ASSET PURCHASE AGREEMENT

by and among

NEW HANOVER COUNTY,

NEW HANOVER REGIONAL MEDICAL CENTER,

NOVANT HEALTH NEW HANOVER REGIONAL MEDICAL CENTER, LLC

and,

solely for purposes of Section 5.28,

NOVANT HEALTH, INC.

DATED: [●], 2020
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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this “Agreement”) is made and entered into as of the [●] day of [●], 2020 (the “Effective Date”), by and among New Hanover County, North Carolina (“County”), New Hanover Regional Medical Center, a North Carolina nonprofit corporation, on behalf of itself and its Subsidiaries and Affiliates (other than the NHRMC Foundation, Pender and Material Affiliations) (collectively, “NHRMC”), on the one hand, and Novant Health, Inc., a North Carolina nonprofit corporation (“Novant Health”), and Novant Health New Hanover Regional Medical Center, LLC (“Buyer”), a North Carolina limited liability company, on the other hand.

RECIPIENTS:

WHEREAS, NHRMC engages in the business of delivering acute care services to the public (i) at facilities set forth on Schedule 1.1 (each, a “Hospital” and, collectively, the “Hospitals”) and (ii) also through those physician practices, urgent care centers, imaging centers, ambulatory surgical facilities, medical office buildings and other ancillary businesses that are used or held for use as part of, or in conjunction with or in support of, the operations of the Hospitals and which are set forth on Schedule 1.2 (the “Other Businesses”) (the Hospitals and the Other Businesses are referred to in this Agreement, collectively, as the “Healthcare Businesses”);

WHEREAS, the County owns the Hospitals and other assets used in conjunction with the operation of the Healthcare Businesses, and leases them to NHRMC to operate the Healthcare Businesses as a healthcare system; and

WHEREAS, NHRMC is governed by a Board of Trustees appointed by the County (“NHRMC Board”);

WHEREAS, discussions regarding certain industry trends, challenges, opportunities, and related matters as to the best course forward for the Healthcare Businesses led to the County Commissioners of New Hanover County (“County Commissioners”) passing a resolution in September 2019 to move forward in exploring potential future options for NHRMC through a request for proposals process (“RFP”) in accordance with North Carolina Law, and to the NHRMC Board passing a corresponding resolution endorsing and joining such County exploration in that same month;

WHEREAS, on March 16, 2020, six health care organizations, including Novant Health (“Respondents”), responded to the comprehensive RFP with a variety of proposals, all of which were well vetted by the Partnership Advisory Group (“PAG”), a joint subcommittee of the County Commissioners and NHRMC Board, with analyses and input from financial, legal, and strategic advisors;

WHEREAS, in accordance with North Carolina Law, a public hearing was held on June 22, 2020, regarding the proposals received in response to the RFP;

WHEREAS, in conjunction with the PAG’s evaluation of the proposals, the corresponding due diligence and discussions with the finalists, the PAG recommended the NHRMC Board and County Commissioners approve and authorize the execution of a nonbinding letter of intent with Novant Health (“LOI”), and the NHRMC Board and County Commissioners, each having reviewed all of the work of the PAG and the proposals, and having considered the best interests of the County and the community, concurred with such recommendations;

WHEREAS, on July 7, 2020, the NHRMC Board adopted a resolution to enter into the LOI with Novant Health;
WHEREAS, on July 13, 2020, the County Commissioners adopted a resolution to enter into the LOI with Novant Health;

WHEREAS, Sellers and Buyer entered into such LOI on July 13, 2020;

WHEREAS, Novant Health, through Buyer, an Affiliate of Novant Health, desires to acquire from Sellers, and Sellers desire to sell to Buyer, substantially all of the assets used with respect to the operation of the Healthcare Businesses, in exchange for the consideration and upon the terms and conditions set forth in this Agreement; and

WHEREAS, the County Commissioners will use, invest, direct and manage the proceeds of the Transactions exclusively for public benefit purposes; and

WHEREAS, Novant Health is a party to this Agreement for purposes of guaranteeing Buyer’s obligations hereunder;

WHEREAS, capitalized terms are defined in Section 12.17 (or a cross-reference to such definition is set forth therein).

NOW, THEREFORE, in consideration of the foregoing premises, which are hereby made a part of this Agreement, and the mutual promises and covenants contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged, and for their mutual reliance, the parties agree as follows:

ARTICLE 1
SALE AND TRANSFER OF ASSETS;
CONSIDERATION; CLOSING

1.1 Purchase Price.

(a) Subject to the terms and conditions of this Agreement, the cash purchase price to be paid by Buyer to Sellers in exchange for the Assets and other rights and benefits conferred by this Agreement and the other Transaction Documents (the “Purchase Price”) shall equal (i) One Billion Five Hundred Million Dollars ($1,500,000,000) (“Base Cash Consideration”), minus (ii) the Closing Liabilities Amount, minus (iii) the Seller Transaction Expenses Amount, minus (iv) the Indebtedness Amount, minus (v) the amount (if any) by which the Net Working Capital Target exceeds Closing Net Working Capital, plus (vi) the amount (if any) by which Closing Net Working Capital exceeds the Net Working Capital Target (the amount in either clause (v) or clause (vi), the “Closing Net Working Capital Adjustment”), plus (vii) the Cash Amount.

(b) At least five Business Days, but no more than ten Business Days, prior to the Closing Date, Sellers shall prepare and deliver to Buyer a statement, substantially consistent with the form set forth on Exhibit A (“Estimated Closing Statement”), setting forth in reasonable detail Sellers’ reasonable and good faith estimates of (i) the Estimated Closing Liabilities Amount, (ii) the Estimated Seller Transaction Expenses Amount, (iii) the Estimated Indebtedness Amount, (iv) the Estimated Closing Net Working Capital, (v) the resulting calculations of the Estimated Closing Net Working Capital Adjustment and the Estimated Purchase Price and (vi) the Estimated Cash Amount. Following the delivery of the Estimated Closing Statement, Sellers shall promptly provide Buyer reasonable access to the books and records and work papers used by Sellers in preparing the Estimated Closing Statement for purposes of assisting Buyer in its review of the Estimated Closing Statement. Prior to the Closing Date, the parties shall cooperate in good faith to answer any questions and resolve any issues reasonably raised by Buyer in connection with Buyer’s review of the Estimated Closing Statement. Sellers shall consider in
good faith any comments or objections to any amounts set forth on the Estimated Closing Statement provided to them by Buyer before the Closing and if, before the Closing, Sellers and Buyer agree in writing at least two days before the Closing Date to make any modification to the Estimated Closing Statement, then the Estimated Closing Statement as so modified shall be deemed to be the Estimated Closing Statement for purposes of calculating the Estimated Closing Payment. If the parties fail to agree upon any amounts set forth in the Estimated Closing Statement at least two days before the Closing Date, then, subject to the satisfaction or waiver (if permissible) of the conditions set forth in Articles 6 and 7 at the Closing, the Closing shall proceed at such time and on such date as otherwise contemplated by Section 1.3 and the Estimated Closing Payment set forth in the Estimated Closing Statement delivered by Sellers pursuant to Section 1.1(b) with such modifications as have been agreed by the parties shall be used for the Closing.

(c) The parties shall work together in good faith to prepare a funds flow spreadsheet (the “Funds Flow Memorandum”) reflecting: (i) the aggregate amount to be paid at the Closing by Buyer to Sellers, as reflected on the Estimated Closing Statement, (ii) the amounts to be paid at the Closing by Buyer to (A) any creditors who are owed any portion of the Indebtedness Amount set forth on Schedule 2.11(b), as reflected on the Estimated Closing Statement, (B) any third party who is owed any portion of the Seller Transaction Expenses Amount, as reflected on the Estimated Closing Statement, and (C) the amount to be paid to the Title Company pursuant to Section 5.5(e), if any, and (iii) wire transfer instructions for each payment to be made at the Closing as set forth in the Funds Flow Memorandum.

(d) Subject to the terms and conditions of this Agreement, at the Closing, Buyer shall pay, by wire transfer of immediately available funds pursuant to the wire instructions set forth on the Funds Flow Memorandum:

(i) to the Escrow Agent, (A) the Adjustment Escrow Amount into an escrow account (the “Adjustment Escrow Account”) and (B) the General Escrow Amount into an escrow account (the “General Escrow Account”), each to be held by the Escrow Agent in accordance with the terms of the Escrow Agreement;

(ii) on behalf and at the direction of Sellers, to the Foundation, an amount equal to the Estimated Closing Payment, minus (A) the NHRMC Transition Stabilization Escrow Amount, minus (B) the County Revenue Stabilization Fund Amount, minus (C) the Mental and Behavioral Health Fund Amount and minus (D) the Bond Defeasance Escrow Amount.

(iii) (A) to the Transition Escrow Agent, the NHRMC Transition Stabilization Escrow Amount, (B) to the County Revenue Stabilization Fund, the County Revenue Stabilization Fund Amount, (C) to the Mental and Behavioral Health Fund, the Mental and Behavioral Health Fund Amount and (D) to the Bond Defeasance Escrow Agent, the Bond Defeasance Escrow Amount.

(iv) on behalf of the applicable obligor, to each of the holders of outstanding Indebtedness that are listed on Schedule 2.11(b), cash in the amount set forth in the holder’s respective Payoff Letter;

(v) on behalf of the applicable obligors, the Seller Transaction Expenses Amount to the applicable recipients identified in the Estimated Closing Statement, net of any applicable withholding Taxes; and

(vi) to the Title Company, the amount required by the terms of Section 5.5(e), if any.
1.2 Post-Closing Adjustment to Purchase Price.

(a) Within 120 calendar days after the Closing Date, Buyer shall prepare and deliver to Sellers a statement, substantially consistent with the form set forth on Exhibit A (the “Closing Statement”) setting forth (i) Buyer’s calculation of the Closing Liabilities Amount, Seller Transaction Expenses Amount, Indebtedness Amount and Closing Net Working Capital, (ii) the resulting calculations of the Closing Net Working Capital Adjustment and the Purchase Price and (iii) Buyer’s calculation of the Cash Amount and any resulting payment among the parties. Buyer shall give Sellers reasonable and timely access, during normal business hours and upon reasonable advance notice, to review the books and records and work papers relating to the Healthcare Businesses and to such employees and representatives of Buyer as shall be reasonably necessary for Sellers to review the calculations contemplated in this Section 1.2.

(b) If Sellers dispute the calculation of the Closing Liabilities Amount, Seller Transaction Expenses Amount, Indebtedness Amount, Cash Amount or Closing Net Working Capital as of the Effective Time or the resulting calculations of the Closing Net Working Capital Adjustment and the Purchase Price, Sellers shall notify Buyer in writing within 60 calendar days after Sellers’ receipt of the Closing Statement from Buyer (the “Objection Statement”), which Objection Statement shall specify the items to which each such objection relates and the basis for each such objection, and which shall include Sellers’ alternative calculation of the Closing Liabilities Amount, Seller Transaction Expenses Amount, Indebtedness Amount, Cash Amount or Closing Net Working Capital as of the Effective Time and the resulting calculations of the Closing Net Working Capital and the Purchase Price. If Sellers do not deliver an Objection Statement to Buyer prior to such date, the Closing Statement and the calculations set forth therein shall be final, binding and nonappealable. Sellers and Buyer shall negotiate in good faith to resolve any objections of the type described above and set forth in the Objection Statement; provided, however, that any discussions relating thereto shall be governed by Rule 408 of the Federal Rules of Evidence and any similar state rule(s), and evidence of such discussions shall not be admissible in any future Proceedings between Sellers and Buyer. If Sellers and Buyer cannot resolve such objection within 30 days after delivery of the Objection Statement, then Sellers and Buyer shall instruct the Independent Accountants to select one of their partners experienced in health-care-related purchase price adjustment disputes to review the matters set forth in the Objection Statement that remain in dispute and promptly decide the proper amounts of such disputed issues (which decision shall also include a recalculation of the Purchase Price). If issues in dispute are submitted to the Independent Accountants for resolution, Sellers, on the one hand, and Buyer, on the other hand, shall furnish to the Independent Accountants and the other party or parties such workpapers and other documents and information relating to the disputed issues as the Independent Accountants may request and that are available to such party or its Affiliates, will be afforded the opportunity to present to the Independent Accountants one position paper relating to the determination within 15 days of the submission of the dispute to the Independent Accountants, and the opportunity to respond to the Independent Accountants’ questions and the items furnished by the other party regarding the dispute. In resolving the items in the Objection Statement that are still in dispute and in determining the recalculation of the Purchase Price, the Independent Accountants shall (i) not assign to any item in dispute a value that is (A) greater than the greatest value for such item assigned by Buyer, on the one hand, or Sellers, on the other hand, or (B) less than the smallest value for such item assigned by Buyer, on the one hand, or Sellers, on the other hand, (ii) make a final determination of the disputed items in accordance with the provisions, guidelines and procedures set forth in this Agreement, (iii) act as an expert and not as an arbitrator, (iv) render a final resolution in writing to Buyer and Sellers (which final resolution shall be requested by Buyer and Sellers to be delivered not more than 60 days following submission of such disputed items to the Independent Accountants), which final resolution, absent manifest error, shall be final, conclusive, binding and nonappealable on Buyer and Sellers, and (v) not engage in independent factual investigation, not hear evidence from either Buyer or Sellers outside the presence of both Buyer and Sellers, and not engage in ex parte communications with Buyer or Sellers.
The Purchase Price as finally determined pursuant to this Section 1.2(b) is referred to herein as the “Final Purchase Price.” The costs of the Independent Accountants shall be borne one-half by Sellers (jointly and severally), on the one hand, and one-half by Buyer, on the other hand; provided, however, that such costs shall be paid by Buyer to the Independent Accountants, and one-half of such costs shall be included in the Seller Transaction Expenses Amount for purposes of determining the Final Purchase Price.

