

REQUEST FOR BOARD ACTION

HENDERSON COUNTY

BOARD OF COMMISSIONERS

MEETING DATE: 21 May 2008

SUBJECT: Sale of Pardee Care Center (final approval)

ATTACHMENT(S): Offer and contract documents

SUMMARY OF REQUEST:

This Board previously on 5 November 2007 voted to allow the Board of Trustees of Henderson County Hospital Corporation to pursue the sale of the Pardee Care Center, with the proceeds of any resulting sale to be retained by the Hospital Corporation.

On 16 April 2008, this Board gave preliminary approval to the offer from Hendersonville Physicians and Associates, LLC, for the purchase of the real estate, other assets and on-going concern of Pardee Care Center, located near the campus of Blue Ridge Community College. The purchase price for the real estate alone is \$1,450,000.00; the price for the other assets and on-going concern is \$7,000,000.00.

A notice of proposed agreement and right to upset bid was published, and the time for upset bid has expired without an upset bid meeting the requirements of N.C. Gen. Stat. §160A-269 being made.

Board options include giving final approval of this sale, or rejecting all bids and re-starting the process.

County staff will present further information on this matter.

BOARD ACTION REQUESTED:

Final consideration of the offer to purchase Pardee Care Center.

If the Board is so inclined, the following motion is suggested:

I move that Board give final approval of the bid and offer presented by the Trustees of Henderson County Hospital Corporation for the sale of Pardee Care Center.

HENDERSONVILLE PHYSICIANS AND ASSOCIATES, LLC
80 BRUMSBERGER CIRCLE
FLETCHER, NORTH CAROLINA 27832

May 1, 2008

Henderson County Hospital Corporation
c/o Mrs. Sharon Alexander
240 Third Avenue West
Hendersonville, NC 28739

Henderson County
c/o Mrs. Sharon Alexander
240 Third Avenue West
Hendersonville, NC 28739

Re: Sale of Pardee Care Center

Dear Mrs. Alexander:

We hereby offer to purchase certain tangible and intangible assets ("the Assets") and certain real property ("the Real Property") as set forth in the Asset Purchase Agreement ("the Asset Purchase Agreement") attached hereto and the Real Estate Contract ("the Real Estate Contract") attached hereto, on the terms and conditions outlined in the Asset Purchase Agreement and the Real Estate Contract, which terms and conditions are incorporated into this offer letter by reference.

Funds totaling Four Hundred Twenty-two Thousand Five Hundred Dollars (\$422,500.00) have been wired, per your instructions, to the Prince Youngblood & Massagee Real Estate Trust Account. These funds consist of Three Hundred Fifty Thousand Dollars (\$350,000.00) representing the Deposit as set forth in Section 3(b) of the Asset Purchase Agreement and Seventy-two Thousand Five Hundred Dollars (\$72,500.00) representing the Deposit as set forth in Section 5.5(a) of the Real Estate Contract.

This offer shall be irrevocable until 5 p.m. on the thirtieth (30th) day after the date of the expiration of the upset bid process to which the sale of the Real Property is subject as set forth in G.S. Section 160A-269. If this offer is not accepted by that time, the same shall be deemed revoked and each Deposit shall immediately be refunded to us.

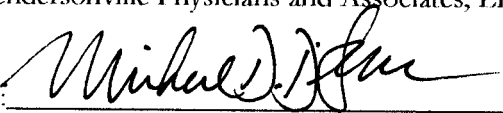
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Time is of the essence of this offer and of the agreement resulting from the acceptance hereof. This offer letter shall be governed by and construed in accordance with the laws of the State of North Carolina.

Yours truly,

Hendersonville Physicians and Associates, LLC

By: 

Michael D. DeLoach, Manager

771610/440122-001

AGREEMENT OF PURCHASE AND SALE

ARTICLE 1

PROPERTY/PURCHASE PRICE

1.1 Certain Basic Terms.

- (a) **Purchaser and Notice Address:** **With a copy to:**
- | | |
|---|-----------------------------------|
| Hendersonville Physicians and Associates, LLC | Young Moore and Henderson P.A. |
| 80 Brownsberger Circle | Post Office Box 31627 |
| Fletcher, NC 28732 | Raleigh, NC 27622 |
| Attn: Christopher Sprenger | Attn: Alexander R. Atchison, Esq. |
| Facsimile: (919)882-9771 | Facsimile: (919) 782-6753 |
- Manager and Notice Address:**
- Hendersonville Health and Rehabilitation Company
80 Brownsberger Circle
Fletcher, NC 28732
- (b) **Seller and Notice Addresses:** **With a copy to:**
- | | |
|--------------------------|---------------------------|
| Henderson County | Sharon B. Alexander |
| 800 North Justice Street | 240 Third Avenue West |
| Hendersonville, NC 28791 | Hendersonville, N C 28739 |
| Atten: Kris Hoce, CEO | Facsimile: (828)693-1077 |
| Facsimile: (828)696-1128 | |
- Lessee and Notice Addresses:** **With a copy to:**
- | | |
|---------------------------------------|---------------------------|
| Henderson County Hospital Corporation | Sharon B. Alexander |
| 800 North Justice Street | 240 Third Avenue West |
| Atten: Kris Hoce, CEO | Hendersonville, N C 28739 |
| Facsimile: (828)696-1128 | Facsimile: (828)693-1077 |
- (c) **Date of this Agreement:** The date of this Agreement is May 1, 2008.
- (d) **Purchase Price:** One million four hundred fifty thousand and 00/100 Dollars (\$1,450,000.00)

- (e) Closing Date: Closing Date shall be the first day of the month following the later of (1) sixty (60) days after the date of the expiration of the upset bid process set forth in G.S. Section 160A-269 or (2) the receipt of all necessary government approvals and provider numbers needed for Purchaser to operate the business conducted on the Property as provided for in that certain Asset Purchase Agreement by and between the Purchaser and Henderson County Hospital Corporation. Notwithstanding the foregoing, in no event shall the Closing Date be any later than ninety (90) days after the expiration of the upset bid process set forth in G.S. Section 160A-269. The Purchaser and Seller acknowledge that the deed to the Real Property will be delivered prior to 5:00 p.m. on the Closing Date.

1.2 Property. Subject to the terms and conditions of this Agreement of Purchase and Sale (the "Agreement"), Seller agrees to sell to Purchaser, and Purchaser agrees to purchase from Seller, the following property (collectively, the "Property") for the Purchase Price:

(a) The "Real Property," consisting of all of Unit 1 and Unit 4 of Partners in Health Condominium Association located in Henderson County, North Carolina (collectively, the "Real Property"), and being the land more particularly described in Exhibit A attached hereto, together with (i) all improvements located on the Real Property ("Improvements"), (ii) all rights, benefits, privileges, easements, tenements, hereditaments, and appurtenances related to the Real Property, and (iii) without warranty, all right, title, and interest of Seller in and to all strips and gores and any land lying in the bed of any street, road or alley, open or proposed, adjoining the Real Property.

(b) The Lessee executes this Agreement to indicate its consent to terminate its lease upon Closing. There are no other Leases encumbering the Real Property.

(c) The "Personal Property," being: (i) all equipment, machinery, and other tangible personal property owned by Seller and located upon the Real Property and used in connection with the ownership and operation thereof; (ii) Seller's interest in any such equipment, machinery or other tangible personal property leased by Seller and located in or used in connection with the ownership and operation of the Real Property; (iii) the plans and specifications and other architectural and engineering drawings for the Improvements; (iv) contract rights related to the construction, operation, ownership or management of the Real Property (but only to the extent Seller's obligations thereunder are expressly assumed by Purchaser pursuant to this Agreement); (v) governmental permits, approvals and licenses applicable to the Real Property (to the extent assignable); and (vi) all records relating to the maintenance and operation of the Real Property.

ARTICLE 2

INSPECTION

2.1 **Seller's Delivery of Specified Documents.** To the extent such items are in Seller's or Lessee's possession or control, except as provided below, Seller or Lessee will promptly provide to Purchaser or will permit Purchaser to examine at the Property the following items (the "Property Information"):

(a) **Maintenance Records.** All available maintenance work orders in excess of Five Thousand Dollars (\$5,000.00) for the Property for the twelve (12) months preceding this Agreement, which will be made available for Purchaser's review at the Property;

(b) **List of Capital Improvements.** A list of all capital improvements known to the Seller and performed on the Property within the twelve (12) months preceding this Agreement;

(c) **Plans and Specifications.** All construction plans and specifications, if any, in Seller's possession relating to the original construction of the Property and any major capital repairs or tenant improvements, which will be made available for Purchaser's review at the Property; and

(d) **Existing Title and Survey Documents.** A copy of Seller's existing title insurance policy and the most recent survey of the Property.

2.2 **Service Contracts.** Prior to closing, the parties will endeavor to agree as to which Service Contracts Purchaser will assume and which Service Contracts will be terminated by Seller or Lessee at Closing. Purchaser will assume the obligations arising from and after the Closing Date under those Service Contracts that Seller, Lessee and Purchaser agree will not be terminated. Seller or Lessee will terminate prior to or at Closing all Service Contracts that Purchaser does not agree to assume.

ARTICLE 3

TITLE AND SURVEY REVIEW

3.1 **Title Commitment and Survey.** Purchaser will, at its sole cost and expense, obtain: a current, effective commitment for title insurance (the "Title Commitment") in the amount of the Purchase Price with Purchaser as the proposed insured, and accompanied by true, complete, and legible copies of all exceptions referred to in the Title Commitment.

3.2 **Title Review and Cure.** This Agreement is specifically conditioned upon Seller being able to convey good and marketable fee simple title, subject only to Permitted Exceptions. Purchaser will review title to the Property to determine whether the Seller can convey good and marketable fee simple title to the Real Property subject only to Permitted Exceptions and shall inform Seller, in writing, of any title objections on or before ten days after the date of the expiration of the upset bid process set forth in G.S. Section 160A-269. If Purchaser does not give written notice of such title objections, this condition shall be deemed to be satisfied. Seller will have no obligation to cure or remove any title objections except to discharge monetary liens

of an ascertainable amount created by, under or through Seller, which liens Seller will cause to be released at the Closing, but not including the lien for current taxes not yet due and payable. Seller further agrees to remove any exceptions or encumbrances to title that are created by, under or through Seller after the date of this Agreement without Purchaser's consent, which consent will not be unreasonably withheld. Purchaser may terminate this Agreement and receive a refund of the Deposit if Seller is unable to convey good and marketable fee simple title to the Real Property at Closing. The term "Permitted Exceptions" will mean: (i) such easements, restrictions and covenants currently of record which will not interfere with or impair Purchaser's intended use of the Premises or reduce the value of the Premises; and (ii) real estate taxes not yet due and payable. Seller agrees that the monetary liens against the Property created or suffered by Seller will be released against the Property at or prior to Closing.

3.3 Title Costs. The premium for the Title Policy and all title examination fees will be paid by Purchaser.

ARTICLE 4

OPERATIONS AND RISK OF LOSS

4.1 Ongoing Operations. During the pendency of this Agreement:

(a) Performance under Service Contracts. Seller and Lessee will perform their respective obligations under the Service Contracts and other agreements that may affect the Property.

(b) New Contracts. Neither Seller nor Lessee will not enter into any contract that will be an obligation affecting the Property after the Closing except contracts entered into in the ordinary course of business that are terminable without cause on 30 days notice, and except for such contracts as may be approved by Purchaser.

(c) Removal and Replacement of Personal Property. Seller will not remove any Personal Property except as may be required for necessary repair or replacement, and replacement will be of equal quality and quantity as existed as of the time of their removal.

4.2 Damage. Risk of loss up to and including the Closing Date will be borne by Seller. In the event of any Material Damage to or destruction of the Property or any portion thereof, Purchaser may, at its option, by notice to Seller given within 10 days after Seller notifies Purchaser of such damage or destruction (and if necessary the Closing Date will be extended to give Purchaser the full 10-day period to make such election): (i) terminate this Agreement, or (ii) proceed under this Agreement, receive any insurance proceeds (including any rent loss insurance applicable to any period on and after the Closing Date) due Seller as a result of such damage or destruction and assume responsibility for such repair, and Purchaser will receive a credit at Closing for any deductible, uninsured or coinsured amount under said insurance policies. If Purchaser elects (ii) above, Purchaser may extend the Closing Date for up to an additional 60-day period in which to obtain insurance settlement agreements with Seller's insurers, and Seller will cooperate with Purchaser in obtaining the insurance proceeds and such agreements from Seller's insurers. If the Property is not materially damaged, then Purchaser will

not have the right to terminate this Agreement, but Seller will, at its cost, repair the damage before the Closing in a manner reasonably satisfactory to Purchaser or if repairs cannot be completed before the Closing, credit Purchaser at Closing for the reasonable cost to complete the repair. "Material Damage" and "Materially Damaged" mean damage (1) reasonably exceeding five percent (5%) of the Purchase Price to repair, or (2) which, in Purchaser's reasonable estimation, will take longer than 90 days to repair.

