

**AGREEMENT FOR PURCHASE  
AND SALE OF ASSETS**

**BY AND AMONG**

**TULARE LOCAL HEALTHCARE DISTRICT,  
A Local Health Care District of the State of California  
("Seller")**

**AND**

**ADVENTIST HEALTH TULARE,  
A California Nonprofit Religious Corporation  
("Buyer")**

**AND**

**ADVENTIST HEALTH SYSTEM/WEST,  
A California Nonprofit Religious Corporation d/b/a Adventist Health  
("Adventist Health")**

**Dated as of: [ ● ], 2018**

## AGREEMENT FOR PURCHASE AND SALE OF ASSETS

THIS AGREEMENT FOR PURCHASE AND SALE OF ASSETS (“**Agreement**”) is made and entered into as of [ ● ], 2018 (the “**Execution Date**”), by and among TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California (“**Seller**” or the “**District**”), on the one hand, and ADVENTIST HEALTH TULARE, a California nonprofit religious corporation (“**Buyer**”), and ADVENTIST HEALTH SYSTEM/WEST, a California nonprofit religious corporation doing business as ADVENTIST HEALTH (“**Adventist Health**”), on the other hand. At times hereafter, Buyer, Seller and Adventist Health are referred to individually as a “**Party**” or collectively as the “**Parties**”. Adventist Health and Buyer are hereinafter referred to at times individually as an “**Adventist Party**” and collectively as “**Adventist Parties**”.

### RECITALS

A. Seller is the owner of an acute care general hospital located in Tulare, California, heretofore known as Tulare Regional Medical Center (the “**Hospital**”). As of the Execution Date, Seller has voluntarily and temporarily surrendered the Hospital’s general acute care hospital license with the California Department of Public Health (“**CDPH**”) and the Hospital is non-operational. Seller is also currently in Chapter 9 Proceeding (as defined below) in the United States Bankruptcy Court for the Eastern District of California, Fresno Division (the “**Bankruptcy Court**”).

B. Adventist Health is the sole corporate member of Buyer and other nonprofit and proprietary entities comprising a health care delivery system operating in the western United States.

C. Buyer is a newly incorporated affiliate of Adventist Health, formed for the purpose of (i) acquiring certain hereafter described property from Seller in accordance with Section 32121(p) of the California Health and Safety Code, (ii) leasing from Seller certain hereafter described real property underlying the Hospital and (iii) subject to the conditions set forth in this Agreement, using and maintaining such property in connection with the ownership and operation of an acute care hospital and associated operations related to the delivery of health care for the benefit of communities served by the District.

D. The board of directors of Seller, having determined that (i) the transfer to Buyer of the assets (other than real property) comprising the Hospital, (ii) the lease by Seller to Buyer of the Hospital Campus Real Property (as defined below) and (iii) Buyer’s operation and maintenance of an acute care hospital as described above, subject to the conditions set forth in this Agreement, are desirable and in the best interest of the communities served by the District, has approved this Agreement.

G. On November 6, 2018, the terms of this Agreement and the Lease (as defined below) will be placed before the residents of the District by a ballot initiative measure (the “**Approval Election**”). The residents of the District must approve the ballot initiative measure by the margin required by the California Local Health Care District Law (California Health and

Safety Code Sections 32000 *et seq.*) for the Parties to effect the terms of this Agreement and the related property lease.

H. This Agreement is intended to accomplish the following objectives:

- (a) Enhance the provision of quality health care to the communities served by the District;
- (b) Promote the development of new contracts for the benefit of the Hospital and other Adventist Health providers, with a particular emphasis on developing systems that utilize the size and geographic scope arising from the resources of Buyer to serve the general public residing in the communities served by the District;
- (c) Achieve efficiencies and economies of scale that cannot be obtained through the continued free-standing operation of the Hospital; and
- (d) Provide for integration of the Hospital into a regional health care system that will better serve the general public residing in the communities served by the District.

## **AGREEMENT**

NOW, THEREFORE, in consideration of the recitals, covenants, conditions and promises herein contained, the Parties hereby agree as follows:

### **ARTICLE 1.**

#### **DEFINITIONS**

**1.1 Defined Terms.** As used herein, the terms below shall have the following meanings.

“**Affiliate**” shall have the meaning set forth in Section 5031 of the California Corporations Code, as amended.

“**Agency Settlements**” shall mean rights to settlements and retroactive adjustments, if any, whether arising under a cost report of Seller or otherwise, for cost reporting periods ending on or prior to the Closing Date, whether open or closed, arising from or against the United States government under the terms of the Medicare program or TRICARE or the Disproportionate Share Replacement Payments program or against the State of California under the Medi-Cal program, and against any third-party payor programs which settle upon a basis other than individual claims.

“**Agreement**” shall mean this Agreement for Purchase and Sale of Assets and the Schedules and Exhibits hereto.

“**Books and Records**” means originals, or where not available, copies, of books and records maintained in connection with the Hospital, the Licensed Operations or the Acquired

Assets, including books and records relating to books of account, ledgers and general financial accounting records, physician records, medical staff records (including peer review records), personnel records, machinery and equipment maintenance files, patient and customer lists, price lists, distribution lists, supplier and vendor lists, quality control records and procedures, customer and patient complaints and inquiry files, research and development files, records and data (including all correspondence with any Government Entity), sales material and records, all architectural plans or design specifications, strategic plans, marketing plans, internal financial statements and marketing and promotional surveys, pricing and cost information, material and research that relate to the Hospital and Licensed Operations.

“**Bond Counsel**” shall mean the law firm of Hawkins, Delafield & Wood LLP.

“**Business Day**” shall mean a day other than a Saturday, Sunday or other day on which banks located in Tulare, California are authorized or required by Law to close.

“**Chapter 9 Proceeding**” shall mean the proceeding filed by Seller pursuant to Chapter 9 of the U.S. Bankruptcy Code on September 30, 2017 in the Bankruptcy Court, Case No. 17-13797.

“**Closing**” shall mean the consummation of the transactions contemplated by this Agreement.

“**Closing Date**” shall mean the later of (i) December 31, 2018 or (ii) the date the CDPH issues to Buyer a general acute care hospital license to operate the Hospital pursuant to Buyer’s change of ownership (“**CHOW**”) application.

“**Code**” shall mean the Internal Revenue Code of 1986, as amended, and the rules and regulations thereunder.

“**Contracts**” shall mean all written commitments, contracts, leases, licenses, agreements and understandings relating to the Hospital or the Licensed Operations, including, without limitation, agreements with payors, physicians and other providers; agreements with health plans, health maintenance organizations, independent practice associations, preferred provider organizations and other managed care plans and alternative delivery systems; joint venture and partnership agreements; management, employment, retention and severance agreements; vendor agreements; real and personal property leases and schedules; maintenance agreements and schedules; agreements with municipalities and labor organizations; and bonds, mortgages and other loan agreements.

“**Credit Agreement**” means that certain Debtor-in-Possession Credit Agreement, dated as of the Execution Date, by and between Seller and Adventist Health.

“**Deed of Trust**” means that certain Short Form Deed of Trust and Assignment of Rents, dated as of the Execution Date, made by Seller as the trustor to Stewart Title of California, Inc. as trustee, for the benefit of Adventist Health as the beneficiary.

“**Encumbrances**” shall mean all liabilities, levies, claims, charges, assessments, mortgages, security interests, liens, pledges, conditional sales agreements, title retention

contracts, leases, subleases, rights of first refusal, options to purchase, restrictions, purchase money indebtedness and other encumbrances, and agreements or commitments to create or suffer any of the foregoing.

**“Employee Benefit Plan”** shall mean any (i) nonqualified deferred compensation or retirement plan or arrangement which is an Employee Pension Benefit Plan, (ii) qualified defined contribution retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), (iii) qualified defined benefit retirement plan or arrangement which is an Employee Pension Benefit Plan (including any Multiemployer Plan), (iv) Employee Welfare Benefit Plan or material fringe benefit plan or program, (v) employment, consulting, severance, termination, pension, retirement, supplemental retirement, excess benefit, profit sharing, bonus, incentive, deferred compensation, retention, transaction and change in control plan, program, arrangement, agreement, policy or commitment, (vi) stock option, restricted stock, deferred stock, performance stock, stock appreciation, stock unit or other equity or equity-based plan, program, arrangement, agreement, policy or commitment, (vii) savings, life, health, disability, accident, medical, dental, vision, death benefit, cafeteria, insurance, flex spending, adoption/dependent/employee assistance, tuition, vacation, paid-time-off, perquisite, outplacement, welfare benefit, fringe benefit and other similar compensation or benefit plan, program, arrangement, agreement, policy (whether formal or informal) or commitment, including in each case each “employee benefit plan” as defined in Section 3(3) of ERISA (whether or not subject to ERISA).

**“Employee Pension Benefit Plan”** shall have the meaning set forth in Section 3(2) of ERISA (whether or not subject to ERISA).

**“Employee Welfare Benefit Plan”** shall have the meaning set forth in Section 3(1) of ERISA (whether or not subject to ERISA).

**“Environmental Law”** shall mean any applicable Law, Environmental Permit, or any binding agreement with any Governmental Entity: (a) relating to pollution (or the cleanup thereof) or the protection of natural resources, endangered or threatened species, or the environment (including ambient or indoor air, soil, surface water or groundwater, or subsurface strata); (b) human health and safety, including occupational safety; (c) any Release, including investigation, remediation, or any other action to address such Release of any Hazardous Material; or (d) the Handling of Hazardous Materials.

**“Environmental Permit”** shall mean any Permit required under or issued, granted, given, authorized by or made pursuant to Environmental Law.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, as amended.

**“ERISA Affiliate”** means (a) any corporation included with Seller in a controlled group of corporations within the meaning of Section 414(b) of the Code; (b) any trade or business (whether or not incorporated) that is under common control with Seller within the meaning of Section 414(c) of the Code; (c) any member of an affiliated service group of which Seller is a member within the meaning of Section 414(m) of the Code; or (d) any other person or

entity treated as aggregated with Seller under Section 414(o) of the Code or Section 4001(b) of ERISA.

**“Existing Bonds”** shall mean the following obligations of Seller:

- (a) General Obligation Bonds; and
- (b) Revenue Bonds.

**“Final Order”** shall mean an order or judgment of the Bankruptcy Court or any other court of competent jurisdiction as entered on the docket in the Chapter 9 Proceeding or the docket of any such court, the operation or effect of which has not been stayed, reversed, or amended and as to which order or judgment (or any revision, modification, or amendment thereof) the time to appeal, petition for certiorari, or move for reargument or rehearing has expired and as to which no appeal, petition for certiorari, or other proceedings for reargument or rehearing shall then be pending or as to which any appeal, petition for certiorari, reargue, or rehear shall have been waived in writing in form and substance satisfactory to the Parties, or, in the event that an appeal, writ of certiorari, or reargument or rehearing thereof has been sought, such order of the Bankruptcy Court or other court of competent jurisdiction shall have been determined by the highest court to which such order was appealed, or certiorari, reargument, or rehearing shall have been denied or resulted in no modification of such order and the time to take any further appeal, petition for certiorari, or move for reargument or rehearing shall have expired.

**“Financing Documents”** shall mean collectively, the Credit Agreement, Security Agreement, and the Deed of Trust.

**“GASB”** shall mean Governmental Accounting Standards Board accounting principles consistently applied, as in effect from time to time.

**“General Obligation Bonds”** shall mean collectively, (i) the \$15,000,000 Tulare Local Health Care District (Tulare County, California) General Obligation Bonds, Election of 2005, Series A (2007); (ii) the \$8,595,000 Tulare Local Health Care District (Tulare County, California) General Obligation Bonds, Election of 2005, Series B-1 (2009)(Tax-Exempt); and (iii) the \$61,405,000 Tulare Local Health Care District (Tulare County, California) General Obligation Bonds, Election of 2005, Series B-2 (2009) (Federally Taxable-Direct Payment Build America Bonds).

**“Government Authorizations”** shall mean all Permits, no objection letters, variances, clearances and other authorizations, consents and approvals of any Government Entity that are required to own or operate the Hospital, including applicable change of ownership application(s) with CDPH.

**“Government Entity”** shall mean any local, state or federal government, including each of their respective branches, departments, agencies, commissions, boards, bureaus, courts, instrumentalities or other subdivisions, including CDPH, the Medicare and Medi-Cal programs, TRICARE and Medicare Administrative Contractors.

**“Government Healthcare Programs”** shall mean Medicare, Medi-Cal and TRICARE, and any other federal health care program as defined in 42 U.S.C. § 1320a-7b(f) or any other state or local health care programs, including such program’s Participation Agreements.

**“Guaranty”** shall mean that certain Guaranty of Agreement for Purchase and Sale of Assets and Lease, dated as of the Execution Date, made by Adventist Health as the guarantor, for the benefit of Seller, guarantying Buyer’s obligations under this Agreement and the Lease.

**“Handling of Hazardous Materials”** means the production, use, reuse, generation, Release, storage, treatment, formulation, processing, labeling, distribution, introduction into commerce, registration, transportation, reclamation, recycling, disposal, arranging for disposal, discharge or other handling or disposition of Hazardous Materials.

**“Hazardous Materials”** shall mean any chemical, substance, object, material, waste, or controlled substance, in the air, including indoor air, ground or water which is or may be hazardous to human health or safety or to the environment, due to its radioactivity, ignitability, corrosiveness, explosivity, flammability, reactivity, toxicity, infectiousness, or other harmful or potentially harmful properties or effects, including, without limitation, petroleum or petroleum products, asbestos, polychlorinated biphenyls, and all other chemicals, substances, materials, or wastes that are now listed or defined as a pollutant, contaminant, hazardous, or toxic, or regulated in any manner by any Government Entity, or under any Law.

**“Healthcare Laws”** shall mean the Laws applicable to the operations of the Hospital, including Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395lll (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended, or **“Stark Law,”** 42 U.S.C. § 1395nn; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396w-5 (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute (the **“Federal Anti-Kickback Statute”**), 42 U.S.C. § 1320a-7b(b); the False Claims Act, as amended (the **“False Claims Act”**), 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; the Clinical Laboratory Improvement Amendments of 1988 (42 U.S.C. § 263a et seq.); HIPAA; any similar state and local Laws that address the subject matter of the foregoing; any state Law or precedent relating to the corporate practice of the learned or licensed healthcare professions; any state Law concerning the splitting of healthcare professional fees or kickbacks; any state Law concerning healthcare professional self-referrals; kickbacks or false claims; any state healthcare professional licensure Laws, qualifications or requirements for the practice of medicine or other learned healthcare profession; any applicable state requirements for business corporations or professional corporations or associations that provide medical services or practice medicine or related learned healthcare profession; workers compensation; any applicable state and federal controlled substance and drug diversion Laws, including, the Federal Controlled Substances Act (21 U.S.C. § 801, et seq.) and the regulations promulgated thereunder; and all applicable implementing regulations, rules, ordinances and Orders related to any of the foregoing.

**“HIPAA”** shall mean the Administrative Simplification provisions of title II, subtitle F, of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and all regulations promulgated thereunder, including the Privacy Standards (45 C.F.R. Parts 160 and 164, Subparts A and E), the Electronic Transactions Standards (45 C.F.R. Parts 160 and 162), and the Security Standards (45 C.F.R. Parts 160 and 164, Subparts A and C), the Enforcement Rule (45 C.F.R. Part 160, Subparts C-E), and the Breach Notification Rule (45 C.F.R. Part 164, Subpart D), as amended by the Health Information Technology for Economic and Clinical Health Act, Title XIII of division A and Title IV of division B of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), as amended (**“HITECH Act”**), the final HIPAA/HITECH Omnibus Rules published by the U.S. Department of Health and Human Services on January 25, 2013, and as otherwise may be amended from time to time.

**“Hospital Campus Real Property”** shall mean the Premises as defined in the Lease.

**“Intellectual Property Rights”** shall mean any of the following statutory and/or common law rights in, arising out of, or associated therewith (including variants of and applications for): (i) all patents and all reissues, divisions, extensions, provisionals, continuations and continuations in part thereof; (ii) all inventions (whether patentable or not), invention disclosures and improvements, all trade secrets, proprietary information, know-how and technology; (iii) all works of authorship, copyrights, copyright registrations and applications; (iv) all industrial designs and registered designs and any registrations and applications therefor; (v) all trade names, logos, trademarks, assumed and/or fictitious business names, and service marks; trademark and service mark registrations and applications; (vi) all databases and data collections (including knowledge databases); (vii) all rights in software; (viii) rights to uniform resource locations, web site address and domain names; (ix) any similar, corresponding or equivalent rights to any of the foregoing; and (x) any goodwill associated with any of the foregoing.

**“Interim Management Service Agreement”** means that certain Interim Management Services Agreement, dated as of the Execution Date, by and between Buyer and Seller.

**“Law”** shall mean any applicable constitutional provision, statute, law, rule, regulation, code, ordinance, accreditation standard, resolution, Order, ruling, promulgation, policy, manual guidance, treaty directive, interpretation, or guideline adopted or issued by any Government Entity.

**“Lease”** shall mean that certain Lease entered into as of the Execution Date, and to be effective as of the Closing Date, by and between Seller, as landlord, and Buyer, as tenant, pursuant to which Seller shall (i) lease to Buyer the Hospital Campus Real Property; and (ii) grant to Buyer an option to purchase at fair market value the Hospital Campus Real Property (the **“Real Property Purchase Option”**).