(c) If the Final Purchase Price exceeds the Estimated Purchase Price, then (i) Buyer shall promptly (but in any event within five Business Days after the final determination thereof) pay to an account designated by Sellers the amount of such excess by wire transfer of immediately available funds, and (ii) Sellers and Buyer shall jointly instruct the Escrow Agent to pay to Sellers from the Adjustment Escrow Account an amount equal to the Adjustment Escrow Amount by wire transfer of immediately available funds.

(d) If the Estimated Purchase Price exceeds the Final Purchase Price, then, within five Business Days after the final determination thereof, Sellers and Buyer shall jointly instruct the Escrow Agent to pay from the Adjustment Escrow Amount an amount equal to such excess to Buyer by wire transfer of immediately available funds. If any funds remain in the Adjustment Escrow Amount, Sellers and Buyer shall also, simultaneously with the joint instruction for Buyer’s distribution, jointly instruct the Escrow Agent to pay to Sellers such remaining funds from the Adjustment Escrow Amount through a wire transfer to an account or accounts designated by Sellers pursuant to the terms of the Escrow Agreement. If such excess is more than the Adjustment Escrow Amount, Sellers shall promptly (but in any event within no more than five Business Days) pay the amount by which the excess is more than the Adjustment Escrow Amount to Buyer by wire transfer of immediately available funds to an account designated by Buyer (for which obligation Sellers shall be jointly and severally liable). Sellers shall fund such payment, if any, out of the Purchase Price.

(e) The parties shall treat any payment made pursuant to this Section 1.2 as an adjustment to the Purchase Price for all Tax purposes to the maximum extent permitted by Law. Payments to be made pursuant to this Section 1.2 shall not include interest.

1.3 Closing Date. The consummation of the Transactions (the “Closing”) shall take place remotely by e-mail through the exchange of PDF documents or other electronic transmissions commencing at 10:00 a.m., Eastern Time, on the last day of the month during which the last of the conditions set forth in Article 6 and Article 7 (other than those conditions that by their terms are to be satisfied at the Closing) have been satisfied or waived, or at such other date and/or at such other location as the parties may mutually designate in writing (the “Closing Date”). Unless otherwise agreed in writing by the parties, the Closing shall be effective for accounting purposes as of 12:00:01 a.m. on the day immediately following the Closing Date or such other time as mutually agreed to by the parties (the “Effective Time”) and the Closing shall be deemed to have occurred as of the Effective Time.

1.4 Transfer of Seller Assets. On the Closing Date and effective as of the Effective Time, Sellers shall assign, transfer, convey and deliver to Buyer, and Buyer shall acquire, free and clear of all Encumbrances, other than Permitted Encumbrances, all of Sellers’ right, title and interest in and to the following rights, properties and assets (in each case, to the fullest extent assignable or transferrable) (collectively, the “Assets”), but in all cases excluding the Excluded Assets:

(a) fee simple title to all of the real property owned by any Seller or any of Sellers’ Affiliates (other than the NHRMC Foundation, Pender and Material Affiliations) used in the operation of the Healthcare Businesses (including those properties listed on Schedule 1.4(a)), including all improvements, fixtures and construction in progress located thereon, and all rights, privileges and easements appurtenant to any of the foregoing (collectively, the “Owned Real Property”; provided,
however, that solely for the purposes of Article 2 and Section 5.5, “Owned Real Property” shall further include all real property owned by Pender);

(b) all of Sellers’ right, title and interest in and to all real property leases, subleases, license agreements and other occupancy agreements pursuant to which a Seller leases, subleases, licenses, or otherwise occupies real property as a tenant, subtenant, licensee or occupant used in the Healthcare Businesses (each, a “Tenant Lease” and, collectively, the “Tenant Leases”) (the real property that is subject to the Tenant Leases being referred to as the “Leased Real Property” and, together with the Owned Real Property, the “Real Property”); the parties hereby acknowledge and agree that the term “Tenant Leases” includes all real property leases, subleases, license agreements and other occupancy agreements pursuant to which any Subsidiary or Affiliate of Sellers or any Joint Venture Business leases, subleases, licenses or otherwise occupies real property as a tenant, subtenant, licensee or occupant used in the Healthcare Businesses; a list of all such Tenant Leases is set forth in Schedule 1.4(b);

(c) all of the tangible personal property, including equipment (including medical equipment), furniture, fixtures, machinery, vehicles, office furnishings, computer hardware, and leasehold improvements, owned by Sellers and that are used or held for use in the operation of the Healthcare Businesses (the “Personal Property”), including the Personal Property listed on Schedule 1.4(c);

(d) all of Sellers’ rights to the National Provider Identifiers (“NPIs”), Medicare, Medicaid and TRICARE provider numbers and agreements, licenses, Orders, grants, authorizations, consents, permits, approvals, applications, certificates of need, certificates of exemption, franchises, accreditations, certifications, registrations and other governmental licenses, permits or approvals issued to Sellers and used with respect to the operation, development or expansion of the Healthcare Businesses (the “Licenses”), including the NPIs and Licenses listed on Schedule 1.4(d);

(e) all of Sellers’ right, title and interest in and to all real property leases under which any Seller is the lessor, sublessor or licensor relating to the operation of the Healthcare Businesses (each, a “Lessor Lease” and, collectively, the “Lessor Leases”); the parties hereby acknowledge and agree that the term “Lessor Leases” includes all real property leases under which any Subsidiary or Affiliate of Sellers is the lessor, sublessor or licensor relating to the operation of the Healthcare Businesses; a list of all Lessor Leases is set forth in Schedule 1.4(e);

(f) all of Sellers’ interest in and to: (i) all capital leases relating to the operation of the Healthcare Businesses (each, a “Capital Lease”), including those Capital Leases listed on Schedule 1.4(f)(i); and (ii) all other personal property leases (other than the Capital Leases) relating to the operation of the Healthcare Businesses (each, a “Personal Property Lease”), including those Personal Property Leases listed on Schedule 1.4(f)(ii);

(g) all of Sellers’ interest in and to all contracts and agreements other than the Tenant Leases, the Lessor Leases, the Capital Leases or the Personal Property Leases associated with, or to which any Seller is a party in support or furtherance of, the operation of the Healthcare Businesses (the “Contracts”), including those Contracts listed on Schedule 1.4(g) and the Transferred Insurance Policies and Surety Bonds; provided, however, the term “Contracts” as used in this Agreement shall exclude the Excluded Contracts;

(h) except as excluded by Section 1.5(f), all supplies, drugs, food, linens, janitorial and office supplies and other disposables and consumables owned by any Seller and used in the Healthcare Businesses or located on the Real Property (the “Inventory”);
(i) except for Non-Transferable Governmental Patient Receivables, all accounts receivable of Sellers, and all claims, rights, interests and proceeds related thereto, arising from the rendering of services or provision of medicine, drugs or supplies to patients of, or otherwise from the operations of, the Healthcare Businesses prior to the Effective Time (the “Accounts Receivable”);

(j) to the extent any Accounts Receivable are prohibited by applicable Law from being transferred to Buyer (the “Non-Transferable Governmental Patient Receivables”), an amount in cash equal to the amount collected in respect of such Non-Transferable Governmental Patient Receivables, which shall be payable as and when the amounts of such Non-Transferable Governmental Patient Receivables are collected;

(k) except for the Excluded Records, subject to the terms of the Custodial Agreement, all documents, records, operating manuals and files that are used or held for use in the operation of the Healthcare Businesses, including patient records, medical records, copies of employee records relating to Hired Employees, financial records, facility records, medical staff records, property records, equipment records, construction plans and specifications, and medical and administrative libraries;

(l) all rights in all warranties of any manufacturer or vendor in connection with the Personal Property;

(m) any claims, causes of action or rights against third parties related to the Healthcare Businesses, the Assets or the Assumed Obligations, contractual or otherwise, arising before or after the Effective Time;

(n) all insurance proceeds arising in connection with damage to the Assets occurring before the Effective Time to the extent not expended for the repair or restoration of such Assets;

(o) the telephone numbers that are used or held for use in the operation of the Healthcare Businesses;

(p) (i) all Intellectual Property that is used or held for use and necessary to the operation of the Healthcare Businesses as currently conducted, including all Intellectual Property Agreements, and (ii) all right, title and interest of any Seller and any of its Affiliates to the use of the names set forth on Schedule 1.4(p) and any derivatives or variations thereof (the “Acquired Names”);

(q) all of those advance payments, prepayments, prepaid expenses, deposits and the like that exist as of the Closing Date and were made with respect to the operation of the Healthcare Businesses (the “Prepaid Expenses”);

(r) the Cash Amount and all bank accounts of Sellers used in the Healthcare Businesses, all of which are set forth on Schedule 1.4(r) (the “Transferred Seller Bank Accounts”), including any deposits in any such accounts as of the Closing Date that are included in the Cash Amount;

(s) all of Sellers’ rights to appoint all of the board of directors of the New Hanover Regional Medical Center Foundation, Inc. (“NHRMC Foundation”);

(t) to the extent not included in any of the foregoing, any current assets included in the determination of Closing Net Working Capital;
(u) all HITECH Payments pertaining to Sellers and the Healthcare Businesses for the federal fiscal year or the calendar year (depending on what was used as the attestation period) in which the Effective Time occurs and all subsequent federal fiscal years or calendar years, as applicable, excluding the portion of the HITECH Payments pertaining to the calendar year in which the Effective Time occurs to which Sellers have a right under Section 11.3;

(v) any writings, documents and other items that are protected from discovery by the attorney-client privilege, the attorney-work-product doctrine or any other cognizable privilege or protection, other than the Excluded Records;

(w) Sellers’ equity and membership interests in all Joint Ventures related to the Healthcare Businesses, including the Joint Ventures set forth on Schedule 1.4(w);

(x) Sellers’ equity and membership interests in all Subsidiaries related to the Healthcare Businesses, including the Subsidiaries set forth on Schedule 1.4(x);

(y) the Books and Records, including all of Sellers’ corporate record books, minute books and Tax records relating to the Joint Ventures;

(z) all unclaimed property of any third party as of the Effective Time, including property which is subject to applicable escheat Laws;

(aa) Sellers’ Graduate Medical Education/Residence Programs and similar medical professional training programs;

(bb) any receipts or refunds (i) relating to disproportionate share payments with respect to time periods prior to the Effective Time or (ii) relating to GPO fee sharebacks, rebates or discounts that are related to the purchase of inventory, equipment or other assets prior to the Effective Time;

(cc) the Transferred Plans and any associated funds, accounts and assets thereof; and

(dd) all goodwill of Sellers associated with the Healthcare Businesses or the Assets.