4.3 Condemnation In the event any proceedings in eminent domain are contemplated, threatened or instituted by any body having the power of eminent domain with respect to the Property or any material portion thereof, Purchaser may, at its option, by notice to Seller given within 10 business days after Seller notifies Purchaser of such proceedings (and if necessary the Closing Date will be extended to give Purchaser the full 10 business day period to make such election): (i) terminate this Agreement, or (ii) proceed under this Agreement, in which event Seller will, at the Closing, assign to Purchaser its entire right, title and interest in and to any condemnation award, and Purchaser will have the sole right during the pendency of this Agreement to negotiate and otherwise deal with the condemning authority in respect of such matter.

ARTICLE 5

CLOSING

5.1 Closing The consummation of the transaction contemplated herein ("Closing") will occur on the Closing Date at the offices of Young Moore and Henderson, P.A., 3101 Glenwood Avenue, Suite 200, Raleigh, North Carolina. The parties agree that neither the Seller nor the Lessee nor any of their respective agents shall be required to personally attend Closing in Raleigh, North Carolina.

5.2 Conditions to the Parties' Obligations to Close In addition to all other conditions set forth herein, the obligation of Seller and Purchaser to consummate the transactions contemplated hereunder will be contingent upon the following:

(a) The other party's representations and warranties contained herein will be true and correct as of the date of this Agreement and the Closing Date;

(b) As of the Closing Date, the other party will have performed its obligations hereunder and all deliveries to be made at Closing will have been tendered;

(c) There will exist no pending or threatened actions, suits, arbitrations, claims, attachments, proceedings, assignments for the benefit of creditors, insolvency, bankruptcy, reorganization or other proceedings, pending or threatened against the other party that would materially and adversely affect the operation or value of the Property or the other party's ability to perform its obligations under this Agreement; and

(d) Seller shall comply with all statutory procedures for the sale of the Real Property to Purchaser.

(e) There will exist no pending or threatened action, suit or proceeding with respect to the other party before or by any court or administrative agency which seeks to restrain or prohibit, or to obtain damages or a discovery order with respect to, this Agreement or the consummation of the transactions contemplated hereby.

5.3 Purchaser's Conditions to Close. The obligation of Purchaser to consummate the transactions contemplated hereunder will be contingent upon the following:

(a) Purchaser, and Lessee will have entered into an Asset Purchase Agreement of even date herewith (the "Asset Purchase Agreement"), for the sale of certain personal property (the "Related Personal Property") to Purchaser in connection with the sale of the Property to Purchaser hereunder and the operation of a skilled nursing facility on the Property (the "Business"). Purchaser, and Lessee will have consummated the sale of the Related Personal Property to Purchaser pursuant to the Asset Purchase Agreement simultaneously with the consummation of the transaction contemplated by this Agreement.

(b) Seller shall have fully and completely kept, observed, performed, satisfied and complied with all terms, covenants, conditions, agreements, requirements, restrictions and provisions required by this Agreement to be kept, observed, performed, satisfied or complied with by Seller before, on or as of the Closing Date;

(c) The representations and warranties of Seller in this Agreement (and the substantive facts contained in any representations and warranties limited to Seller's knowledge and belief) shall be true and correct, and certified by Seller to Purchaser as such, on and as of the Closing Date, in the same manner and with the same effect as though such representations and warranties had been made on and as of the Closing Date;

(d) Purchaser shall not have terminated this Agreement pursuant to an express right to terminate as set forth in this Agreement;

(e) All required consents and approvals and all licenses, permits, consents, approvals, authorizations, qualifications and orders required to enable Purchaser to own, occupy and operate the Property and to conduct the Business as presently conducted (collectively, the "Permits") will have been obtained or assigned and will be in full force and effect, and Purchaser will have been furnished with evidence reasonably acceptable to it of the existence of all such required consents and approvals and all Permits. Purchaser shall proceed with due diligence to obtain the Permits, and this condition shall be deemed to be satisfied in the event that the Permits are not obtained as a result of Purchaser's lack of diligence or as a direct result of Purchaser's conduct or misconduct within ninety (90) days of the upset bid period prescribed by N.C.G.S. Section 160A-269. If Purchaser is delayed in obtaining its Permits and such delay exceeds the Closing Date, Lessee agrees to continue to operate the facility and enter into a lease for the facility from Purchaser on terms that make it financially neutral to Purchaser and Lessee in closing on the Property until Purchaser obtains its Permits or for a period of ninety (90) days, whichever is earlier. Notwithstanding the foregoing, if it is finally determined that Purchaser is ineligible to obtain its Permits, Purchaser must close and cannot assert this paragraph as condition of closing or, in the alternative, Purchaser may choose not to close and forfeit its

Deposit and Seller shall be barred from asserting any further claim for damages under this Agreement.

If any of the foregoing conditions have not been satisfied or performed or waived in writing by Purchaser on or as of the Closing Date, Purchaser shall have the right, at Purchaser's option, either: (i) to terminate this Agreement by giving written notice to Seller on or before the Closing Date, in which event all rights and obligations of Seller and Purchaser under this Agreement shall expire, and this Agreement shall become null and void; or (ii) to accept the Real Property and close. If Purchaser elects to terminate this Agreement as provided in this paragraph, the Deposit shall be refunded to Purchaser immediately upon request.

5.4 Seller's Deliveries. At Closing, Seller will deliver the following:

(a) Deed. A special warranty deed executed by Seller, conveying to Purchaser good and indefeasible fee simple title to the Real Property, subject only to the Permitted Exceptions (the "Deed");

(b) Termination of the Lease. Termination of the Lease, executed by Lessee;

(c) State Law Disclosures. Such disclosures and reports as are required by applicable state and local law, if any, in connection with the conveyance of real property;

(d) Lien Affidavit. An affidavit executed by Seller in form and content sufficient to permit the Title Company to issue a title insurance policy without exception for materialmen's and mechanics' liens;

(e) FIRPTA. A Foreign Investment in Real Property Tax Act affidavit executed by Seller. If Seller fails to provide the necessary affidavit and/or documentation of exemption on the Closing Date, Purchaser may proceed with withholding provisions as provided by law;

(f) Authority. Evidence of the existence, organization and authority of Seller and of the authority of the persons executing documents on behalf of Seller reasonably satisfactory to the Title Company;

(g) Additional Documents. Any additional documents that Purchaser or the Title Company may reasonably require for the proper consummation of the transaction contemplated by this Agreement and all instruments and documents to be delivered at Closing pursuant to the Asset Purchase Agreement; and

(h) Closing Statement. A Closing Statement consistent with this Agreement.

5.5 Purchaser's Deliveries. At Closing, Purchaser will deliver the following:

(a) Statutory Deposit. Purchaser has delivered to Elizabeth Corn, as Clerk for Seller, (herein called "Clerk") the sum of Seventy two thousand five hundred Dollars (\$72,500.00) (the "Deposit"). Throughout the term of this Agreement, Clerk shall hold and disburse the Deposit in accordance with the terms and conditions of N.C.G.S. Section 160A-269. On the Closing Date, the Deposit will be released to the Seller to be applied as part

payment of the Purchase Price. If this Agreement is terminated as provided for herein and the Purchaser is not in default under this Agreement, the Deposit shall promptly be returned to Purchaser.

(b) **Purchase Price.** The Purchase Price (less the Deposit), plus or minus applicable prorations, will be deposited by Purchaser in immediate, same-day federal funds wired for credit into an account designated by Seller; and

(c) **Closing Statement.** A Closing Statement consistent with this Agreement.

5.6 Possession. Seller will deliver possession of the Property to Purchaser at the Closing subject only to the Permitted Exceptions.

5.7 Delivery of Books and Records. Immediately after the Closing, Seller, if requested, and in Seller's possession, will deliver to the Purchaser: copies or originals of all books and records of account pertaining to the Property, contracts, copies of correspondence with tenants and suppliers, receipts for deposits, unpaid bills and other papers or documents which pertain to the Property; all booklets, keys and other items, if any, used in the operation of the Property; and, if in Seller's possession or control, the original "as-built" plans and specifications and all other available plans and specifications. Seller will cooperate with Purchaser after Closing to transfer to Purchaser any such information stored electronically.

5.8 Closing Costs. Seller will furnish and pay the expense of any documentary or transfer tax stamps and the fees and costs of Seller's own attorney. Seller will also be responsible for and discharge prior to Closing all assessments (special or otherwise), deferred taxes and charges placed against or applicable to the Property or the Improvements, due and payable prior to Closing. Purchaser will pay for the expense of preparing and filing the Deed and the fees and costs of Purchaser's own attorney.

ARTICLE 6

PRORATIONS

6.1 Prorations. The items in subparagraphs (a) through (c) of this Paragraph 6.1 will be prorated on an accrual basis between Seller and Purchaser as of the close of business on the day immediately preceding the Closing Date:

(a) **Taxes and Assessments.** The parties acknowledge that the Real Property has not been subject to any general real estate and personal property taxes and assessments imposed by governmental authority ("Taxes") or any assessments imposed by private covenant constituting a lien or charge on the Property for the then-current calendar year or other current tax period.

(b) **Operating Costs.** Taxes, insurance, utilities, common area maintenance and other operating costs and expenses (collectively, "Operating Costs") incurred by Seller in connection with the ownership, operation, maintenance and management of the Property will be prorated as of the Closing Date.

6.2 Utility Deposits. Seller will receive a credit for the amount of deposits, if any, with utility companies that are transferable and that are assigned to Purchaser at the Closing.

6.3 Commissions. Seller and Purchaser represent and warrant each to the other that they have not dealt with any broker, sales person or finder in connection with the transactions contemplated by this Agreement or the Asset Purchase Agreement. Except as expressly set forth above, in the event of any claim for broker's or finder's fees or commissions in connection with the negotiation, execution or consummation of the transactions contemplated by this Agreement or the Asset Purchase Agreement, each party will indemnify and hold harmless the other party from and against any such claim based upon any statement, representation or agreement of such party.

6.4 Seller's Obligations. Other than those obligations of Seller expressly assumed by Purchaser hereunder or expressly agreed to in writing by Purchaser, Seller will pay and discharge any and all liabilities of each and every kind arising out of or by virtue of their ownership and operation of the Property, and no other expense related to the ownership or operation of the Property will be charged to or paid or assumed by Purchaser, whether allocable to any period before or after the Closing.

ARTICLE 7

REPRESENTATIONS AND WARRANTIES

7.1 Seller's and Lessee's Representations and Warranties.

(a) As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Seller represents and warrants to Purchaser that:

(i) **Authority.** Seller has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Seller at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Seller, enforceable in accordance with their terms.

(ii) **Conflicts and Pending Actions or Proceedings.** There is no agreement to which the Seller is a party or, to Seller's knowledge, binding on the Seller that is in conflict with this Agreement. No action or proceeding is pending or, to Seller's knowledge, threatened against Seller or relating to the Property, including, without limitation, any condemnation proceedings, which challenges or impairs Seller's ability to execute or perform their obligations under this Agreement.

(iii) **Contractors and Suppliers.** All contractors, subcontractors, suppliers, architects, engineers, and others who have performed services or labor or have supplied materials in connection with Seller's ownership of the Property have been paid in full and all liens arising therefrom (or claims which with the passage

of time or the giving of notice, or both, could mature into liens) have been satisfied and released.

(iv) Leases. There are no leases, tenants or parties in possession (except for Seller) with respect to the Property except the Lease wherein Lessee is the Tenant.

(v) Service Contracts. The list of Service Contracts to be delivered to Purchaser pursuant to this Agreement will be true, correct, and complete as of the date of its delivery. The Seller nor, to Seller's knowledge, any other party is in default under any Service Contract.

(vi) Notice of Violations or Defects. Except as disclosed to Purchaser in the Property Information, Seller: (i) has received no written notice that the Property or the use thereof violates any governmental law or regulation or any covenants or restrictions encumbering the Property; (ii) has no actual knowledge of any material latent physical defect in the Improvements; and (iii) has received no written notice from any insurance company or underwriter providing casualty insurance coverage with respect to the Property of any latent defect that would materially adversely affect the insurability of the Property or cause an increase in insurance premiums.

(vii) Zoning. The Real Property is zoned in the zoning classification for operation of a skilled nursing facility under all applicable zoning ordinances.

(viii) FEMA. To the best of Seller's knowledge, no portion of the Real Property is located within any Special Flood Hazard Area designated by the Federal Emergency Management Agency, or in any area similarly designated by any agency of any other governmental authority; no portion of the Real Property meets the definition of "wetlands" codified at 40 C.F.R. part 230.3(t), or has been similarly designated by any agency of any governmental authority; and no portion of the Real Property constitutes "wetlands" that have been filled, whether or not pursuant to appropriate permits.