**“Leased Real Property”** shall mean all leasehold or subleasehold estates and other rights held by Seller, as lessee, to use or occupy any land, improvements, or other interest in real property, in connection with the Hospital and Licensed Operations.



**“Licensed Operations”** shall mean the services licensed as part of Seller’s consolidated general acute care hospital license for the Hospital, including, without limitation, Seller’s outpatient services, including those outpatient clinics reimbursed through the “Rural Health Clinics Program” (as defined in 42 C.F.R. Pt. 405).

**“Most Recent Balance Sheet”** shall mean the unaudited balance sheet of Seller as of June 30, 2018.

**“Multiemployer Plan”** shall have the meaning set forth in Section 3(37) of ERISA or Section 4001(a)(3) of ERISA (whether or not subject to ERISA).

**“Order”** shall mean any judgment, order, writ, injunction, decree, determination, or award of any Government Entity.

**“Owned Real Property”** shall mean the real property, including all rights, covenants, easements and appurtenances in connection therewith, and including all buildings, improvements, structures, fixtures and appurtenances (but excluding any and all leasehold estates created under the Contracts that constitute real property leases), owned by Seller, including the Hospital Campus Real Property.

**“Participation Agreement”** means any of Seller’s Government Healthcare Program participation agreement, provider agreement and related provider numbers and national provider identifiers (“NPIs”).

**“Permit”** means any consent, ratification, registration, waiver, authorization, license, permit, grant, franchise, concession, exemption, order, notice, certificate or clearance issued, granted, given, or otherwise made available by or under the authority of any Government Entity or pursuant to any Law.

**“Permitted Encumbrances”** means the Permitted Personal Property Encumbrances and Permitted Real Property Encumbrances.

**“Permitted Personal Property Encumbrances”** means (i) all liens for taxes and assessments not yet due and payable, (ii) liens for taxes, assessments and other charges, if any, the validity of which is being contested in good faith by appropriate action, and with respect to Seller, adequate reserves (as determined in accordance with GASB) have been established on the Seller’s books with respect thereto; (iii) liens on Personal Property listed on Schedule 4.16; and (iv) any other liens disclosed to Buyer and deemed in writing by Buyer to be a Permitted Personal Property Encumbrance including, without limitation, any liens on Personal Property securing and subject to any purchase money indebtedness not otherwise listed on Schedule 4.16.

**“Permitted Real Property Encumbrances”** shall mean (i) all liens for taxes and assessments not yet due and payable and (ii) liens for taxes, assessments and other charges, if any, the validity of which is being contested in good faith by appropriate action, and with respect to Seller, for which adequate reserves (as determined in accordance with GASB) have been established on Seller’s books with respect thereto, (iii) normal easements, covenants and conditions of record and disclosed on the preliminary title report(s) obtained by Buyer which do not materially affect Buyer’s intended use of the Hospital Campus Real Property unless objected

to in writing by Buyer, (iv) those Encumbrances on any Real Property listed on Schedule 4.16, and (iv) any other matter disclosed to Buyer and deemed in writing by Buyer to be a Permitted Real Property Encumbrance.

“**Personal Property Leases**” means all leases, subleases, licenses, and other Contracts pursuant to which Seller holds any Personal Property, including the right to all security deposits and other amounts and instruments deposited by or on behalf of Seller thereunder.

“**Release**” means any release, spill, emission, leaking, pumping, pouring, dumping, emptying, injection, deposit, disposal, discharge, dispersal, leaching, or migration into or through the environment.

“**Revenue Bonds**” means, collectively, the \$17,850,000 Tulare Local Health Care District (Tulare County, California) Refunding Revenue Bonds, Series 2007.

“**Security Agreement**” means that certain Security Agreement and Chattel Mortgage, dated as of the Execution Date, by and between Seller and Adventist Health.

“**Seller Employee Benefit Plans**” shall mean any Employee Benefit Plan sponsored, maintained or contributed to, or required to be sponsored, maintained or contributed to by Seller, or with respect to which Seller has any actual or contingent liability.

“**Service Area**” shall mean the service area described in **Exhibit A**.

“**Valuation Consultant**” shall mean Deloitte Financial Advisory Services LLP.

“**Valuation Date**” shall mean the date of the final fair market appraisal report provided by the Valuation Consultant for purposes of determining the Purchase Price and the rental rate under the Lease.

“**WARN Act**” shall mean the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar state or local plant closing or mass layoff law.

**1.2 Other Defined Terms.** The following terms shall have the meanings defined for such terms in the Sections set forth below:

<u>Term</u>	<u>Section</u>
Accounts Receivable	2.1.6
Acquired Assets	2.1
Adventist Health	Preamble
Adventist Party/Parties	Preamble
Approval Election	Recital E

<u>Term</u>	<u>Section</u>
Assumed Contracts	2.1.3
Assumed Leases	2.1.2
Assumed Liabilities	2.3
Assumed Real Estate Leases	2.1.2
Assumption Document	2.5.2
Bankruptcy Court	Recital A
Bond Counsel G.O. Bond Opinion	7.1.7
Bond Counsel Revenue Bond Opinion	7.1.7
Buyer's Knowledge Representations	Article 5
Buyer	Preamble
CDPH	Recital A
District	Preamble
Electorate Approval	4.5.2
Environmental Damages	9.10.2
Excluded Assets	2.2
Excluded Liabilities	2.4
Excluded Personal Property	2.2.2
Execution Date	Preamble
Final Schedule	6.9.5
Hospital	Recital A
IGT Amounts	9.6
IGT Program	9.6

<u>Term</u>	<u>Section</u>
Inspection Period	6.5
Insurance Policies	4.13
Intangible Property	2.1.9
Inventory	2.1.4
Material Contracts	4.16
Medical Records	2.1.9
Modification	6.9.1
New Encumbrances	6.4.3
Non-Removal Notice	6.4.2
Party/Parties	Preamble
Personal Property	2.1.1
Phase II Site Testing	6.5.2
Post-MSA Accounts	2.1.7
Post-Valuation Assets	2.1.10
Preliminary Site Testing	6.5.2
Prepays	2.1.5
Purchase Price	2.5.1
Real Estate Leases	4.8.2
Removable Objections	6.4.3
Seller	Preamble
Seller's Knowledge Representations	Article 4
Site Testing	6.5.2

<u>Term</u>	<u>Section</u>
Express Map	6.4.1
Third Party Claim	9.10.4
Title Company	6.4.1
Title Objection Notice	6.4.2
Title Report	6.4.1
Transition Patients	9.3.1
Transition Services	9.3.1
Zoning Reports	6.4.1

## ARTICLE 2.

### PURCHASE AND SALE OF ACQUIRED ASSETS

**2.1 Acquired Assets.** Upon the terms and subject to the conditions contained herein, at the Closing, Seller shall sell, convey, transfer, assign and deliver to Buyer, and Buyer shall acquire from Seller, all right, title and interest of Seller in and to all the business, properties, assets and rights, whether tangible or intangible, real, personal or mixed, owned, leased or held by Seller that constitute, or are used in connection with or are related to the Hospital and the Licensed Operations, as such assets shall exist on the Closing Date, including the following items to the extent used or held for use in the operations of the Hospital and the Licensed Operations (except to the extent that any such assets constitute Excluded Assets) (collectively, the “**Acquired Assets**”).

2.1.1 Personal Property. All tangible personal property of every kind and nature owned by Seller that is physically located within the Hospital Campus Real Property or any location in which the Licensed Operations are conducted or used, or held for use, in connection with the Hospital and Licensed Operations as of the Closing Date (collectively, the “**Personal Property**”), including, without limitation, the following:

(a) all tangible personal property in connection with the Licensed Operations that are identified and scheduled on Schedule 2.1.1(a) as part of and pursuant to the fair market value appraisal process conducted by the Valuation Consultant, including during the walk-through of the Hospital Campus Real Property of the Valuation Consultant and representatives of each of Buyer and Seller, but excluding the Excluded Personal Property; and

(b) all other furniture, fixtures, machinery, vehicles, equipment, owned or licensed computer systems, supplies, spare parts, and tools, whether or not capitalized at the time of their purchase, and whether or not recorded on the books of Seller, that are physically

located within the Hospital Campus Real Property or any location in which the Licensed Operations are conducted or used, or held for use, in connection with the Hospital and Licensed Operations, but excluding the Excluded Personal Property;

2.1.2 Assumed Leases. All of Seller's right, title and interest in and to:

- (a) the leases and subleases in connection with the Leased Real Property, as set forth on Schedule 2.1.2 (the "**Assumed Leases**");
- (b) all Personal Property Leases set forth on Schedule 2.1.2;
- (c) all Real Estate Leases (as defined in Section 4.8.2), but excluding those leases set forth on Schedule 2.1.2 (the "**Assumed Real Estate Leases**");

2.1.3 Assumed Contracts. Each Contract set forth in Schedule 2.1.3, and all deposits and prepayments made by Seller under all such Contracts (all such Contracts, together with the Assumed Leases, the Personal Property Leases, and the Assumed Real Estate Leases, collectively, the "**Assumed Contracts**");

2.1.4 Inventory. All of Seller's inventories of supplies, raw materials, parts, merchandise, drugs, food, janitorial and office supplies, maintenance and shop supplies, and other disposables and consumables (collectively, the "**Inventory**") located within the Hospital Campus Real Property or any location in which the Licensed Operations are conducted and used in connection with the Licensed Operations;

2.1.5 Prepays. All of Seller's advance payments, prepayments, prepaid rentals, prepaid expenses and deposits (including any prepaid deposits for the Inventory) made by or on behalf of Seller in the ordinary course of business for goods and services, including those set forth on Schedule 2.1.5, whether or not pursuant to an Assumed Contract, where such goods or services have not been received by Seller as of the Closing (the "**Prepays**");

2.1.6 Accounts Receivable. All accounts, notes, interest and other receivables of Seller and all accounts receivable of Seller that have arisen, and not been collected, since the effective date of the Interim Management Services Agreement and prior to the Closing Date, in connection with the business and operation of the Hospital and Licensed Operations, including: accounts, notes or other amounts receivable from a third-party, and all claims, rights, interests and proceeds related thereto; cost report settlements that relate to the period before the Closing Date; and any account receivable arising from Agency Settlements even if such adjustments occur after the Closing, for items and/or services provided by Seller prior to the Closing Date while owner of the Acquired Assets, whether payable by professional service providers, private pay patients, private insurance, third-party payors, Medicare, Medi-Cal, TRICARE, or by any other source (collectively, the "**Accounts Receivable**"), and all documents, records, correspondence, work papers and other documents relating to the Accounts Receivable, Seller's cost reports or Agency Settlements;

2.1.7 Post-MSA Bank Accounts. All bank accounts of Seller opened on or after the effective date of the Interim Management Services Agreement ("**Post-MSA Accounts**") and all cash on hand as of the Closing Date and reflected in the Post-MSA Accounts;

2.1.8 Claims. All claims, causes of action, rights of recovery and rights of setoff and recoupment of any kind (including rights to insurance proceeds and rights under and pursuant to all warranties, representations, and guarantees made by suppliers of services, products, materials, or equipment, or components thereof) that arise out of or inure to the benefit of Seller with respect to the Acquired Assets;

2.1.9 Intangible Property. All of Seller's intangible property (the "**Intangible Property**") used in connection with the Licensed Operations, including the following:

(a) all Government Authorizations, to the extent assignable or transferable, owned, utilized, licensed, or issued to Seller relating to the ownership, development and business or operation of the Licensed Operations or the Acquired Assets (including any pending Government Authorizations related to the Licensed Operations or the Acquired Assets);

(b) all Intellectual Property Rights of Seller related to the Licensed Operations, licenses and sublicenses granted and obtained with respect thereto, copies of tangible embodiments thereof in whatever form or medium, all rights to sue and recover damages for infringement occurring on or after the Closing Date, misappropriation or breach thereof, rights to protection of interests therein under the Laws of all jurisdictions, and the goodwill associated therewith;

(c) all goodwill associated with the Licensed Operations;

(d) all warranties and guarantees of third parties relating to the Licensed Operations;

(e) all Books and Records;

(f) originals, or where not available, copies (including in electronic format), of all medical records, patient files, and other written accounts of the medical history of the Hospital's patients maintained in connection with the Licensed Operations, to the extent transferable by Law ("**Medical Records**");

(g) all business phone numbers, advertising and all sales and promotional literature, samples, and catalogs used in the marketing of the Licensed Operations; and

2.1.10 Post-Valuation Assets. All other assets owned by Seller and used in connection with the Hospital and the Licensed Operations that are (i) acquired by Seller or (ii) (A) discovered to not have been covered by the Valuation and reflected in the Purchase Price set forth in Section 2.5.1(a), and (B) where the Parties agree in good faith such asset should be included among Acquired Assets, from and after the Valuation Date (the "**Post-Valuation Assets**").

**2.2 Excluded Assets**. Notwithstanding any other provision of this Agreement, Seller shall retain all other assets of Seller that are not the Acquired Assets (collectively, the "**Excluded Assets**").

2.2.1 Real Property. All of the Owned Real Property;

2.2.2 Personal Property. All of the personal property that are not located in the Hospital Campus Real Property or used in connection with the Licensed Operations, including the personal property in storage as of the Closing Date located at 446 E. Prosperity Avenue, Tulare, California 92374 (the “**Excluded Personal Property**”);

2.2.3 District Records. All bylaws, minute books and other business records of Seller that do not pertain primarily to the Licensed Operations, and, notwithstanding any other provision of this Agreement, any Hospital records that Seller is required by Law to retain in its possession and any confidential corporate and financial books and records, marketing materials, attorney-client privileged communications and other confidential records or correspondence of Seller;

2.2.4 District Tax Revenues. All tax accruals or tax revenues of Seller, including, without limitation, any unexpended funds maintained by Seller as of the Closing Date and such accruals or revenues as of the Closing Date which are received by Seller after the Closing Date;

2.2.5 District Restricted Funds. All funds or assets that are restricted or otherwise precluded by applicable Law or contract from assignment or transfer, including, without limitation, all funds held from time to time by any indenture trustee and/or paying agent under the documents that evidence or otherwise secure Existing Bonds, and any proceeds thereof;

2.2.6 Employee Benefit Plan Assets. All rights in connection with and assets of any Seller Employee Benefit Plans, including assets representing a surplus or overfunding of any such plan;

2.2.7 Pre-MSA Bank Accounts. All bank accounts of Seller opened prior to the Interim Management Services Agreement effective date (“**Pre-MSA Accounts**”) and all cash on hand as of the Closing Date and reflected in Seller’s Pre-MSA Accounts;

2.2.8 Certain Insurance Claims. All rights to claims under or proceeds of Insurance Policies pertaining to the Acquired Assets prior to Closing Date;

2.2.9 Chapter 9 Proceeding Claims. Claims of Seller arising in connection with any construction litigation, claims the Seller holds against the Health Care Compliance Association (“**HCCA**”), HCCA’s principals and Southern Inyo Healthcare District, and claims arising in or from Chapter 5 of the U.S. Bankruptcy Code and the Chapter 9 Proceeding such as preference claims as well as those assets listed on Schedule 2.2.9; and

2.2.10 Other Assets. All other assets of Seller that are not expressly included herein as Acquired Assets.

**2.3 Assumption of Liabilities**. Effective as of the Closing Date, subject to and in accordance with the terms of this Agreement, Buyer shall assume and agree to perform and



discharge when due, the following liabilities and obligations (except to the extent that such liabilities constitute Excluded Liabilities) (collectively, the “**Assumed Liabilities**”):

2.3.1 Assumed Contracts. All liabilities and obligations of Seller arising on or after the Closing Date under any Assumed Contract other than liabilities or obligations arising in connection with the breach of any such arrangement on or prior to the Closing Date; and

2.3.2 Post-Closing Liabilities. All obligations and liabilities arising out of Buyer’s operations and/or ownership of the Acquired Assets or Licensed Operations on or after the Closing Date, including all liabilities with respect to medical staff, health and/or safety matters.

2.4 **Excluded Liabilities**. Notwithstanding any other provision of this Agreement, Buyer shall not assume, or otherwise be responsible for, any liabilities or obligations of Seller, whether actual or contingent, matured or unmatured, liquidated or unliquidated, or known or unknown, arising out of occurrences prior to the Closing, subject to the terms of the Interim Management Services Agreement, and not expressly assumed hereunder as Assumed Liabilities, including, without limitation, the following (collectively, the “**Excluded Liabilities**”):

2.4.1 Professional and Comprehensive General Liability Claims. Professional liability or general liability that relates to incidents, actions or omissions occurring prior to the Closing Date.

2.4.2 Medical Staff Claims. Professional, general, or directors and officers liability claims that relate to incidents, actions or omissions of the medical staff or governing body prior to the Closing Date.

2.4.3 Employment Liabilities. Any liability relating to, resulting from, or arising out of (and whether or not such liabilities arise prior to, on or following the Closing Date) (i) Seller’s actual or prospective employment or engagement, retention and/or termination of any current or former employee or service provider of Seller or any affiliate of Seller (including liabilities for compensation or benefits or liabilities with respect to a claim of an unfair labor practice or under any employment Law or regulation), (ii) any Seller Employee Benefit Plan (including, without limitation, any liability to make any payment or payments to any third party as a result of the transactions contemplated by this Agreement or worker’s compensation claims), (iii) due to Seller’s, or an affiliate of Seller’s, status as an ERISA Affiliate of any other entity.