1.5 Excluded Assets. Notwithstanding anything to the contrary in Section 1.4, Sellers shall retain all assets owned directly or indirectly by them (or any of Sellers’ Affiliates) which are not included in the Assets, including the following assets of Sellers (collectively, the “Excluded Assets”):

(a) any receipts or refunds (i) relating to bad debt reimbursements with respect to services furnished prior to the Effective Time; (ii) relating to the Provider Relief Funds or (iii) relating to the Disaster Relief Funds;

(b) any current or long-term assets not related to the Healthcare Businesses;

(c) all Restricted Cash that cannot be transferred to Buyer, the amounts and sources of which are described on Schedule 1.5(c);

(d) except for the Transferred Plans and any associated funds, accounts and assets, all Seller Plans and the funds and accounts of all employee retirement, pension, deferred compensation, health, welfare or benefit plans and programs, including assets representing a surplus or overfunding of any Seller Plan;
(e) all agreements, contracts, commitments, leases, purchase orders and other arrangements set forth on Schedule 1.5(e) (the “Excluded Contracts”);

(f) the portions of Inventory and other Assets disposed of, or expended, as the case may be, by Sellers after the Effective Date and prior to the Effective Time in the ordinary course of business;

(g) Subject to Section 1.11, all claims, rights, interests and proceeds with respect to Tax payments, refunds, and credits (including property Tax refunds and charity Tax credits) related to the Healthcare Businesses or the Assets with respect to periods ending prior to the Effective Time, and the right to pursue appeals of same;

(h) all of Sellers’ corporate record books, minute books and Tax records, except for those relating to the Joint Ventures;

(i) all bank accounts of the County not related to the Healthcare Businesses;

(j) all claims, causes of action, choses in action, rights of recovery, rights of set off and rights of recoupment of Sellers and their Affiliates with respect to the Excluded Assets and the Excluded Liabilities, and any payments, awards or other proceeds resulting therefrom;

(k) any writings, documents and other items that are protected from discovery by the attorney-client privilege, the attorney-work-product doctrine or any other cognizable privilege or protection and (i) that are directly related to the Transactions or (ii) relate principally to the Excluded Assets or Excluded Liabilities (collectively, the “Excluded Records”);

(l) any receipts or refunds relating to the Seller Cost Reports, Agency Settlements, or Waiver/Supplemental Payment Program Receivables (whether resulting from an appeal by Sellers or otherwise) with respect to time periods prior to the Effective Time,

(m) subject to the terms of the Custodial Agreement, all documents, records, correspondence, work papers and other documents other than patient records, relating to the Seller Cost Reports or Agency Settlements, but excluding records relating to the provision of patient care;

(n) all rights to HITECH Payments pertaining to Sellers or Healthcare Businesses for all federal fiscal years or calendar years (depending on what was used as the attestation period) ending prior to the Effective Time, and the portion of the HITECH Payments pertaining to the calendar year in which the Effective Time occurs to which Sellers have a right under Section 11.3;

(o) any Licenses that are not transferrable to Buyer pursuant to applicable Laws;

(p) any Non-Transferable Governmental Patient Receivables;

(q) the rights of Sellers and their Affiliates under this Agreement;

(r) all of the assets of, and all of Sellers’ right, title, and interest in or to, OWP4 and Iron Gate;

(s) all cash equivalents, marketable securities and other investments of the Healthcare Businesses; and
1.6 Assumed Obligations. At the Effective Time, and except for the Excluded Liabilities, Sellers shall assign, and Buyer shall assume, the future payment and performance of the following Liabilities of Sellers with respect to the operation of the Healthcare Businesses (collectively, the “Assumed Obligations”):

(a) all Liabilities relating to the period after the Effective Time arising under the Assumed Contracts, but only to the extent that such Liabilities are not Excluded Liabilities, were incurred in the ordinary course of business and do not arise from any failure by any Seller or any of its Affiliates to perform, improper performance, warranty or other default, breach or violation by any Seller or any of its Affiliates on or before the Effective Time;

(b) Subject to Section 1.11, any and all obligations with respect to the Real Property arising after the Effective Time or relating to the ownership or operation of the Real Property after the Effective Time (excluding any Liabilities that accrue before the Effective Time, regardless of whether payment thereof is not due until after the Effective Time, which shall remain the obligation of Sellers);

(c) any and all obligations of Sellers under the Worker Adjustment and Retraining Notification Act (and any state-equivalent statute) (collectively, “WARN”) as a result of (i) the consummation of the Transactions, (ii) the acts of Buyer or any Affiliate(s) of Buyer on and after the Effective Time (taking into account, or otherwise including, any employee terminations prior to the Effective Time), (iii) Buyer’s breach of its covenant with respect to the Hired Employees as set forth in Section 5.13 or (iv) Seller’s termination of any Closing Date Business Employee to whom Buyer fails to offer employment as of the Effective Time;

(d) Subject to Section 1.11, all real and personal property Taxes, if any, that are attributable to the Assets, and all utilities furnished to the Assets (excluding any Liabilities that accrue before the Effective Time, regardless of whether payment thereof is not due until after the Effective Time, which shall remain the obligation of Sellers);

(e) any Liabilities under any change-of-control, retention, bonus, termination, severance, employment or similar agreement assumed by Buyer and providing for payments to any Hired Employee as a result of Buyer’s termination of his or her employment at any time following the Effective Time (the “Buyer Severance Obligations”);

(f) Accrued Paid Time Off carried over pursuant to Section 5.13 to the extent included in the calculation of Closing Net Working Capital;

(g) the Transferred Plans and any associated funds, accounts and assets thereof; and

(h) all current Liabilities included in the calculation of Closing Net Working Capital.

1.7 Excluded Liabilities. Notwithstanding anything to the contrary in Section 1.6, Buyer shall not be responsible to pay, perform, discharge or assume any other Liabilities of any Seller or any of its Affiliates or Joint Ventures, any Liabilities related to the pre-Closing ownership or operation of the Healthcare Businesses or any Liabilities related to the Excluded Assets or any acts or omissions of any Seller or any of their Affiliates or Joint Ventures other than the Assumed Obligations (the “Excluded Liabilities”). For the avoidance of doubt, Excluded Liabilities include:

(t) any Contracts or other assets identified in Schedule 1.5(t).
(a) all Liabilities of Sellers with respect to any long-term debt, guarantees of debt, accrued interest or net interest rate swap Liabilities of Sellers, other than Sellers’ Liabilities arising under the Capital Leases on or after the Effective Time;

(b) all Liabilities of Sellers relating to the Seller Cost Reports, Agency Settlements and/or Waiver/Supplemental Payment Program Receivables (whether resulting from an appeal by Sellers or otherwise) with respect to time periods ending prior to the Effective Time;

(c) all Liabilities of Sellers relating to the Excluded Assets;

(d) all Seller Taxes;

(e) except for the Accrued Paid Time Off, Buyer Severance Obligations, Transferred Plans or as otherwise set forth in Section 5.13, all Liabilities under or in connection with the Seller Plans and/or any plans ever maintained by and/or contributed to by Sellers, the Healthcare Businesses or the Joint Venture Businesses or in which the current and/or former employees of Sellers, the Healthcare Businesses or the Joint Venture Businesses participate or have ever participated, including (i) all benefits and administrative costs associated with any such plans, (ii) all Liabilities under any change of control, retention, bonus, termination, severance, employment or similar plan or agreement providing for payments to current or former employees of Sellers and (iii) all Liabilities imposed by Law and/or contract, including withdrawal Liability arising under or with respect to such plans;

(f) any Liabilities under or in connection with the Transferred Plans that pertain to events, matters or actions occurring or arising before the Closing;

(g) any Liabilities under any change-of-control, retention, bonus, termination, severance, paid time off, leave, employment or similar plan or agreement providing for payments to (i) any Hired Employee as a result of the consummation of the Transactions or (ii) any Non-Offered Employee as a result of any Seller’s termination of his or her employment at any time following the Effective Time;

(h) all Liabilities of any Seller for commissions or fees owed to any finder or broker in connection with the Transactions;

(i) all Liabilities associated with Provider Relief Funds, Disaster Relief Funds and the AAP Program;

(j) all Seller Transaction Expenses;

(k) any Liability arising out of any Proceeding pending as of the Closing;

(l) any Liability set forth on Schedule 1.7(l);

(m) any Liability arising out of or relating to the ownership or use of the assets of any Joint Venture before the Effective Time, whether fixed or contingent, recorded or unrecorded, known or unknown, currently existing or hereafter arising;

(n) any Liability arising out of any Proceeding commenced after the Closing and arising out of or relating to any occurrence or event happening prior to the Closing; and
(o) any Liability arising out of or resulting from any Sellers’ compliance or noncompliance with any Law or Order of any Governmental Entity.

1.8 Cash Management with Respect to Non-Transferable Governmental Patient Receivables. Sellers and their Affiliates hereby appoint and authorize Buyer to act as their respective collection agent with respect to the Non-Transferable Governmental Patient Receivables. In connection therewith, Sellers and Buyer shall use each of Sellers’ existing bank accounts set forth in Schedule 1.4(r) (“Bank Accounts”) that receive any direct deposits, wires or other electronic transfers from any Government Program as “lock box” accounts for the deposit of all collections of Non-Transferable Governmental Patient Receivables, and such accounts shall be maintained by Sellers in accordance with this Section 1.8 until all Non-Transferable Governmental Patient Receivables are collected and deposited in such lock box accounts. After the Closing, all cash, checks, drafts or other similar items of payment with respect to all of the Non-Transferable Governmental Patient Receivables shall continue to be deposited into such lock box accounts. At or before the Closing, Sellers shall instruct the banks that maintain such lockbox accounts to transfer automatically on a daily or other periodic basis (as determined by Buyer) all available funds held in such lockbox accounts or other depository accounts to an account or accounts designated by Buyer. If any Seller comes into possession or control of any payments with respect to any Non-Transferable Governmental Patient Receivables, such Seller shall promptly (and in any event within two Business Days of request) deposit such payments into such lockbox accounts or other depository accounts specified by Buyer.

(a) Signature Cards. Sellers shall execute and deliver all signature cards and other documentation, and cooperate with Buyer to effect all changes in the Bank Accounts as reasonably requested by Buyer.

(b) Misdirected Payments. If, following the Closing, any Government Program, Private Program, customer, patient, vendor, supplier or other third party misdirects goods or payments to any Seller in respect of any Assets, then Sellers shall promptly notify Buyer and forward such misdirected goods or payments to Buyer (or, if such payment is from a Government Program, then to the lockbox account in accordance with this Section 1.8).

1.9 Escrow Amount. On or prior to the Closing Date, Sellers and Buyer shall enter into an escrow agreement (the “Escrow Agreement”) with the Escrow Agent in a form substantially and materially similar to that set forth in Exhibit B. The Adjustment Escrow Account shall be maintained until final determination of the Final Purchase Price in accordance with this Agreement. The General Escrow Account shall be maintained, pursuant to the terms of the Escrow Agreement, for a period of 48 months following the Closing (“Escrow Period”). The Escrow Agent’s fee and costs shall be paid by Buyer; provided, that any obligation for indemnification or for other fees and expenses of the Escrow Agent arising out of a dispute giving rise to indemnification or out-of-pocket expenses incurred on account of a party’s noncompliance with this Agreement or the Escrow Agreement shall be borne by the party determined by a court of competent jurisdiction to be responsible for causing the Damage or Liability against which the Escrow Agent is entitled to indemnification or reimbursement or, if no such determination is made, then equally by Sellers and Buyer. Any interest accruing on the Escrow Amount shall be paid pro rata to the Sellers, collectively on the one hand, and Buyer, on the other hand, based on the percentage of the Adjustment Escrow Amount and General Escrow Amount, respectively, paid to such parties.

1.10 Physical Inventory. Between 10 and 15 days preceding the Closing Date, Sellers shall perform a physical inventory of each material warehouse or other facility holding a material quantity of Inventory used in the Healthcare Businesses in a manner consistent with its past practice to verify the levels and amounts of the Inventory. Sellers shall give Buyer not less than 10 days’ prior written notice
before conducting each such physical inventory. Sellers shall permit Buyer’s Representatives to observe such physical inventory and will be permitted to make test counts of Inventory and receive copies of the records related to such physical inventory. In connection with such physical inventory, Sellers and Buyer shall jointly determine if any items of Inventory are unusable or obsolete, which unusable or obsolete items of Inventory shall be excluded from the calculation of the value of the Inventory calculated pursuant to this Section 1.10. Before the Closing Date, Sellers shall remove items of Inventory that, based upon such physical inventory, have been determined by the parties to be unusable or obsolete. The value of the Inventory shall be determined by applying the lower of market or cost to each item of Inventory as of the date of such physical inventory and Sellers shall prepare a schedule thereof, which shall be used in calculating Closing Net Working Capital; provided, that the value of the Inventory (for purposes of calculating Closing Net Working Capital) shall be increased or decreased, as appropriate, to reflect the value of any additions to, or the value of deletions from (as determined by the physical inventory), the Inventory between the date(s) of such physical inventory and the Effective Time.

1.11 Prorations. Except as otherwise provided herein or as settled at the Closing or in connection with the post-Closing adjustments to the Purchase Price as set forth in Section 1.2, within 90 days after the Closing Date, Sellers and Buyer shall prorate as of the Effective Time any amounts that become due and payable on or after the Closing Date with respect to (a) ad valorem Taxes, if any, on the Assets (which shall be prorated as of the Closing Date) and (b) real and personal property Taxes on the Assets (which shall be prorated as of the Closing Date). Any such amounts which are not available within 90 days after the Closing Date shall be similarly prorated as soon as practicable thereafter. For the avoidance of doubt, any items that are included in the calculation of Closing Net Working Capital shall be deemed finally settled and shall not be subject to any further prorations or adjustments pursuant to this Section 1.11.

1.12 Intended Tax Treatment and Allocation of the Purchase Price.

(a) Sellers and Buyer agree and acknowledge that, for U.S. federal Income Tax purposes, and for purposes of any corresponding provision under state or local Tax law, the sale by Sellers of the Assets to Buyer in exchange for the Purchase Price hereby is intended to be treated as follows: (i) the purchase by Buyer and sale by NHRMC of NHRMC’s equity or membership interests in the Joint Ventures is intended to be treated as a taxable sale and acquisition of partnership interests pursuant to Section 741 of the Code; (ii) the purchase by Buyer and sale by NHRMC of NHRMC’s equity interests in the Disregarded Entities is intended to be treated as a taxable sale and purchase of an undivided interest in the underlying assets of each of the Disregarded Entities pursuant to Treasury Regulations Section 301.7701-3 and Section 1001 of the Code; and (iii) the purchase by Buyer and sale by Sellers of the remaining Assets (including the equity or membership interests of the Seller Subsidiaries) not included in clauses (i) and (ii) is intended to be treated as a taxable sale and purchase of an undivided interest in such Assets pursuant to Section 1001 of the Code (the “Intended Tax Treatment”).