(ix) Restriction on Use. No portion of the Real Property is subject to any other classification, designation or preliminary determination of any agency of any federal, state or local government, or pursuant to any federal, state or local law, which would restrict the use, development, occupancy or operation of the Property, including, without limitation, any designation or classification as an archeological site, any classification or determination under the Endangered Species Act, or any designation as an historical site.

(x) Subdivision Compliance. The Real Property constitutes either a previously subdivided lot in compliance with applicable subdivision regulations and similar governmental requirements, or was created in a manner not subject thereto; and no subdivision filing or approval or similar governmental filing or approval is required for the conveyance of the Real Property at Closing.

(xi) Tax Deferral. The Real Property is not and has not been subject to any exemption from ad valorem taxes that will result in imposition of any tax or

penalty upon the transfer of title at Closing or any change in use of the Real Property.

(xii) **Compliance with Regulations.** The Real Property is not constructed, occupied, used or operated in violation of, is not otherwise in violation of, and Seller has received no notice of any violations or potential violation of any, zoning, building, health, environmental or other laws, codes, ordinances, regulations, orders or requirements of any city, county, state or other governmental authority having jurisdiction thereof, or any private restrictive covenants affecting the Real Property; and all certificates, licenses, permits, authorizations, consents and approvals required by any such governmental authority for the continued use, occupancy and operation of the Real Property have been obtained, are paid for, and are free of restrictions.

(xiii) **Access.** Access to the Real Property from streets and roads adjoining the Real Property is not limited or restricted.

(xiv) **Assessments.** To the best of Seller's knowledge, there are no encumbrances or special assessments, either pending or confirmed, for any improvements on or adjoining the Property. Pending assessments will be deemed to include such assessments which have been passed by resolution of any governmental body having jurisdiction and authority over the Property even though such assessments have yet to be assessed or levied against the Property. Seller will pay for all public improvements related to the Property which have been advertised, ordered, commenced or completed prior to the date of this Agreement.

(xv) Notwithstanding any other provision of this Agreement, the parties agree with regard to environmental matters related to the contemplated transaction as follows:

(A) **The Seller's Environmental Representations.** The Seller represents that:

(1) To the best knowledge of the Seller, the Seller is not, and at all times has not been, in violation of any Environmental Law.

(2) The Seller holds all permits, licenses and other approvals that it has understood were and are required under Environmental Laws for the conduct of the Business.

(3) The Seller has not received and has no reason to expect any actual or threatened claim, citation, directive, inquiry, notice, order, summons, warning or other communication that relates to any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any environmental liabilities, with respect to the Real Property.

(4) Seller has not caused or permitted the release or threat of release of any Hazardous Materials at or from the Real Property.

(B) Definitions. For purposes of this paragraph, the following definitions will apply:

(1) "Environmental Law" means any and all federal, state and local laws, regulations, ordinances and other requirements relating to pollution or protection of the environment and human health and safety, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the North Carolina Oil Pollution and Hazardous Substances Control Act, the North Carolina Inactive Hazardous Sites Act, or any other federal, state or local statutory or regulatory program governing environmental conditions at the Property, as such acts may be amended from time to time.

(2) "Hazardous Material" means any substance, chemical, waste, contaminant, pollutant, or other material that is or becomes regulated by any federal, state, or local governmental authority because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness, or reactivity, including, without limitation, those substances regulated by the Environmental Laws, and also specifically including petroleum and petroleum products, lead and lead-based paint, polychlorinated biphenyls, asbestos and asbestos-containing materials, radiation and radon gas.

(b) As a material inducement to Purchaser to execute this Agreement and consummate this transaction, Lessee represents and warrants to Purchaser that to the best of Lessee's knowledge, the structures on the Real Property are in good order and repair, and in a good, safe, substantial condition, free from defects; all plumbing, heating, electrical and air conditioning systems and equipment and systems therein are in good order and repair and operating condition; the Improvements are constructed and completed strictly in compliance with accepted standards of good materials and workmanship, all electrical, plumbing, heating and air-conditioning and exterior drainage systems, in or on the Real Property are in good condition and working order; to the best of Lessee's knowledge and belief, there is no termite or other pest infestation, dry-rot or similar damage affecting the Property; the Improvements are water-tight; and there is no subsidence or other soil condition that does or may in the future adversely affect the Real Property. For purposes of this subparagraph, Lessee knowledge shall be limited to representatives and agents of Lessee who have direct managerial responsibility for the maintenance of the Real Property.

Seller acknowledges and agrees that no examination or investigation of the Property or of the operation of the Property by or on behalf of Purchaser prior to Closing shall in any way modify, affect or diminish Seller's obligations under the representations, warranties, covenants and agreements set forth in this Agreement.

7.2 Purchaser's Representations and Warranties. As a material inducement to Seller to execute this Agreement and consummate this transaction, Purchaser represents and warrants to Seller that:

(a) **Organization and Authority.** Purchaser has been duly organized and is validly existing as a limited liability company, in good standing in the State of North Carolina, and will be qualified to do business in the state in which the Real Property is located on the Closing Date. Purchaser has the full right and authority and has obtained any and all consents required to enter into this Agreement and to consummate or cause to be consummated the transactions contemplated hereby. This Agreement has been, and all of the documents to be delivered by Purchaser at the Closing will be, authorized and properly executed and constitute, or will constitute, as appropriate, the valid and binding obligation of Purchaser, enforceable in accordance with their terms.

(b) **Conflicts and Pending Action.** There is no agreement to which Purchaser is a party or to Purchaser's knowledge binding on Purchaser that is in conflict with this Agreement. No action or proceeding is pending or, to Purchaser's knowledge, threatened against Purchaser that challenges or impairs Purchaser's ability to execute or perform its obligations under this Agreement.

(c) **Improvements to the Real Property.** Purchaser and Manager shall invest at least One Million Dollars (\$1,000,000.00) total in the Property and the skilled nursing home business operated in the Property in capital improvements. Such investment shall begin within twelve months from date of Closing and all such improvements shall be completed no later than twenty-four (24) months from the date of Closing. Manager executes this Agreement for the sole purpose of obligating itself to contribute to such investment.

7.3 Survival of Representations and Warranties. The representations and warranties set forth in this Article 7 are made as of the date of this Agreement and will be remade as of the Closing Date and will not be deemed to be merged into or waived by the instruments of Closing, but will survive the Closing.

ARTICLE 8

DEFAULT AND REMEDIES

If this transaction fails to close as a result of Seller's or Purchaser's default, then the non-defaulting party may elect either (i) to terminate this Agreement and pursue all other remedies available at law or in equity, or (ii) to seek an order of specific performance and all other remedies available at law or in equity. Any and all defaults by one party under the Asset Purchase Agreement will constitute a default under this Agreement, and termination of the Asset Purchase Agreement will constitute a termination of this Agreement.

If (i) any representation or warranty of Seller set forth in this Agreement shall prove to be untrue or incorrect in any respect, or (ii) Seller shall fail to keep, observe, perform, satisfy or comply with, fully and completely, any of the terms, covenants, conditions, agreements, requirements, restrictions or provisions required by this Agreement to be kept, observed,

performed, satisfied or complied with by Seller, or (iii) the purchase and sale of the Property is otherwise not consummated in accordance with the terms and provisions of this Agreement due to circumstances or conditions which constitute a default by Seller under this Agreement (the matters described in the foregoing clauses (i), (ii) and (iii) are herein sometimes collectively called "Seller Defaults"), the Earnest Money shall be refunded to Purchaser immediately upon request, and Purchaser may exercise such rights and remedies as may be provided for in this Agreement or as may be provided for or allowed by law or in equity. Seller hereby acknowledges that Purchaser's remedies in the event of the occurrence of any of the Seller Defaults shall specifically include, without limitation, the right to seek, prove and recover (to the extent proven) monetary damages from Seller in an amount equal to all actual out-of-pocket costs and expenses paid or incurred by Purchaser in connection with its execution of and entry into this Agreement and its proposed acquisition of the Property, including, without limitation, (A) attorney's fees and disbursements in connection with the negotiation and execution of this Agreement, the examination of title to the Property, and any other legal matter undertaken by Purchaser pertaining to the Property and (B) any examinations, investigations, tests and inspections, undertaken by Purchaser with respect to the Property.

ARTICLE 9

INDEMNIFICATION

Seller shall, and does hereby, indemnify, defend and hold Purchaser harmless from, against and in respect of: (i) physical injury to or the death of persons or damage to property occurring prior to and including the Closing Date (x) on or in the Real Property, or (y) in any manner arising out of, by reason of or in connection with the use, occupancy or operation of the Property; (ii) any matter arising out of, by reason of or with respect to the ownership or operation of the Real Property prior to and including the Closing Date; (iii) any breach by Seller of any representation or warranty under this Agreement; (iv) any and all judgments or liens, of any kind or nature whatsoever, arising out of, by reason of, as a result of or in connection with any of the matters covered by the immediately preceding clauses (i), (ii) or (iii); and (iv) any and all liabilities, damages, losses, amounts of judgment, assessments, fines or penalties, if established by final judgment and amounts paid in compromise or settlement, suffered, incurred or sustained by Purchaser and to which Seller has agreed on account of, by reason of, as a result of or in connection with any of the matters covered by the immediately preceding clauses (i), (ii) (iii) or (iv). Nothing herein shall be deemed to have waived in whole or in part any claims of immunity available to the Seller as against any third party to this Agreement.

ARTICLE 10

MISCELLANEOUS

10.1 Parties Bound. This Agreement will be binding upon and inure to the benefit of the respective legal representatives, successors, assigns, heirs, and devisees of the parties.

10.2 Headings. The article and paragraph headings of this Agreement are for convenience only and in no way limit or enlarge the scope or meaning of the language hereof.

10.3 Invalidity and Waiver. If any portion of this Agreement is held invalid or inoperative, then so far as is reasonable and possible the remainder of this Agreement will be deemed valid and operative, and, to the greatest extent legally possible, effect will be given to the intent manifested by the portion held invalid or inoperative. The failure by either party to enforce against the other any term or provision of this Agreement will not be deemed to be a waiver of such party's right to enforce against the other party the same or any other such term or provision in the future.

10.4 Governing Law and Venue. This Agreement will, in all respects, be governed, construed, applied, and enforced in accordance with the laws of the State of North Carolina. The parties agree that proper venue for any action between the parties arising out of or related to this Agreement or the Real Property shall be only in Henderson County, North Carolina.

10.5 Survival. The provisions of this Agreement that contemplate performance after the Closing and the obligations of the parties not fully performed at the Closing will survive the Closing and will not be deemed to be merged into or waived by the instruments of Closing.

10.6 No Third Party Beneficiary. This Agreement is not intended to give or confer any benefits, rights, privileges, claims, actions, or remedies to any person or entity as a third party beneficiary, decree, or otherwise.

10.7 Entirety and Amendments. This Agreement embodies the entire agreement between the parties and supersedes all prior agreements and understandings relating to the Property. This Agreement may be amended or supplemented only by an instrument in writing executed by the party against whom enforcement is sought.

10.8 Attorneys' Fees. Should either party employ attorneys to enforce any of the provisions hereof, the party against whom any final judgment is entered agrees to pay the prevailing party all reasonable costs, charges, and expenses, including attorneys' fees, expended or incurred in connection therewith.

10.9 Notices. All notices required or permitted hereunder will be in writing and will be served on the parties at the addresses set forth in Paragraph 1.1. Any such notices will be either (a) sent by overnight delivery using a nationally recognized overnight courier, in which case notice will be deemed delivered one business day after deposit with such courier, (b) sent by telefax with a confirming copy by first class U.S. Mail, in which case notice will be deemed delivered upon transmission of such notice by telefax, or (c) sent by personal delivery, in which case notice will be deemed delivered upon receipt. A party's address may be changed by written notice to the other party; provided, however, that no notice of a change of address will be effective until actual receipt of such notice. Copies of notices are for informational purposes only, and a failure to give or receive copies of any notice will not be deemed a failure to give notice.

10.10 Construction. The parties acknowledge that the parties and their counsel have reviewed and revised this Agreement and agree that the normal rule of construction to the effect

that any ambiguities are to be resolved against the drafting party will not be employed in the interpretation of this Agreement or any exhibits or amendments hereto.

10.11 Calculation of Time Periods. Unless otherwise specified, in computing any period of time described herein, the day of the act or event after which the designated period of time begins to run is not to be included and the last day of the period so computed is to be included, unless such last day is a Saturday, Sunday or legal holiday for national banks in the location where the Property is located, in which event the period will run until the end of the next day that is not a Saturday, Sunday, or legal holiday. The last day of any period of time described herein will be deemed to end at 5:00 p.m., Raleigh, North Carolina time.

10.12 Time of the Essence. In regard to any and all of the rights and obligations created pursuant to this Agreement, time shall be of the essence.

10.13 Execution in Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed to be an original, and all of such counterparts will constitute one Agreement. To facilitate execution of this Agreement, the parties may execute and exchange by telephone facsimile counterparts of the signature pages.