2.4.4 Contract Liabilities. Any liability or obligation arising from any attempt by Seller to formally reject in the Chapter 9 Proceeding any Contracts that are Excluded Assets, whether or not such liability or obligation arises before or after the Closing Date.

2.4.5 Tort and Contract Claims. Any other claim or liability (including litigation identified in Schedule 4.17), whether in contract or tort, which arises from the conduct of Seller or in the operation of the Licensed Operations prior to the Closing Date.

2.4.6 Environmental Liabilities. Any and all known or unknown costs, losses, liabilities, obligations, damages, lawsuits, deficiencies, claims, demands and expenses (whether or not arising out of third-party claims), including without limitation interest, penalties, costs of

mitigation, any investigation or clean-up, remedial correction or response action, damages to the environment or natural resources, legal fees and all amounts paid in investigation, defense or settlement of any of the foregoing incurred in connection with, arising out of or resulting from any liabilities arising under or noncompliance with any Environmental Law, in connection with any Hazardous Materials or Handling of Hazardous Materials, or concerning any environmental condition or any property damage, natural resource damage, or bodily injury occurring as a result of Seller's operation of the Hospital before the Closing Date or attributable to conditions on the Hospital Campus Real Property before the Closing Date.

2.4.7 Liabilities under Laws, Government Healthcare Programs. Any debts, obligations or liabilities of Seller related to the Hospital and Licensed Operations prior to the Closing Date (i) under applicable Laws, including Healthcare Laws (whether known or unknown to Seller as of the Closing Date, fixed, absolute, accrued, contingent or otherwise); (ii) otherwise in connection with the Government Healthcare Programs and related Participation Agreements; or (iii) otherwise in connection with any other Government Entity, and (iv) including those set forth on Schedule 2.4.7.

2.4.8 Other Claims. Any other debts, obligations or liabilities of Seller that relate to incidents, actions or omissions of Seller or Seller's directors, officers, employees, contractors, agents or representatives occurring prior to the Closing Date that is not expressly assumed by Buyer under the terms of this Agreement.

## 2.5 Purchase Price.

2.5.1 Purchase Price. In exchange for the sale, transfer, assignment, conveyance and delivery of the Acquired Assets by Seller to Buyer, Buyer shall, upon the terms and subject to the conditions set forth herein, (x) assume the Assumed Liabilities and (y) pay the amount equal to the sum of the amounts set forth in subsections (a) and (b) below, in accordance with Section 2.5.2 (collectively, (x) and (y) are hereinafter referred to as the "**Purchase Price**"):

(a) an amount equal to [ ● ] Dollars (\$[ ● ])<sup>1</sup>; and

(b) the fair market value of any Post-Valuation Assets. Unless agreed otherwise by the Parties the fair market value of any Post-Valuation Assets shall be the purchase price thereof less the amount of any purchase debt on such assets. Seller shall not acquire any Post-Valuation Assets outside the ordinary course of business without the express written consent of Buyer.

2.5.2 Payment of Purchase Price. Buyer shall pay the Purchase Price as follows:

(a) Buyer shall deliver to Seller an executed copy of the Assumption of Certain Liabilities, substantially in the form attached hereto as Exhibit 2.5.2 (the

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<sup>1</sup> TBD: Value of Acquired Assets as determined by the Valuation Consultant.

“Assumption Document”), evidencing assumption of the Assumed Liabilities pursuant to Section 2.3.

(b) On the Closing Date, the Purchase Price shall be applied in full to reduce the amount of any outstanding balance due from Seller to Adventist Health under the Credit Agreement.

2.5.3 Purchase Price Allocation. The Purchase Price shall be allocated among the Acquired Assets.

## 2.6 Prorations.

2.6.1 Prorations in General. All prorations shall be computed as of the Closing Date.

2.6.2 Assumed Contracts. The Parties shall prorate all rent and other payments payable by Seller under all Assumed Contracts, including real estate and personal property taxes, assessments and other similar charges, for the calendar month during which the Closing Date occurs, as applicable.

2.6.3 Utilities. All utility costs and expenses shall be prorated between the Parties within thirty (30) days after the Closing Date, based upon the latest available information, such that Seller shall be responsible for all utility costs and expenses relating to the period up to and including the day prior to the Closing Date, and Buyer shall be responsible for all such costs and expenses relating to the period from and after the Closing Date. Seller shall endeavor to have all meters read for all utilities servicing the Hospital and Licensed Operations including, without limitation, water, sewer, gas and electricity for or the period to and including the day promptly following the Closing Date, and shall pay all bills rendered on the basis of such readings (provided that Buyer shall be responsible-for any and all fees and charges relating to the changeover of all such services and utilities into the name of Buyer or its affiliates). If, on the Closing Date, Seller is unable to have any utility meters read, Buyer and Seller shall estimate the amount of such bills based on the immediately preceding utility bills.

2.6.4 Other Prorations. To the extent not otherwise prorated pursuant to this Agreement, Buyer and Seller shall prorate between them any periodic revenue or expense that is applicable to the time periods before and after the Closing Date.

2.6.5 Post-Closing Corrections. If any errors or omissions are made regarding adjustments and prorations as aforesaid, the Parties shall make the appropriate corrections promptly upon the discovery thereof. If any estimations are used to prepare the proration amounts used for the Closing, the Parties shall make the appropriate corrections promptly when accurate information becomes available. Any corrected adjustment or proration shall be paid in cash to the Party entitled thereto.

## ARTICLE 3.

### CLOSING

**3.1 Closing Date.** The Closing shall take place on, and the Lease shall be effective as of, the Closing Date. Buyer shall provide written notification to Seller of the actual Closing Date as soon as reasonably practicable, but no later than seventy-two (72) hours of Buyer's receipt of approval from the CDPH of Buyer's hospital license CHOW application.

**3.2 Deliveries by Seller.** At or before the Closing, Seller shall deliver to Buyer the following (duly executed where appropriate):

3.2.1 **Seller's Certificates.** Certificates of Seller, executed by Seller's duly authorized officers, confirming the completeness and truthfulness in all material respects of the representations, warranties and covenants made herein, and incumbency certificates identifying the officers of Seller as of the Closing Date.

3.2.2 **Certified Resolutions.** A certified copy of the resolution of Seller's board of directors authorizing and approving the transactions contemplated by this Agreement, the execution and delivery of this Agreement and the consummation of transactions provided herein.

3.2.3 **Bill of Sale.** A Bill of Sale, substantially in the form attached hereto as **Exhibit 3.2.3.**

3.2.4 **Evidence of Title.** Appropriate documents evidencing Seller's title to the Acquired Assets subject only to the Assumed Liabilities assumed by and assigned to Buyer pursuant to Section 2.3. A copy of the original of such documents shall, upon Buyer's written request, be procured and delivered by Seller to Buyer on the Closing Date.

3.2.5 **Assignment of Contracts and Other Assumed Liabilities.** A General Assignment of Rights, substantially in the form attached hereto as **Exhibit 3.2.5**, and other written assignments or consents, in a form reasonably acceptable to Buyer or to any designated assignee of Buyer, including all obtained consents to said assignments of all of Seller's right, title and interest in all Assumed Contracts and other Assumed Liabilities assumed by and assigned to Buyer pursuant to Section 2.3. By the Closing Date, Seller shall have delivered to Buyer the true and correct originals, or true and correct photocopies of originals if such originals are not available to Seller after due inquiry, of all Assumed Contracts and other Assumed Liabilities, and all amendments to such Assumed Contracts and other Assumed Liabilities. Seller also shall obtain and deliver to Buyer a Final Order entered in the Chapter 9 Proceeding in form and substance reasonably acceptable to Buyer authorizing and directing Seller to assume and assign to Buyer the Assumed Contracts identified in Section 2.3.

3.2.6 **Assignment of Leases.** An Assignment of Leases, substantially in the form attached hereto as Exhibit 3.2.6.

3.2.7 **Certified Order of the Bankruptcy Court.** A certified order of the Bankruptcy Court authorizing the Seller to enter into this Agreement, the Interim Management Services Agreement, the Financing Documents and the Lease.

3.2.8 **Other Documents.** Such other documents as (i) may be reasonably requested by Buyer prior to the Closing Date to effect the closing of the transactions as they are

herein contemplated, or (ii) are required to effect the closing of the transactions as they are herein contemplated, whether or not requested by Buyer.

3.2.9 Opinions of Bond Counsel. As applicable, the Bond Counsel Revenue Bond Opinion and the Bond Counsel G.O. Bond Opinion.

3.2.10 Certificate of Election. Certificate of Election from the office of the clerk of the County of Tulare, California certifying the results of the Approval Election.

**3.3 Deliveries by Buyer.** At or before the Closing, Buyer and/or Adventist Health shall deliver to Seller the following (duly executed where appropriate):

3.3.1 Buyer's Certificate. Certificates of Buyer and Adventist Health, executed by their respective duly authorized officers, confirming the completeness and truthfulness in all material respects of the representations, warranties and covenants made herein, and incumbency certificates identifying the respective officers of Buyer and Adventist Health as of the Closing Date.

3.3.2 Certified Resolutions. Certified copies of the resolutions of the boards of directors of Buyer and of Adventist Health, authorizing and approving the transactions contemplated by this Agreement, the execution and delivery of this Agreement and the consummation of transactions provided herein.

3.3.3 Assumption Document. The Assumption Document.

3.3.4 Guaranty. The Guaranty.

3.3.5 Other Documents. Such other documents as (i) may be reasonably requested by Seller prior to the Closing Date to effect the Closing, or (ii) are required to effect the Closing whether or not requested by Seller.

**3.4 Tax Clearances, Closing Tax Returns, Notices and Reports.**

3.4.1 Tax Clearances and Releases. Seller shall secure and deliver to Buyer, concurrently with the Closing, tax clearance certificates from the California Employment Development Department, the California Franchise Tax Board, the California Board of Equalization, the County of Tulare, California, and the Internal Revenue Service, to the extent such certificates are applicable to Seller.

3.4.2 Returns, Notices and Reports. Seller shall promptly file all Closing returns, notices and reports of every kind and nature required by federal, state, county and municipal governments, or any subdivision thereof, with respect to the Acquired Assets, as applicable, and pay any and all sums payable in connection therewith.

**3.5 Other Expenses.** Except as otherwise provided herein, each of the Parties shall bear its own costs and expenses incurred in connection with the transactions described herein, including, without limitation, the fees and expenses of its respective counsel and accountants.

## ARTICLE 4.

### REPRESENTATIONS AND WARRANTIES OF SELLER

The following representations, warranties and agreements are made by Seller for the purpose of inducing Buyer to enter into this Agreement and consummate the sale and purchase of the Acquired Assets. The representations based on the knowledge of Seller (“**Seller’s Knowledge Representations**”) shall be limited to the actual knowledge of Larry Blitz (Interim Chief Executive Officer), Dan Heckathorne (Interim Chief Financial Officer), Teresa Jacques (Controller), and Kevin Northcraft (President, District Board of Directors). Buyer acknowledges that Seller has not undertaken any investigation related to Seller’s Knowledge Representations out of the ordinary course of their business.

**4.1 Organization and Standing.** Seller is a political subdivision of the State of California, organized, existing and acting under and pursuant to the Local Health Care District Law of the State of California, constituting Division 23 of the California Health and Safety Code. Seller possesses all requisite power and authority necessary to own and operate the Acquired Assets and carry on its business as the same is now being conducted.

**4.2 Authority, Validity and Binding Effect.** The execution and delivery of this Agreement, and each of the documents to be executed by or on behalf of Seller pursuant to this Agreement, and the performance of the transactions contemplated hereby, have been duly authorized by the board of directors of Seller. Seller has all requisite power and authority to enter into, consummate and perform this Agreement and carry out all of the terms and provisions of this Agreement, subject to Electorate Approval, any required approvals in the Chapter 9 Proceeding and receipt of consents which the Parties contemplate will be obtained prior to the Closing Date. This Agreement is a legal, valid and binding obligation of Seller, enforceable against Seller in accordance with its terms, except insofar as enforcement thereof may be limited by bankruptcy, moratorium, insolvency or similar Laws affecting creditor’s rights and all general equitable principles.

**4.3 No Violation or Bar.**

4.3.1 **Governing Documents.** Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby violates or conflicts with any material provision of the governing documents of Seller.

4.3.2 **Laws, Regulations, Orders and Decrees.** Except for the Electorate Approval, any required approvals in the Chapter 9 Proceeding and approvals which may be required in connection with the transfer of Government Authorizations, as contemplated under Section 2.1, neither the execution and the delivery of this Agreement by Seller, nor the consummation of the transactions contemplated hereby violates or conflicts with any order of any governmental or regulatory authority, any judgment, decree, order or award of any court, arbitrator, administrative agency or governmental authority or, to the knowledge of Seller, any material Government Authorization, or any applicable Law.

**4.4 Contracts and Other Obligations.** Seller is not a party to any material contract or agreement or subject to any restriction, respecting the Acquired Assets or otherwise, which would prevent or restrict the power or authority of Seller to enter into this Agreement and to consummate the transactions contemplated hereby, except for the Electorate Approval, and such contracts or agreements for which consent to the transfer of the Acquired Assets contemplated hereby is expected to be obtained prior to the Closing Date.

**4.5 Required Governmental Consents and Public Meetings.**

4.5.1 Governmental Consents. Except for the Electorate Approval, approvals which may be required in connection with the transfer of Government Authorizations, as contemplated under Section 2.1, the assumption and assignment of the Assumed Contracts, contemplated under Section 3.2.5 and other consents as set forth on Schedule 4.5.1, which the Parties contemplate will be obtained prior to the Closing Date, no consent, approval, authorization of or filing or registration with any Government Entity is required to be obtained or made by Seller in order for Seller to consummate the sale of the Acquired Assets to Buyer pursuant to this Agreement.

4.5.2 Electorate Approval. Attached hereto as Schedule 4.5.2 is (i) a list of the public meetings, including the date and type of notice provided, conducted by Seller with respect to the consummation of the transactions contemplated under this Agreement and the Lease, (ii) the resolution of the board of directors of Seller approving the transactions contemplated under this Agreement and the Lease, and (iii) a description of the transactions contemplated under this Agreement and the Lease as authorized by the board of directors of Seller and set forth on the ballot of a special election to be held upon the request of the District on November 6, 2018. To its knowledge, Seller has taken such actions as are necessary to submit to the voters of Seller's district a measure proposing the transfer and lease of assets contemplated hereby and under the Lease, in accordance with Section 32121(p)(1) of the California Health and Safety Code and applicable provisions of the California Elections Code ("**Electorate Approval**").

**4.6 Absence of Certain Changes or Events.** Except as described in Schedule 4.6, since the date of the Most Recent Balance Sheet:

4.6.1 no material adverse change has occurred in the financial condition, results of operations, assets, liabilities, income or prospects of the Licensed Operations or Acquired Assets;

4.6.2 no material damage, destruction or loss (whether or not covered by insurance) has occurred affecting the Acquired Assets;

4.6.3 except in the ordinary course of business of Seller in accordance with existing Hospital personnel policies, Seller has not increased or agreed to increase the compensation payable to any of the employees, contractors or service providers of Seller or made or agreed to make any bonus or severance payment to any of the employees, contractors or service providers of Seller and Seller has not employed any additional management personnel in respect of the Licensed Operations;

4.6.4 no labor dispute or enactment of state or local Law, promulgation of state or local regulation, or other event or condition has occurred materially adversely affecting the Licensed Operations or the Acquired Assets;

4.6.5 Seller has not sold, assigned, transferred, distributed or otherwise disposed of any of the Acquired Assets, except in the ordinary course of business of Seller and under the operations of the Interim Management Services Agreement;

4.6.6 no Encumbrance has been imposed on any of the Acquired Assets except Permitted Encumbrances;

4.6.7 Seller has not cancelled or waived any rights in respect of the Acquired Assets, except in the ordinary course of business of Seller;

4.6.8 there has been no material change in any accounting method, policy or practice of Seller, except as pursuant to the Interim Management Services Agreement, with respect to the Acquired Assets or Licensed Operations;

4.6.9 Seller has not entered into or agreed to enter into any transaction outside the ordinary course of business of Seller which may cause a liability or obligation of Seller in excess of Seventy-Five Thousand Dollars (\$75,000), except as pursuant to the Interim Management Services Agreement; and

4.6.10 Seller has not entered into any agreement by or on behalf of Seller with any physician, except as pursuant to the Interim Management Services Agreement.

**4.7 Title to Acquired Assets.** Except as specifically set forth in this Agreement, Seller has, or will have on the Closing Date, title to all of the Acquired Assets, free and clear of all liens, judgments, pledges, title defects, Encumbrances, leases, security interests (UCC or otherwise, including without limitation, any and all active liens on Acquired Assets included in the list set forth on Schedule 4.7, security agreements, chattel mortgages, conditional sale contracts, collateral security agreements, leases and other title or interest retention arrangements), actions, claims, charges, conditions or restrictions of any nature whatsoever. Notwithstanding the foregoing, title to the Acquired Assets shall be subject to all Assumed Liabilities assumed by Buyer pursuant to Section 2.3. Except for merchandise and other property sold or used in the ordinary course of business, Seller has not entered into any contract, commitment or arrangement that would cause any of the Acquired Assets to be subject to any security interest, claim, equity, pledge, mortgage, lien (including, without limitation, mechanics' and materialmen's liens) or Encumbrances whatsoever which will exist or come into existence after the Closing Date.