(b) The parties agree that the Purchase Price, including any Assumed Obligations and along with any other items treated as taxable consideration for the Assets for Tax purposes (the “Allocable Consideration”), shall be allocated separately among the Assets acquired from each Seller as described on Schedule 1.12(b)(1) (the “Purchase Price Allocation”), and in accordance with the methodology set forth on Schedule 1.12(b)(2) (the “Allocation Schedule Methodology”), which is consistent with Section 1060 of the Code and the Treasury Regulations promulgated thereunder. Buyer shall deliver a draft allocation schedule to each Seller within 180 days following the date when the Final Purchase Price is determined under this Agreement consistent with the Allocation Schedule Methodology (each, a “Purchase Price Allocation Schedule”). Sellers shall provide any comments to Buyer within 30 days of receipt thereof (the “Allocation Review Period”). Sellers shall be deemed to have accepted such
Purchase Price Allocation Schedule if Sellers do not provide any comments to Buyer during such Allocation Review Period. If Sellers provide any comments to such Purchase Price Allocation Schedule within such Allocation Review Period, the parties will negotiate in good faith to resolve any such comment(s). If Buyer and Sellers are unable to agree on any timely raised comments by Sellers to a draft Purchase Price Allocation Schedule, then Buyer and Sellers shall engage the Independent Accountants to resolve the matter, and the Independent Accountants’ determination shall be final and binding on the parties. The fees and expenses of the Independent Accountants shall be borne by each party in the percentage inversely proportionate to the percentage of the total items submitted for dispute that are resolved in such party’s favor.

(c) The parties shall prepare and file all Tax Returns in a manner consistent with the final Purchase Price Allocation Schedules and the Intended Tax Treatment, and shall not take a position on any Tax Return or agree to any proposed settlement or adjustment with respect thereto with any Governmental Entity inconsistent with such final Purchase Price Allocation Schedules and the Intended Tax Treatment without the written consent of the other parties unless required to do so by applicable Law.

(d) To the extent requested by Buyer at least 10 Business Days before the Closing Date, Buyer and Sellers shall cooperate in good faith to (i) allocate the Owned Real Property Purchase Price among the Owned Real Property to be transferred at Closing pursuant to the terms of Section 1.4(a) and (ii) prepare a schedule reflecting such mutually agreed-upon allocation of the Owned Real Property Purchase Price (the “Owned Real Property Allocation Schedule”). As used herein, the term “Owned Real Property Purchase Price” means the portion of the Purchase Price allocable to the Owned Real Property to be transferred at Closing pursuant to the terms of Section 1.4(a), as reasonably determined by Buyer and Sellers.

1.13 Withholding. Buyer shall be entitled to deduct and withhold from the consideration otherwise payable pursuant to this Agreement all amounts required under the Code or any applicable provision of any state, local or foreign Tax Law to be deducted and withheld. To the extent that any such amount is so deducted and withheld by Buyer, such amount shall be treated for all purposes of this Agreement as having been paid to the Person to whom such amount was deducted and withheld.

ARTICLE 2
REPRESENTATIONS AND WARRANTIES OF SELLERS

Sellers hereby jointly and severally represent and warrant to Buyer as set forth in Article 2:

2.1 Authorization. Each Seller has full power and authority to enter into this Agreement and the other Transaction Documents and to carry out the Transactions.

2.2 Binding Agreement. All corporate actions required to be taken by Sellers to authorize the execution, delivery and performance of this Agreement, the other Transaction Documents and the Transactions have been duly and properly authorized, taken or obtained by Sellers. No other action on the part of Sellers is necessary to authorize the execution, delivery and performance of this Agreement, the other Transaction Documents or the Transactions. This Agreement and the other Transaction Documents have been (or will be when executed and delivered) duly and validly executed and delivered by Sellers and, assuming due and valid execution by Buyer, this Agreement and other Transaction Documents constitute (or will constitute) a valid and binding obligation of Sellers enforceable in accordance with their terms, subject to (i) applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors’ rights generally from time to time in effect and (ii) limitations on the enforcement of equitable remedies.
2.3 Organization and Good Standing; No Conflict; Subsidiaries; Joint Ventures.

(a) Each Seller is a North Carolina county, corporation, or limited liability company, as the case may be, and is duly organized, validly existing and in good standing under the Laws of the State of North Carolina. Each Seller is properly registered to do business as a foreign corporation or foreign limited liability company in each jurisdiction in which such foreign registration is required. Each Seller has full power and authority to own, operate and lease its properties (including the Real Property) and to carry on its businesses as now conducted.

(b) Neither the execution and delivery by Sellers of this Agreement or any Transaction Document to which they are party nor the consummation of the Transactions by Sellers will (i) violate, conflict with or result in a breach of any provision of any Seller’s articles of incorporation, articles of organization, bylaws, limited liability company agreement or operating agreement, stockholders agreement, or other similar organizational, governance, or constitutive document; or (ii) violate any Order or Law applicable to any Seller, the Assets or the Healthcare Businesses.

(c) Schedule 2.3(c) sets forth a true, correct and complete list of each Seller Subsidiary, including for each (i) its jurisdiction of formation or incorporation, (ii) if it has outstanding equity or membership interests, its authorized stock, membership interests or equity interests and, as of the date hereof and as of the Closing, the owner(s) of all of its issued and outstanding shares of stock or other equity or membership interests and (iii) the states in which it is qualified to transact business as a foreign entity. Each Seller Subsidiary is duly organized, formed or incorporated, validly existing and in good standing under the Laws of its jurisdiction of organization, formation or incorporation. Each Seller Subsidiary has all requisite entity power and authority to own, operate or lease its respective properties and assets and to carry on the Healthcare Businesses as now being conducted by it. Each Seller Subsidiary is legally qualified to transact business as a foreign entity as set forth on Schedule 2.3(c) and is in good standing in all jurisdictions where the nature of its properties and the conduct of its business as now conducted require such qualification. None of the Seller Subsidiaries owns, holds or has the right or obligation (contingent or otherwise) to acquire any equity ownership interest in, or make any loan or capital contribution to, any Person other than in another Seller Subsidiary. All of the shares of capital stock or other equity or membership interests of the Seller Subsidiaries are duly authorized and validly issued and are fully paid and nonassessable and held free and clear of any Encumbrances (other than Permitted Encumbrances pursuant to the Securities Act and state securities Laws). To the extent a Seller Subsidiary has authorized capital stock or other equity interests, (x) there are no outstanding options, warrants, convertible securities, preemptive rights, rights of first refusal or offer, subscription rights, conversion rights or exchange rights that require any of the Seller Subsidiaries to issue or sell any of its capital stock or other equity interests (or securities convertible into or exchangeable or exercisable for shares of its capital stock or other equity interests), and (y) there are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to any Seller Subsidiary.

(d) Schedule 2.3(d) sets forth a true, correct and complete list of each Person other than the Seller Subsidiaries in which any Seller or any Seller Subsidiary, directly or indirectly, owns any equity, membership, or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity, membership, or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity, membership, or similar interest, including for each (i) its jurisdiction of formation or incorporation, (ii) if it has outstanding equity interests, its authorized stock or equity interests and, as of the date hereof and as of the Closing, the owner(s) of all of its issued and outstanding shares of stock or other equity interests and (iii) the states in which it is qualified to transact business as a foreign entity (each such Person, a “JV Entity”). Each JV Entity is duly organized, formed or incorporated, validly existing and in good standing under the Laws of its jurisdiction of organization, formation or incorporation. Each JV Entity has all requisite entity power and authority to own, operate or lease its respective properties and assets and to carry on the Healthcare Businesses as now being conducted by it.
Each JV Entity is legally qualified to transact business as a foreign entity as set forth on Schedule 2.3(d) and is in good standing in all jurisdictions where the nature of its properties and the conduct of its business as now conducted require such qualification. None of the JV Entities owns, holds or has the right or obligation (contingent or otherwise) to acquire any equity ownership interest in, or make any loan or capital contribution to, any Person other than as set forth on Schedule 2.3(d). All of the shares of capital stock or other equity interests of the JV Entities are duly authorized and validly issued and are fully paid and nonassessable and held free and clear of any Encumbrances (other than Permitted Encumbrances pursuant to the Securities Act and state securities Laws). There are no outstanding options, warrants, convertible securities, preemptive rights, rights of first refusal or offer, subscription rights, conversion rights or exchange rights that require any of the JV Entities to issue or sell any of its capital stock or other equity interests (or securities convertible into or exchangeable or exercisable for shares of its capital stock or other equity interests). There are no outstanding or authorized stock appreciation, phantom stock, profit participation or similar rights with respect to any JV Entity.

2.4 Contracts and Leases.

(a) With the exception of the Excluded Contracts, (i) Schedule 1.4(b) sets forth a true, correct and complete list of all Tenant Leases and (ii) Schedule 1.4(e) sets forth a list of a true, correct and complete list of all Lessor Leases. With the exception of the Excluded Contracts, Schedule 1.4(f)(i) sets forth a true, correct and complete list of all Capital Leases and Schedule 1.4(f)(ii) sets forth a true, correct and complete list of all Personal Property Leases, in each case, which require lease payments by or to any Seller with respect to the operation of the Healthcare Businesses during the remaining term of such Capital Lease or Personal Property Lease in excess of $100,000. As used herein, the term “Leases” shall collectively refer to all Tenant Leases, Lessor Leases, Capital Leases and Personal Property Leases; and each of the “Leases” shall be referred to herein as a “Lease”.

(b) Schedule 1.4(g) sets forth, by subpart, an accurate and complete list of the following Contracts (except for Excluded Contracts) to the extent such Contracts bind or affect any of the Assets or any Seller is a party to or is bound by such Contract in connection with the Healthcare Businesses or the Assets (collectively, the “Material Contracts”):

(i) all Contracts involving aggregate consideration in excess of $250,000 or requiring performance by any party thereto more than one year from the Effective Date;

(ii) all Contracts with any Physician, Practitioner, Referral Source or licensed healthcare facility, whether on an employment or independent contractor basis;

(iii) all Contracts for medical direction, the provision of professional healthcare services or medical supervision of the performance of healthcare services at the Healthcare Businesses or Facilities;

(iv) all Contracts that cannot be cancelled without penalty or without more than 60 days’ notice;

(v) all Contracts that relate to the acquisition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(vi) all Contracts that contain noncompetition or nonsolicitation provisions restricting the conduct of the Healthcare Businesses, or restricting the conduct of any Person
potentially competing with the Healthcare Businesses, in any geographic area or during any period of time;

(vii) all Contracts granting any exclusive rights, rights of first refusal, rights of first negotiation or similar rights to any Person;

(viii) except for agreements relating to trade receivables, all Contracts relating to Indebtedness (including guarantees), or imposing an Encumbrance on any Asset;

(ix) all managed care or Third-Party Payor agreements;

(x) all Contracts between or among any of Sellers on the one hand and any Affiliate of any Seller on the other hand;

(xi) all collective bargaining agreements or Contracts with any labor organization, union or association;

(xii) all employment or retention agreements with any officer or manager of the Healthcare Businesses (other than those described in clause (ii) above);

(xiii) all Contracts pursuant to which material payments are required upon a sale of substantially all the assets that constitute the Healthcare Businesses;

(xiv) all Contracts that provide for severance pay or any other material post-employment payment by, or financial obligation of, any Seller in excess of $50,000;

(xv) all joint venture, partnership or similar Contracts that involve the sharing of profits or revenues with any third party;

(xvi) all Contracts for the sale of any of the Assets or for the grant to any Person of any option, right of first refusal or preferential or similar right to purchase any of the Assets;

(xvii) all Contracts that provide for the assumption of any Tax, environmental or other Liability of any Person;

(xviii) all Intellectual Property Contracts that (A) involve payments either annually of greater than $50,000 or during the remaining term of greater than $150,000 and/or (B) are material to the operation of the Healthcare Businesses, taken as a whole;

(xix) all Lessor Leases, Tenant Leases and Capital Leases;

(xx) all Personal Property Leases that involve payments either annually of greater than $50,000 or during the remaining term of greater than $150,000;

(XXI) all Contracts related to the construction of improvements or alterations at any Real Property, including all Contracts related to architectural or engineering services, general contractor or subcontractor services, construction management or consulting services, grading services and/or the supplying of construction labor, materials or construction supplies (collectively, “Construction Contracts”); and
(xxii) all confidentiality agreements, nondisclosure agreements or similar agreements with (A) any third party that has had any discussions or negotiations with any Seller regarding the potential acquisition of the Hospitals, the Healthcare Businesses or any substantial portion thereof since January 1, 2017 or (B) any third party with whom any Seller has had any discussions or negotiations regarding the acquisition of such third party or any substantial portion of its business or any joint venture or similar joint business arrangement since January 1, 2017.