10.12 Further Assurances. In addition to the acts and deeds recited herein and contemplated to be performed, executed and/or delivered by either party at Closing, each party agrees to perform, execute and deliver, but without any obligation to incur any additional liability or expense, on or after the Closing any further deliveries and assurances as may be reasonably necessary to consummate the transactions contemplated hereby or to further perfect the conveyance, transfer and assignment of the Property to Purchaser.

IN WITNESS WHEREOF, the parties have executed this Agreement on the day and year written below.

PURCHASER: HENDERSONVILLE PHYSICIANS AND ASSOCIATES, LLC

By: Michael D. DeLoach
Name: MICHAEL D. DELOACH
Title: MANAGER

Dated: 5-01-08

MANAGER: HENDERSONVILLE HEALTH AND REHABILITATION COMPANY

By: _____
Name: _____
Title: _____

Dated: _____

SELLER: HENDERSON COUNTY

By: _____
Name: _____
Title: _____

Dated: _____

LESSEE: HENDERSON COUNTY HOSPITAL CORPORATION

By: _____
Name: _____
Title: _____

Dated: _____

EXHIBIT A

[LEGAL DESCRIPTION]

To be reasonably agreed upon and attached prior to closing

ASSET PURCHASE AGREEMENT

by and among

HENDERSONVILLE PHYSICIANS AND ASSOCIATES, LLC (Purchaser),

HENDERSON COUNTY HOSPITAL CORPORATION (Seller),

MAY 1, 2008

ASSET PURCHASE AGREEMENT

THIS AGREEMENT is made as of May 1, 2008, by and among **HENDERSONVILLE PHYSICIANS AND ASSOCIATES, LLC**, a North Carolina limited liability company (“the Purchaser”), and **HENDERSON COUNTY HOSPITAL CORPORATION**, a North Carolina nonprofit corporation (“the Seller”). The Purchaser and the Seller are collectively referred to in this Agreement as the “parties.”

RECITALS

WHEREAS, the Seller owns and operates, among other things, a skilled nursing facility doing business as Pardee Care Center in Henderson County, North Carolina (the “Business”);

WHEREAS, the Purchaser owns and operates skilled nursing facilities in several locations in North Carolina and is experienced in skilled nursing care and knowledgeable about the Business.

WHEREAS, the Seller desires to sell to the Purchaser, and the Purchaser desires to purchase from the Seller, certain tangible and intangible assets used or held in connection with the operation of the Business, together with certain real property used in the operation of the Business owned by Henderson County, on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the foregoing and the mutual promises made below, the parties agree as follows:

1. **Definitions**

Except as otherwise expressly provided herein or unless the context otherwise requires, the following terms will have the respective meanings hereinafter specified:

(a) “Books and records” means all written and computerized records and other documents and information necessary to the ownership of the Assets (defined below) and/or operation of the Business including, without limitation, all patient and vendor contracts, purchase orders, settlements, bills of sale and invoices, all marketing and statistical information pertaining to the Business and the Seller’s patients, all warranties received by the Seller upon its acquisition of machinery and equipment being purchased, and all maintenance and repair records related to such machinery and equipment.

(b) “Business” means that skilled nursing facility described herein above in the Recitals.

(c) “Closing Date” shall be the first day of the month following the later of (1) sixty (60) days after the date of the expiration of the upset bid process

set forth in N.C.G.S. Section 160A-269, or (2) the receipt of all necessary government approvals and provider numbers needed for Purchaser to operate the Business, or ninety days from expiration of the final upset bid period mandated by G.S. Section 160A-269, whichever is earlier. The transfer of the Assets shall be deemed to take place at 7:00 a.m. on the Closing Date. The Purchaser and Seller acknowledge that the deed to the Real Property will be delivered prior to 5:00 p.m. on the Closing Date. The Seller and the Purchaser shall act in good faith on the Closing Date and for a reasonable period thereafter to ensure a smooth transition. After Closing, should either the Seller or the Purchaser receive any funds the other would be entitled to receive under this Agreement, the party in receipt of such funds shall promptly pay all such sums to the party who is entitled to receive such funds.

(d) "Default" means an event of default, as defined in any contract, agreement or instrument, or any event that, with the passage of time or the giving of notice or both, would constitute an event of default or other breach under such document.

(e) "Generally accepted accounting principles" will have the meaning ascribed to it from time to time by the American Institute of Certified Public Accountants.

(f) "Knowledge" by a Person of a particular fact or other matter is that which is actually known by the Person, without further duty of investigation unless this Agreement requires such investigation. The knowledge of the Seller is deemed to include the knowledge of its officers and directors. The knowledge of the Purchaser is deemed to include the knowledge of each of its officers and managers.

(g) "Person" means any natural person, corporation, limited liability company, partnership, unincorporated association, firm or other entity.

(h) "Real Property" means the property located in Henderson County, North Carolina, consisting of units 1 and 4 of the Partners in Health Condominium Association (the "Real Property"), including all structures and other improvements.

2. Sale and Transfer of Assets

(a) Sale of Assets. Subject to all of the terms and conditions of this Agreement, the Seller agrees to sell and assign to the Purchaser, and the Purchaser agrees to acquire from the Seller, all of the Seller's right, title and interest in and to the following assets of the Seller (the "Assets"), free and clear of all liens and encumbrances:

(i) Equipment. All of the Seller's machinery, equipment, furniture, furnishings, supplies, other office equipment, leasehold improvements and other fixed assets located upon the Real Property and used by the Business, including, without limitation, the assets listed on Schedule 2(a)(i) attached hereto.

(ii) Patients and Supplier Information. In regard to the Business, the Seller's lists of all patients and substantive suppliers, all purchasing formulas for such suppliers, and all books and records related to the Seller's relationship with each supplier.

(iii) Inventory. All of the inventory of the Business of every nature and description at the time of the Closing (the "Inventory").

(iv) Contracts. The Seller's contracts, commitments, orders and agreements pertaining to the Business as listed on Schedule 2(a)(iv) that the Purchaser elects in writing to assume at Closing (the "Acquired Contracts").

(v) Written Materials. All books and records of the Business that relate to the other Assets being acquired under this Agreement.

(vi) Intangible Property. All of the intangible rights and property of the Seller only as directly related to the Business, including without limitation claims against third parties, going concern value, goodwill, telephone, telecopy and e-mail addresses and listings.

(vii) Insurance Policies. To the extent assignable, all insurance policies covering the Business.

(b) Retained Assets. The Seller will retain, and the Purchaser will not acquire, all of the Seller's assets not expressly identified as Assets in **Section 2(a)** above, including, without limitation, (i) all cash, (ii) all accounts receivable, (iii) computers, (iv) vehicles, (v) contracts, commitments, orders and agreements that the Purchaser elects not to assume or acquire under **Section 2(a)(iv)**, (vi) leasehold estates or any other interest in real property presently or formerly owned or operated by the Seller, and (vii) those assets listed on Schedule 2(b) (collectively, the "Retained Assets.")

(c) Assumed Liabilities. At the Closing, Purchaser shall assume and begin to pay, perform, satisfy and discharge the following liabilities and obligations of Seller (all of which shall be discharged by Purchaser only when and as they become due or otherwise) and no other liabilities or obligations of Seller (collectively, the "Assumed Liabilities"):

(i) all obligations and liabilities under the Assumed Contracts accruing or arising out of events or occurrences happening after the Closing Date; and

(ii) any obligation or liability relating to the Assets accruing or arising out of events or occurrences happening after the Closing Date.

(d) **Retention of Liabilities.** Except for the Assumed Liabilities, the Seller will retain and within a reasonable time pay, and the Purchaser will not assume or have any liability for, all other liabilities of or obligations of the Seller, whether known or unknown, absolute, accrued, fixed, contingent or otherwise (the "Retained Liabilities"), including, but not limited to, all obligations of the Seller arising under the Contracts on or prior to the Closing Date, whether known or unknown at the time of the Closing, and any and all claims arising out of the Seller's operation of the Business, including (by way of example and not by way of limitation) North Carolina provider assessment fees, all profit sharing, bonuses, federal and state employment taxes, withholding taxes, contributions to and payments due under retirement or other employee benefit plans, as well as wages and fringe benefits, including accrued vacation pay, of all employees employed at the Business, employment taxes, sales and use taxes, income taxes, City and/or County Privilege License fees (which shall be prorated as of the Closing Date), property taxes on the Assets for the year 2007 (which shall be prorated as of the Closing Date) and all prior years, utility bills, product liability claims, violations of any Environmental Law and claims arising from acts or omissions of the Seller or any of its agents or employees on or prior to the Closing Date under any of the Contracts. Subject to the terms of **Section 15(c)** below, the Seller will have exclusive control over the management and resolution of all Retained Liabilities, including whether to settle or contest any claims related to such Retained Liabilities.

3. **Purchase Price**

(a) **Purchase Price.** The Purchase Price to be paid by the Purchaser to the Seller for all of the Assets is Seven million and No/100 Dollars (\$7,000,000.00) (the "Purchase Price").

(b) **Statutory Deposit.** The Purchaser delivered to Deborah Crowder, as Clerk to the Seller (herein called "Clerk") the sum of Three hundred fifty thousand Dollars (\$350,000.00) (the "Deposit"). Throughout the term of this Agreement, Clerk shall hold and disburse the Deposit in accordance with the terms and conditions of N.C.G.S. Section 160A-269. On the Closing Date, the Deposit will be released to the Seller to be applied as part payment of the Purchase Price. If this Agreement is terminated as provided for herein and the Purchaser is not in default under this Agreement, the Deposit shall promptly be returned to the Purchaser.

(c) Payment of Purchase Price. The Purchaser shall deliver and pay the Purchase Price less the Deposit and less any Prorations to the Seller by wire, certified check or other immediately available funds at Closing.

(d) Allocation of Purchase Price. The Purchase Price will be allocated among the acquired Assets as shown on Schedule 3(d). The Seller and the Purchaser will cooperate in the preparation of IRS Form 8594 (the Asset Acquisition Statement”) reflecting the allocation shown on Schedule 3(d) (the “Allocation”) and the consideration received under related agreements, and each will file Form 8594 reflecting the same information with its income tax returns for its fiscal year in which the Closing occurs. If any tax authority disputes the Allocation, the Seller or the Purchaser, as the case may be, will promptly notify the other party of the nature of such dispute and will provide reasonable cooperation with the goal of resolving such dispute.

(e) Prorations. Except as otherwise set forth herein, all (i) taxes and fees resulting from the operation of the Business; (ii) license or registration fees; and (iii) sewer rents or charges for water, telephone, electricity, fuel or other utilities related to the Assets shall be prorated as of the Closing, with the Seller liable to the extent such items relate to any time period up to the Closing and Purchaser liable to the extent such items relate to periods including and subsequent to the Closing (the “Prorations”).

4. Disclosure of Information

Between the date of this Agreement and the Closing, the Seller will, and will cause its representatives to, (i) afford the Purchaser and its representatives full and free access at all reasonable times to the Seller’s personnel, properties, contracts, books and records, and other documents and data, (ii) furnish the Purchaser with copies of all such contracts, books and records, and other existing documents and data as the Purchaser may reasonably request, (iii) allow the Purchaser and its representatives full and free access at all reasonable times to inspect, conduct testing and survey the Real Property, and (iv) furnish the Purchaser with such additional financial, operating, and other data and information as the Purchaser may reasonably request. The Seller has provided to the Purchaser certain books and records including the following:

(a) The fixed asset list, including dates of purchase, costs, depreciable values, titles, and any appraisals, liens, etc.

(b) Human resources information, including a list of employees, job descriptions, employment history and wage and benefit information from 2005 through the present.

(c) Employment, confidentiality, non-competition and other contracts with employees.

(d) The compensation structure for all salaried employees, including the amounts of all salaries, bonuses and other compensation and benefits from 2005 through the present, and the method of determining each element of compensation.

(e) The Seller's reviewed income statements and balance sheets for 2005 through the present, and any internal year-to-date financial statements for 2008.

(f) Information regarding capitalization of the Seller.

(g) Year-end accounts receivable agings for 2005 through 2007, and accounts receivable agings for each of the last two months, with a list of any writeoffs.

(h) All tax returns and related records from 2005 through the present.

(i) Year-end inventory schedules for 2005 through 2007 and the last two months.

(j) A list of all purchase contracts and monthly inventories.

(k) Documents related to all pending litigation involving the Seller and all complaints or claims by or against the company.

(l) All insurance records related to the Seller.

(m) All permits held by the Seller, and documents and records related to those permits.

(n) All leases and notes of any kind, and if related to the acquisition of equipment, a list of all such affected equipment.

(o) All electric contracts.

(p) A current patient census (using codes if desired).

(q) All computer hardware and accounting narrative.

(r) All communications to or from local, state and federal taxing authorities since January 1, 2003, other than routine matters that do not involve potential tax liability issues.