**4.8 Real Property.** With respect to Seller's Real Property, Seller represents and warrants the following:

4.8.1 Leased Real Property. Seller has the right to use and occupy all of the Leased Real Property (as lessee) pursuant to valid, binding, and enforceable Assumed Leases, and has provided Buyer with a copy of such Assumed Leases. Except as set forth in Schedule 4.8.1: (i) the Assumed Leases have not been modified, amended, or assigned, are legally valid,



binding and enforceable in accordance with their respective terms, and are in full force and effect; and (ii) to Seller's knowledge, there are no material defaults (or matters that upon written notice or lapse of time would constitute material defaults) by Seller or by any other party to the Assumed Leases.

4.8.2 Real Estate Leases. All leases, subleases, licenses, concessions, options, and other agreements relating to the occupancy of the Leased Real Property, including the right to all security deposits and other amounts and instruments deposited thereunder, are listed on Schedule 4.8.2 (collectively, the "**Real Estate Leases**"), and Seller has provided Buyer with a copy of such Real Estate Leases. Except as set forth in Schedule 4.8.2: (i) the Real Estate Leases have not been modified, amended, or assigned, are legally valid, binding and enforceable in accordance with their respective terms, and are in full force and effect; and (ii) to Seller's knowledge, there are no material defaults (or matters that upon written notice or lapse of time would constitute material defaults) by Seller or by any other party to the Real Estate Leases.

4.8.3 Zoning. To Seller's knowledge, the Leased Real Property is zoned to permit the uses for which such Leased Real Property is presently used and/or intended to be used, without variances or conditional use permits.

#### **4.9 Environmental Matters.**

4.9.1 Use of Real Property and Condition. The Hospital Campus Real Property has been operated by Seller as an acute care hospital from the date of first licensure as such to the present—subject to the period under which licensure by the CDPH has been in suspense, which use included the handling of certain substances normally used in such hospitals some of which may be Hazardous Materials; Seller has limited or no knowledge of any uses or operations of the Hospital Campus Real Property prior to such first acute care hospital licensure. Seller has no knowledge of any Release or threatened Release by any person of any Hazardous Materials, at, under or about the Hospital Campus Real Property, which may give rise to any cost, penalty, expense, claim, demand, order, or liability, including, but not limited to, investigation, remediation, or other response action costs being imposed against Seller and/or Buyer by any third party. Seller hereby represents and warrants to Buyer that Seller is not aware of, nor has Seller received notification of any information which reasonably should have alerted Seller to become aware of, any actual or potential claim, action, or demand relating to the Handling of Hazardous Materials or Environmental Laws with respect to the Acquired Assets, actual material violations of any statutes, regulations or laws relating to maintenance, disposition, release or handling of any Hazardous Materials at the Hospital, or with respect to the Acquired Assets.

4.9.2 Permits. The Hospital and the Hospital Campus Real Property are and, during the period of Seller's ownership always have been, operated in compliance in all material respects with all Environmental Laws. Seller has all permits required under Environmental Laws for any and all operations, activities, alterations, or improvements at the Hospital, or the Acquired Assets, which permits are listed in Schedule 4.9.2. Seller is in full compliance with the terms and conditions of such permits and all such permits are presently in full force and effect. No such permits will terminate as a result of the consummation of the transactions contemplated by this Agreement, and no such permit is required to be transferred to Buyer or any of its

Affiliates at or prior to the Closing in order for Buyer to lawfully operate the Hospital on and after the Closing.

4.9.3 Violations. Except as set forth on Schedule 4.9.3, Seller has not: (a) entered into or been subject to any consent decree, compliance order, or administrative order with respect to the Hospital, or with respect to the Acquired Assets, or operations thereon, in each case relating to Environmental Law; (b) received notice under the citizen provision of any Environmental Law in connection with the Hospital, or the Acquired Assets, or operations thereon; (c) received any request for information, notice, notice of violation, demand letter, administrative inquiry, or complaint or claim with respect to any environmental condition or Environmental Law relating to the Hospital, or the Acquired Assets, or operations thereon; or (d) been subject to or threatened with any governmental or citizen enforcement action with respect to the Hospital, or the Acquired Assets, or operations thereon; and Seller has no reason to believe that any of the above will be forthcoming.

4.9.4 Reports. Seller has provided to Buyer all material permits, audits, reports, notices, assessments, and other documentation relating to the Handling of Hazardous Substances or Environmental Laws at the Hospital or Hospital Campus Real Property that are in the possession, custody, or control of the Seller.

#### **4.10 Employees**

4.10.1 Employee Status. Seller represents and warrants that Seller has provided Buyer with a complete and accurate list of all of the employees of Seller as of the Execution Date and Seller shall immediately notify Buyer of any update to such list until the Closing Date. Seller shall provide Buyer with access to Seller's employee files, which shall include the following accurate and complete information for each such employee: (i) such employee's name, job title, department, and location; (ii) such employee's annualized compensation and base salary as of the Execution Date, separately identifying any bonus payments; (iii) leave status (including type of leave), expected date of return for non-disability related leaves and expiration dates for disability-related leaves; (iv) whether such employee is classified as exempt from overtime requirements; and (v) such employee's date of hire. Seller has made available or delivered accurate and complete copies of all disclosure materials, policy statements and other materials relating to the employment of the current employees of Seller. Seller is not, nor has ever been, a party to or bound by any labor or collective bargaining agreement, nor is any such agreement being negotiated by Seller. Seller has delivered to Buyer accurate and complete copies of all employee manuals and handbooks, disclosure materials, policy statements and other materials relating to the employment of the current and former employees of Seller. No labor strike, dispute, slowdown, stoppage, unresolved employee grievance or labor arbitration proceeding under a collective bargaining agreement has occurred in the last five years or is pending, or has been threatened, against Seller or the Licensed Operations. No current union organizing activities or other attempts to organize or establish a labor union, employee organization, works council or labor organization or group involving the employees of Seller has occurred in the last five (5) years, is in progress or is threatened. There is no union, works council, employee representative or other labor organization, which, pursuant to applicable Law, must be notified, consulted or with which negotiations need to be conducted connection with the transactions contemplated by this Agreement. In the three years prior to (and not including) the

date hereof, Seller has not effectuated (i) a “plant closing” (as defined in the WARN Act or any similar state, local or foreign Law) affecting any site of employment or one or more facilities or operating units within any site of employment or facility of Seller, or (ii) a “mass layoff” (as defined in the WARN Act, or any similar state, local or foreign Law) affecting any site of employment or facility of Seller.

4.10.2 Claims. Except as set forth in Schedule 4.10.2, there are either no claims pending or, to Seller’s knowledge, threatened against Seller before the U.S. Equal Employment Opportunity Commission or any federal, foreign, state or local court or agency, or arbitrator, relating to any labor, safety, employee benefit, or employment matters or under any workers’ compensation or long-term disability plan or policy, or any such claims will not have a material adverse effect on the Licensed Operations on or after the Closing Date. Seller either does not have any unsatisfied obligations to any employees or qualified beneficiaries pursuant to COBRA, HIPAA, or any state Law governing health care coverage extension or continuation other than the payment of benefits in the ordinary course of business, or any such obligations will not have material adverse effect on the Licensed Operations on or after the Closing Date.

4.10.3 Compliance With Employment Laws. Seller is either in compliance in all material respects with all applicable Laws as of the date of this Agreement respecting terms and conditions of employment including, but not limited to, those relating to plant closure or mass layoff issues, affirmative action, wage and hour Law, or any noncompliance with a Law will not adversely affect the Licensed Operations on or after the Closing Date. Seller is either not liable for any arrearage of wages or any taxes or penalties for failure to comply with any of the foregoing, or such will not have a material adverse effect on the Licensed Operations on or after the Closing Date. Seller is not, and has never been, engaged in any unfair labor practice of any nature, or such labor practice will not have a material adverse effect on the Licensed Operations on or after the Closing Date.

#### **4.11 Employee Plans**

4.11.1 Seller Employee Plans. Schedule 4.11.1 contains a true and complete list of each Seller Employee Benefit Plans.

4.11.2 Compliance With Seller Employee Benefit Plans. Except as disclosed on Schedule 4.11.2, Seller has complied, and currently is in compliance, both as to form and operation, in all respects, with the terms of each Seller Employee Benefit Plan and all applicable provisions of each other Law or regulation imposed or administered by any Government Entity with respect to each of the Seller Employee Benefit Plans. There is, and in the future will be, no liability to Buyer or any of its benefit plans with respect to the Seller Employee Benefit Plans.

4.11.3 Code Requirements. No Seller Employee Benefit Plan is, and none of Seller, any affiliate of Seller or any ERISA Affiliate thereof sponsors, maintains, contributes to, has within the past six years, sponsored, maintained, or contributed to or has any liability or obligation, whether fixed or contingent, with respect to (i) a Multiemployer Plan, (ii) a single employer plan or other pension plan that is subject to Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code, (iii) a “multiple employer plan” (within the meaning of

Section 413(c) of the Code), or (iv) a multiple employer welfare arrangement (within the meaning of Section 3(40) of ERISA).

4.11.4 **Encumbrances.** Except as set forth in Schedule 4.11.4, with respect to each welfare plan, all claims incurred by Seller are insured pursuant to a contract of insurance whereby the insurance company bears any risk of loss with respect to such claims. No Seller Employee Plan provides medical, health, dental or life benefits (whether or not insured), after an employee's or other service provider's termination of employment or service other than COBRA Coverage and other coverage required by applicable Law, the full cost of which is borne by the former employee of Seller and/or his or her qualified beneficiaries. There are no Encumbrances imposed on the Acquired Assets under any Law or regulation and no act or omission has

4.11.5 **Accelerated Payments.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby, either alone or in combination with another event (whether contingent or otherwise) will (i) entitle any current or former employee or other service provider of Seller to any payment; (ii) increase the amount of compensation or benefits due to any such employee or other service provider or any such group of employees, consultants, directors or other service providers; (iii) accelerate the vesting, funding or time of payment of any compensation, equity award or other benefit; or (iv) result in any "parachute payment" under Section 280G of the Code (or any corresponding provision of state, local, or foreign tax Law).

**4.12 Licenses and Permits.** Subject to the period under which licensure by the CDPH has been in suspense, the Hospital is duly licensed as an acute care hospital and holds all Permits required for the Licensed Operations by the appropriate Government Entities.

**4.13 Insurance.** Schedule 4.13 describes all insurance arrangements, including self-insurance, in place for the benefit of the Acquired Assets and the conduct of the Licensed Operations (collectively, the "**Insurance Policies**"). All Insurance Policies are in full force and effect and are issued by insurers of recognized responsibility. The insurance coverage provided by the Insurance Policies (a) is on such terms, (b) covers such categories of risk, (c) contains such deductibles and retentions, and (d) is in such amounts as, with respect to each of the criteria set forth in the foregoing clauses (a) through (d), as adequate and suitable for the Acquired Assets and the conduct of the Licensed Operations. With respect to each Insurance Policy, (i) there are no claims pending as to which coverage has been questioned, denied or disputed by the underwriter(s) of such Insurance Policy, (ii) all premiums due have been paid, (iii) no notice of cancellation or termination has been given and (iv) Seller has complied in all material respects with the terms and provisions of such Insurance Policy.

**4.14 Government Healthcare Programs.** Subject to the period under which licensure by the CDPH has been in suspense, the Hospital is qualified for participation in Government Healthcare Programs. Seller receives payment under the Government Healthcare Programs for services rendered to qualified beneficiaries.

**4.15 Medical Staff; Physician Relations.** Seller has made available to Buyer complete and genuine copies of the bylaws, policies, rules and regulations of the medical staff and medical executive committee of the Hospital under the Interim Management Services

Agreement. To Seller's knowledge, no member of the medical staff of the Hospital has been excluded from participation in any Government Healthcare Program.

**4.16 Title to Acquired Assets.** Seller has made available to Buyer a true, correct and complete copy of each Contract, together with all amendments, waivers or other changes or modifications thereto to which Seller is a party or to which the Acquired Assets are bound (collectively, the "**Material Contracts**"). The Material Contracts are valid, legally binding and enforceable as to Seller and, as to the other parties thereto, in accordance with their respective terms. Each Material Contract is currently and will be in full force and effect in accordance with its terms upon the Closing Date. Except as described in Schedule 4.16, none of the Material Contracts have been nor will they be prior to the Closing Date, modified, amended or assigned. Except as described in Schedule 4.16, Seller, and to the knowledge of Seller, each other party thereto, has performed all obligations required to be performed by it and is not in default under or in breach of, or in receipt of any claim of default or breach under, any Material Contract. Except as described in Schedule 4.16, there has not occurred any event that, with the lapse of time or the giving of notice or both, would constitute a default by Seller, or to the knowledge of Seller, any of the other parties to such Material Contracts. Except as described in Schedule 4.16, Seller has not received written notice that any party to any Material Contract intends to cancel or terminate any such Material Contract or to exercise or not to exercise any option to renew thereunder. As of the Closing Date, to Seller's knowledge, there will not exist any material Encumbrance other than Permitted Encumbrances on any Real Property or Personal Property governed by a Material Contract, except as disclosed on Schedule 4.16.

**4.17 Litigation, Claims and Proceedings.** Except as set forth in Schedule 4.17, Seller has not been served with any summons, complaint or written notice to arbitrate, and no suit, litigation, claim (equitable or legal), administrative arbitration, investigation or other proceeding is pending or to Seller's knowledge, threatened, against Seller or affecting the Acquired Assets, the Hospital, or the business of Seller by or before any court, governmental department, commission, board, bureau, agency, mediator, arbitrator or other person or instrumentality, except: (a) the malpractice or negligence actions, claims, suits or proceedings set forth in Schedule 4.17; (b) the contract or general liability actions, claims, suits, or proceedings set forth in Schedule 4.17; and (c) Seller's pending Chapter 9 Proceeding and the claims, objections and proceedings therein. None of the actions, claims, suits, proceedings and matters set forth in Schedule 4.17 materially affects the value of the Acquired Assets, materially impairs the ability of Seller to perform Seller's obligations hereunder, or involves the likelihood of any material and adverse effect on the ability of Buyer to use the Acquired Assets purchased hereunder as previously used by Seller.

**4.18 Orders, Decrees and Rulings.** Except as described in this Agreement, Seller is not a party to any order, decree or ruling of any court or administrative agency, federal, state or local, nor has Seller any contracts, formal or informal, with any such agency that could materially and adversely affect the ability of Seller to perform its obligations hereunder or conduct its business or the ability of Buyer to own the Acquired Assets and to conduct its business as previously conducted by Seller.

**4.19 Compliance with Law.** To the knowledge of Seller, except as provided in Schedule 4.19, Seller is not in violation of any Laws, including Healthcare Laws, applicable to

Seller, the operation of the Hospital or the Acquired Assets, which would in any manner materially and adversely affect Seller's ability to perform its obligations hereunder or Seller's operation of the Hospital or the Acquired Assets.

**4.20 Broker's and Finder's Fees.** Seller has had no dealing with any agent, broker, representative or other person so as to entitle such agent, broker, representative or other person to any commission or finder's fee in connection with the transactions described herein.

**4.21 Medical Records.** Seller has maintained the confidentiality of all Medical Records as required by and in conformance with all applicable Laws, including HIPAA, and regulations. To Seller's knowledge, no Medical Records have been transferred to any individual or entity against the request of any patient prohibiting Hospital from transferring his or her patient information or records.

**4.22 Accuracy of Representations and Warranties.** To the knowledge of Seller, no representation or warranty of Seller contained in this Agreement, or any statement, document or certificate furnished or to be furnished to Buyer, or in connection with the transactions contemplated hereby, is or will be, as of the Closing, incomplete, inaccurate, or contain any untrue statement of any material fact known to Seller, or intentionally omit to state any material fact known to Seller necessary to make the statements contained therein not misleading.

**4.23 Survival of Representations and Warranties.** The representations and warranties by Seller set forth in Article 4 are true and complete on the Execution Date and shall be true and complete on and as of the Closing Date as though said representations, warranties and agreements were made on the Closing Date; provided, however, that the representations and warranties by Seller set forth in Sections 4.3, 4.9, 4.10, 4.11 and 4.19 shall also continue until, and be true and complete on, the date that is sixty (60) days following the Closing Date as though said representations, warranties and agreements were made on such date. Except as may be expressly noted otherwise in the foregoing sentence and elsewhere herein, the representations and warranties shall expire and terminate as of the Closing.

**4.24 No Other Representations.** Except for the representations and warranties contained in this Article 4 (as modified by the Schedules) and in any certificate delivered by or on behalf of Seller hereunder, Seller makes no express or implied representation or warranty, and Seller hereby disclaims any such representation or warranty, with respect to the execution and delivery of this Agreement and the other transaction documents and the consummation of the transactions contemplated hereunder and thereunder. Notwithstanding anything herein to the contrary, Buyer shall not be deemed to have waived the right to bring any claim or action based on actual fraud. Nothing contained in this Section 4.24 is intended to (i) negate or alter the indemnification obligations of any Party under this Agreement, or (ii) preclude any remedy for fraud or constitute an admission by any Party that any element of a claim for actual fraud cannot be established.