(c) Sellers have made available to Buyer true and complete copies of each Material Contract and each Lease. Each Material Contract and Lease is the valid and legally binding obligation of each applicable Seller (or each applicable Subsidiary or Affiliate of Sellers) and, to the knowledge of Sellers, of each other party thereto. Each Material Contract and Lease constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter thereof. In all material respects, all obligations required to be performed by the applicable Seller (or each applicable Subsidiary or Affiliate of Sellers) under the terms of each Material Contract and Lease have been performed to the extent such obligations are required to have been performed, and no act or omission by the applicable Seller (or applicable Subsidiary or Affiliate of Sellers) has occurred or failed to occur, which, with the giving of notice, the lapse of time, or both, would constitute a default under any Material Contract or Lease. There is no material default under any Material Contract or Lease by Sellers (or applicable Subsidiary or Affiliate of Sellers) and, to the knowledge of Sellers, no fact or circumstance exists that is reasonably likely to lead to a material default under any Material Contract or Lease. No security deposit or portion thereof deposited with respect to any Lease has been applied in respect of a breach or default under a Lease that has not been redeposited in full.

2.5 Consents and Notices.

(a) Except as set forth on Schedule 2.5(a), no Seller is a party to or bound by, nor are any of the Assets subject to, any Encumbrance (other than a Permitted Encumbrance), Lease, Material Contract or Order that requires the consent of any Person to the execution of this Agreement or the consummation of the Transactions by Sellers. Without limiting the foregoing, Schedule 2.5(a) sets forth each of the Leases and Material Contracts for which consent is required to assign such Leases and Material Contracts to Buyer and/or to effectuate the Transactions (the “Contract and Lease Consents”).

(b) Except as set forth on Schedule 2.5(b), no Seller is required to give any notice to, make any filing with, or obtain any material authorization, consent or approval of any Governmental Entity in order for the parties to consummate the Transactions.

2.6 Compliance with Laws. Except as set forth in Schedule 2.6 or as set forth in a writing delivered by Sellers to Buyer that specifically makes reference to this Section 2.6, if any, with respect to the Healthcare Businesses, Sellers are, and have been at all times during the last six years, in compliance with all applicable Laws in all material respects. Except as set forth in Schedule 2.6, with respect to the Healthcare Businesses, within the past six years, Sellers have not been charged with or given notice of, and to the knowledge of Sellers, Sellers are not under investigation with respect to any material violation of, or any obligation to take remedial action under, any (i) Law, (ii) Governmental Permit or Accreditation issued to any Seller or (iii) Order.

2.7 Environmental Matters. Sellers’ ownership and operation of the Healthcare Businesses and the Assets are, and have been at all times during the last six years, in compliance in all material respects with all Environmental Laws. Sellers have obtained all Governmental Permits necessary or required under Environmental Laws (the “Environmental Permits”) for the ownership and operation of the Healthcare Businesses and the Assets. All such Environmental Permits are in effect and, to Sellers’ knowledge, no action to revoke or modify any of such Environmental Permits has been taken or is

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pending. Except as set forth in Schedule 2.7, there is not now pending or, to Sellers’ knowledge, threatened any claim, investigation or enforcement action by any Governmental Entity concerning Sellers’ potential Liability under Environmental Laws in connection with the ownership or operation of the Healthcare Businesses or the Assets. To Sellers’ knowledge, there has not been a release or threatened release of any Hazardous Substance at, upon, in, under or from the Owned Real Property or Leased Real Property at any time, during the last six years, except in compliance with applicable Environmental Laws. Except as set forth on Schedule 2.7, to Sellers’ knowledge, there are presently no, and there have not been in the last six years, on any Owned Real Property and Leased Real Property, (i) any above-ground or underground storage tanks for the storage of Hazardous Substances, (ii) asbestos-containing material, (iii) materials or equipment containing polychlorinated biphenyls or (iv) landfills, surface impoundments or disposal areas. During the last six years, Sellers have not been, or, to Sellers’ knowledge, been alleged to be, a “potentially responsible party” under the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. §9610, et seq.) (“CERCLA”), or any other corresponding state Laws with respect to the operation of the Healthcare Businesses. With respect to the operation of the Healthcare Businesses, no Seller or any of its Affiliates have within the last six years transported, released, treated, stored, disposed of, arranged for or permitted the disposal of any Hazardous Substance in a manner that has given or would give rise to any Liability pursuant to Environmental Laws. Sellers have made available to Buyer complete copies and final results of any written reports, studies, analyses, tests or monitoring possessed by any Seller or any of its Affiliates or any of their Representatives that either (i) pertain to Hazardous Substances that are or at any time during the last six years were present in, on or under any Owned Real Property or Leased Real Property or (ii) otherwise concern compliance by any Seller or any of its Affiliates with Environmental Laws during the last six years.

2.8 Property.

(a) Schedules 1.4(a) and 1.4(b) set forth an accurate and complete list of all Owned Real Property and Leased Real Property, including the name, physical address, and brief description of each parcel of Owned Real Property and Leased Real Property, and, with respect to the Leased Real Property, all leases, subleases, licenses, amendments, extensions, renewals, guaranties, memoranda of lease and other agreements related thereto and all amendments to any of the foregoing. Schedule 1.4(e) sets forth an accurate and complete list of all Lessor Leases, including the name, physical address and brief description of the real property subject to any such Lessor Lease, and all leases, subleases, licenses, amendments, extensions, renewals, guaranties, memoranda of lease and other agreements related thereto and all amendments to any of the foregoing. Sellers have delivered to Buyer copies of all title insurance policies, surveys and other documentation in the possession, custody or control of Sellers or any of their Representatives relating to the Owned Real Property.

(b) Schedule 2.8(b) includes an accurate and complete list of the Personal Property having a book value in excess of $100,000 individually as of the Interim Balance Sheet Date. Except as disclosed on Schedule 2.8(b), since the Interim Balance Sheet Date, none of Sellers or any of their Subsidiaries have sold or otherwise disposed of any item or items of Personal Property having a book value in excess of $100,000 individually, other than Inventory items sold, used or disposed of in the ordinary course of business.

(c) Each Seller (and, if applicable, each Subsidiary and Affiliate of Sellers) has good and marketable fee simple title to all of its respective Owned Real Property and an effective leasehold interest in its respective Leased Real Property, and each Seller and Seller Subsidiary has title to its respective Personal Property.
(d) The Real Property is held by Sellers or one of their Subsidiaries or Affiliates, as applicable, free and clear of all Encumbrances except (i) liens for real property Taxes and assessments (A) not yet due or payable or (B) being contested in accordance with applicable Law and set forth on Schedule 2.8(b), (ii) mechanics’, carriers’, workmen’s, repairmen’s and other statutory liens (A) not yet due or payable or (B) being contested in accordance with applicable Law and set forth on Schedule 2.8(b), (iii) rights of way, building or use restrictions, exceptions, easements, agreements, covenants, variances, reservations and other limitations of record, to the extent, in each case, any such matter does not, individually or in the aggregate, materially affect the operation of the Healthcare Businesses, (iv) the Tenant Leases and the Lessor Leases, including the rights of tenants under the Lessor Leases, (v) zoning regulations and other Laws affecting the Real Property, (vi) with respect to the Owned Real Property only, matters that would be revealed by a current and accurate survey or physical inspection of the Real Property, or by a current or accurate lien search, to the extent, in each case, any such matter does not, individually or in the aggregate, materially affect the operation of the Healthcare Businesses, (vii) matters arising as a result of the acts or omissions of Buyer or any of its Affiliates, agents, employees, contractors or representatives, (viii) standard printed exceptions set forth in title policies, (ix) any other matters disclosed by the Title Commitment or the Surveys and (x) other such encumbrances as are set forth in Schedule 2.8(d) (collectively, the “Permitted Exceptions”). The Personal Property is held by Sellers free and clear of all Encumbrances except Permitted Encumbrances.

(e) Except as set forth on Schedule 2.8(e), none of Sellers or any of their Subsidiaries or Affiliates have received written notice from any Governmental Entity of, and there is not any pending or, to the knowledge of Sellers, threatened (i) condemnation or other Proceedings affecting the Owned Real Property or any part thereof, or the Leased Real Property or any part thereof; or (ii) any violation of any Laws (including zoning and land use ordinances, building codes and similar requirements) with respect to the Real Property or any part thereof, which have not heretofore been cured.

(f) The Real Property comprises all of the real property owned, leased or used in connection with the operation of the Healthcare Businesses. The Real Property is adequate and suitable to conduct the Healthcare Businesses as the Healthcare Businesses are operated as of the Closing Date.

(g) All buildings, structures, improvements, fixtures, utilities, building systems and equipment, parking areas, and all components thereof, included in or located at, in or upon the Real Property (collectively, the “Improvements”) are in reasonably good condition and repair, and have been maintained in accordance with normal industry practice for similar assets of like age and construction and are in normal operating condition for their intended purpose, normal wear and tear excepted, and are sufficient for the continued operation of the Healthcare Businesses as currently conducted. There are no structural deficiencies or latent defects affecting any of the Improvements and, to the knowledge of Sellers, there are no facts or conditions affecting any of the Improvements that would, individually, or in the aggregate, interfere in any material respect with the use or occupancy of the Improvements or any portion thereof in the operation of the Healthcare Businesses as currently conducted. The Real Property and the Improvements are in compliance in all material respects with applicable Laws and are being used, occupied and maintained in all material respects in accordance with all applicable zoning and entitlement codes, building codes, easements, rights of way, contracts, permits, insurance requirements, restrictions, building setback lines, restrictive covenants, reservations and entitlements, subdivision planning and building codes and other land use Laws and permits, consents and rules under such Laws and any administrative, occupational safety and Healthcare Laws. Certificates of occupancy and other Governmental Permits required by any Governmental Entity having jurisdiction over the Real Property are in full force and effect. Each Real Property is served by utilities in sufficient capacities in each case as necessary for the normal operation of the Healthcare Businesses.
(h) All easements, rights of way, permits, servitudes, licenses and similar rights related to the Real Property benefitting any Seller or any of Sellers’ Subsidiaries or Affiliates (collectively, the “Easements”) are, to the knowledge of Sellers, valid and enforceable and such Easements grant the rights purported to be granted thereby and all rights necessary thereunder for the ordinary operation of the Healthcare Businesses as currently conducted. Each Real Property has direct access, or indirect access through valid Easements, to and from public rights of way.

(i) Except with respect to the Lessor Leases, neither Sellers nor any of Sellers’ Subsidiaries or Affiliates have leased or otherwise granted to any Person the right to use or occupy any Owned Real Property or any portion thereof. Except with respect to the Lessor Leases, neither Sellers nor any of the Sellers’ Subsidiaries or Affiliates have subleased, licensed or otherwise granted any Person the right to use or occupy any Leased Real Property.

(j) No Person has a right to acquire any interest in the Owned Real Property or the interests of Sellers or any of the Sellers’ Subsidiaries or Affiliates, as applicable, in any Tenant Lease or Lessor Lease, including any options to purchase, rights of first refusal to purchase, or rights of first refusal to lease.

2.9 Healthcare Matters.

(a) Except as set forth on Schedule 2.9(a), with respect to the Healthcare Businesses and the Joint Venture Businesses, Sellers, Facilities and the Material Affiliations are, and at all times during the past six years, have been, in compliance in all material respects with all Healthcare Laws. Except as set forth on Schedule 2.9(a), no Seller or Material Affiliation has during the last six years (i) received notice, correspondence or communication of any violation, alleged violation or potential violation of, or Liability under, any such Laws, or to the effect that any Seller, Material Affiliation or any Affiliate or Representative of, or any Person acting on behalf of, any Seller or Material Affiliation, is or could potentially be under investigation or inquiry with respect to a violation or alleged violation of any Healthcare Law, applicable to any Seller or Material Affiliation, or (ii) been subject to any actual or alleged obligation to undertake, or to bear all or any portion of the cost of, any remedial action under any Healthcare Law. No event has occurred during the last six years, and no condition exists, that would reasonably be expected to (with or without notice or lapse of time) constitute or result directly or indirectly in (x) a violation by Sellers or the Material Affiliations of, or a failure on the part of Sellers or the Material Affiliations to comply with, any Healthcare Law relating to the operation and conduct of the Healthcare Businesses, the Joint Venture Businesses or any of their respective properties or facilities or (y) any obligation on the part of a Seller or Material Affiliation to undertake, or to bear all or any portion of the cost of, any remedial action.

(b) During the past six years, no Seller, Material Affiliation, or any of their respective Affiliates, employees, independent contractors, officers or directors, has, on behalf of any Seller or Material Affiliation or with respect to the Healthcare Businesses or Joint Venture Businesses, (i) violated any of the Healthcare Laws in any material respect; (ii) presented or caused to be presented a claim for a medical or other item or service that was not provided as claimed (other than claims submitted in error that have been corrected in the ordinary course of business and that individually or in the aggregate would not be considered material in any fiscal year), or is for a medical or other item or service where such Person knew or should have known the claim was false or fraudulent, or (iii) presented or caused to be presented a claim to any Government Program for a designated health service furnished pursuant to a prohibited referral by a Physician pursuant to the Stark Law.