5. **Representations, Warranties and Covenants of the Seller**

The Seller represents warrants and covenants to the Purchaser as follows:

(a) Organization and Qualification; Ownership of the Seller. The Seller is a nonprofit corporation duly incorporated and validly existing under the laws of North Carolina. The Seller has all requisite corporate power and authority to own, lease and operate its properties and assets and to carry on the Business as it is now being conducted. There are no options, contracts, warrants of rights, contractual or otherwise, outstanding for the purchase or other acquisition of any ownership interest from the Seller.

(b) Required Consents; Conflicts; Defaults. The execution, delivery and performance of this Agreement and all instruments and documents to be delivered by the Seller to complete this transaction (i) are within the power and authority of the Seller, respectively; (ii) do not require the consent or approval of any other Person; (iii) do not require the consent or approval of or filing with any governmental body; (iv) will not require any consent, approval or notice under and will not conflict with, or result in the breach or termination of any provision of, or constitute a default under, or result in acceleration of the performance of the obligations of any of the Seller, under, or result in the creation of a lien, charge or encumbrance upon any of the properties or assets of the Seller pursuant to, such corporation's charter or bylaws or any mortgage, deed of trust, indenture, lease, contract, instrument or other agreement, or any order, judgment or decree, to which the Seller is a party or by which it or any of its assets or properties are bound; (v) will not violate any law, statute, rule, regulation or order of any governmental body; and (vi) will not result in the creation or imposition of any lien upon any of the Assets.

(c) Binding Obligation. This Agreement has been duly authorized, executed and delivered by the Seller and constitutes the legal, valid and binding obligation of Seller and enforceable against it in accordance with its terms. The agreements and other instruments attached as Exhibits and Schedules and such agreements, instruments and documents to be delivered at Closing to which the Seller is a signatory have been duly authorized, executed and delivered by all requisite corporate action of the Seller, and such agreements and instruments constitute the legal, valid and binding obligations of Seller, respectively, enforceable in accordance with their terms.

(d) Title to Assets; Absence of Liens and Encumbrances. The Seller has good and marketable title to all of the Assets, free and clear of all mortgages, deeds of trust, claims, liens, security interests and other encumbrances, except (i) as specifically disclosed in Schedule 5(d); (ii) applicable zoning laws and ordinances, provided that they do not prohibit or restrict the use of the Real Property as a skilled nursing facility; (iii) minor utility easements not adversely affecting Purchaser's intended use of the Real Property as a skilled nursing facility; (iv) liens for taxes not yet due and payable; and (v) such imperfections of title, pledges, liens and encumbrances, if any, as do not materially detract from the value or interfere with the present use of the properties of the Seller or

otherwise materially impair the Seller's business operations. The foregoing title exceptions are herein referred to collectively as the "Permitted Exceptions."

(e) Litigation. Except as disclosed in Schedule 5(e), no litigation, at law or in equity, or any proceeding before any governmental body, is pending or threatened against the Business, the Seller, or any of the Assets. There is no litigation, proceeding, investigation or arbitration pending, or to the knowledge of the Seller, threatened that seeks to enjoin the consummation of, or questions the validity of, any of the transactions contemplated by this Agreement, or that would question the validity or enforceability or impair the validity or enforceability of or the ability of the Seller to perform its obligations under this Agreement. To the knowledge of the Seller, no basis exists for the commencement of any such litigation or proceeding.

(f) Conduct of the Business. From and after the date of this Agreement and until the Closing Date:

(i) The Business will be operated lawfully and in the usual and ordinary manner in which it has been conducted in the past; during such period, the Seller will not enter into any commitments that are outside the scope of the normal course of routine operations that will have a material adverse impact on the Assets;

(ii) The Seller will keep in a normal state of repair and operating efficiency all machinery and equipment included in the Assets;

(iii) The Seller will use its best efforts to maintain the good will associated with the Business, and the existing business relationships with the Seller's patients and suppliers, and will notify the Purchaser promptly of any loss of any accounts that, alone or in the aggregate, would have a material adverse effect on the Business;

(iv) The Seller will not enter into any contract, agreement or transaction, or relinquish or release any rights or privileges under any contracts or agreements, the performance, violation, relinquishment or release of which could be reasonably foreseen to have a material adverse effect on the Assets, the Business or course of the Business;

(v) The Seller will not sell, transfer or dispose of any Assets outside the ordinary course of business;

(vi) The Seller will give prompt notice to the Purchaser of (A) any notice of, or other communication it receives relating to a default or that would cause any warranty or representation under this **Section 5** to be untrue or misleading; (B) any notice or other communication from any third party alleging that the consent of such third party is or may be

required in connection with the transactions contemplated by this Agreement; and (C) any event that the Seller reasonably believes could have a material adverse effect on the Business or the Assets, or that could impair the ability of the Seller or the Purchaser to perform any obligation under this Agreement or the related agreements and documents;

(vii) The Seller will keep true, complete and correct books and records of all accounts being transferred, and all entries have been made of all transactions with such accounts on a basis consistent with past practices and in accordance with Generally Accepted Accounting Principles consistently applied;

(viii) The Seller will not incur any obligation or liability (contingent or otherwise) relating to the Business except (i) normal trade or business obligations incurred in the ordinary course of business, the performance of which will not, individually or in the aggregate, have an adverse effect on the Business, or its prospects, financial condition or results of operations, and (ii) obligations under contracts and agreements described in this Agreement or the Schedules hereto, the performance of which will not, individually or in the aggregate, have an adverse effect on the Business, or its prospects, financial condition or results of operations;

(ix) The Seller will not incur any indebtedness for borrowed money secured by any of the Assets;

(x) The Seller will not mortgage, pledge or subject to any lien, charge, security interest or other encumbrance, any of the Assets, tangible or intangible, except for the liens of real or personal property taxes not yet due and payable;

(xi) The Seller will not sell, assign, transfer, lease or otherwise dispose of or agree to sell, assign, transfer, lease or otherwise dispose of, any of the properties or assets utilized in the Business, except for a fair consideration in the ordinary course of business;

(xii) Unless disclosed to the Purchaser and approved by the Purchaser, the Seller will not pay any bonus or similar payment or make or grant any general or specific wage or salary increases or enter into any employment contract with any employee of the Business that is not terminable by the Seller at will without penalty, or adopt any increase in any bonus, incentive compensation, pension, profit sharing or other employee benefit plan or arrangement;

(xiii) The Seller will not suffer any material casualty loss or damage to the Assets, if such loss or damage is not covered by insurance; and

(xiv) The Seller will not enter into any agreements or commitments, whether in writing or otherwise, to take any action described in this **Section 5(f)**.

(g) Balance Sheets. The unaudited balance sheets attached as Schedule 5(g) (the "Statement"), fairly represent, in all material respects, the assets and liabilities of the Business to be acquired by the Purchaser as of December 31, 2007 (the "Statement Date"), and have been prepared in accordance with generally accepted accounting principles.

(h) No Undisclosed Liabilities. Except as and to the extent disclosed in the Statement or as set forth in Schedule 5(h), as of the Statement Date, in all material respects, the Seller does not have knowledge or notice of any liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise, relating to the Business of a kind required to be disclosed on a balance sheet prepared in accordance with generally accepted accounting principles.

(i) No Material Adverse Change. From the Statement Date, there has been no material adverse change in the assets, liabilities, properties, business, prospects, results of operations or financial condition of the Business, and there will not be any material damage, destruction or loss from the Statement Date to any of the properties or assets of the Business, whether or not covered by insurance.

(j) Tax Matters. Except as disclosed on Schedule 5(j), (i) all federal, state and local tax returns, reports and statements (including without limitation all income tax, unemployment compensation, social security, payroll, sales and use, excise, privilege, property, ad valorem, franchise, license, school and any other tax under laws of the United States or any state or municipal or political subdivision thereof) required to be filed by the Seller that relate in any manner to the Business (the "Tax Returns") have been filed on a timely basis with the appropriate governmental agencies in all jurisdictions in which such returns, reports and statements are required to be filed, and all such returns, reports and statements reflect accurately the tax liabilities of the Seller for the periods, properties or events covered thereby; (ii) all federal, state and local taxes, assessments, interest, penalties, deficiencies, fees and other governmental charges or impositions, including those enumerated above in respect of the Tax Returns, which are called for by the Tax Returns, or claimed to be due by any taxing authority from the Seller, or upon or measured by properties, assets or income of the Seller (the "Taxes"), have been paid (other than Taxes the liability for which is adequately reserved for in the Statement); (iii) the Seller has not received any notice of assessment or proposed assessment from the Internal Revenue Service or any other taxing authority in connection with any Tax Returns and there are no pending tax examinations of or tax claims being asserted against the Seller or any of its assets or properties; (iv) there is no examination by the Internal Revenue Service or any state or other taxing authority affecting the Seller presently pending or, to the knowledge of the Seller, contemplated; (v) all payroll, sales and

any other taxes relating to the Business which the Seller is required by law to withhold or collect have been withheld or collected and have been paid over to the proper governmental authorities or are properly held by the Seller for such payment; and (vi) no waivers of statutes of limitations with respect to any Tax Returns of the Seller nor extensions of time for the filing of Tax Returns or assessments of any tax have been requested or given.

(k) Material Contracts. Schedule 2(a)(iv) is a complete and accurate list of the Acquired Contracts. The Seller has made available to the Purchaser a correct and complete copy of each Acquired Contract listed on Schedule 5(k). With respect to each Acquired Contract so listed: (i) the contract is in full force and effect; (ii) the Seller is not in breach or default, and no event has occurred that with notice or lapse of time or both would constitute a breach or default by the Seller or permit termination, modification, or acceleration against the Seller; (iii) the Seller has not repudiated or waived any material provision; and (iv) no other party to such contract is in default in any material respect or has repudiated or waived any material provision. With respect to any lease disclosed pursuant to this **Section 5(k)**, all rents and other amounts currently due have been paid; no material waiver or indulgence or postponement of any obligation has been granted by any lessor or sublessor or been requested by any lessee or sublessee, and the Seller has not received any notice that the Seller or any other party to such lease has breached any term, condition or covenant of the lease.

(l) Compliance with Laws. The Business is in compliance in all material respects with all applicable federal, state, local and foreign laws, ordinances, regulations, orders, judgments and decrees, including, without limitation, all federal, state and local labor and employment laws, and the Seller has not received notice of any alleged or potential violation of any such law, ordinance, regulation, order, judgment or decree.

(m) Governmental Licenses, Permits and Related Approvals. The Seller has all licenses, permits, certificates, consents, approvals, authorizations, qualifications and orders of all federal, state and local governmental authorities (collectively, "Permits") that are required to enable the Seller to conduct the Business as presently conducted. No proceeding is pending or threatened to limit, suspend or revoke any Permit, and no cause exists for such suspension or cancellation. The Seller has no information or reason to believe that any Permits will not be transferred or reissued to the Purchaser. The Seller will fully cooperate with the Purchaser to facilitate the transfer or reissuance of the Permits to the Purchaser.

(n) Labor Matters. There are no controversies pending or threatened between the Seller and any of its employees, former employees, drivers, job applicants or any association or group of such persons relating to employment in the Business and the Seller has not taken or failed to take any action which would provide a reasonable basis for such a controversy. The Seller has complied in all

material respects with all laws applicable to it relating to the employment of labor in the Business, including any provisions thereof relating to wages, hours, collective bargaining and the payment of social security, unemployment compensation and similar taxes. To the best of the Seller's knowledge, there are no employees in the Business who have indicated that they will not continue to be available for employment by the Purchaser after the Closing on substantially the same terms as presently employed. Purchaser acknowledges that certain of its principals have a pre-existing relationship with the Business and with employees of the Business. The parties agree that certain employees may choose to terminate their employment by the Business solely as a result of Purchaser's purchase, and Seller makes no representation as to any employee who may choose to terminate employment on this basis.

(o) Patient Census. Schedule 5(o) lists the patient census as of March 15, 2008. To the best knowledge of the Seller, except as set forth on Schedule 5(o), the consummation of the transactions contemplated by this Agreement will not affect in any material respect the relationship of the Business with any Person listed on Schedule 5(o).

(p) Employee Benefit Plans.

(i) Schedule 5(p)-1 sets forth a list of each pension, profit sharing, thrift, 401(k) or other retirement plan, employee stock ownership plan, SIMPLE IRA deferred compensation, stock option, stock purchase, performance share, bonus or other incentive plan, severance plan, health, group insurance or other welfare plan, vacation and leave policies, and other similar plan, agreement, policy or understanding, including without limitation, any "employee benefit plan" within the meaning of Section 3(3) of ERISA, under which Seller or any ERISA Affiliate has any current or future obligation or liability with respect to any employee who works in the Business or under which any such employee (or any beneficiary of such an employee) has any current or future right to benefits in connection with or related to their employment with the Business (each such plan, agreement, policy or understanding being hereinafter referred to individually as a "Plan"). Except as described on Schedule 5(p)-1, the Seller has delivered to the Purchaser true and complete copies of the summary plan description for each Plan or a copy of the Plan itself.