**ARTICLE 5.**  
**REPRESENTATIONS AND WARRANTIES OF THE ADVENTIST PARTIES**

The following representations, warranties and agreements are made by Buyer and Adventist Health for the purpose of inducing Seller to enter into this Agreement and consummate the sale and purchase of the Acquired Assets. The representations based on the knowledge of Buyer and/or Adventist Health (“**Buyer’s Knowledge Representations**”) shall be limited to the actual knowledge of Buyer and/or Adventist Health, as the case may be. Seller acknowledges that Buyer has not undertaken any investigation related to Buyer’s Knowledge Representations out of the ordinary course of their business.

**5.1 Organization and Standing.** Each Adventist Party is a California nonprofit religious corporation duly formed and in good standing under the Laws of the State of California. Buyer possesses all requisite power and authority necessary to carry on the operations of the Hospital as the same are now being conducted. Adventist Health is exempt from taxation as an organization described under Section 501(c)(3) of the Code and Section 23701(d) of the Revenue and Taxation Code of the State of California, and has been determined to qualify for tax-exempt status under rulings of the Internal Revenue Service and from the Franchise Tax Board of the State of California, which rulings have not been revoked, rescinded or modified. To the knowledge of Adventist Health, neither Adventist Health nor any of its Affiliates has received any information that (i) its tax-exempt status may be revoked, rescinded, modified or under review, or (ii) it or its officers, directors, employees or other individuals may be subject to excise taxes imposed under Section 4958 of the Code.

**5.2 Authority, Validity and Binding Effect.** The execution and delivery of this Agreement, and each of the documents to be executed by or on behalf of each of Buyer and Adventist Health pursuant to this Agreement, and the performance of the transactions contemplated hereby, have been duly authorized by the respective Boards of Directors and by all other necessary corporate actions on the part of Buyer and Adventist Health. Buyer and Adventist Health have all requisite power and authority to enter into, consummate, perform and carry out all of the terms and provisions of this Agreement. This Agreement is a legal, valid and binding obligation of Buyer and Adventist Health, enforceable against Buyer and Adventist Health respectively in accordance with its terms, except insofar as enforcement thereof may be limited by bankruptcy, moratorium, insolvency or similar Laws affecting creditor’s rights, and all general equitable principles.

**5.3 No Violation or Bar.**

5.3.1 Articles, Bylaws, and Corporate Documents. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby violates or conflicts with any material provision of the Articles of Incorporation or Bylaws of Buyer or Adventist Health.

5.3.2 Laws, Regulations, Orders and Decrees. Each of Adventist Health and Buyer, represent and warrant that neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby: (a) violates or conflicts with any order of any governmental or regulatory authority, any judgment, decree, order or award of any court, arbitrator, administrative agency or Government Entity, or any Government Authorization; or (b) requires any Government Authorization which has not been obtained of any Government Entity.

5.3.3 **Contracts and Other Obligations.** Neither Buyer nor Adventist Health is a party to any contract or agreement or subject to any restriction respecting the Acquired Assets or otherwise, including, without limitation any noncompetition or nonsolicitation covenants, which would prevent or restrict the power or authority of Buyer or Adventist Health to enter into this Agreement and to consummate the transactions contemplated hereby.

5.4 **Litigation, Claims and Proceedings.** Neither Adventist Health nor Buyer has been served with any summons, complaint or written notice to arbitrate, and no suit, litigation, claim (equitable or legal), administrative arbitration, investigation or other proceeding is pending or threatened against the respective Adventist Party by or before any court, governmental department, commission, board, bureau, agency, mediator, arbitrator or other person or instrumentality, which would materially and adversely affect Buyer's ability to perform its obligations hereunder and consummate the transactions contemplated by this Agreement.

5.5 **Broker's and Finder's Fees.** Neither Buyer nor Adventist Health has had any dealing with any agent, broker, representative or other person so as to entitle such agent, broker, representative or other person to any commission or finder's fee in connection with the transactions described herein.

5.6 **Orders, Decrees and Rulings.** Neither Buyer nor Adventist Health is a party to any order, decree or ruling of any court or administrative agency, federal, state or local, nor is either a party to any contracts, formal or informal, with any such agency that could materially and adversely affect the ability of Buyer or Adventist Health to perform its obligations hereunder.

5.7 **Compliance with Law.** To the knowledge of Buyer and Adventist Health, neither is in violation of any Laws, including Healthcare Laws, applicable to Buyer or Adventist Health that could materially and adversely affect the ability of Buyer or Adventist Health to perform its obligations hereunder.

5.8 **Accuracy of Representations and Warranties.** To the knowledge of Buyer and Adventist Health, no representation or warranty of Buyer or Adventist Health contained in this Agreement, or any statement, document or certificate furnished or to be furnished to Seller, or in connection with the transactions contemplated hereby, is or will be, as of the Closing, incomplete, inaccurate, or contain any untrue statement of any material fact known to Buyer or Adventist Health, or intentionally omit to state any material fact known to Buyer or Adventist Health necessary to make the statements contained therein not misleading.

5.9 **Survival of Warranties, Representations and Agreements.** The warranties, representations and agreements by Buyer and Adventist Health set forth in this Article 5 are true and complete on the Execution Date and shall be true and complete on and as of the Closing Date as though said representations, warranties and agreements were made on and as of the Closing Date. Except as may be expressly noted otherwise herein, the representations and warranties set forth in this Article 5 shall expire and terminate as of the Closing.

5.10 **No Other Representations.** Except for the representations and warranties contained in this Article 5 (as modified by the Schedules) and in any certificate delivered by or



on behalf of Buyer hereunder, Buyer makes no express or implied representation or warranty, and Buyer hereby disclaims any such representation or warranty, with respect to the execution and delivery of this Agreement and the other transaction documents and the consummation of the transactions contemplated hereunder and thereunder. Notwithstanding anything herein to the contrary, Seller shall not be deemed to have waived the right to bring any claim or action based on actual fraud. Nothing contained in this Section 5.10 is intended to (i) negate or alter the indemnification obligations of any Party under this Agreement, or (ii) preclude any remedy for fraud or constitute an admission by any Party that any element of a claim for actual fraud cannot be established.

## ARTICLE 6.

### **PRE-CLOSING COVENANTS OF THE PARTIES**

**6.1 Operation of the Hospital and Acquired Assets Pending Closing.** During the period from the Execution Date until the Closing Date, the board of directors of Seller has not and will not, without the consent of Buyer (which consent may be withheld or granted in Buyer's sole discretion) and/or pursuant to the Interim Management Services Agreement:

6.1.1 Sale or Transfer. Authorize or approve the transfer, sale or other disposition of any of the Acquired Assets or the Hospital Campus Real Property other than in the ordinary and usual course of business as heretofore conducted, except for such items as are no longer useful, or obsolete, worn out or incapable of any further use, and as will be replaced in accordance with Seller's usual practice with other items of substantially the same value and utility as the items transferred, sold, exchanged or otherwise disposed of.

6.1.2 Liens. Authorize or approve the creation, participation in or agreement to the creation of any liens, encumbrances or hypothecations of any of the Acquired Assets or the Hospital Campus Real Property, except any liens for current taxes not yet due and payable and liens created in the ordinary and usual course of its business as heretofore conducted.

6.1.3 Leases and Contracts. Authorize or approve the execution of any lease, contract or agreement of any kind or character with respect to the Hospital or the Licensed Operations, or incur any liabilities in connection therewith, save and except (a) those which will terminate or expire prior to the Closing Date; and (b) those to which it is presently committed or that arise in the ordinary and usual course of business as heretofore conducted.

6.1.4 Termination of License. Authorize or approve the termination of any Permits concerning the Hospital or the Licensed Operations.

6.1.5 Waiver of Right. Authorize or approve the waiver or release of any right or claim of Seller with respect to the Hospital or the Licensed Operations except in the ordinary course of business.

6.1.6 Employee Matters. (i) Hire or terminate any employee, (ii) pay, announce, promise or grant, whether orally or in writing, any increase in or establishment of (as applicable) any wages, base pay, fees, salaries, compensation, bonuses, incentives, deferred compensation, pensions, severance or termination payments, retirement, profit sharing, fringe

benefits, equity or equity-linked awards, employee benefit plans, or any other form of compensation or benefits payable by Seller, including, without limitation, any increase or change pursuant to any Seller Employee Benefit Plan (except as required by any applicable Law), or (iii) enter into, adopt or materially amend any Seller Employee Benefit Plan.

## **6.2 Contracts and Process for Assumption.**

6.2.1 Modification of Assumed Contracts. Buyer shall have the right to negotiate at any time after the Execution Date with any party to an Assumed Contract for modification of or an earlier termination of such Assumed Contract, provided that such modifications or terminations are effective only on or after the Closing Date.

6.2.2 Third-Party Consents. Notwithstanding any provision to the contrary contained in this Agreement, Seller shall use its best efforts and work cooperatively with Buyer to obtain any required consent for assignment of the Assumed Contracts prior to the Closing, and any and all liability resulting from the failure to obtain any required consent for assignment of the Assumed Contracts shall rest with Seller. Notwithstanding the foregoing, to the extent consent to assignment of any Assumed Contract is not obtained as of the Closing, Seller and Buyer shall use their reasonable commercial good faith efforts to mitigate any costs, losses or damages associated with the failure to obtain such consents prior to the Closing.

**6.3 Access to Information.** Buyer and Seller acknowledge that, prior to the execution of this Agreement, Buyer has had reasonable access to the Hospital, the property and the records of Seller relating to the Acquired Assets and has, in fact, availed itself of this access to perform many of the inspections, investigations and reviews that it has desired, in particular under the Interim Management Services Agreement, but if Buyer desires to make further inspections, investigations and reviews, therefore, from the date of execution and delivery of this Agreement through the Closing Date, Seller agrees to continue to afford to the officers, employees and representatives of Buyer, reasonable access to the Hospital, the property and records of Seller relating to the Acquired Assets during all reasonable times pursuant to the Interim Management Services Agreement so that Buyer may have full opportunity to make such investigation as it shall desire of the affairs of the Hospital.

## **6.4 Title.**

6.4.1 Title Report. Buyer will obtain from a reputable title insurance company (the “**Title Company**”) a preliminary title report or title commitment for title insurance on the Hospital Campus Real Property (the “**Title Report**”), together with copies of all items shown as recorded exceptions to title therein, and will review and investigate any and all conditions and aspects of title to the Hospital Campus Real Property and obtain and review additional documentation relating to the ownership of the Hospital Campus Real Property including, without limitation, an “express map” of the Hospital Campus Real Property, obtained by Buyer at Buyer’s sole cost (collectively, the “**Express Map**”), and zoning reports prepared for the Hospital Campus Real Property by the Planning and Zoning Resource Corporation, one of its affiliated organizations or any other third-party providing zoning reports (the “**Zoning Reports**”).

6.4.2 Buyer Objections. No later than the date that is twenty (20) days prior to the Closing Date, Buyer shall notify Seller in a reasonably detailed writing (the “**Title Objection Notice**”) which exceptions to the Title Report and the Express Map (including survey and zoning matters), if any, will not be accepted by Buyer with respect to the Hospital Campus Real Property. Seller shall have ten (10) Business Days after receipt of the Title Objection Notice to notify Buyer in writing that Seller either (i) will remove such objectionable exception from title before any exercise by Buyer of any of the Real Property Purchase Options pursuant to the Lease, or (ii) elects not to cause such exception to be removed (a “**Non-Removal Notice**”). If Seller fails to notify Buyer of its election within said ten (10) Business Day period, then Seller shall be deemed to have delivered a Non-Removal Notice. If Seller delivers a Non-Removal Notice to Buyer, then Buyer shall have until the date that is five (5) Business Days after the date that Buyer has received the Non-Removal Notice to notify Seller in writing that Buyer elects to either (A) nevertheless proceed with the transactions contemplated herein subject to such exceptions (in which event all such exceptions shall be deemed to constitute Permitted Real Property Encumbrances), or (B) terminate this Agreement. If Buyer fails to notify Seller in writing of its election on or prior to the expiration such five (5) Business Day period, then Buyer shall be deemed to have elected to terminate this Agreement.

6.4.3 New Encumbrances. Buyer shall have the right to review and approve any new exceptions to title that, if not cured, removed or otherwise remedied, would encumber the Hospital Campus Real Property at Closing to the extent such new exceptions arise after the date of the Title Report (collectively, the “**New Encumbrances**”). Any New Encumbrance must be either approved or disapproved by Buyer within ten (10) Business Days of Buyer’s receipt of written notice of such New Encumbrance. Any such New Encumbrance not approved or disapproved within such ten (10) Business Day period shall be deemed a Permitted Real Property Encumbrance for purposes of this Agreement. If Buyer disapproves any New Encumbrance (“**Objectionable Encumbrance**”) within such ten (10) Business Day period, Seller may elect (but shall not be obligated) to remove or cause to be removed, at its sole cost and expense, any Objectionable Encumbrances (other than the Removable Objections, which Seller shall in all cases be obligated to remove as exceptions to title) before any exercise by Buyer of any of the Real Property Purchase Options pursuant to the Lease. Seller shall notify Buyer in writing within ten (10) Business Days after receipt of Buyer’s notice of Objectionable Encumbrances whether Seller elects to remove such Objectionable Encumbrances (other than the Removable Objections) as described above. If Seller elects in writing not to remove one or more Objectionable Encumbrances (other than the Removable Objections), Buyer may elect, to either (a) terminate this Agreement by giving written notice to Seller within five (5) Business Days after Buyer’s receipt of Seller’s election, or (b) waive such Objectionable Encumbrances, in which event such Objectionable Encumbrances shall be deemed additional Permitted Real Property Encumbrances and the Closing shall occur as herein provided. Notwithstanding the foregoing, Seller shall be obligated at or before Closing to cause the release of the Encumbrances of all monetary Encumbrances (and exceptions removable solely by the payment of money) encumbering the Hospital Campus Real Property or any portion thereof (collectively, the “**Removable Objections**”).

## 6.5 Access to Hospital Campus Real Property.

6.5.1 Inspection Period. Subject to the terms and conditions set forth in this Section 6.5, commencing on the Execution Date and continuing until 5:00 p.m. (Pacific Time) on December 31, 2018 or some later mutually agreeable date (such period, the “**Inspection Period**”), and notwithstanding Buyer’s access to the Hospital Campus Real Property pursuant to the Interim Management Services Agreement, upon reasonable advance notice to Seller, Buyer shall conduct its Site Testing (as defined below). Buyer shall at all times (and shall cause Buyer’s representatives to) conduct its entry onto the Hospital Campus Real Property pursuant to this Section 6.5 so as to not cause any liability, lien, damage, loss, cost or expense to Seller or the Hospital Campus Real Property, and Buyer hereby agrees to indemnify, defend, and hold Seller harmless from and against any such liability, lien, damage, loss, cost or expense (except to the extent arising from the negligence or willful misconduct of Seller or any of their employees, agents or contractors, or any pre-existing conditions that are not exacerbated by Buyer or any representatives of Buyer).

6.5.2 Testing. The Parties hereto understand, acknowledge and agree that during the Inspection Period, as part of Buyer’s due diligence, Buyer intends to conduct physical testing (environmental including, without limitation, a Phase I environmental site assessment, structural or otherwise) at the Hospital Campus Real Property (such as water samplings or the like) (collectively, “**Preliminary Site Testing**”) and Seller, subject to the provisions herein, hereby consent to such testing. To the extent that the final report resulting from any Phase I environmental site assessment made of any Hospital Campus Real Property or the improvements located thereon reveals or reports recognized or identified environmental conditions suggesting that any investigation that would be considered a “Phase II Site Assessment” with respect to such Hospital Campus Real Property or improvements is reasonably warranted and Buyer desires to undertake such investigation (the “**Phase II Site Testing**” and collectively, with the Preliminary Site Testing, the “**Site Testing**”), Buyer shall conduct any such Phase II Site Testing and Seller, subject to the provisions herein, hereby consents to such testing. Buyer shall, at its expense, promptly repair any damage to the Hospital Campus Real Property caused by Buyer, its agents or its contractors, in whatever manner reasonably necessary, after Buyer’s, its agents’ or its contractors’ entry thereon so that the adversely affected Hospital Campus Real Property shall be restored to substantially the same condition that existed prior to Buyer’s, its agents’ or its contractors’ entry thereon.

6.5.3 Buyer Obligations. In the event of any termination hereunder, Buyer shall return all documents and other materials furnished by Seller with respect to the Hospital Campus Real Property. No information or knowledge obtained in any investigation pursuant to this Section shall affect or be deemed to modify any representation or warranty contained in this Agreement or the conditions to the obligations of the Parties hereunder. Buyer shall keep the Hospital Campus Real Property free and clear of all mechanics’ or materialmen’s liens arising from or related to Buyer’s due diligence efforts and shall take all necessary actions, at Buyer’s sole cost and expense, to remove any such liens that encumber the Hospital Campus Real Property to the extent that the existence of such liens shall have a material adverse effect on Seller (including, without limitation, causing Seller to be in default of any of its obligations or agreements), the Hospital Campus Real Property (or any portion thereof) or the Licensed Operations.