(c) Neither Sellers, the Material Affiliations, the Practitioners, the Facilities, nor any of their respective employees, officers, directors or independent contractors have during the last six years
been convicted of, charged with, investigated for, or has engaged in conduct that would constitute, an offense related to Medicare or any other Government Program or, convicted of, charged with, investigated for or engaged in conduct that would constitute a violation of any Law related to fraud, theft, embezzlement, breach of fiduciary duty, kickbacks, bribes, other financial misconduct, obstruction of an investigation or controlled substances. No employee of or any independent contractor to any Seller or Material Affiliation (with respect to the Healthcare Businesses or Joint Venture Businesses) is excluded from participating in any Government Program, nor, to the knowledge of Sellers, is any such exclusion threatened or pending. None of the current officers, directors, agents, or managing employees (as such term is defined in 42 U.S.C. § 1320a-5(b)) of any Seller or Material Affiliation (with respect to the Healthcare Businesses or Joint Venture Businesses), or any such person in the last six years while employed or engaged by any Seller or Material Affiliation, have been excluded from a Government Program, been subject to sanction pursuant to 42 U.S.C. § 1320a-7a or 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b, nor are any such exclusions, sanctions or charges pending or, to Sellers’ knowledge, threatened.

(d) Except as set forth on Schedule 2.9(d), Sellers are, and during the past six years have been, in compliance in all material respects with HIPAA and all other applicable Information Privacy and Security Laws. Sellers and the Material Affiliations have undertaken surveys, audits, inventories, reviews, analyses and/or assessments of all areas of the Healthcare Businesses and the Joint Venture Businesses required by the HITECH Act and the administrative simplification provisions of HIPAA. Sellers have provided to Buyer accurate and complete copies of the compliance policies and/or procedures and privacy notices of the Facilities relating to Information Privacy and Security Laws. All of Sellers’, the Material Affiliations’ and the Facilities’ respective workforces (as such term is defined in 45 C.F.R. § 160.103) with access to Personal Information have received or are scheduled to receive, in accordance with the timeframes required by HIPAA and such Sellers’, Material Affiliation’s, providers or Facilities’ respective privacy policies, training with respect to compliance with Information Privacy and Security Laws. Except as set forth on Schedule 2.9(d), with respect to the Healthcare Businesses and Joint Venture Businesses, during the past six years (i) neither Sellers nor the Material Affiliations have received notice of, and there are no pending or, to the knowledge of Sellers, threatened Proceedings with respect to any alleged “breach” as defined in 45 C.F.R. § 164.402 (a “Breach”) or any other material violation of HIPAA or any other Information Privacy and Security Laws by Sellers, the Material Affiliations or any of their respective “workforce” (as such term is defined under HIPAA); (ii) no Breach, or other material violation of any Information Privacy and Security Laws, by Sellers, the Material Affiliations or their respective “workforce” has occurred; and (iii) no successful “security incident” as defined in 45 C.F.R. § 164.304 has occurred with respect to “protected health information” as defined in 45 C.F.R. § 164.103 in the possession or under the control of Sellers or the Material Affiliations. Sellers and each Material Affiliation have entered into business associate agreements with all third parties acting as a business associate (as defined in 45 C.F.R. § 160.103) of any Seller, Material Affiliation or any component of the Healthcare Businesses or Joint Venture Businesses to the extent required by HIPAA. No Seller, Material Affiliation or component of the Healthcare Businesses or Joint Venture Businesses (x) to the knowledge of Sellers, is under investigation by any Governmental Entity for a violation of HIPAA; or (y) has received any notices from the United States Department of Health and Human Services Office for Civil Rights, the U.S. Justice Department, the FTC or the Attorney General of any state or territory of the United States relating to any such violations. During the past six years, there has not been any incident that would trigger a notification or reporting requirement under any HIPAA business associate agreement or HIPAA, including a Breach with respect to any unsecured protected health information (as such terms are defined in 45 C.F.R. § 164.402) maintained by or on behalf of the Healthcare Businesses or Joint Venture Businesses. Sellers have provided to Buyer accurate and complete copies of any written complaint(s) delivered to any Seller, Material Affiliation or the Facilities during the past six years alleging a violation of any Information Privacy and Security Laws.
(e) Each respective Seller, Facility and Material Affiliation is, and for the past six years has been, duly licensed in accordance with applicable Law and has held all Governmental Permits that are necessary or advisable to own the Assets and operate the Healthcare Businesses and Joint Venture Businesses as currently or during such period owned and operated. All such Governmental Permits are listed on Schedule 2.9(e), which sets forth the type of licensed facility, the license number and, for each Hospital, the number of licensed beds at such Hospital. Sellers have provided accurate and complete copies to Buyer of each Governmental Permit set forth in Schedule 2.9(e). Each Hospital, pharmacy, laboratory or other ancillary departments, facilities, services, departments and other operations comprising the Healthcare Businesses or Joint Venture Businesses, or operated for the benefit of the Healthcare Businesses or Joint Venture Businesses, that are required by Law to be specifically licensed are, and have been for the past six years, duly licensed by the appropriate Governmental Entities. All of the Governmental Permits required to be listed on Schedule 2.9(e) are valid, in good standing and in full force and effect and not subject to meritorious challenge. There are no provisions in, or agreements relating to, any Governmental Permits that preclude or limit in any material respect any Seller, Facility or Material Affiliation from operating the Facilities or carrying on the Healthcare Businesses or Joint Venture Businesses as currently conducted. Each of the Physicians and other licensed professional providers employed by any Seller or who provide services to or at the Healthcare Businesses or Joint Venture Businesses on an independent contractor basis (each, a “Practitioner” and, collectively, the “Practitioners”) is, and at all times during which such Practitioner performed services at or on behalf of the Healthcare Businesses or Joint Venture Businesses has been, in possession of all Governmental Permits necessary for such Practitioner’s performance of such services. Each of the Physicians and other licensed professional providers on the medical staff (each, a “Medical Staff Member”) of any Facility is, and at all times during which such Medical Staff Member performed services at or on behalf of the Healthcare Businesses or Joint Venture Businesses has been, in possession of all Governmental Permits necessary for such Medical Staff Member’s performance of such services. There is no pending or, to the knowledge of Sellers, threatened Proceeding by or before any Governmental Entity to revoke, cancel, rescind, suspend, restrict, modify or refuse to renew any material Governmental Permit owned or held by any Seller, Practitioner, Facility or any component of the Healthcare Businesses or Joint Venture Businesses. No event has occurred and no facts exist with respect to any such Governmental Permits that allow or, after notice or the lapse of time or both, would allow the suspension, revocation or termination of any Governmental Permits, or would result in any other impairment in the rights of any holder thereof. No Seller, Practitioner, Facility, or Material Affiliation has received any notice (whether written or oral from any Governmental Entity regarding any violation of any such Governmental Permits (other than any surveys or deficiency reports for which a plan of correction has been accepted or approved by the applicable Governmental Entity)). Sellers have delivered to Buyer accurate and complete copies of all material survey reports, deficiency notices, plans of correction and related correspondence received by any Seller, Material Affiliation or any Facility, since January 1, 2014, in connection with the Governmental Permits relating to the Healthcare Businesses or the Joint Venture Businesses. Except as set forth on Schedule 2.9(e), no Governmental Permit relating to the Healthcare Businesses or Joint Venture Businesses will expire, be terminated or be restricted as a result of the Transactions.

(f) Schedule 2.9(f) sets forth an accurate and complete list of all accreditations and certifications held by Sellers, the Hospitals, the Facilities, the Material Affiliations, the Healthcare Businesses and the Joint Venture Businesses (collectively, the “Accreditations”). All such Accreditations are, and have been for the past six years, valid, unrestricted, in good standing and in full force and effect. Each Hospital is duly accredited, without conditions, by DNV GL – Healthcare through the period set forth on Schedule 2.9(f). No event has occurred or other fact exists with respect to such Accreditations that allows or, after notice or the lapse of time or both, would allow revocation or termination of any such Accreditations, or would result in any other material impairment in the rights of any holder thereof. There is no pending or, to the knowledge of Sellers, threatened Proceeding by any accrediting body to revoke, cancel, rescind, suspend, restrict, modify or not renew any such Accreditation, and no such
Proceedings, surveys or actions are pending or, to the knowledge of Sellers, threatened or imminent. Since the date of each most recent Accreditation survey, none of Sellers, the Hospitals or the Facilities has made any changes in policy or operations that would reasonably be likely to cause any Facility to lose such Accreditations. Sellers have delivered to Buyer a copy of each Facility’s most recent Accreditation reports and any material reports, documents or correspondence relating thereto.

(g) Each of the Hospitals, Joint Venture Businesses and the other Healthcare Businesses, to the extent they are receiving payments from Medicare, Medicaid, TRICARE, NC Health Choice or any other applicable state or federal healthcare program (collectively, the “Government Programs”) (i) are certified, and have been certified for the past six years, for participation in such Government Programs, (ii) have, and have had for the past six years, current and valid provider Contracts with each of such Government Programs, (iii) to the extent such entity bills Government Programs on behalf of Practitioners, has, and for the past six years has had, valid reassigments from such Practitioners that permits such entity to bill Government Programs and (iv) are and have been in compliance in all material respects during the past six years, with the conditions of participation of such Government Programs. Except as set forth in Schedule 2.9(h), in the past six years, Sellers have not received any notice of any pending or threatened investigations, surveys or audits by any Governmental Entity with respect to the operation of the Healthcare Businesses, other than audits or surveys in the ordinary course of business. Sellers and the Material Affiliations are parties to, or are otherwise entitled to bill under, current Payor Agreements with certain private nongovernmental payors or programs, including any private insurance payor or program, self-insured employer or Third-Party Payor (each, a “Private Program”), under which Sellers and the Material Affiliations directly or indirectly receive payments. Sellers have delivered accurate and complete copies of all Payor Agreements to Buyer.

(h) Except as set forth in Schedule 2.9(h), Sellers and the Material Affiliations are, and for the past six years have been, in compliance in all material respects with the conditions of participation in the Government Programs and Private Programs and with the terms of the Payor Agreements. The Payor Agreements are each in full force and effect, and no events or facts exist that would cause any Payor Agreement to be suspended, terminated, restricted or withdrawn. Except as set forth on Schedule 2.9(h), during the last six years, none of Sellers or the Material Affiliations have received any notice (whether written or oral) from any Government Program or Private Program to the effect that it intends to cease or materially alter its business relationship with any Seller or Material Affiliation (whether as a result of the Transactions or otherwise). No Government Program or Private Program (i) has indicated in writing to Sellers or any Material Affiliation its intent to cancel or otherwise substantially and adversely modify its relationship with any Seller or Material Affiliation or (ii) has advised any Seller or Material Affiliation (whether orally or in writing) of any material problem or dispute that remains unresolved. During the last six years, all billing practices of Sellers and the Material Affiliations with respect to all Government Programs and Private Programs have been conducted in compliance with all applicable Laws and the billing guidelines of such Government Programs or Private Programs in all material respects. Except as set forth in Schedule 2.9(h) and except with respect to routine overpayments consistent with historical practice refunded in the ordinary course of business, during the last six years, none of Sellers, the Material Affiliations or the Facilities have billed or received any payment or reimbursement in excess of amounts allowed by Law or the billing guidelines of any Private Programs or Government Programs. During the last six years, no Seller or Material Affiliation has submitted any claims that are cause for civil penalties under, or mandatory or permissive exclusion from, any Government Program, Private Program or under the terms of a Payor Agreement. During the last six years, Sellers and the Material Affiliation have maintained such records as required by applicable Laws or Third-Party Payor policy supporting the provision of services billed under all Government Programs and Private Programs. Except as set forth on Schedule 2.9(h) and other than ordinary and routine Third-Party Payor claims auditing processes, there is no Proceeding, survey or other action pending or, to the knowledge of Sellers, threatened involving any Government Program or any Private Program, including
the Facilities’ participation in and the reimbursement received by Sellers, the Material Affiliations and the Facilities from the Government Programs or any Private Program, and no such Proceedings surveys or actions are pending or, to Sellers’ knowledge, threatened or imminent. During the last six years, none of Sellers, the Material Affiliations or any of their respective employees, officers, directors or agents (or any former employee, officer, director or agent) has committed a violation of any Law relating to payments and reimbursements under any Government Program or any Private Program. Schedule 2.9(h) contains a list of all NPIs and all provider numbers under the Government Programs issued to and held by Sellers, the Material Affiliations and the Facilities, all of which are in full force and effect.

(i) Sellers have made available to Buyer true, correct and complete copies of the bylaws of the medical staffs of the Facilities, to the extent required by Law or Accreditation standards, as well as a list of all members of each Facility’s medical staff as of the Effective Date. Except as set forth in a writing delivered by Sellers to Buyer that specifically makes reference to this Section 2.9(i), there are no (i) pending or, to the knowledge of Sellers, threatened adverse actions with respect to any medical staff member of any of the Facilities or any applicant thereto, including any adverse actions for which a medical staff member or applicant has requested a judicial review hearing that has not been scheduled or that has been scheduled but has not been completed or (ii) pending or, to the knowledge of Sellers, threatened disputes with applicants, medical staff members or health professional affiliates, and all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Except as set forth on Schedule 2.9(i), no medical staff members of the Hospitals have resigned while under investigation by the applicable medical staff or had their privileges revoked or suspended in the past six years. Notwithstanding the foregoing provisions of this Section 2.9(i), Sellers shall not be required to disclose any information pursuant to this Section 2.9(i) where such disclosure is prohibited by applicable Law.

