnification Fund**”) in to an escrow account pursuant to the form of indemnity escrow agreement provided

by the escrow agent selected by and mutually acceptable to Buyer and Seller. Any and all claims for indemnification by Buyer shall only be funded from the Indemnification Fund.

## 12. MISCELLANEOUS.

**12.1 Updates to Schedules.** The parties hereto acknowledge that, as of the date hereof, the Schedules contemplated by this Agreement may have not been completed by the parties. The parties agree to use their respective good faith best efforts to produce completed Schedules, to be prepared by one party, as applicable (a “**Preparing Party**”), and approved by the other party (an “**Approving Party**”) within two (2) days after the date of Seller’s acceptance, subject to entry of the Sale Order, of this Agreement (the “**Schedule Date**”). Notwithstanding any contrary provision of this Agreement, Seller shall have no right to amend, modify, update, supplement or change any of **Schedule 7.8** (closing condition required consents) or **Schedule 1.1(g)** Assumed Contracts.

**12.2 Additional Assurances.** The provisions of this Agreement shall be self-operative and shall not require further agreement by the parties except as may be herein specifically provided to the contrary; provided, however, at the request of a party, the other party or parties shall execute such additional instruments and take such additional actions as are consistent with this Agreement and are reasonably necessary or convenient to consummate the transactions contemplated hereby, with each party bearing its own costs and expenses incurred by such party related thereto. In addition and from time to time after Closing, Seller shall execute and deliver such other instruments of conveyance and transfer, and take such other actions as Buyer reasonably may request, more effectively to convey and transfer full right, title, and interest to, vest in, and place the Buyer in legal and actual possession of, any and all of the Facilities and the Assets in a manner consistent with this Agreement with each party bearing its own costs and expenses associated therewith. Upon reasonable notice, during normal business hours and at Buyer’s expense, and upon Seller’s receipt of any legally required consents and authorizations, Seller shall furnish Buyer or its Affiliates with such information and documents in its possession or under its control, or which Seller can execute or cause to be executed, as will enable Buyer or its Affiliates to prosecute any and all petitions, applications, claims, and demands relating to or constituting a part of the Facilities or the Assets. Upon reasonable notice, during normal business hours and with each party bearing its own costs and expenses related thereto, and upon Seller’s receipt of any legally required consents and authorizations, Seller shall cooperate and use its reasonable efforts to have its present directors, officers, and employees cooperate with Buyer or its Affiliates on and after Closing 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. Any access to the records or personnel granted to any party or its Affiliates in this Agreement shall be upon the condition that any such access not materially interfere with the business operations of the other party.

**12.3 Consented Assignment.** Anything contained herein to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any claim, right, contract, license, lease, commitment, sales order, or purchase order if an attempted assignment

thereof without the consent of the other party thereto would constitute a breach thereof or in any material way affect the rights of Seller thereunder, unless such consent is obtained or assumption and assignment is approved by the Bankruptcy Court under 11 U.S.C. § 365.

**12.4 Consents, Approvals and Discretion.** Except as herein expressly provided to the contrary, whenever this Agreement requires any consent or approval to be given by a party, or whenever a party must or may exercise discretion, the parties agree that such consent or approval shall not be unreasonably withheld or delayed and such discretion shall be reasonably exercised.

**12.5 Legal Fees and Costs.** In the event a party elects to incur legal expenses to enforce or interpret any provision of this Agreement by judicial proceedings, the prevailing party will be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs, and necessary disbursements at all court levels, in addition to any other relief to which such party shall be entitled.

**12.6 Choice of Law; Consent to Jurisdiction.** The parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma, without regard to conflict of laws principles. THE BANKRUPTCY COURT WILL HAVE EXCLUSIVE JURISDICTION OVER ALL MATTERS, INCLUDING ANY LEGAL ACTION, SUIT OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY RELATED AGREEMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY AND THE INTERPRETATION, IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT, ANY RELATED AGREEMENTS, OR INTERPRETATION, IMPLEMENTATION AND ENFORCEMENT OF THIS AGREEMENT AND THE PARTIES HERETO IRREVOCABLY SUBMIT AND CONSENT TO SUCH JURISDICTION.

**12.7 Benefit/Assignment.** Subject to provisions herein to the contrary, this Agreement shall inure only to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors, and assigns. No party may assign this Agreement without the prior written consent of the other parties, which consent shall not be unreasonably withheld; provided, however, that any party may, without the prior written consent of the other parties, assign its rights and delegate its duties hereunder to one or more Affiliates, but in such event, the assignor shall be required to remain obligated hereunder in the same manner as if such assignment had not been effected.