6.5.4 Survival. The provisions of this Section shall survive any Closing or earlier termination of this Agreement.

**6.6 Material Changes**. During the period from the Execution Date to the Closing Date, Seller shall promptly notify Buyer in writing of any event of which Seller obtains knowledge which has had or might reasonably be expected to cause any representation or warranty set forth in Article 4 to be untrue or inaccurate in any material respect and of any event reasonably expected to have a material and adverse effect on the Acquired Assets, the Licensed Operations, the Assumed Liabilities or the Hospital Campus Real Property. From time to time prior to the Closing Date, Seller will promptly supplement or amend the Exhibits and Schedules hereto with respect to any matter hereafter arising or not known to Seller, which, if existing or occurring at or prior to the Execution Date of this Agreement would have been required to be set forth or described in an Exhibit or Schedule or in any representation or warranty of Seller which has been rendered inaccurate thereby.

**6.7 Regulatory Approvals**. Except for the approvals identified in Section 4.5.2 and Schedule 6.7 hereof, Buyer shall secure all regulatory approvals, consents or authorizations necessary to consummate the transactions described herein.

**6.8 Government Authorizations**.

6.8.1 Government Authorizations. Except for the approvals identified in Section 4.5.2 and Schedule 6.8.1 hereof, Buyer shall promptly apply for and use commercially reasonable efforts to obtain, as promptly as practicable, all material Government Authorizations.

6.8.2 Cooperation. Except as otherwise provided herein, each Party shall reasonably cooperate with the other Parties and respective representatives and attorneys: (i) in the efforts to obtain all Government Authorizations and Permits required to carry out the transactions contemplated under this Agreement (including those of Government Entities) or which the Party reasonably deems necessary or appropriate, and (ii) in the preparation of any document or other material which may be required by any Government Entity as a predicate to or result of the transactions contemplated under this Agreement.

**6.9 Exhibits and Schedules**.

6.9.1 Modification. From time to time prior to the Closing, Seller shall supplement or amend (in each case, a “**Modification**”) the Exhibits and Schedules hereto in order to keep the information therein timely, complete and accurate. Each Modification of the Exhibits and Schedules made pursuant to this Section 6.9 shall, subject to compliance with the conditions set forth in this Section 6.9, be deemed to amend the Exhibits and Schedules as of that date; provided that, if any such Modification reflects an item that has a material adverse effect on the representation or warranty to which it relates, then Buyer may terminate this Agreement as set forth in this Section.

6.9.2 Completion of Exhibits and Schedules. The Parties acknowledge that all of the Exhibits and Schedules anticipated to have been delivered by Seller pursuant to this Agreement have been completed on or prior to the Execution Date by Seller but that such Exhibits and Schedules may be amended or supplemented pursuant to a Modification after the

Execution Date in accordance with the terms herein. All Exhibits and Schedules attached to this Agreement shall be binding on the Parties unless and until amended or supplemented pursuant to this Section, if at all, or until termination of this Agreement.

6.9.3 Modification After Execution Date. With respect to any fact or condition that that did not exist as of the Execution Date that, after the Execution Date, causes any Exhibit or Schedule delivered by Seller to become incomplete, inaccurate or misleading, Seller shall prepare or complete and deliver in writing to Buyer a draft of Seller's proposed Modification to such Exhibit or Schedule as soon as possible after becoming aware of the need for a new or revised Exhibit or Schedule.

6.9.4 Review by Buyer. Upon receipt of the draft Modification, Buyer shall review it and determine in good faith whether such draft Modification reflects an item that has a material adverse effect on the representation or warranty to which it relates.

6.9.5 No Material Adverse Effect. If such draft Modification does not reflect an item that has a material adverse effect on the representation or warranty to which it relates, as determined in good faith by Buyer, it shall thereupon be added to the applicable Exhibit or Schedule, and such Exhibit or Schedule shall be deemed a final Exhibit or Schedule (each, a **"Final Schedule"**).

6.9.6 Material Adverse Effect. If the draft Modification is determined by Buyer in good faith to reflect an item that has a material adverse effect on the representation or warranty to which it relates, Buyer shall notify Seller in writing of its objection thereto within five (5) Business Days after receipt of the draft Modification, and Seller and Buyer shall negotiate in good faith to resolve such objections. If they reach agreement with respect to Buyer's objections, the draft Modification (revised to reflect the agreement resolving Buyer's objections) shall be added to the applicable Exhibit or Schedule, initialed by the Parties, and deemed a Final Schedule. If the Parties are unable to agree (i) within five (5) Business Days after Buyer notifies Seller in writing of its objections or (ii) by Closing, whichever is earlier, then either Party may terminate this Agreement pursuant to Section 11.1.4.

6.9.7 Final Schedule. Each Final Schedule shall be deemed to be the Exhibit or Schedule referred to in this Agreement and shall be part of this Agreement.

6.9.8 Buyer Discretion. During the period from the Execution Date to the Closing Date, if Seller becomes aware of (i) any fact or condition that existed on the date hereof that causes or constitutes a breach of any of Seller's representations and warranties as of the Execution Date or (ii) any event reasonably expected to have a material and adverse effect on the Acquired Assets, the Licensed Operations, the Assumed Liabilities or the Hospital Campus Real Property, Seller shall promptly notify Buyer in writing of such fact or condition and deliver to Buyer a proposed Modification to any applicable Exhibit or Schedule, and the addition of such Modification to the Final Schedule shall be in the sole discretion of Buyer.

6.9.9 Closing. The ability to amend the Exhibits and Schedules and create a new Final Schedule shall continue until the Closing, at which time all Exhibits and Schedules must be Final Schedules.

**6.10 Plan of Adjustment.** The Parties hereby understand, acknowledge and agree that the plan of adjustment in connection with the Chapter 9 Proceeding shall not amend, modify or contradict any provision of this Agreement, the Interim Management Services Agreement, the Financing Documents or the Lease.

## ARTICLE 7.

### CONDITIONS PRECEDENT TO CLOSING

**7.1 Conditions Precedent to Buyer's Obligations.** Buyer's obligation to consummate the transactions contemplated hereby is conditioned and contingent upon each of the following:

7.1.1 Casualty to Acquired Assets. The absence of the occurrence, during the period from the Execution Date to the Closing Date, of any (a) loss or damage to the Acquired Assets (including, without limitation, by reason of casualty or condemnation) or the Hospital Campus Real Property which would materially impair, in the reasonable judgment of Buyer, Buyer's ability to operate the Hospital after the Closing Date, or (b) except as otherwise provided for in this Agreement, changes in the liabilities (contingent or otherwise), business, employee relations, or staff relations of Seller, other than changes which are in the aggregate not material and adverse to Buyer. The foregoing condition shall be conclusively deemed satisfied unless Buyer, prior to the Closing Date, gives Seller written notice of the failure of this condition.

7.1.2 Compliance with Agreement. Seller's performance of and compliance with all covenants, agreements, conditions, terms and provisions required by this Agreement, the Interim Management Services Agreement, the Financing Documents and the Lease to be performed or complied with by Seller prior to the Closing Date.

7.1.3 Accuracy of Representations and Warranties. The accuracy and completeness as of the Closing of all representations and warranties made by Seller pursuant to Article 4.

7.1.4 Approvals. Procurement, prior to the Closing, and without conditions which materially and adversely affect the operations of the Hospital, of approvals of all other Government Entities, the Final Order referenced in Section 3.2.5 necessary to consummate legally the purchase of the Acquired Assets and the lease of the Hospital Campus Real Property and the Real Property Purchase Options under the Lease and the certified order referenced in Section 3.2.7.

7.1.5 Licensure. Buyer shall have received reasonable assurances from CDPH, customary to such transactions, that a license will be issued to Buyer to operate the Hospital effective as of the Closing Date. Further, Buyer shall have received reasonable assurances from any other Government Entities as may be necessary to own, operate and maintain the Acquired Assets as owned, operated and maintained by Seller prior to Closing.

7.1.6 Board Approval. Procurement, prior to the Closing, and without conditions that materially and adversely affect the operations of the Hospital, of approval of the boards of directors of Buyer and Adventist Health.

7.1.7 Opinions of Bond Counsel. On the Closing Date, Seller shall, at its sole cost and expense, cause to be delivered to Buyer, the opinions of Bond Counsel, dated as of the Closing Date, addressed to the indenture trustee and paying agent under the Existing Bonds, in form and substance reasonably satisfactory to Buyer and its counsel and the indenture trustee and paying agent, to the effect that the transactions contemplated hereby and by the Lease do not constitute either a taxable event or an event of default under any of the General Obligation Bonds (the “**Bond Counsel G.O. Bond Opinion**”) and the Revenue Bonds (the “**Bond Counsel Revenue Bond Opinion**”). The Bond Counsel G.O. Bond Opinion and the Bond Counsel Revenue Bond Opinions must also include opinions (or be accompanied by Seller’s corporate counsel opinions) as to due authorization and enforceability of this Agreement, the Financing Documents and the Lease.

7.1.8 Site Testing. The Site Testing requested by Buyer shall be complete, and Buyer shall have determined, based upon the results from any Site Testing, that the Hospital Campus Real Property is in a condition acceptable to Buyer.

7.1.9 Release of Liens. All Encumbrances against the Acquired Assets have been released or insured against such that Buyer shall acquire the Acquired Assets free and clear of all Encumbrances other than the Permitted Encumbrances.

**7.2 Conditions Precedent to Seller’s Obligations.** The obligation of Seller to consummate the transaction contemplated by this Agreement is conditioned and contingent upon:

7.2.1 Buyer’s Performance. Buyer’s performance and compliance with all covenants, agreements, conditions, terms and provisions required by this Agreement, the Interim Management Services Agreement, Financing Documents and the Lease, to be performed or complied with by Buyer prior to the Closing Date.

7.2.2 Accuracy of Representations and Warranties. The accuracy and completeness as of the Closing of all representations and warranties made by Buyer pursuant to Article 5.

7.2.3 Approvals. Procurement, prior to the Closing, and without conditions which materially and adversely affect the operations of the Hospital, of approvals of all other Government Entities necessary to consummate legally the sale of the Acquired Assets and the lease of the Hospital Campus Real Property and the Real Property Purchase Options under the Lease.

7.2.4 Board Approval. Procurement, prior to the Closing, and without conditions that materially and adversely affect the operations of the Hospital, of approval of the board of directors of Seller.

7.2.5 Opinions of Bond Counsel. Seller shall have received the Bond Counsel Revenue Bond Opinion and the Bond Counsel G. O. Bond Opinion.

**7.3 Waiver of Conditions.** The conditions set forth in Section 7.1 are solely for the benefit of Buyer and may be waived in writing by Buyer at any time. The conditions set forth in



Section 7.2 are solely for the benefit of Seller and may be waived in writing by Seller at any time.

**7.4 Electorate Approval.** The clerk of the County of Tulare, California shall have certified the results of an election called by Seller in which the voters of the District shall have approved the proposed transfer of assets contemplated hereby.

**7.5 Change of Law.** No Law or Order shall have been enacted, promulgated or enforced by any Government Entity, nor shall any legal or regulatory action have been instituted and remain pending and threatened that prohibits or restricts the Agreement or the transactions contemplated hereby.

**7.6 Satisfaction of Conditions.** The Parties agree to use reasonable efforts and due diligence to satisfy in a timely manner all of the foregoing conditions and contingencies.

**ARTICLE 8.**

**RESERVED**

**ARTICLE 9.**

**POST-CLOSING COVENANTS**

**9.1 Seller's Continuing Operations.** Notwithstanding the transactions contemplated herein, the Parties acknowledge that Seller shall continue to receive tax revenues as authorized under the Local Health Care District Law (California Health and Safety Code Sections 32000 *et seq.*). Seller shall utilize such revenues for the benefit of the communities served by Seller as determined in the sole discretion of the board of directors of Seller. Such revenues and other funds available to Seller may be used for any purpose permitted by Law, subject to the restrictions set forth below. The uses will include payments to the indenture trustee and paying agent on account of the District's obligations under the documents evidencing or otherwise securing the Existing Bonds. The uses may include expenditures for Seller's activities, or for grants or other assistance to nonprofit organizations and public agencies for health care promotion, health education, health prevention, non-competing health services or other resources, including resources or programs at the Hospital. Subject to compliance with the covenants set forth in Section 9.2 below, Seller's distribution or use of the proceeds of the tax revenues shall support the health needs of the community as identified from time to time by Seller in consultation with other community representatives.

**9.2 Non-Compete.**

**9.2.1 Restrictive Covenants.** Notwithstanding Seller's continued existence following the Closing and except as contemplated under the Lease, for a period of five (5) years following the Closing so long as Buyer remains in material compliance with its obligations under this Agreement, absent approval from Buyer, Seller shall not own or otherwise participate in the provision of any service of a hospital or health care provider that competes with services of Buyer in the Service Area while Buyer is the operator of the Hospital, including the provision of hospital services, professional medical/clinic services, home health services or any other

professional medical services that are substantially similar to services provided by the Hospital, Buyer or their Affiliates in the Service Area.

9.2.2 Severability of Provisions. In the event that the provisions of this Section 9.2 should ever be adjudicated by a court of competent jurisdiction to exceed the time or geographic or other limitations permitted by applicable Law, then such provisions shall be deemed reformed to the maximum time or geographic or other limitations permitted by applicable Law, as determined by such court in such action. Each breach of the covenants set forth in this Section 9.2 shall give rise to a separate and independent cause of action.

### 9.3 Patient Care Obligations.

9.3.1 Transition Services; Transition Patients. Buyer acknowledges that there will be patients located in the Hospital on the Closing Date. Buyer shall accept such patients as patients of Buyer, and Buyer shall assume responsibility and liability for treating such patients on and after the Closing Date. All revenue, expenses and liabilities incurred on and after the Closing Date in connection with such patients shall become revenue, expenses and liabilities of Buyer, and all liability arising from treatment and care rendered to such patients prior to the Closing Date shall be borne solely by Seller, regardless of whether a liability is asserted prior to, on or after the Closing Date. The services rendered and medicine, drugs and supplies provided to patients who were admitted to the Hospital prior to the Closing Date but who are not discharged until after the Closing Date shall be referred to as the “**Transition Services**” and such patients shall be referred to as the “**Transition Patients.**”

9.3.2 Consent of Transition Patients. Buyer shall be responsible for obtaining all necessary consents as required by Law from all Transition Patients.

9.4 Misdirected Payments. To the extent there are any misdirected funds forwarded to Seller (or any of its Affiliates, if any) by any third parties, which misdirected funds are paid in respect of the performance of services by or on behalf of the Hospital from and after the Closing Date or with respect to the Accounts Receivable or other Acquired Assets, Seller shall remit such misdirected funds to Buyer within ten (10) Business Days after receipt thereof, to an account designated by Buyer.

9.5 Withholds. If and to the extent that Medicare or any other payor withholds funds from Buyer due to claims which are attributable to Seller for any period prior to the Closing Date, or Buyer is required to refund any payments because of claims which are attributable to Seller for any period prior to the Closing Date and which payment Buyer did not receive and retain after the Closing Date, Buyer shall notify Seller of any deficient payment and provide any supporting information as requested by Seller. Seller shall, within ten (10) Business Days, reimburse Buyer for any uncontested deficient payment or refund payment made by Buyer and take any such action as may be required to satisfy Medicare or any other payor with respect to that matter. In the event that Seller is successful in appealing any adverse decisions by Medicare or any other payor that caused the payments contemplated by this Section, Buyer shall, within ten (10) Business Days, pay to Seller any amount received by Buyer attributable to such appeal.

**9.6 IGT Program.** Seller shall take all actions necessary to maximize and obtain intergovernmental transfer payments allocated in respect of the Licensed Operations under the (collectively, the “**IGT Amounts**”), California Welfare & Institutions Code Sections 14165.55. *et seq.* (the “**IGT Program**”), providing a net benefit in respect of the Licensed Operations under the IGT Program including, without limitation, review and acceptance of an offer of allocation of IGT Amounts, entry into an IGT agreement with the California State Department of Health Care Services, notification of acceptance to participate in the IGT Program and all required information statements. Seller shall promptly remit to Buyer a portion of any and all IGT Amounts received by Seller following the Closing Date, equal to the percentage of days during the 2018-2019 fiscal year (July 1-June 30) that the Licensed Operations were conducted by Buyer.

**9.7 Preservation of Records.** After the Closing, Buyer shall keep and preserve all Medical Records and other Books and Records of the Hospital existing as of the Closing that are required to be kept and preserved by any federal or state Law or regulation for the period of time required thereby. After the Closing Date, upon reasonable notice by Seller or any Affiliate thereof to Buyer, Seller or any Affiliate thereof (or its agents) shall be entitled, during regular business hours, to have access to and make copies of all records without charge to Seller pertaining to the operation of the Hospital prior to the Closing for any lawful corporate or charitable purpose.

**9.8 Dissolution of Seller Neither Prohibited Nor Required.** No provision in this Agreement shall restrict Seller from dissolving or otherwise terminating its existence, in accordance with the Laws of the State of California. No provision in this Agreement shall require Seller to dissolve or otherwise terminate its existence.