(j) Each Seller and Material Affiliation is in compliance with all applicable Laws regarding the selection, deselection and credentialing of its employed and independent contractor Physicians and other Practitioners, including verification of licensing status and eligibility for reimbursement under Government Programs.

(k) Sellers have provided to Buyer an accurate and complete copy of each Facility’s current compliance program materials, including all program descriptions, compliance officer and committee descriptions, ethics and risk area policy materials, training and education materials, auditing and monitoring protocols, reporting mechanisms and disciplinary policies. During the last six years, Sellers, the Material Affiliations and the Facilities have conducted their operations in accordance with their respective compliance programs in all material respects. Except as set forth on Schedule 2.9(k), no Seller or Material Affiliation (i) is a party to a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services ("OIG"); (ii) has any reporting obligations pursuant to any settlement agreement entered into with any Governmental Entity; (iii) to the knowledge of Sellers, has been the subject of any Government Program investigation conducted by any federal or state enforcement agency during the last six years; (iv) has been a defendant in any qui tam/False Claims Act litigation during the last six years; (v) has been served with or received any search warrant, subpoena, civil investigative demand, contact letter, telephone or personal contact by or from any federal or state enforcement agency during the last six years; or (vi) has received any complaints through any Seller’s or Material Affiliation’s compliance “hotline” from employees, independent contractors, vendors, Physicians, patients or any other Persons during the past six years that could reasonably be considered to indicate that such Seller or Material Affiliation has violated, or is currently in violation of, any applicable Law. For purposes of this Agreement, the term “compliance program” refers to provider programs of the type described in compliance guidance published by the OIG.
(I) No Seller, Facility or Material Affiliation nor any of their respective predecessors has received any loans, grants, loan guarantees, donations, monies or other financial assistance pursuant to the Hill-Burton Act program, the Health Professions Educational Assistance Act, the Nurse Training Act, the National Health Planning and Resource Development Act, or the Community Mental Health Centers Act or similar Laws relating to healthcare facilities that remain unpaid or that impose any restrictions on the Facilities, Healthcare Businesses, Joint Venture Businesses or the Assets.

(m) During the last six years, Sellers and the Material Affiliations have timely filed all required Cost Reports relating to the Healthcare Businesses or the Joint Venture Businesses for all fiscal years through and including the fiscal year ended September 30, 2019 and has provided copies of all Cost Reports relating to the Healthcare Businesses and Joint Venture Businesses since the fiscal year ended September 30, 2017 to Buyer. All Cost Reports relating to the Healthcare Businesses or the Joint Venture Businesses filed by or on behalf of Sellers or the Material Affiliations during the last six years accurately reflect the information required to be included therein in all material respects, and such Cost Reports do not claim, and neither Sellers, the Facilities nor the Material Affiliations have received, reimbursement in any amount materially in excess of the amounts allowed by Law or any applicable agreement to which such entity is a party. Except as set forth on Schedule 2.9(m), no facts or circumstances exist that would reasonably be expected to give rise to any material disallowance under any such Cost Reports. Schedule 2.9(m) indicates which of such Cost Reports have not been audited and finally settled and includes a brief description of any and all notices of program reimbursement, proposed or pending audit adjustments, disallowances, appeals of disallowances and any and all other unresolved claims or disputes in respect of such Cost Reports. Sellers and the Material Affiliations have established adequate reserves to cover any potential reimbursement obligations that Sellers or any Material Affiliation may have in respect of such Cost Reports, and such reserves are accurately set forth in the Financial Statements of such entity.

(n) For the three fiscal years of the U.S. federal government (“Federal Fiscal Year”) or calendars years, as applicable, immediately preceding the current Federal Fiscal Year or current calendar year, as applicable, each Seller and each Material Affiliation has timely filed all quality and performance reports, data, and other information to be filed with the Centers for Medicare & Medicaid Services (“CMS”), with respect to both Physicians and hospitals, inpatients and outpatients, as required by CMS Reporting, and all reports, data and other information submitted by a Seller or Material Affiliation in support of its quality and performance for the avoidance of negative payment adjustments or in support of positive payment adjustments are in all material respects accurate, correct and supportive of its claims of quality and performance and receipt of positive payment adjustment and avoidance of negative payment adjustments, as applicable. During the last six years, none of Sellers, the Material Affiliations or any of their respective officers, directors or managing employees have knowingly and willfully made or caused to be made a false statement or representation of a material fact in any report, data and other information supporting its CMS Reporting.

(o) During the last six years, none of Sellers, the Material Affiliations or the Facilities has received any written notification of any pending or threatened Proceeding or other action from any Governmental Entity, Private Program or patient of any potential or actual material noncompliance by, or material Liability of, any Seller, Material Affiliation, the Facilities, the Practitioners or the Assets under any Law. Sellers and the Material Affiliations have timely filed all reports, data, and other information required to be filed with such Governmental Entities regarding Sellers, the Facilities, the Material Affiliation and the Assets during the last six years.

(p) All of Sellers’, the Material Affiliations’ and the Facilities’ Contracts with a Physician or any Immediate Family Members of any Physicians, or any entity in which Physicians or Immediate Family Members of any Physicians are equity owners, involving services, supplies, payments,
or any other type of remuneration, and all of Sellers’, the Material Affiliations’ and the Facilities’ leases of personal or real property with such Physicians, Immediate Family Members of any Physician or entities are in compliance with applicable Laws in all material respects.

(q) Except in material compliance with all applicable Laws, none of Sellers or the Material Affiliations are party to any Contract (including any joint venture or consulting agreement) to provide services, lease space, lease equipment or engage in any other venture or activity related to any Seller, Material Affiliation, Facility, the healthcare Businesses, the Joint Venture Businesses or the Assets with any Physician, Immediate Family Member of a Physician, or other Person that is in a position to make or influence referrals to or otherwise generate business for any Seller, Material Affiliation or Facility.

(r) None of Sellers, the Material Affiliations or any Representative of any Seller or Material Affiliation has engaged in any activities that are prohibited under 42 U.S.C. §§ 1320a-7, et seq., or the regulations promulgated thereunder, or under any other federal or state Laws.

(s) All off-campus locations of each Hospital that are treated by such Hospital as being a provider-based location or department of such Hospital (i) were in operation and billing the Medicare program under the outpatient prospective payment system for covered outpatient department services prior to November 2, 2015, (ii) are in compliance with the site-neutral programs of Section 603 of the Bipartisan Budget Act of 2015 and CMS Regulations 42 C.F.R. § 413.65 and (iii) have been reported as practice locations on such Hospital’s Medicare application. All on-campus locations of each Hospital that are required to be included on the CMS Medicare Enrollment Application have been reported.

(t) None of the HHAs, nor any Seller or Material Affiliation, in connection with the operation of the HHAs, has during the last six years made a claim to any Government Program or any Private Program for: (i) a patient who has not been certified or re-certified as needing home health services in the timeframes and manner set forth in 42 C.F.R. § 484.55 (other than certification errors that are corrected in the ordinary course of business that would not result in an overpayment); (ii) a service that is not an approved home health service; or (iii) a service that does not comply with the plan of care approved for the patient. The effective dates of the initial enrollment of each of the HHAs in Medicare occurred prior to February 1, 2012, and neither of the HHAs has undergone a change in majority ownership as such term is defined in 42 C.F.R. § 424.502 since February 1, 2012.

(u) None of the Hospices or any Seller or Material Affiliation, in connection with the operation of the Hospices, has made a claim to any Government Program or any Private Program in the last six years for: (i) a patient who has not been certified or re-certified as terminally ill in the timeframes and manner set forth in 42 C.F.R. §§ 418.22 and 418.25 (other than certifications in error that are corrected in the ordinary course of business and that would not result in an overpayment); (ii) a service that is not an approved hospice service; or (iii) a service that does not comply with the plan of care approved for the patient. All claims, returns, invoices, reports, including cap reports, and other forms made by the Hospices, Sellers or the Material Affiliations, in connection with the operation of the Hospices, to any Government Program or any Private Program in the last six years are true, complete and accurate in all material respects. As of the Closing Date, (i) the Hospices have no Medicare Cap Liability for Cost Reports for any fiscal year through and including the fiscal year ended September 30, 2019 and (ii) to the knowledge of Sellers, no circumstances currently exist that would cause the Hospices to exceed their Medicare Cap Liability at the end of the current Medicare cap year. For purposes of this Section 2.9(u), “Medicare Cap Liability” means any Liability for amounts paid to Sellers or the Material Affiliations in excess of the maximum “caps” allowed pursuant to the limitation on payments for hospice services described in 42 U.S.C. § 1395f and the applicable Medicare regulations.
(v) Sellers and the Material Affiliations, in connection with the operation of the CAHs, have been during the last six years and are currently in compliance in all material respects with the requirements set forth in 42 U.S.C. § 1395i-4, and 42 C.F.R. Part 485, Subpart F, including the status and location requirements set forth in 42 C.F.R. § 485.610, and, to the extent applicable, the requirements for swing-beds set forth in 42 C.F.R. § 485.645. None of the CAHs, or Sellers or the Material Affiliations in connection with the operation of the CAHs, has received notice from CMS or any other Governmental Entity of its intent to terminate the critical access hospital designation of any of the CAHs, and no events or facts exist that would reasonably be expected to jeopardize the critical access hospital designation of any of the CAHs.

(w) The entities set forth in Schedule 2.9(w) (i) participate in the Medicare program as an accountable care organization in the Medicare Shared Savings Program (“MSSP”), (ii) have been during the last six years and are currently in compliance in all material respects with the requirements set forth in 42 C.F.R. Part 425, and any guidance promulgated by CMS pursuant to the MSSP and (iii) have been during the last six years and are currently in compliance in all material respects with each MSSP Participation Agreement that each such entity has entered into with CMS, as well as each provider agreement with providers participating in the MSSP. Sellers and the Material Affiliations have repaid all amounts owed to any Private Program and Government Program, including MSSP, pursuant to any shared savings or bundled payments program, or any amounts owed by Sellers or any Material Affiliation, as applicable, to any participant participating in any bundled payments or shared savings program, including the MSSP.

(x) Except as set forth on Schedule 2.9(x), no insurance application, to the North Carolina Department of Insurance or any other Governmental Entity (each, an “Insurer Application”) has been made by any Seller or Material Affiliation that is currently pending or open before such Governmental Entity. No Insurer Application filed by any Seller or Material Affiliation within the past six years has been ultimately denied by any Governmental Entity or withdrawn by such Seller or Material Affiliation. Sellers and each Material Affiliation have properly filed all required Insurer Applications necessary to the Healthcare Businesses and Joint Venture Businesses, and such Insurer Applications are complete and correct in all material respects.

(y) For the six fiscal years or calendar years, as applicable, immediately preceding the current calendar year, Sellers and the Material Affiliations, as applicable, have timely filed all reports, data and other information to be filed with CMS regarding Sellers’ and the Material Affiliations’ use of certified electronic health record technology (“CEHRT”) as required by the HITECH Act, and its implementing regulations, and have successfully attested to meaningful use of CEHRT as required by the HITECH Act, and, all reports, data and other information submitted by Sellers or the Material Affiliations in support of their attestation of CEHRT meaningful use and claim for HITECH Payments and avoidance of payment adjustment are accurate and correct in all material respects and support their claims of required CEHRT use and receipt of HITECH Payments and avoidance of payment adjustments. During the last six years, neither Sellers nor the Material Affiliations have, and no employee, officer or director of any Seller or Material Affiliation, has knowingly and willfully made or caused to be made a false statement or representation of a material fact in any report, data and other information supporting Sellers’ or the Material Affiliations’ attestation of CEHRT use.

(z) During the past six years, none of Sellers, the Material Affiliations or the Facilities have performed or permitted the performance of any experimental or research procedure or study involving patients in the Facilities that were not authorized and/or conducted in accordance with the policies and procedures of the Facilities that comply with applicable Laws, including applicable U.S. Food and Drug Administration regulations.
(aa) Except as set forth on Schedule 2.9(aa), other than with respect to the Transactions, no application for any Certificate of Need, exemption certificate or declaratory ruling (collectively, the “Applications”) has been made by any Seller or Material Affiliation with any Governmental Entity that is currently pending or open before such Governmental Entity or has been approved but relates to projects not yet completed. Except as set forth on Schedule 2.9(aa), no Application filed by any Seller or Material Affiliation within the past six years has been ultimately denied by any Governmental Entity or withdrawn by such Seller or Material Affiliation. Each Seller and Material Affiliation has properly filed all required Applications necessary to the Healthcare Businesses and the Joint Venture Businesses, which Applications are complete and correct in all material respects with respect to any and all improvements, projects, changes in services, construction and equipment purchases, and other changes for which approval is required under any applicable federal or state Law.