(ii) The Seller has made or will make all contributions required to be made by the Seller under each Plan, and the Purchaser will have no liability to any employee or former employee of the Seller under any Plan of the Seller.

(iii) The Seller will be responsible for the due termination and payment of benefits under all of the Seller's Plans, and the Purchaser will have no liability with respect thereto.

(iv) The Seller does not maintain any welfare benefit plan within the meaning of ERISA Section 3(1) that provides for continuing benefits or coverage for any participant or beneficiary of a participant after such participant's termination of employment, except as may be required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA") and the regulations thereunder and at the expense of the participant or the beneficiary of the participant.

(v) The Seller has complied with the notice and continuation coverage requirements of COBRA and the regulations thereunder.

(vi) The Seller has complied and has caused the group health plans which it sponsors to comply in all material respects with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA") and the regulations thereunder to the extent that the provisions of HIPAA and the regulations thereunder apply to it as covered entities.

(vii) There has been no mass layoff or plant closing as defined by the Worker Adjustment and Retraining Notification Act or any similar state or local "plant closing" law with respect to the employees of Seller, and the transactions contemplated hereunder will not constitute a mass layoff or plant closing under the federal, state or local laws.

(viii) Except as disclosed on Schedule 5(p)-2, the consummation of the transactions contemplated by this Agreement will not result in an increase in the amount of compensation or benefits or create an obligation for severance pay, or accelerate the vesting or timing of payment of any compensation or benefits payable to or in respect of any employee or former employee of the Seller.

(q) Insurance. Schedule 5(q) sets forth a list and brief description (specifying the insurer and briefly describing each pending claim) of all policies or binders of fire, liability, product liability, group health, vehicular and other insurance relating to the Business held by or on behalf of the Seller for the last ten (10) years, to the extent such records are available. Schedule 5(q) also sets forth a list and brief description (specifying the insurer and describing each pending claim) of all workers' compensation insurance held by or on behalf of the Seller covering employees of the Business. The premiums due under all such policies or binders have been fully paid, provided, however, that with regard to any policy the premiums for which are paid by the Seller under a normal premium payment plan, the Seller has paid those portions of the premiums currently due under such premium payment plan. All policies and binders are in full force and effect, and the Seller has not received any notice of termination with respect to any such policy that remains uncured. Except for claims set forth on Schedule 5(q), there are no outstanding unpaid claims under any such policy or binder, and the Seller has not received any notice of cancellation or non-renewal of any such policy or

binder. Except as set forth on Schedule 5(q), the Seller has not received any notice from any of its insurance carriers that any insurance premiums will be materially increased in the future or that any insurance coverage listed on Schedule 5(q) will not be available in the future on substantially the same terms as now in effect.

(r) No Right of Action. The execution of this Agreement and the other documents contemplated hereby and the completion of the transactions contemplated hereby will not cause the Purchaser to be liable for damages to any other Person or give such Person any equitable right against Purchaser or any of the Assets.

(s) Agreements. The Seller is not a party to any material agreement, loan, credit, lease, sublease, franchise, license, contract, commitment or instrument or subject to any corporate restriction (i) the performance or violation of which could, on the date hereof, reasonably be foreseen to have a material adverse effect on the Assets, or (ii) that could impair the ability of the Seller to perform any obligation under this Agreement or any document to be entered into pursuant hereto.

(t) Full Disclosure. All documents and other papers delivered by or on behalf of the Seller in connection with this Agreement and the transactions contemplated hereby are true and complete in all material respects. No representation or warranty of the Seller contained in this Agreement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made, in the context in which made, not materially false or misleading.

(u) Condition of Assets. **THE ASSETS ARE BEING SOLD AS IS, WHERE IS, WITH ALL FAULTS. EXCEPT AS SPECIFICALLY SET FORTH IN THIS AGREEMENT, THE SELLER SPECIFICALLY DISCLAIMS ANY WARRANTIES OR REPRESENTATIONS OF ANY KIND OR CHARACTER, EXPRESS OR IMPLIED, WITH RESPECT TO THE PHYSICAL CONDITION OF THE ASSETS, INCLUDING WITHOUT LIMITATION THE CONDITION, MERCHANTABILITY, MARKETABILITY, PROFITABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(v) Environmental Compliance. The Seller's environmental representations and warranties are set forth in **Section 7** below.

(w) Termination of Business; Covenant Not To Compete. Upon the Closing, the Seller will terminate all ongoing operations that relate to skilled nursing care and will refer all new skilled nursing patient inquiries to the Purchaser. The Seller further agrees as follows:

(i) If Purchaser is in compliance with its obligations herein, then for the five (5) year period commencing on the Closing Date (the

“No-Compete Period”) and the Seller will not directly or indirectly, whether as owner of an interest or as consultant, employee, partner, venturer, agent, lender of money or property, renderer of services, or otherwise, compete in any part of the Restricted Territory with the Purchaser in the business of skilled nursing care, or assist, or become interested in any Person that so competes with the Purchaser or affiliate who is an affiliate of Purchaser on the date of Closing. The Restricted Territory to which this covenant will apply consists of the geographic area within a five (5) mile radius of the Real Property. Purchaser shall provide Seller with a list of all of its affiliates at Closing.

(ii) During the Non-Compete Period, the Seller will not, for its own account or for the account of any other Person, solicit, endeavor to entice away from the Purchaser or otherwise interfere with the relationship of the Purchaser with any employee of the Purchaser, or induce or attempt to influence any patient of the Purchaser to terminate, reduce or adversely alter its business dealings with the Purchaser or to divert the patient’s skilled nursing care from the Purchaser. For purposes of this restrictive covenant, an employee of the Purchaser includes anyone employed by the Purchaser at any time during the Non-Compete Period or whom the Seller employed within six (6) months before the commencement of the Non-Compete Period. Nothing herein shall prohibit Seller from offering employment to any employee terminated by Purchaser or to any employee who independently determines to terminate employment with Purchaser.

(iii) The Seller expressly acknowledges and agrees that the provisions of these covenants in **Section 5(w)** are fair and reasonable as to scope, territory and duration.

(iv) Without limiting any other rights or remedies available to the Purchaser, the Purchaser will be entitled to an ex parte, temporary, preliminary and permanent injunction restraining the Seller from any violation or threatened violation of any of the covenants of this **Section 5(w)**, and to its reasonable legal fees incurred in enforcing the terms of this section.

As consideration for this Covenant Not to Compete, Purchaser shall pay Seller’s costs of advertising as required by N.C.G.S. Section 160A-269.

6. **Representations, Warranties and Covenants of the Purchaser**

The Purchaser represents, warrants and covenants to the Seller as follows:

(a) **Organization and Authorization.** The Purchaser is a limited liability company duly organized and validly existing under the laws of North

Carolina and has all requisite power and authority to enter into this Agreement and to consummate the transactions contemplated hereby.

(b) Litigation. No actions, suits or proceedings are pending or threatened, nor to the knowledge of the Purchaser is there any basis therefor, against or affecting the Purchaser in any court, before an arbitrator or before or by any governmental body, that involve the possibility of materially and adversely affecting the transactions contemplated by this Agreement or that in any way might adversely affect the validity or enforceability of this Agreement or any other agreement or instrument to which the Purchaser is or is to be a party relating to the transactions contemplated hereby.

(c) Transactions are Legal and Authorized; Enforceable Obligation. The execution, delivery and performance of this Agreement by the Purchaser, and the Purchaser's compliance with all the provisions of this Agreement, (i) are within the power and authority of the Purchaser; (ii) will not conflict with or result in the breach of any of the provisions of, or constitute a default under, any agreement or other instrument to which the Purchaser is a party or by which it is bound, or of any license, law, statute, ordinance, governmental law or regulation or order applicable to the Purchaser; (iii) have been duly authorized by all necessary action on the part of the Purchaser; (iv) will not conflict with, result in the breach of, or constitute a default under, any indenture, mortgage, deed of trust, lease, agreement, or other instrument to which the Purchaser is a party or by which it or any of its property is bound; and (v) do not require the consent or approval of or filing with any governmental body, or any other Person. This Agreement has been duly executed and delivered by the Purchaser, and constitutes the legal, valid and binding obligations of the Purchaser, enforceable against the Purchaser in accordance with its terms, except as (i) such enforcement may be subject to bankruptcy, insolvency, reorganization, moratorium or other similar laws now or hereafter in effect, or by legal or equitable principles, relating to or limiting creditors' rights, and (ii) the remedy of specific performance and injunctive and other forms of equitable or legal relief are subject to certain equitable defenses, equitable principles and to the discretion of the court before which any proceeding therefor may be brought.

(d) Full Disclosure. All documents and other papers delivered by or on behalf of the Purchaser in connection with this Agreement and the transactions contemplated hereby are true and complete in all material respects. No representation or warranty of the Purchaser contained in this Agreement contains an untrue statement of a material fact or omits to state a material fact required to be stated therein or necessary to make the statements made, in the context in which made, not materially false or misleading.

(e) Quality of Care. Purchaser will maintain at least an average of three and one-half (3.5) hour direct care staff (nurses and nursing assistants) per resident ratio per day at the Business. The distribution of such direct care staff

between nurses and nursing assistants shall be consistent with industry and regional standards. There are no outstanding, identified quality deficiencies at any of Purchaser's existing long term nursing facilities, no active investigations by any supervisory, accrediting or regulatory body and no unresolved surveys or audits by any supervisory, accrediting or regulatory body.

7. **Environmental Matters**

Notwithstanding any other provision of this Agreement, the parties agree with regard to environmental matters related to the contemplated transaction as follows:

(a) **The Seller's Environmental Representations.** The Seller represents that, except as disclosed in Schedule 7(a):

(i) To the best knowledge of the Seller, the Seller is not, and at all times has not been, in violation of any Environmental Law.

(ii) The Seller holds all permits, licenses and other approvals that it has understood were and are required under Environmental Laws for the conduct of the Business.

(iii) The Seller has not received and has no reason to expect any actual or threatened claim, citation, directive, inquiry, notice, order, summons, warning or other communication that relates to any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any environmental liabilities, with respect to the Real Property.

(iv) Seller has not caused or permitted the release or threat of release of any Hazardous Materials at or from the Real Property.

(b) **Definitions.** For purposes of this **Section 7**, the following definitions will apply:

(i) "Environmental Law" means any and all federal, state and local laws, regulations, ordinances and other requirements relating to pollution or protection of the environment and human health and safety, including without limitation the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act, the Toxic Substances Control Act, the Clean Water Act, the Clean Air Act, the Safe Drinking Water Act, the North Carolina Oil Pollution and Hazardous Substances Control Act, the North Carolina Inactive Hazardous Sites Act, or any other federal, state or local statutory or regulatory program governing environmental conditions at the Property, as such acts may be amended from time to time.

(ii) "Hazardous Material" means any substance, chemical, waste, contaminant, pollutant, or other material that is or becomes regulated by any federal, state, or local governmental authority because of its toxicity, infectiousness, radioactivity, explosiveness, ignitability, corrosiveness, or reactivity, including, without limitation, those substances regulated by the Environmental Laws, and also specifically including petroleum and petroleum products, lead and lead-based paint, polychlorinated biphenyls, asbestos and asbestos-containing materials, radiation and radon gas.

8. **Cooperation in Transferring Patient Accounts**

The parties will work cooperatively to ensure the smooth transfer of the Seller's patient accounts to the Purchaser at the Closing as allowed by applicable law. Prior to the Closing, the parties will jointly develop a plan for informing the Seller's patients of the sale, which notification will not occur until after the Closing, and the Seller will after Closing encourage Seller's patients to continue doing business with the Purchaser upon the same terms as they had with the Seller. The Seller also will take whatever additional reasonable steps are requested by the Purchaser to assist in the transfer of the patient accounts.

9. **Covenants and Agreements**

The parties covenant and agree as follows:

(a) **Conduct of Business.** From the date of this Agreement through the Closing Date, the Seller will conduct the Business in the ordinary course, consistent with past practice, and, without the prior written consent of the Purchaser, the Seller will not take any action that would cause the representations and warranties contained in **Section 5(f)** not to be true and correct immediately after the taking of such action. From the date of this Agreement through the Closing Date, the Seller will conduct the Business in such a manner so that the other representations and warranties contained in **Section 5**, in addition to those contained in **Section 5(f)**, will continue to be true and correct on and as of the Closing Date as if made on and as of the Closing Date.

(b) **Maintenance of Assets; Casualty Loss.** From the date of this Agreement through the Closing Date, the Seller will maintain the Assets in customary repair, order and condition, reasonable wear and tear accepted, and, in the event of a casualty, loss or damage prior to the Closing Date to any of such assets for which the Seller is insured, the Seller will, at the option of the Purchaser, and subject to the requirements of any applicable loss payee clauses, either to repair or replace such damaged assets or transfer the proceeds of such insurance to the Purchaser on the Closing Date.