**9.9 Provision of Meeting Facilities, Office Space.** Buyer shall make reasonable meeting facilities available to Seller within the Hospital (or at another mutually agreed upon location) to conduct its board of directors meetings. Each of the Parties shall use its good faith efforts to accommodate the schedules of the other Party in the scheduling of such meetings. Buyer shall also provide reasonable office space for Seller and reasonable storage space for Seller’s records within the Hospital (or at another mutually agreed upon location within the District). Seller shall be responsible for its own furniture and equipment, staff, files and other costs of operation. Buyer shall also provide to Seller at fair market value and upon such terms and conditions as Buyer and Seller may agree accounting and other administrative services. The provisions of this Section shall apply only so long as Seller continues in existence.

**9.10 Indemnification of Buyer.**

**9.10.1 General Indemnification.** Except for any Assumed Contracts and Assumed Liabilities assumed by Buyer pursuant to Section 2.3, Seller hereby agrees to protect, indemnify, defend and hold Buyer and Adventist Health, their respective members, officers, directors, trustees, agents, legal representatives, successors and assigns, and each of them, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, damages, fines, penalties, judgments, assessments, costs and expenses (including but not limited to reasonable attorneys’ fees and expenses), liens and encumbrances accruing, based upon, resulting from or directly or indirectly arising out of (a) any breach or default hereunder by Seller

or (b) Seller's operation of the Hospital prior to the Closing, and with respect to the liabilities retained by Seller. This indemnification shall include any and all liabilities and obligations of Seller described in Section 2.4. In addition, the indemnification shall include, but not be limited to, any and all claims, debts, liabilities, obligations, losses, damages, fines, penalties, judgments, assessments, costs and expenses arising directly or indirectly by reason of any of the legal actions described in Section 4.17. Nothing in this Section shall supersede the limitations on Seller's liability set forth elsewhere in this Agreement.

9.10.2 Environmental Indemnification. Seller hereby agrees to protect, indemnify, defend and hold Buyer and Adventist Health, their respective members, officers, directors, agents, legal representatives, successors and assigns, and each of them, free and harmless from and against any and all known or unknown costs, losses, liabilities, obligations, damages, lawsuits, deficiencies, claims, demands and expenses (whether or not arising out of third-party claims), including without limitation interest, penalties, costs of mitigation, any investigation or clean-up, remedial correction or response action, damages to the environment or natural resources, legal fees and all amounts paid in investigation, defense or settlement of any of the foregoing (herein, "**Environmental Damages**"), incurred in connection with, arising out of or resulting from any liabilities arising under or noncompliance any Environmental Law or concerning any environmental condition or any property damage, natural resources damage, or bodily injury occurring as a result of Seller's operation of the Hospital before the Closing Date and attributable to conditions on the Hospital Campus Real Property before the Closing Date. The term Environmental Damages as used in this Section is not limited to matters asserted by third parties against any indemnified party, but includes Environmental Damages incurred or sustained by an indemnified party in the absence of third party claims. Payments by any indemnified party of amounts for which such indemnified party is indemnified hereunder shall not be a condition precedent to recovery. The rights and remedies provided in this Section shall be exclusive as to any Environmental Damages incurred by a Party under this Agreement; provided, however, that nothing herein shall preclude a Party from exercising its rights under this Agreement and applicable Law to seek equitable remedies, including without limitation, specific performance and injunctions.

9.10.3 Remedies. Upon the occurrence of any event for which Buyer and/or Adventist Health is entitled to indemnification under this Agreement, Buyer and/or Adventist Health shall notify Seller of the type of damage and its amount, and Seller shall pay to Buyer and/or Adventist Health, in a manner agreed upon by the Parties, the full amount of such damage. Buyer and Adventist Health shall have all of the rights and remedies available to it at law, in equity, in bankruptcy or otherwise and, in addition, shall have the right to offset the amount of any damage for which it is entitled to indemnification against all amounts which Buyer and/or Adventist Health may at any time owe Seller or any Affiliate of Seller.

9.10.4 Third Party Claims. Buyer and/or Adventist Health shall give reasonable notice to Seller after Buyer and/or Adventist Health has knowledge of any third party claim or the commencement of any third party legal proceedings ("**Third Party Claim**"), arising after the date against Buyer and/or Adventist Health for which it is entitled to indemnification by Seller hereunder. Except as set forth in the immediately following sentence, Seller shall have the right to assume, at its expense, the defense of any Third Party Claim and to control the Third Party Claim and any settlement thereof, provided that it promptly assumes such defense and

acknowledges in writing its obligation to indemnify Buyer and Adventist Health in accordance with the terms of this Agreement. Notwithstanding the foregoing, Buyer and/or Adventist Health, at their expense, may assume primary responsibility for, or participate with Seller in the defense of, any Third Party Claim which may have a material impact on the business of Buyer, Adventist Health, the Hospital or any of the affiliates of Adventist Health.

9.10.5 Failure by Seller to Defend. If Seller fails to assume promptly the defense of any Third Party Claim at its expense and acknowledge its obligation to indemnify Buyer and Adventist Health as provided herein, Seller shall nonetheless reasonably cooperate with Buyer and Adventist Health at Seller's expense, but such claim may be defended, paid, settled or otherwise disposed of in such manner as Buyer and Adventist Health shall, in their sole discretion, determine, without in any manner impairing the indemnification obligations of Seller arising under this Agreement.

9.10.6 Obligations of Seller in Defending Claims. If Seller assumes the defense of any such Third Party Claim, Seller shall take all reasonable steps necessary in the defense or settlement of such Third Party Claim, and shall furnish to Buyer, Adventist Health, indenture trustee and paying agent for the Existing Bonds and bondholders for the General Obligation Bonds and Revenue Bonds a copy of all written communications concerning such Third Party Claim, including, without limitation, a copy of all pleadings, motions, judgments and other documents filed in court. Buyer and Adventist Health agree to cooperate reasonably with Seller in such defense, at Buyer's and/or Adventist Health's expense. Seller shall not, in the defense of such Third Party Claim, consent to the entry of any judgment (except with the prior written consent of Buyer and/or Adventist Health) or enter into any settlement (except with the prior written consent of Buyer and/or Adventist Health and as applicable, bondholders for the General Obligation Bonds and Revenue Bonds) which does not include as an unconditional term thereof the giving by any claimant a release from all liability in respect of such Third Party Claim to Buyer and Adventist Health.

9.10.7 Insurance Coverage. To be effective on the Closing Date, Seller shall for all claims made policies that is terminating obtain an extended reporting period endorsement (i.e., "tail" coverage) for the Insurance Policies listed in Schedule 9.10.7, all with limits not less than the applicable individual and aggregate coverage limits then in effect for such Insurance Policy for an unlimited reporting period (or if an unlimited reporting period is unavailable, then for the longest reporting period); provided that for the Hospital's Property Insurance, the Parties agree to the terms for coverage as described in the Lease.

## **9.11 Indemnification of Seller**

9.11.1 General Indemnification. Except as specifically provided in Section 2.4, Buyer and Adventist Health hereby agree to protect, indemnify, defend and hold Seller, its members, officers, directors, trustees, agents, legal representatives, successors and assigns, and each of them, free and harmless from and against any and all claims, debts, liabilities, obligations, losses, fines, penalties, judgments, assessments, damages, costs and expenses (including, but not limited to, reasonable attorneys' fees and expenses), liens and encumbrances accruing, based upon, resulting from or directly or indirectly arising out of (a) any breach or default hereunder by Buyer; (b) Buyer's or Adventist Health's operation of the Hospital after the

Closing, (c) the Assumed Liabilities or (d) any mechanics' liens or other claims arising from or in connection with the due diligence activities conducted by Buyer and Adventist Health in connection herewith. This indemnification shall include any breach by Buyer or Adventist Health of any Assumed Contracts or Assumed Liabilities to the extent assumed by Buyer or Adventist Health pursuant to Section 2.3; however, said indemnity shall not apply to any liability arising prior to the Closing Date in accordance with the terms of the Contracts and Assumed Liabilities assumed by Buyer pursuant to Section 2.3.

9.11.2 Remedies. Upon an occurrence of any event for which Seller is entitled to indemnification under this Agreement, Seller shall have all remedies and rights available to it as Buyer or Adventist Health has against Seller under the terms of Sections 9.11.2 through 9.16 of this Agreement, subject to the same limitations and procedures set forth therein.

**9.12 Further Assurances**. Each of the Parties agrees that it will, at any time, and from time to time after the Execution Date, upon the request of the appropriate Party, do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be required to complete the transactions contemplated by this Agreement, including, without limitation, prompt payment of any amounts due payable from one Party to another (*e.g.*, the definition of "**Excluded Assets**").

**9.13 Limitations on Indemnification Obligations**. The Parties' obligations under Sections 9.11 and 9.12 are subject to the following limitations:

9.13.1 Limitation on Recovery. Neither Party shall be entitled to recover under Section 9.11 or 9.12 until the aggregate amount which such Party would recover but for this Section 9.13 exceeds Fifty Thousand Dollars (\$50,000), in which event such Party shall be entitled to recover for all damages (including the initial \$50,000); provided, however, that the foregoing limitation shall not apply to recovery for mechanics liens or other claims asserted under Section 9.11.1(c).

9.13.2 Fraud, Intentional Misrepresentation, Intentional Torts. The limitations contained in this Section 9.13 shall not apply to indemnification obligations which are a result of or arise out of fraud, intentional misrepresentation or intentional torts. Notwithstanding the foregoing, the limitations contained in this Section 9.13.2 shall not apply for any breach of the representation made by Seller under Section 4.7.

**9.14 Buyer's Pursuit of Tax-Exempt Status**. Following the Closing Date, Buyer shall take such action as may be necessary to secure recognition of its status, effective as of the Closing Date, as an organization described under Section 501(c)(3) of the Code and Section 23701(d) of the California Revenue and Taxation Code.

**9.15 Continuing Disclosure Statement**. Upon the reasonable request of Seller from time to time, Buyer shall make available to Seller any information regarding the operation of the Hospital and the health care facilities which contain or utilize the Acquired Assets as may be necessary for Seller to provide any disclosures or reports which may be required from time to time in connection with any of the Existing Bonds, including, without limitation, those required

under the Continuing Disclosure Certificates delivered in connection with each of the General Obligation Bonds and Revenue Bonds of the Seller.

**9.16 Plan of Adjustment.** The Parties hereby understand, acknowledge and agree that the plan of adjustment in connection with the Chapter 9 Proceeding shall not amend, modify or contradict any provision of this Agreement, the Interim Management Services Agreement, the Financing Documents or the Lease.

## ARTICLE 10.

### DISPUTE RESOLUTION

**10.1 Dispute Resolution.** Except as otherwise provided in this Agreement, any dispute, claim or controversy arising out of or relating to this Agreement, or the breach, termination, enforcement, interpretation, or validity thereof, including the determination of the scope or applicability of this Agreement to arbitrate (collectively, a “*Dispute*”) shall be settled in accordance with the following procedures. Notwithstanding anything that may be construed to the contrary herein, each of the Parties expressly acknowledges that (i) it has an affirmative duty to expedite the process and procedures described below to the extent reasonably practical in order to facilitate a prompt resolution of any Dispute and (ii) each Party has a mission of serving their communities, and all communications and proposed resolutions of the Dispute shall take these missions into consideration.

10.1.1 Dispute Notice. Notice by either Party of the existence of a Dispute shall (i) be delivered in writing, (ii) specify what provision of the Agreement such Party believes is under Dispute and (iii) recommend a course of action to resolve the Dispute (the “*Dispute Notice*”).

10.1.2 Meet and Confer. If, within fifteen (15) days after receipt by the applicable Party of a Dispute Notice, the Parties do not resolve such dispute, then the Dispute shall be referred to the designated senior executives with authority to resolve the Dispute from each Party for further negotiation (the “*Meet and Confer*”). The obligation to conduct a Meet and Confer pursuant to this Section 10.1.2 does not obligate any Party to agree to any compromise or resolution of the Dispute that such Party does not determine, in its sole and absolute discretion, to be a satisfactory resolution of the Dispute. The Meet and Confer shall be considered a settlement negotiation for the purpose of all applicable laws protecting statements, disclosures, or conduct in such context, and any offer in compromise or other statements or conduct made at or in connection with any Meet and Confer shall be protected under such laws, including California Evidence Code Section 1152.

10.1.3 Arbitration. If any Dispute is not resolved to the mutual satisfaction of the Parties within thirty (30) days after delivery of the Dispute Notice (or such other period as may be mutually agreed upon by the Parties in writing), the Dispute shall be determined by arbitration in F County, California. The arbitration shall be administered by Judicial Arbitration and Mediation Services, Inc. (“*JAMS*”) pursuant to its Comprehensive Arbitration Rules and Procedures. Judgment on the Award may be entered in any court having jurisdiction.

(a) Either Party may commence arbitration by giving written notice to the other Party demanding arbitration (the “**Arbitration Notice**”). The Arbitration Notice shall specify the Dispute, the particular claims and/or causes of action alleged by the Party demanding arbitration, and the factual and legal basis in support of such claims and/or causes of action.

(b) The parties shall cooperate in good faith to identify one person that is acceptable to both Parties to act as an arbitrator within fifteen (15) days after the commencement of arbitration. In the event the Parties are unable or fail to agree upon the arbitrator within the allotted time, the arbitrator shall be appointed by JAMS in accordance with its rules. All arbitrators shall serve as neutral, independent and impartial arbitrators, and they shall have the authority to grant any relief permitted by law, including equitable relief.

(c) The Parties shall be entitled to reasonable production of relevant, non-privileged documents, carried out expeditiously. If the Parties are unable to agree upon same, the arbitrator shall have the power, upon application of any Party, to make all appropriate orders for production of documents by any Party. Depositions shall be permitted only upon a showing of substantial need.

(d) The substantive internal law (and not the conflict of laws) of the State shall be applied by the arbitrator to the resolution of the Dispute.

(e) The following time limits are to apply to any arbitration arising out of or related to this Agreement: The evidentiary hearing on the merits (“**Hearing**”) is to commence within six (6) months of the service of the arbitration demand. A brief, reasoned award is to be rendered within forty-five (45) days of the close of the Hearing or within forty-five (45) days of service of post-hearing briefs if the arbitrator directs the service of such briefs. The arbitrator must agree to the foregoing deadlines before accepting appointment. Failure to meet any of the foregoing deadlines will not render the award invalid, unenforceable or subject to being vacated.

(f) The Parties shall maintain the confidential nature of the arbitration proceeding and the award, including the Hearing, except as may be necessary to prepare for or conduct the arbitration hearing on the merits, or except as may be necessary in connection with a court application for a preliminary remedy, a judicial challenge to an award or its enforcement, or unless otherwise required by law or judicial decision.

(g) The award of the arbitrator shall be final and binding upon the Parties without appeal or review except as permitted by applicable law.

**10.2 Provisional Measures.** Nothing in this Agreement shall prevent either Party from seeking provisional measures from any court of competent jurisdiction, and any such request shall not be deemed incompatible with the agreement to arbitrate or a waiver of the right to arbitrate.

**10.3 Attorneys' Fees and Costs.** The arbitrator(s) in the Sections 10.1.3 shall award to the prevailing Party, if any, the costs and attorneys' fees reasonably incurred by the prevailing Party in connection with the arbitration. In addition, the prevailing Party shall be entitled to its



reasonable attorneys' fees and other costs for any other Action, including court proceedings for provisional measures or for the enforcement of any arbitral award.

## ARTICLE 11.

### TERMINATION

**11.1 Termination Prior to Closing.** This Agreement may be terminated and the transactions described herein abandoned at any time prior to the Closing in accordance with the following:

11.1.1 Mutual Written Consent. By the mutual written consent of the respective Boards of Directors of the Parties.

11.1.2 Condition Not Fulfilled. By either Party, if a condition to the performance of the other Party shall not be fulfilled or waived.

11.1.3 Default. A material default under or breach of this Agreement or of any representation, warranty or covenant of a party set forth in this Agreement shall have occurred and shall not have been cured prior to the Closing Date. A termination shall be effected by transmitting written notice of such occurrence to the other Party (in accordance with Section 12.5 below) in the form of a certified copy of resolutions of the board of directors of that Party.

11.1.4 Failure to Finalize Schedules. By either Party, if Section 6.9.5 is applicable.

**11.2 Liability in Event of Termination.** In the event of a termination of this Agreement prior to the Closing as provided in Section 11.1 above, no Party or its board of directors shall be liable to the other or its board of directors. The sole and exclusive remedy under this Section shall be the termination of this Agreement prior to the Closing.

**11.3 Release in Event of Termination.** In the event of a termination of this Agreement prior to the Closing as provided in Section 11.1 above, each Party does hereby release and forever discharge the other Party, and its respective directors, trustees, officers, agents, employees, attorneys, and the successors and assigns of each, of and from any and all claims, debts, liabilities, demands, obligations, costs, expenses, attorneys' fees, actions and causes of actions arising out of or related to the negotiations leading up to, execution or performance of the terms and conditions of this Agreement, except for claims arising out of a violation of Section 9.11 or 9.12, which claims are not so released. Each of the Parties hereby waives the rights and benefits of Section 1542 of the California Civil Code, which provides as follows:

“A general release does not extend to claims which the creditor does not know or suspect to exist in his or her favor at the time of executing the release, which if known by him or her must have materially affected his or her settlement with the debtor.”