**12.8 No Brokerage.** Buyer and Seller each represent and warrant to the other that it has not engaged a broker in connection with the transactions described herein. Each party agrees to be solely liable for and obligated to satisfy and discharge all loss, cost, damage, or expense arising out of claims for fees or commissions of brokers employed or alleged to have been employed by such party.

**12.9 [Intentionally Omitted]**

**12.10 [Intentionally Omitted]**

**12.11 Public Announcements.** Seller and Buyer mutually agree that no party hereto shall release, publish, or otherwise make available to the public in any manner whatsoever any information or announcement regarding the transactions herein contemplated without the prior written consent of Seller and Buyer (which consents will not be unreasonably withheld or delayed), except for (i) information and filings reasonably necessary to be directed to governmental agencies to fully and lawfully effect the transactions herein contemplated or required in connection with securities and other laws; (ii) any filing with the Bankruptcy Court; (iii) information that Buyer might be required to make public or which becomes public information as a result of the public trust status of Buyer; and (iv) information provided to any creditor, official committee, secured creditor or other party in connection with the Bankruptcy Case. 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 hereto.

**12.12 Waiver of Breach.** The waiver by any party of a 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 any other provision hereof. Any waiver of a breach or violation of any provision of this Agreement must be in writing and signed by the party waiving such breach or violation to be effective.

**12.13 Notice.** Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by receipted overnight delivery, or three (3) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

Seller: TSG, Inc., Manager for Moore Medical Center, LLC  
c/o Richard Klinge, General Counsel  
3555 NW 58th Street  
Suite 1000  
Oklahoma City, OK 73112

And (prior to the closing)

Moore Medical Center, LLC  
700 South Telephone Road  
Moore, OK 73160  
Attn: Michael Schuster

With a simultaneous copy to: Kane Russell Coleman & Logan PC  
3700 Thanksgiving Tower  
1601 Elm Street  
Dallas, Texas 75201  
Attn: Joseph A. Friedman

Buyer: Norman Regional Health Authority  
901 North Porter Avenue  
P.O. Box 1308  
Norman, OK 73070-1308  
Attn: David D. Whitaker, President

With a simultaneous copy to: Michael A. Bickford  
Fuller Tubb, a P.L.L.C.  
201 Robert S. Kerr Ave., Suite 1000  
Oklahoma City, OK 73102  
Email: [mabick@abanet.org](mailto:mabick@abanet.org)

or to such other address, and to the attention of such other person or officer as any party may designate, with copies thereof to the respective counsel thereof as notified by such party.

**12.14 Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which shall be and remain in full force and effect, enforceable in accordance with its terms.

**12.15 Gender and Number.** Whenever the context of this Agreement requires, 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.

**12.16 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.

**12.17 Survival.** All of the representations, warranties, covenants, and agreements made by the parties in this Agreement or pursuant hereto in any certificate, instrument, or document shall survive the consummation of the transactions described herein, and may be fully and completely relied upon by Seller and Buyer, as the case may be, notwithstanding any investigation heretofore or hereafter made by any of them or on behalf of any of them, and shall not be deemed merged into any instruments or agreements delivered at the Closing or thereafter. The representations and warranties of Seller contained in or made pursuant to this Agreement shall survive the Closing for one year. The representations and warranties of Buyer contained in or made pursuant to this Agreement shall survive the Closing for one year.

**12.18 Affiliates; Knowledge; Notices.** As used in this Agreement, the term “**Affiliate**” means, as to the entity in question, any person or entity that directly or indirectly controls, is controlled by or is under common control with, the entity in question and the term “**control**” means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity whether through ownership of voting securities, by

contract or otherwise. As used herein, the term “**knowledge of the Seller,**” or similar words shall mean the knowledge of the Seller or of any Affiliate of the Seller after reasonable investigation and due inquiry of the persons it deemed appropriate. As used herein, any references to notice to the Seller or the Seller having received shall be deemed to include any notice to Affiliates of the Seller, and vice versa; and any representation that the Seller has not received certain notices or become aware of certain matters shall be deemed to constitute a representation that neither the Seller nor any of its Affiliates have received such notice or become aware of such matters.

**12.19 [Intentionally Omitted]**

**12.20 Accounting Date.** The transactions contemplated hereby shall be effective for accounting purposes as of 12:00:01 a.m. on the day following Closing, unless otherwise agreed in writing by Seller and Buyer. The parties will use commercially reasonable efforts to cause the Closing to be effective as of a month end.

**12.21 No Inferences.** Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power represented by counsel, no inference in favor of, or against, either party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party.