(c) **Notice of Certain Events.** The Seller agrees to give the Purchaser prompt notice of (i) any event, condition or circumstances occurring from the date

hereof through the Closing Date that would constitute a violation or breach of any representation, warranty or covenant of the Seller contained in this Agreement, or (ii) any event, occurrence, transaction or other item which would have been required to have been disclosed in this Agreement or any Schedule or statement delivered hereunder, had such event, occurrence, transaction or item existed on the date hereof.

(d) Expenses. The parties to this Agreement will bear their own respective expenses incurred in connection with the negotiation, preparation, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby, including, without limitation, all fees and expenses of agents, representatives, counsel and accountants.

(e) Indemnification of Brokerage. The Seller represents and warrants that no broker, finder, agent or similar intermediary has acted on behalf of the Seller in connection with this Agreement or the transactions provided for herein, and that there are no brokerage commissions, finder's fees or similar fees or commissions payable with respect to this Agreement or such transactions based on any agreement, arrangement or understanding with the Seller, or any action taken by the Seller. The Seller agrees to indemnify and save the Purchaser harmless from any claim or demand for commission or other compensation by any broker, finder, agent or similar intermediary claiming to have been employed by or on behalf of the Seller, or any affiliate of the Seller, and to bear the cost of legal expenses incurred in defending against any such claim. The Purchaser represents and warrants to the Seller that there are no brokerage commissions, finder's fees or similar fees or commissions payable in connection with this Agreement or the transactions provided for herein based on any agreement, arrangement or understanding with the Purchaser, or any action taken by the Purchaser. The Purchaser agrees to indemnify and save the Seller harmless from any claim or demand for commission or other compensation by any broker, finder, agent or similar intermediary claiming to have been employed by or on behalf of the Purchaser and to bear the cost of legal expenses incurred in defending against any such claim.

(f) Exclusive Dealing. From the date of this Agreement until it is terminated or until the Closing Date, the Seller agrees that it will not, directly or indirectly, encourage, initiate or engage in discussions or negotiations with, or provide any information to, any corporation, partnership, person or other entity or group, other than the Purchaser, concerning any purchase of any interest in the Business, or any merger, sale of substantial assets or similar transaction involving the Business except as required by applicable law.

(g) Further Assurances. Each of the parties will execute such agreements, certificates, documents and other instruments and take such further action as may be reasonably necessary or appropriate to carry out the provisions of this Agreement and the contemplated transactions. Each party will use its best

commercially reasonable efforts to fulfill or obtain the fulfillment of all conditions to the Closing.

(h) Signage and Naming Rights. So long as Purchaser owns the Real Property, the Purchaser will agree to leave in place and maintain the current internal signage related to donations made to fund Pardee Care Center and its construction if the respective donors so desire. Purchaser agrees to remove any signage related to a donation at the request of the donor. After Closing, Purchaser shall not have the right to use the name "Pardee Care Center" or to maintain any signage on the Property using the name "Pardee" without the explicit written consent of Seller. Purchaser shall have a period of thirty (30) days to remove all signage containing any reference to "Pardee Care Center" or "Pardee".

(i) Placement of Difficult to Place Patients. The Purchaser will use its best efforts to admit "difficult to place residents" from the Seller in the course of operating the Business. The Purchaser has a history of assisting in the placement of difficult to place residents and intends to continue this practice. The Purchaser's affiliates have a history of routinely accepting difficult to place residents with the following diagnoses, co-morbidities, excessive expense, and payer issues that others may not consider, including, by way of example, but not limited to: tracheotomy patients, patients with Decubitus ulcers of all stages, intravenous (IV) antibiotics patients, patients receiving/having wound vac treatments, bariatric patients, residents requiring bi-pap assistance, residents with HIV, residents with MRSA, Medicare replacement plan recipients, Medicaid only participants, and Medicaid "pending" patients. Purchaser agrees to engage in a good faith review of its efforts to place such residents with Seller on a periodic basis, and the parties' representatives shall meet for such purpose on a quarterly basis.

(j) Quality of Care. Purchaser shall maintain an appropriate infrastructure to monitor and assure a high quality of care at the Business. Such infrastructure shall be at least to industry standards and shall insure that all complaints receive attention from an objective person in such position, or with the necessary authority, to resolve such complaint. Purchaser shall maintain at least the same ratio of staff to residents as is described herein above in **Section 6(e)**.

(k) Current Employees. At Closing, Purchaser shall offer employment to all then-current employees of the business. Employment shall be at each employees' then-current pay rate and tenure. Benefits offered to employees will be consistent with those offered by Purchaser to employees of its other long term skilled nursing facilities, and responsive to the regional employment market for skilled nursing facility staff.

(l) Continuing Contracts and Relationships. Purchaser shall enter into such assumption agreements or other agreements as is necessary for Purchaser to be obligated to continue providing services to Hospice of Henderson

County, Inc. and to Seller's adult day care facility known as "the Pavilion" at the same level as Seller has historically provided to such facilities.

10. **Documents to be Delivered at Closing by the Seller**

The Seller will deliver to the Purchaser the following at Closing:

(a) **Seller's Certificate**. A Certificate executed by the Seller, dated as of the Closing Date, stating that all of the representations, warranties and covenants made by the Seller are true and correct and fully performed and complied with on and as of the Closing Date as if made anew on such date. Such Certificate will annex the resolutions or written consents authorizing the negotiation and execution of this Agreement and all other collateral agreements or instruments required hereunder to which the Seller is a party, and authorizing the performance of the terms thereof.

(b) **Certificate of Existence**. A Certificate of Existence issued by the North Carolina Secretary of State, as of a recent date, for the Seller.

(c) **Patient and Supplier Information**. Copies of all Acquired Contracts, and all books and records related to the Seller's patient and supplier accounts and all other Assets.

(d) **Transfer Documents**. A Bill of Sale and Assignment and Assignment and Assumption Agreement, in the forms attached as **Exhibit 10(d)(1)** and **Exhibit 10(d)(2)**, and such other certificates of title, assignments and other instruments of transfer in form and substance satisfactory to the Purchaser and sufficient to effectively vest in the Purchaser all of the Seller's right, title and interest in and to all of the Assets, including the Acquired Contracts, free and clear of any and all liens, encumbrances, security interests and claims except the Assumed Liabilities.

(e) **Consents**. All consents and approvals required for the execution, delivery and performance of this Agreement by the Seller.

(f) **Department of Revenue Clearance**. A statement from the Secretary of the North Carolina Department of Revenue pursuant to N.C.G.S. Sec. 105-164.38(b) dated within ten days of Closing showing that Seller's sales and use taxes have been paid or no such taxes are due by Seller.

11. **Documents to be delivered by the Purchaser**

The Purchaser will deliver the following at Closing to the Seller:

(a) **Payment of Purchase Price**. The amount provided for in **Section 3(a)** and paid in the manner provided in **Section 3(c)**.

(b) Officer's Certificate. An Officer's Certificate from the Purchaser dated as of the Closing Date, stating that all of the representations, warranties and covenants made by the Purchaser are true and correct and fully performed and complied with in all material respects on and as of such date.

(c) Certificate of Existence. A Certificate of Existence issued by the North Carolina Secretary of State, as of a recent date, for the Purchaser.

(d) Consents and Approvals. All consents and approvals required for the execution, delivery and performance of this Agreement by the Purchaser.

12. **Closing**

The Closing will take place by the delivery of all of the Assets and payment of the Purchase Price and will take place on the Closing Date. The Closing will take place at Young Moore and Henderson, PA, 3101 Glenwood Avenue, Suite 200, Raleigh, North Carolina. The parties agree that neither Seller nor any agent or representative of Seller shall be required to personally attend the Closing in Raleigh, North Carolina.

All transactions to be effected by this Agreement at the Closing will be deemed to occur nearly simultaneously, and no such transaction will be deemed to have occurred unless all such transactions have occurred. All documents and items required to be delivered at the Closing by any party will be deemed initially delivered in escrow. No such document will be released from escrow unless all documents have been delivered in escrow, whereupon all will be deemed released together.

13. **Conditions to the Purchaser's Obligation to Close**

The obligation of the Purchaser to consummate the transactions contemplated by this Agreement is subject to satisfaction on or before the Closing Date of each of the following conditions unless waived in writing, in whole or in part, by the Purchaser, provided, however, that any waiver of a condition will not be deemed a waiver of any breach of any representation, warranty or covenant by the Seller except to the extent expressly so waived.

(a) Representations, Warranties and Covenants. All of the representations, warranties and covenants made by Seller in this Agreement will be true and correct and fully performed and complied with in all material respects on and as of the Closing Date, as if made thereon.

(b) No Adverse Change. Since the date of this Agreement, there will have been no material adverse change in the financial condition, results of operations, business or prospects of the Seller, or in the condition of the Real Property except as such change may be directly related to Purchaser's involvement in this transaction.

(c) No Casualty. Since the date of this Agreement, no damage, destruction or loss, whether or not covered by insurance, adversely affecting in any material respect any of the properties or assets of the Seller will have occurred.

(d) No Proceeding or Litigation. No action, suit, claim, proceeding or investigation before any federal or state court or any federal or state governmental or regulatory authority will have been commenced, and no action, suit, claim or proceeding by any such governmental or regulatory authority will have been threatened, against the Seller or the Purchaser seeking to restrain, prevent or change the transactions contemplated by this Agreement or seeking material damages in connection with any of such transactions.

(e) Real Estate Purchase Agreement. Concurrently with the Closing, the Purchaser will have entered into a mutually satisfactory real estate purchase agreement with Henderson County regarding the Real Property, in substantially the form attached hereto as Exhibit 13(e) (the "Real Estate Purchase Agreement"). The closing of the acquisition by the Purchaser of the Real Property will occur simultaneously with the closing of the transaction contemplated by this Agreement.

(f) Other Documents and Instruments to be Delivered by the Seller. The Seller will have delivered to the Purchaser all documents referred to in **Section 10** and all other documents and instruments required to be delivered by the Seller.

(g) Government Approvals and Provider Numbers. The Purchaser shall have obtained all necessary government approvals, certificates and authority to conduct the Business together with all necessary provider numbers, providing that Purchaser shall have made a diligent and good faith effort to obtain such approvals, certificates and numbers and any failure to obtain such approvals, certificates or authority is not the proximate result of Purchaser's conduct or misconduct. Notwithstanding anything contained herein to the contrary, this condition shall be deemed to be satisfied ninety (90) days after Closing. If Purchaser is delayed in obtaining its Permits and such delay exceeds the Closing Date, Lessee agrees to continue to operate the facility and enter into a lease for the facility from Purchaser on terms that make it financially neutral to Purchaser and Lessee in closing on the Property until Purchaser obtains its Permits or for a period of ninety (90) days, whichever is earlier. Notwithstanding the foregoing, if it is finally determined that Purchaser is ineligible to obtain its Permits, Purchaser must close and cannot assert this paragraph as a condition of closing or, in the alternative, Purchaser may choose not to close and forfeit its Deposit and Seller shall be barred from asserting any further claim for damages under this Agreement. The Seller shall, to the extent possible, assign all provider numbers and government approvals and certificates to the Purchaser.

(h) Statutory Compliance and Expiration of Upset Bid Period. Seller shall comply with all statutory procedures for the sale of the Assets to Purchaser.

14. **Conditions to the Seller's Obligation to Close**

The obligation of the Seller to consummate the transactions contemplated by this Agreement is subject to the satisfaction, in all material respects, on or before the Closing Date of each of the following conditions unless waived in writing, in whole or in part, by the Seller; provided, however, any waiver of a condition will not be deemed a waiver of any breach of any representation, warranty or covenant by the Purchaser:

(a) Representations, Warranties and Covenants. All of the representations, warranties and covenants made by the Purchaser in this Agreement will be true and correct and fully performed and complied with in all material respects on and as of the Closing Date, as if made thereon.

(b) Other Documents and Instruments. All documents and instruments required to have been delivered by Purchaser at Closing will have been delivered.

15. **Termination and Remedies for Breach of this Agreement**

(a) Failure to Satisfy Conditions to Closing. If any of the Conditions to the Purchaser's obligation to close in **Section 13** or any of the Conditions to the Seller's obligation to close in **Section 14** will not have been met or waived by the Closing Date, the party whose obligations are subject to such conditions may terminate this Agreement in accordance with this **Section 15**. In addition, this Agreement may be terminated without any liability to any other party to this Agreement or further obligation of any party at any time by written consent of all the parties.

(b) Notice of Termination. Notice of termination specifying in reasonable detail the cause will be given not less than one week before the effective date of such termination. If no effective date is specified then it will be deemed to be the end of the fifth business day following the date of the notice. Termination will not be effective if the cause has been cured before the effective date.