**11.4 Fees and Expenses in Event of Termination.** In the event of a termination of this Agreement or abandonment of the purchase and sale of the Acquired Assets prior to the

Closing, each Party shall pay the fees and expenses of its own advisors, including accountants and attorneys, in preparing and negotiating this Agreement.

**11.5 Extension, Waiver.** At any time prior to the Closing, Adventist Health and Buyer, on the one hand, and Seller, on the other, by action taken by their respective boards of directors, may (a) extend the time for the performance of any of the obligations or other acts of the other, (b) in whole or in part, waive any inaccuracy in or breach of the representations and warranties of the other contained herein or in any schedule hereto in any document delivered by the other pursuant hereto, and (c) in whole or in part, waive compliance with any of the agreements by the other or conditions contained herein. Any agreement on the part of the Parties hereto to any such extension or waiver shall be valid only if set forth in an instrument in writing signed and delivered on behalf of such Party to the other Parties in accordance with Sections 12.2 and 12.3 below.

## ARTICLE 12.

### MISCELLANEOUS PROVISIONS

**12.1 Waiver of Personal Liability.** No member, director, officer, agent, or employee of any of the Parties shall be individually or personally liable for the obligations of any such Party hereunder or subject to personal liability or accountability by reason of approval, execution or delivery of this Agreement or the performance of any of the obligations arising under or in connection herewith.

**12.2 Entire Agreement and Amendment.** This Agreement embodies the entire agreement and understanding of the Parties regarding its subject matter and supersedes all prior agreements, correspondence, arrangements and understandings relating to the subject matter herein. No representation, promise, inducement or statement of intention has been made by any Party which has not been embodied in this Agreement. This Agreement may be amended, modified, superseded, or canceled only by a written instrument signed by all of the Parties, and any of the terms, provisions, and conditions of this Agreement may be waived, only by a written instrument signed by the waiving Party. Failure of any Party at any time or times to require performance of any provision hereof shall not be considered to be a waiver of any succeeding breach of such provision by any Party.

### **12.3 Benefit and Assignment.**

12.3.1 Benefit. All the terms, provisions and conditions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the Parties, as well as the successors and permitted assigns (as specified in Section 12.3.2) of Buyer and Seller.

12.3.2 Assignment. No party shall have the power or authority to assign any of its rights or interests herein or delegate any duties or obligations hereunder without first procuring the written consent of the other Parties. Notwithstanding the foregoing, however, Buyer shall be allowed to assign any of its rights or interests herein or delegate any duties or obligations hereunder without the written consent of Seller if Buyer assigns such rights or interests or delegates such duties or obligations to an entity that constitutes an Affiliate of Buyer

with the financial and administrative capacity to perform such duties and obligations. The covenants, conditions and promises contained herein shall, subject to the foregoing limitations, inure to the benefit of and bind the legal representatives, successors and assigns of all of the Parties. Any purported assignment in violation of this provision shall be void *ab initio* and of no force and effect.

**12.4 No Third Party Interest.** This Agreement is entered into by and between the Parties signatories only for their benefit. The Parties hereby expressly agree that there is no intent by any party to create or establish third party beneficiary status rights or the equivalent in any other referenced individual, entity or third party, and no such individual, entity or third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement with respect to the rights and obligations of the Parties.

**12.5 Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing and shall be deemed to have been given (a) on the date of personal delivery or (b) provided that such notice, request, demand or communication is actually received by the party to which it is addressed in the ordinary course of delivery, one (1) Business Day after the date of deposit to a nationally recognized overnight courier service, in each case, addressed as follows, or to such other address, person or entity as either party shall designate by notice to the other in accordance herewith:

SELLER: Tulare Local Healthcare District  
1255 N. Cherry #536  
Attention: Kevin Northcraft, President  
Michael Jamaica, Vice President

With a copy to: McCormick Barstow, LLP  
7647 North Fresno Street P.O. Box 28912  
Fresno, California 93729  
Attention: Todd Wynkoop, Esq.

BUYER: Adventist Health Tulare  
[ ● ]  
[ ● ]  
Attention: President

ADVENTIST HEALTH Adventist Health  
2100 Douglas Boulevard  
Roseville, California 95661  
Attention: Office of General Counsel

With a copy to: Latham & Watkins LLP  
355 South Grand Avenue, Suite 100  
Los Angeles, California 90071-1560  
Attention: Daniel K. Settelmayer, Esq.

Bond Counsel Hawkins, Delafield & Wood LLP  
333 S. Grand Ave. #3650  
Los Angeles, California 90071  
Attention: Arto Becker, Esq.

## **12.6 Construction.**

12.6.1 Severability. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be held in any proceeding to be invalid or unenforceable, the remainder of this Agreement, or the application of such provision to persons or circumstances other than those to which it was held to be invalid or unenforceable, shall not be affected thereby, and shall be valid and be enforceable to the fullest extent permitted by Law, but only if and to the extent such enforcement would not materially and adversely frustrate the Parties' essential objectives as expressed herein.

12.6.2 Number and Gender. Unless the context clearly states otherwise, the use of the singular or plural in this Agreement shall include the other and the use of any gender shall include all others.

12.6.3 Captions. The captions in this Agreement are included for purposes of convenience only and shall not be considered a part of the Agreement in construing or interpreting any provision.

**12.7 Governing Law.** This Agreement shall be governed by, and shall be construed and enforced in accordance with, the internal Laws (not the choice of law) of the State of California. Each Party agrees to submit to the jurisdiction of the Bankruptcy Court and the Courts of the State of California. Any action or proceeding to enforce or interpret any provision of this Agreement shall be brought, commenced or prosecuted in the County of Fresno, California.

**12.8 Public Announcements.** Neither Party shall issue any press release or make any public announcement of the transaction subject to this Agreement without the prior written consent of the other Party, provided that either Party may make any such announcement as may be required by Law or in connection with obtaining any bankruptcy approval which may be required in connection with this transaction.

**12.9 Attorneys' Fees.** Each Party shall be responsible for its respective attorneys' fees associated with this Agreement. However, if any Party brings an action for any relief or collection against another Party, declaratory or otherwise, arising out of the arrangement described in this Agreement, the losing Party shall pay to the prevailing Party a reasonable sum for attorneys' fees and costs actually incurred in bringing such action, including fees incurred in arbitration, at trial, on appeal and on any review therefrom, all of which shall be deemed to have

accrued upon the commencement of such action and shall be paid whether or not such action is prosecuted to judgment. Any judgment or order entered in such action shall contain a specific provision providing for the recovery of attorneys' fees and costs incurred in enforcing such judgment. For the purpose of this Section, attorneys' fees shall include fees incurred in connection with discovery, post judgment motions, contempt proceedings, garnishment and levy.

*[signature page follows]*

IN WITNESS WHEREOF, the Parties execute this Agreement as of the day and year first above written.

**SELLER**

TULARE LOCAL HEALTHCARE DISTRICT,  
a local health care district of the State of California

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

**BUYER**

ADVENTIST HEALTH TULARE  
a California nonprofit religious corporation

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

**ADVENTIST HEALTH**

ADVENTIST HEALTH SYSTEM/WEST,  
a California nonprofit religious corporation  
d/b/a ADVENTIST HEALTH

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

**Exhibit A**

**SERVICE AREA**

[TO COME]

**Exhibit 2.5.2**

**ASSUMPTION OF CERTAIN LIABILITIES**

Pursuant to that certain Asset Purchase Agreement dated as of July [\_\_\_], 2018 (the “**Agreement**”) by and between ADVENTIST HEALTH TULARE, a California nonprofit religious corporation (“**Buyer**”), and TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California (“**Seller**”), for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Buyer assumes the Assumed Liabilities as such term is defined in the Agreement. Except as expressly assumed in this Assumption of Certain Liabilities, Buyer does not assume and shall not in any manner be responsible for any liability (including any contingent liability), obligation, lien or encumbrance of Seller.

**BUYER**

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



**Exhibit 3.2.3**

**BILL OF SALE**

For good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California (“**Seller**”), does hereby grant, bargain, transfer, sell, assign, convey and deliver to ADVENTIST HEALTH TULARE, a California nonprofit religious corporation (“**Buyer**”), all right, title and interest in and to the Acquired Assets as such term is defined in the Asset Purchase Agreement dated as of [\_\_\_], 2018 by and between Seller and Buyer (the “**Agreement**”). Buyer acknowledges that Seller is making no representation or warranty with respect to the assets being conveyed by this Bill of Sale except as specifically set forth in the Agreement. Seller for itself, its successors and assigns covenants and agrees that, upon the written request of Buyer, Seller will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, each and all of such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may reasonably be required by Buyer in order to assign, transfer, set over, convey, assure and confirm unto and vest in Buyer, its successors and assigns, title to the assets sold, conveyed, transferred and delivered by this Bill of Sale.

This Bill of Sale is executed at Tulare, California, this [\_\_\_] day of [\_\_\_\_\_], 2018, and shall be effective as of 12:01 a.m. [\_\_\_\_\_] [\_\_\_], 2018.

**SELLER**

TULARE LOCAL HEALTHCARE DISTRICT,  
a local health care district of the State of California

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

**Exhibit 3.3.5**

**GENERAL ASSIGNMENT OF RIGHTS**

THIS GENERAL ASSIGNMENT (this “**Assignment**”) is executed as of [\_\_\_\_], 2018, by and between TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California (“**Assignor**”), and ADVENTIST HEALTH TULARE, a California nonprofit religious corporation (“**Assignee**”).

**RECITALS**

A. Pursuant to and in accordance with that certain Asset Purchase Agreement dated as of [\_\_\_\_], 2018 (the “**Agreement**”), by and between Assignor as Seller, and Assignee as Buyer, Assignee is purchasing the Acquired Assets from Assignor.

B. In connection with the conveyance of the Acquired Assets to Assignee, Assignor and Assignee have agreed that all of Assignor’s right, title and interest in certain assets shall be conveyed to Assignee.

**AGREEMENT**

**THE PARTIES AGREE AS FOLLOWS:**

1. **Capitalized Terms**. All capitalized terms not otherwise defined in this Assignment shall have the same meaning given to such terms in the Agreement
2. **Assignment**. On the Closing Date, Assignor hereby assigns to Assignee, its successors and assigns, free and clear of any and all adverse claims of right, title or interest, the following Acquired Assets (collectively, the “**Assigned Assets**”):
  - (a) **Personal Property**. All of Assignor’s right, title and interest in and to all of the Personal Property;
  - (b) **Assumed Contracts**. All of Assignor’s right, title and interest in and to all of the Personal Property Leases set forth on Schedule 2.1.2 of the Agreement and the Contracts set forth on Schedule 2.1.3 of the Agreement;
  - (c) **Inventory**. All of Assignor’s right, title and interest in and to all of the Inventory;
  - (d) **Prepays**. All of Assignor’s right, title and interest in and to all of the Prepays;
  - (e) **Accounts Receivable**. All of Assignor’s right, title and interest in and to all of the Accounts Receivable and all documents, records, correspondence, work papers and other documents relating to the Accounts Receivable, Assignor’s cost reports or Agency Settlements;

(f) Post-MSA Bank Accounts. All of Assignor's right, title and interest in and to the Post-MSA Accounts;

(g) Claims. All of Assignor's right, title and interest in and to all of all claims, causes of action, rights of recovery and rights of setoff and recoupment of any kind (including rights to insurance proceeds and rights under and pursuant to all warranties, representations, and guarantees made by suppliers of services, products, materials, or equipment, or components thereof) that arise out of or inure to the benefit of Assignor with respect to the Acquired Assets on or after the Closing Date (any recovery from a claim made by Assignor before the Closing Date shall belong to Assignor);

(h) Intangible Property. All of Assignor's right, title and interest in and to all of the Intangible Property; and

(i) Post-Valuation Assets. All of Assignor's right, title and interest in and to all of the Post-Valuation Assets.

**3. Acceptance**. Assignee hereby accepts the foregoing assignments and agrees to assume and keep, perform and fulfill all of the terms, covenants, conditions, duties and obligations which are required, from and after the Closing Date, to be kept, performed and fulfilled by the Assignee (as successor in interest to the Assignor) in connection with the Assigned Assets.

**4. Indemnification**. Assignor and Assignee shall each indemnify, defend and hold the other harmless, upon the terms and conditions and to the extent provided in the Agreement. Assignor shall indemnify and hold harmless Assignee from and against damages that arise out of or result from Assignor's acts or omissions with respect to the Assigned Assets. Assignee shall indemnify and hold harmless Assignor from and against damages that arise out of or result from Assignee's acts or omissions with respect to the Assigned Assets.

**5. Miscellaneous**. Assignor and Assignee agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment. If any action or suit by either Party to this Assignment against the other arises from or interprets this Assignment, the prevailing Party in such action or suit shall, in addition to such other relief as may be granted, be entitled to recover its costs of suit and actual attorneys' fees, whether or not the action or suit proceeds to final judgment. This Assignment shall be governed by and construed in accordance with the Laws of the State of California, and shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment may be executed in multiple counterparts, all of which when duly delivered taken together, shall be binding on the Parties. Each of the schedules attached to this Assignment is incorporated by reference into this Assignment.

*[signature page follows]*

The Parties have executed this Assignment on the date first above written.

**ASSIGNOR**

TULARE LOCAL HEALTHCARE DISTRICT,  
a local health care district of the State of California

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

**ASSIGNEE**

ADVENTIST HEALTH TULARE,  
a California nonprofit religious corporation

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

**Exhibit 3.3.6**

**ASSIGNMENT OF LEASES**

THIS ASSIGNMENT OF LEASES (this “**Assignment**”) is executed as of [\_\_\_\_], 2018, by and between TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California (“**Assignor**”), and ADVENTIST HEALTH TULARE, a California nonprofit religious corporation (“**Assignee**”).

**RECITALS**

A. Pursuant to and in accordance with that certain Asset Purchase Agreement dated as of [\_\_\_\_], 2018 (the “**Agreement**”), by and among Assignor as Seller, on the one hand, and Assignee and Adventist Health System/West, a California nonprofit religious corporation doing business as Adventist Health, as Buyer, on the other hand, Assignee is purchasing from Assignor certain assets of Assignor.

B. Assignor is the lessor, lessee or sublessor under certain Assumed Leases and Assumed Real Estate Leases, and Assignee has agreed to accept and assume those Assumed Leases and Assumed Real Estate Leases in connection with its purchase of certain assets from Assignor.

**AGREEMENT**

**THE PARTIES AGREE AS FOLLOWS:**

1. **Capitalized Terms.** All capitalized terms not otherwise defined in this Assignment shall have the same meaning given to such terms in the Agreement.
2. **Assignment.** On the Closing Date, Assignor assigns, sets over, conveys and transfers to Assignee, its successors and assigns, any and all of Assignor’s rights, title and interest, as lessor, lessee, sublessor, sublessee and/or otherwise, in and to the Assumed Leases and Assumed Real Estate Leases, and all extensions thereof (collectively the “**Subject Leases**”), and to the rents and profits generated by or derived from the Subject Leases, together with any and all rights and appurtenances to the Subject Leases in any way belonging to Assignor, its successors and assigns. All assignments shall be effective as of the Closing Date. Assignor warrants and defends unto Assignee, its successors and assigns, all such rights, title and interest in and to the Subject Leases against every person who claims all or any part of the Subject Leases.
3. **Acceptance and Assumption.** Assignee hereby accepts and agrees to perform all of the terms, covenants and conditions of the Subject Leases required to be performed by Assignee (as successor in interest to Assignor) from and after the date of their Assignment (but not prior thereto, which shall remain Assignor’s obligation and responsibility).
4. **Indemnification.** Assignor and Assignee shall each indemnify, defend and hold the other harmless upon the terms and conditions and to the extent provided in the Agreement. Assignor shall indemnify and hold harmless Assignee from and against damages that arise out of

or result from Assignor's acts or omissions relating to the Subject Leases. Assignee shall indemnify and hold harmless Assignor from and against damages that arise out of or result from Assignee's acts or omissions relating to the Subject Leases.

**5. Pre-Closing Rent and Operating Expenses.** Any rents or operating expenses received by Assignor or Assignee after the date of this Assignment with respect to the Subject Leases shall belong to and be paid over to Assignor to the extent attributable to periods preceding the date of this Assignment, and shall belong to and be paid to Assignee to the extent attributable to the period from and after the date of this Assignment.

**6. Miscellaneous.** Assignor and Assignee agree to execute such other documents and perform such other acts as may be necessary or desirable to effectuate this Assignment. If either Party brings any action or suit against the other arising from or interpreting this Assignment, the prevailing Party in such action or suit shall, in addition to such other relief as may be granted, be entitled to recover its costs of suit and actual attorneys' fees, whether or not the action or suit proceeds to final judgment. This Assignment shall be governed by and construed in accordance with the Laws of the State of California, and shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns. This Assignment may be executed in multiple counterparts, all of which shall be but one and the same instrument, binding on all Parties when all separately executed copies have been fully delivered.

The Parties have executed this Assignment as of the date first above written.

**ASSIGNOR**

TULARE LOCAL HEALTHCARE DISTRICT,  
a local health care district of the State of California

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

**ASSIGNEE**

ADVENTIST HEALTH TULARE,  
a California nonprofit religious corporation

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

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