**12.22 Limited Third Party Beneficiaries.** The terms and provisions of this Agreement are limited solely to the benefit of Buyer, Seller, their Affiliates and their respective permitted successors or assigns, and it is not the intention of the parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other person or entity. No ambiguity or vagueness of terms herein shall be interpreted or construed to burden Buyer with any monetary or non-monetary obligation to any person or entity not a party to this Agreement.

**12.23 Enforcement of Agreement.** The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement was not performed in accordance with its specific terms or was otherwise breached. It is accordingly agreed that the parties shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity.

**12.24 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 respecting 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 statements 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, and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by Buyer and Seller. 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.

**12.25 Risk of Loss.** The risk of loss or damage to any of the Assets, the Facilities and all other property, transfer of which is contemplated by this Agreement, shall remain with Seller until the Closing and Seller shall maintain its insurance policies covering the Assets, the Facilities and all other property through the Closing.

(a) If, prior to the Closing, all or any part of Seller Facilities is partially destroyed or damaged by fire or the elements or by any other cause where such damage or destruction is in the aggregate (the “**Aggregate Damage**”) less than or equal to fifteen percent (15%) of the Purchase Price and such damage or destruction would not reasonably be expected to materially interfere with or disrupt operations at the Hospital or to have, individually or in the aggregate, a material adverse effect on the Assets or the Facilities, taken as a whole, or on the business, financial condition, operations or results of operations of the Facilities, taken as a whole, the parties’ duties and obligations under this Agreement shall not be affected and the Closing shall proceed as scheduled; provided, however, Seller shall assign, transfer and set over to Buyer or its designated Affiliate all of Seller’s right, title and interest in and to any insurance proceeds on account of such damage or destruction, or if the insurance proceeds are not, for any reason, paid in whole or in part to Buyer, then a reduction of the purchase price by such insurance proceeds not paid shall be made to the Purchase Price, which shall be Buyer’s exclusive and sole remedy.

(b) If, prior to the Closing, all or any part of the Hospital is destroyed or damaged by fire or the elements or by any other cause where the Aggregate Damage exceeds fifteen percent (15%) of the Purchase Price or where such damage or destruction could reasonably be expected to materially interfere with or disrupt operations at any of the Hospital or to have, individually or in the aggregate, a material adverse effect on the Assets or the Facilities, taken as a whole, or on the business, financial condition, operations or results of operations of the Facilities, taken as a whole, Buyer may elect to (i) purchase Hospital, and the Closing shall proceed as scheduled (provided, however, at the Closing, Seller shall assign, transfer and set over to Buyer all of Seller’s right, title and interest in and to any insurance proceeds on account of such damage or destruction loss) or (ii) terminate the Agreement by the delivery of a written notice to Seller (the “**Casualty Termination Notice**”). If Buyer and Seller are unable to agree upon the amount of the Aggregate Damage, the amount of the Aggregate Damage shall be determined by a consulting firm mutually selected by Seller and Buyer (the “**Independent Consultant**”).

(c) If pursuant to Section 12.25(a), the amount of the Aggregate Damage (and any applicable Purchase Price adjustment) is to be determined by the Independent Consultant, within fifteen (15) calendar days after the occurrence of the damage to the Hospital (the “**Submittal Date**”), each party shall submit to the other party and to the Independent Consultant its proposed Aggregate Damage as a result of the event(s) contemplated by Section 12.25(a), along with a detailed description of the basis for such amount and any applicable adjustment. Within ten (10) calendar days after the Submittal Date (the “**Decision Date**”), the




Independent Consultant, acting as an expert and not as an arbitrator, shall determine the definitive amount of the Aggregate Damage (and any applicable adjustment to the Purchase Price), taking into account any submissions by Seller or Buyer by the Submittal Date. If the Aggregate Damage exceeds fifteen percent (15%) of the Purchase Price, Buyer shall thereafter have the right to terminate this Agreement by delivery of a Casualty Termination Notice to Seller. The decision of the Independent Consultant as the amount of Aggregate Damage shall be conclusive and binding as between Buyer and Seller, and the costs of such review shall be borne equally by Seller and Buyer. If the Aggregate Damage is less than or equal to fifteen percent (15%), then in accordance with this Section 12.25, the parties shall, subject to the terms and conditions of this Agreement, consummate the transactions contemplated by this Agreement at a mutually agreeable time and place, in accordance with the provisions of this Agreement.


**[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 first above written.

**MOORE MEDICAL CENTER, L.L.C.**

By:   
Title: THE MANAGER  
("Seller")

**NORMAN REGIONAL HOSPITAL AUTHORITY**

By:   
~~Melvin Alexander, Senior Vice President and Chief  
Financial Officer~~  
("Buyer")

David D. Whitaker  
President & Chief Executive Officer