(c) Default; Remedies on Termination. In the event of a material breach of any representation, warranty, covenant or condition of this Agreement by the Purchaser or by the Seller, which occurs prior to Closing and becomes known to the party not in breach (the "Non-Defaulting Party") prior to Closing, the Non-Defaulting Party will be entitled to issue a notice of termination and to seek and obtain any remedy available to it at law or in equity, including but not limited to (i) money damages from the parties in breach (which damages will include but will not be limited to such Non-Defaulting Party's costs and expenses, including attorneys' and accountants' fees, incurred in connection with the negotiation and execution of this Agreement), plus its costs and attorneys' fees in connection with

the pursuit of its remedies, and/or (ii) an order of specific performance of this Agreement by the parties in breach, from a court of competent jurisdiction in Wake County. All remedies may be pursued cumulatively, simultaneously and/or in the alternative.

16. **Indemnification**

(a) **Applicability**. The provisions of **Section 16(b), (c), and (e)** below apply to any costs, fees, liabilities, taxes, charges, claims, expenses, losses and damages, including reasonable legal fees and expenses (both those legal costs incurred in connection with the defense or prosecution of the identifiable claim and those incurred in connection with the enforcement of this provision) (collectively, "Losses"), other than Losses that arise from environmental conditions, events or occurrences. Losses that arise from environmental conditions, events or occurrences are addressed exclusively in **Section 7** and **Section 16(d)**.

(b) **Indemnification by the Seller**. The Seller agrees to indemnify and defend the Purchaser from and against all Losses incurred by the Purchaser or any of its affiliates, or any of their respective officers, directors or affiliates (collectively, the "Purchaser Losses") as a result of arising out of:

(i) any material inaccuracy in or breach of any of the Seller's representations, warranties, covenants, obligations or agreements contained in this Agreement or in any agreement, certification, schedule, exhibit or writing delivered pursuant to this Agreement;

(ii) any Retained Liability for which the Purchaser is or becomes legally liable;

(iii) any Retained Asset not assumed by the Purchaser;

(iv) the operation of the Business prior to Closing;

(v) any and all taxes of the Seller, including without limitation any sales and use taxes owed by the Seller for which the Purchaser may be held liable by reason of the Seller's failure to provide the Purchaser with a certificate from the North Carolina Department of Revenue showing that no sales and use taxes are due by the Seller;

(vi) any and all liabilities of the Seller arising prior to the Closing Date; or

(vii) any liability for Seller's obligations under **Section 19(j)** of this Agreement.

(c) Indemnification by the Purchaser. The Purchaser agrees to indemnify and defend the Seller from and against all Losses incurred by the Seller (collectively, the “Seller Losses”) as a result of or arising out of:

(i) any material inaccuracy in or breach of any of the Purchaser’s representations, warranties, covenants, obligations or agreements contained herein or in any agreement, document, schedule, exhibit or writing delivered pursuant hereto;

(ii) any Assumed Liability for which the Seller is legally liable;

(iii) the operation of the Business after Closing;

(iv) any and all taxes of the Purchaser;

(v) any and all liabilities of the Purchaser arising after the Closing Date; or

(vi) any liability for Purchaser’s obligations under **Section 19(j)** of this Agreement.

(d) Indemnification Claims.

(i) With respect to a claim for indemnification arising under **Section 7** herein, the Indemnified Parties will promptly notify the Indemnifying Party of the claim or potential liability for which indemnification is provided herein; provided, however, that the failure to promptly give such notice will affect any Indemnified Party’s rights hereunder only to the extent that such failure actually materially and adversely affects any Indemnifying Party, its rights or its ability to defend such claim.

(ii) Within thirty (30) days after delivery of the notification described in **Section 16(d)(i)**, the Indemnifying Party may, upon written notice to the Indemnified Party, assume control of the defense of such suit or proceeding with counsel reasonably satisfactory to the Indemnified Party.

(iii) With respect to a claim for indemnification arising out of or involving an assertion by a third party of liability on the part of an Indemnified party, the Indemnified party and the Indemnifying Party will cooperate in the defense of such claim. The Indemnified Party will have the right to retain its own counsel and to participate in the defense, but the fees and expenses of such counsel will be at the expense of the Indemnified Party unless the Indemnifying Party and Indemnified Party otherwise agree in writing.

(iv) Notwithstanding the foregoing, the Indemnifying Party may not assume control of the defense of a suit or proceeding alleging criminal liability of the Indemnified Party or in which injunctive relief is sought against the Indemnified Party, unless the Indemnified Party consents. In the absence of consent by the Indemnified Party in such case, each party will control *its own defense*. In such case, neither party will agree to any settlement of, or the entry of any judgment arising from, any such suit or proceeding without the prior written consent of the other party, which will not be unreasonably withheld or delayed.

(v) In order to seek indemnification under this **Section 16(d)** an Indemnified Party will give a claim notice to the Indemnifying Party which contains (1) a description and the amount, if capable of estimation, of the losses incurred or reasonably expected to be incurred by the Indemnified Party (the "Claimed Amount"); (2) a statement that the Indemnified Party is entitled to indemnification under this **Section 16(d)** for such losses and a reasonable explanation of the basis therefor; and (3) a demand for payment (a "Claim Notice").

(vi) Within ten (10) days after delivery of a Claim Notice, the Indemnifying Party will deliver to the Indemnified Party a response in which the Indemnifying Party will:

(1) agree that the Indemnified Party is entitled to receive all of the Claimed Amount in which case the response will be accompanied by a payment by the Indemnifying Party to the Indemnified Party of the Claimed Amount, by check or by wire transfer in exchange for a release of further liability by the Claim Notice;

(2) reach agreement with the Indemnified Party upon the amount that the Indemnified Party is entitled to receive, in which case the response will be accompanied by a payment by the Indemnifying Party to the Indemnified Party of the agreed amount, by check or by wire transfer in exchange for a release of further liability for claims covered by the Claim Notice; or

(3) dispute that the Indemnified Party is entitled to receive the Claimed Amount or any agreed amount. If the Indemnifying Party in the response disputes its liability for all or part of the Claimed Amount, the Indemnifying Party and the Indemnified Party will use good faith efforts to resolve the dispute.

(vii) The Indemnifying Party will have the right to settle or compromise any claim or liability subject to indemnification under this **Section 16(d)** which is susceptible to being settled or compromised; provided, however, that any such settlement will require the consent of the

Indemnified Party, which consent will not be unreasonably withheld or delayed; provided further however, that the consent of the Indemnified Party will not be required if (i) the terms of the settlement require only the payment of damages and payment of the full amount of the relevant indemnification obligation to the Indemnified Party is assured, and (ii) the Indemnified Party is not otherwise materially and adversely affected by the terms of the settlement.

(e) Survival of Indemnification. The obligations of the Seller and the Purchaser under this Section shall survive the Closing and continue for a period of five (5) years following the Closing Date.

17. Confidentiality

The Purchaser acknowledges that during its due diligence investigation, the Seller has provided the Purchaser with confidential business information relating to the Business and its facilities, equipment, other assets, employees, patients, financial condition and results, operations, processes, designs and compilations of data (the "Information"). The Purchaser will treat the Information in confidence and will not disclose any of the Information to any other person without the prior written consent of the Seller, except as provided in this section.

The Purchaser will not use the Information for any purpose other than its evaluation of the proposed transaction. The Purchaser will only disclose the Information to those of its employees, attorneys, financial advisers and affiliates who reasonably need to know the Information in order to render advice in connection with the proposed transaction, and who are informed of the non-disclosure and non-solicitation provisions of the Agreement agree to be bound by its terms. The Purchaser agrees to be jointly and severally liable for any breach of this Agreement by such employees, attorneys, financial advisers or affiliates.

The confidentiality and non-disclosure obligations in this Agreement will not apply to any Information that the Purchaser can demonstrate falls within any of the following:

(a) Information that has come within the public domain through no fault of or action by the Purchaser; or

(b) Information that is in the Purchaser's possession prior to the time of disclosure, or that is independently discovered after the date of this Agreement by the Purchaser without the aid, application or use of the Information; or

(c) Information that the Purchaser obtains after the date of this Agreement from any third party who is lawfully in possession of such Information, and who is not in violation of any contractual or legal obligation to the Seller with respect to such Information; or

(d) Information that the Purchaser becomes legally obligated to disclose, provided that the Purchaser (i) obtains a written opinion of counsel that disclosure of such Information is legally required, and (ii) notifies the Seller in advance of its duty to disclose, so that the Seller may seek a protective order or other remedy.

In the event the transaction contemplated by this Agreement is not consummated, the Purchaser will keep and maintain, in strict confidence, all information concerning the Business and the Assets of the Seller obtained in the course of its examination and will destroy all copies of documents, data, schedules and the like that the Purchaser has acquired from the Seller related to the Business or the Assets.

Notwithstanding anything contained herein, the parties acknowledge that neither party can or does control what information the media may report.

18. **Notices**

All notices and other communications under this Agreement will be in writing and will be given by delivery in person; by facsimile which reflects verification of delivery, if a copy of the faxed notice is deposited within one business day thereof in the U.S. Mail by registered or certified mail; by overnight courier, or by registered or certified mail, return receipt requested, to the parties at their respective addresses set forth below, with copies as follows:

If to the Purchaser:

Mr. Michael D. DeLoach, Manager
Hendersonville Physicians and Associates, LLC
80 Brownsberger Circle
Fletcher, North Carolina 28732
Fax: (919) 882-9771

With a copy to:

Alexander R. Atchison, Esq.
Young Moore and Henderson, P.A.
3101 Glenwood Avenue, Suite 200
Raleigh, NC 27612
Fax: 919/782-6753

If to Seller:

Henderson County Hospital Corporation
c/o Kris Hoce
800 North Justice Street
Hendersonville, NC 28791
Fax: (828)696-1128

With a copy to:

Sharon Alexander, Esq.
240 Third Avenue West
Hendersonville, NC 28739
Fax: (828)693-0177

Notice will be deemed given on the date of personal delivery; on the date of verified delivery by fax; in the case of delivery by certified or registered mail, three business days after deposit with the United States Postal Service; and one business day after delivery into the custody and control of an overnight courier service for next business day delivery.

19. **Miscellaneous**

(a) **Rights Confined to Parties.** Nothing expressed or implied in this Agreement is intended or will be construed to confer upon or give to any Person, other than the parties and their successors and assigns as permitted hereunder, any right, remedy, or claim under or by reason of this Agreement, and all the terms, covenants, conditions, promises, and agreements contained herein will be for the sole and exclusive benefit of the parties and their successors and assigns as permitted hereunder.

(b) **Survival.** Except as otherwise specifically provided herein, all representations, warranties and covenants will survive the Closing, regardless of any inspection or discovery, whether by reason of due diligence or otherwise, for a period of three years from Closing. Claims for indemnification or claims in respect of potential Losses that are made during the relevant survival period will survive expiration of such periods.

(c) **Entire Agreement.** This Agreement constitutes the entire understanding between the parties with respect to the subject matter hereof and supersedes any and all prior agreements among the parties with respect to the subject matter hereof, including, without limitation, that certain Request for Proposal submitted by the Purchaser to the Seller.

(d) **Assignment.** This Agreement is not assignable and any purported assignment will be null and void and of no effect, except that the Purchaser may assign its rights and obligations to an affiliate of the Purchaser, provided that Purchaser shall continue to be responsible for the Purchaser's obligations under the Agreement after such assignment.

(e) **Severability.** Any provision of this Agreement that is prohibited or unenforceable will not affect the validity or enforceability of any other provision.

(f) Effect of Headings. The Article, Section and subsection headings contained in this Agreement are for convenience only and will not affect the construction of the Agreement.

(g) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the State of North Carolina without regard to its conflict of law rules. The parties agree that the only proper venue for any action arising out of or related to this Agreement shall be Henderson County, North Carolina.

(h) Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed to be an original, and all such counterparts will constitute but one instrument.

(i) Amendment and Waiver. This Agreement may be amended only by written agreement signed by the parties. No party will be deemed to have expressly or impliedly waived any of its rights, powers and/or remedies under this Agreement unless such waiver is in writing and signed by an authorized signatory of such party. No waiver of any right or remedy will be construed as a waiver of such right or remedy that would otherwise be available on any future occasion.

(j) Bulk Sales Law. The transactions will be consummated without compliance with any bulk sales law ("Bulk Sales Laws"). If creditors of Seller assert any claims under an applicable Bulk Sales Law, Purchaser will be responsible for claims arising under any of the Assumed Liabilities, and Seller will be responsible for claims arising under any of the Retained Liabilities

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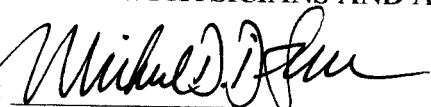
SELLER:

HENDERSON COUNTY HOSPITAL CORPORATION

By: _____ (SEAL)
N. Kristopher Hoce, CEO

PURCHASER:

HENDERSONVILLE PHYSICIANS AND ASSOCIATES, LLC

By:  _____ (SEAL)
Michael D. DeLoach, Manager