(bb) Other than as set forth in Schedule 2.9(bb), no Affiliate of any Seller or Material Affiliation, or Referral Source of Seller or Material Affiliation, directly or indirectly: (i) other than with respect to employment agreements delivered by Sellers to Buyer, provides any services to the Healthcare Businesses or Joint Venture Businesses or is a lessor, lessee or supplier to the Healthcare Businesses or Joint Venture Businesses; (ii) has any cause of action or other claim whatsoever against or owes any amount to, or is owed any amount by, any Seller or Material Affiliation; (iii) has any financial interest in or owns property or rights used in the Healthcare Businesses or Joint Venture Businesses; (iv) is a party to any Contract relating to the Assets or the Healthcare Businesses or Joint Venture Businesses (other than employment compensation or employee benefits payable in the ordinary course of business); (v) received from or furnished to any Seller or Material Affiliation any goods or services; or (vi) has any financial interest in, or serves as an officer, manager, director of any customer, competitor or vendor or supplier of any Seller or Material Affiliation.

(cc) All financial relationships (as such term is defined by the Stark Law) between Sellers, their Affiliates and any Material Affiliation, on the one hand, and a Referral Source to any such entity, on the other hand, are commercially reasonable and the consideration paid under such arrangements is consistent with fair market value, including employment, lease, medical director, co-management, and other similar arrangements.

(dd) NHRMC entered into an agreement dated July 9, 2015 with Elderhaus, Inc. ("Elderhaus"), which owns and operates an approved PACE Organization (within the meaning of 42 C.F.R. § 460.6) (the “PACE Organization”) and a capitated program of all-inclusive care for the elderly (the “PACE Program”) pursuant to a PACE program agreement with CMS and the North Carolina Department of Health, Division of Medical Assistance (the “PACE Program Agreement”). NHRMC and, to the knowledge of Sellers, Elderhaus, have been during the past six years and currently are in compliance in all material respects with the requirements set forth in 42 U.S.C. §§ 1395eee and 1396u-4, and 42 C.F.R. Part 460, and the terms and conditions set forth in the PACE Program Agreement. None of NHRMC or, to the knowledge of Sellers, Elderhaus or the PACE Organization, is subject to any enrollment or payment suspension, restriction or corrective action plan in connection with the PACE Program. None of NHRMC or, to the knowledge of Sellers, Elderhaus or the PACE Organization has received any written notice from any Governmental Entity during the past six years of any compliance deficiencies or intent to issue civil money penalties or terminate the PACE Provider Agreement in connection with the PACE Program, and no events or facts exist that would reasonably be expected to jeopardize or impair the ability of NHRMC to continue to contract with Elderhaus regarding the PACE Program.

(ee) The AAP Program Amount is zero.
2.10 Title to Assets; Sufficiency and Condition of Assets.

(a) Sellers own and hold good and marketable title to, or have valid and subsisting leasehold interests in, all assets, real, personal or mixed, whether tangible or intangible (including all Intellectual Property), used or held for use in, or otherwise relating to, the Healthcare Businesses or located at the Facilities, free and clear of all Encumbrances other than the Permitted Encumbrances, all of which shall be a part of the Assets, except for the Excluded Assets. No third party owns or holds in its name any assets, real, personal or mixed, whether tangible or intangible (including all Intellectual Property), used or held for use in, or otherwise relating to, the Healthcare Businesses or located at the Facilities, except for (i) the Leased Real Property set forth on Schedule 1.4(b), (ii) furniture and equipment owned or leased by the applicable counterparties to the Lessor Leases set forth on Schedule 1.4(e), (iii) the Capital Leases and Personal Property Leases set forth on Schedule 1.4(f)(i) and Schedule 1.4(f)(ii), respectively, or (iv) Excluded Assets. At the Closing, Sellers will convey to Buyer, and Buyer will acquire, good and marketable title to, or valid and subsisting leasehold interests in, the Assets, free and clear of all Encumbrances, other than Permitted Encumbrances. There are no outstanding rights (including any right of first refusal or right of first offer), options or Contracts giving any third party any current or future right to require any Seller to sell or transfer to a third party any interest in any of the Assets.

(b) The Assets (together with the Excluded Assets) constitute all the assets used in or necessary to operate, and are adequate for the purposes of operating, the Healthcare Businesses in the manner in which they have been operated before the Effective Time. There are no facts or conditions affecting the Assets that could, individually or in the aggregate, interfere in any material respect with the use, occupancy or operation of the Assets as currently used, occupied or operated, or their adequacy for such use. Following the consummation of the Transactions, no Seller or any of its Affiliates will retain any asset necessary to operate the Healthcare Businesses in the manner in which it has been operated before the Effective Time. The Assets will enable Buyer to operate the Healthcare Businesses after the Effective Time in substantially the same manner as operated by Sellers before the Effective Time. All tangible Assets are in reasonably good operating condition and repair and are reasonably adequate for the uses to which they are being put, and none of the tangible Assets is in need of maintenance or repairs, except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(c) All funds currently held by NHRMC Foundation can remain with NHRMC Foundation immediately after the Closing based on the terms of the restricted gift or endowment agreements applicable to those funds.

2.11 Financial Statements; Indebtedness.

(a) Attached as Schedule 2.11(a) are (a) the audited balance sheets, and statements of income, changes in net assets and cash flows of NHRMC with respect to the operation of the Healthcare Businesses as of September 30, 2018 and September 30, 2019, and for the years ended September 30, 2018 and September 30, 2019, and (b) the unaudited balance sheet (the “Interim Balance Sheet”) and statements of income, changes in net assets and cash flows of NHRMC with respect to the operation of the Healthcare Businesses as of June 30, 2020 (the “Interim Balance Sheet Date”) and for the nine months then ended (collectively, the “Financial Statements”). The Financial Statements are true, correct and complete, are derived from the books and records of Sellers and fairly and accurately present the financial condition and results of operations, changes in net assets and cash flows, as applicable, of Sellers with respect to the operation of the Healthcare Businesses as of and for the periods then ended, in each case in conformity with GAAP consistently applied during such periods, except, in the case of the unaudited Financial Statements, that the Financial Statements (i) do not contain footnotes and (ii) are subject to normal year-end adjustments and reclassifications, the effect of which is not material,
individually or in the aggregate. There are no Liabilities, whether accrued or fixed, absolute or contingent, matured or unmatured, determined or determinable, of Sellers of a nature required to be reflected on a balance sheet prepared in accordance with GAAP, other than any such Liabilities (x) reflected or reserved against on the Financial Statements or the notes thereto, (y) incurred since the date of the Interim Balance Sheet in the ordinary course of business of Sellers, none of which, individually or in the aggregate, is material in amount, or (z) those that would not be Assumed Obligations.

(b) Schedule 2.11(b) sets forth all Indebtedness of Sellers. For each item of Indebtedness of Sellers, Schedule 2.11(b) correctly sets forth, as of the date hereof, the debtor or borrower, creditor or lender, outstanding principal amount and accrued but unpaid interest, maturity date, the collateral, if any, securing the Indebtedness (in reasonable detail), and any prepayment, make-whole, breakage or other premiums, payments, fees, costs or penalties required to be paid (in reasonable detail) to fully discharge such Indebtedness in connection with the consummation of the Transactions.

2.12 Legal Proceedings. Except as set forth on Schedule 2.12, there is no Proceeding before any Governmental Entity or arbitrator pending, and, to Sellers’ knowledge, there is no such Proceeding threatened, against any Seller or any of their Affiliates with respect to the operation of the Healthcare Businesses or any of the Assets. Except as set forth on Schedule 2.12, none of Sellers or any of their Affiliates, with respect to the operation of the Healthcare Businesses or the Assets, are subject to any Order or other governmental restriction specifically (as distinct from generally) applicable to them or their assets, including the Assets. Sellers have complied in all material respects, and are in material compliance with, all applicable Orders, settlements and other governmental restrictions. There is no Proceeding before any Governmental Entity pending or, to Sellers’ knowledge, threatened against any Seller or any of their Affiliates or the Healthcare Businesses which: (a) adversely affects or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement; (b) adversely affects or challenges the validity or enforceability of this Agreement; or (c) challenges the power or authority of any Seller to carry out the Transactions or to perform its obligations under this Agreement.

2.13 Employee Benefits.

(a) Schedule 2.13(a) contains a list of (i) each pension, profit sharing, bonus, deferred compensation or other retirement plan or arrangement of Sellers with respect to the operation of the Healthcare Businesses and each Material Affiliation, whether oral or written, which constitutes an “employee pension benefit plan” as defined in Section 3(2) of ERISA, (ii) each medical, health, disability, insurance or other plan or arrangement of Sellers and each Material Affiliation with respect to the operation of the Healthcare Businesses and the Joint Venture Businesses, whether oral or written, that constitutes an “employee welfare benefit plan” as defined in Section 3(1) of ERISA, (iii) each employee benefit plan within the meaning of Section 3(3) of ERISA and (iv) each other employment, severance, termination or similar contract and any other employee benefit plan, program, policy or arrangement providing for compensation, bonuses, commission, profit-sharing, stock option or other stock- or equity-linked benefits or rights, incentive, deferred compensation, vacation or paid-time-off benefits, insurance (including any self-insured arrangements), death, life, dental, vision, health or medical benefits, employee assistance, disability or sick leave benefits, workers’ compensation, supplemental unemployment benefits, retention, transaction, change-of-control payments, savings, pension, retirement, post-employment or retirement benefits or other employee compensation plan, program, policy, agreement, program, arrangement or commitment, in each case, whether written or unwritten and whether formal or informal provided by Sellers and each Material Affiliation with respect to the operation of the Healthcare Businesses and the Joint Venture Businesses, in which any employee of Sellers or the Joint Venture Businesses participates in his capacity as such (each, a “Seller Plan” and, collectively, the “Seller Plans”).
(b) Current copies of each of the Seller Plans, including all amendments thereto, and related contracts and trusts, to the extent applicable, have been provided or otherwise made available to Buyer. There has also been provided or otherwise made available to Buyer, with respect to each Seller Plan, the following (to the extent applicable): (i) copies of the most recent Internal Revenue Service ("IRS") determination letter or advisory or opinion letter with respect to each such Seller Plan intended to qualify under Section 401(a) of the Code; (ii) copies of the most recent summary plan descriptions and any summaries of material modifications thereto; (iii) copies of the three most recent Form 5500 annual reports and accompanying schedules, the actuarial report (to the extent applicable), and the nondiscrimination testing results; and (iv) any material correspondence with any Governmental Entity with respect to any Seller Plan during the last six years.

(c) Except as set forth on Schedule 2.13(c), neither Sellers, any Joint Venture Business nor any of their ERISA Affiliates sponsors, maintains, has an obligation to contribute to or any current or contingent Liability under or with respect to (i) any “multiemployer plan” (as defined in Section 3(37) of ERISA), (ii) any “pension plan” (as defined in Section 3(2) of ERISA) that is or was subject to Sections 412 or 430 of the Code or Title IV of ERISA, (iii) any “multiple employer plan” within the meaning of Section 210 of ERISA or Section 413(c) of the Code, (iv) any “multiple employer welfare arrangement” as defined in Section 3(40) of ERISA, (v) any “voluntary employees’ beneficiary association” within the meaning of Section 501(c)(9) of the Code or (vi) a “defined benefit plan” as defined in Section 3(35) of ERISA.

(d) With respect to each Seller Plan, Sellers do not have any direct or indirect, actual or contingent Liability under or with respect to (i) any “multiemployer plan” subject to Sections 412 or 430 of the Code or Title IV of ERISA, (ii) any “multiple employer plan” within the meaning of Section 210 of ERISA or Section 413(c) of the Code, (iii) any “multiple employer welfare arrangement” as defined in Section 3(40) of ERISA, (iv) any “voluntary employees’ beneficiary association” within the meaning of Section 501(c)(9) of the Code or (v) a “defined benefit plan” as defined in Section 3(35) of ERISA.

(e) Each of the Seller Plans has been administered, and is currently administered, in compliance with the applicable provisions of the Code, except to the extent any noncompliance would not result in a material Liability. There are no “accumulated funding deficiencies” within the meaning of the Code or any federal excise Tax or other Liability on account of any deficient funding in respect of the Seller Plans.

(f) Seller, the Healthcare Businesses, and the Joint Venture Businesses have no obligation to offer or provide health benefits to any employee following retirement or other termination, except continuation coverage as required under Section 4980B of the Code (or equivalent state law).

(g) Each of the Seller Plans is in compliance in all material respects with the applicable requirements of the Patient Protection and Affordable Care Act.

(h) All material reports and disclosures relating to the Seller Plans required to be filed with or furnished to Governmental Entities, Seller Plan participants or Seller Plan beneficiaries have been filed or furnished in accordance with applicable Law.

(i) Each of the Seller Plans intended to be qualified under Section 401 of the Code satisfies in all material respects the requirements of such Section. Each Seller Plan that is intended to be qualified within the meaning of Section 401(a) of the Code has received a determination letter or, with respect to a prototype or volume submitter plan, can rely on an opinion letter from the Internal Revenue Service to the prototype or volume submitter plan sponsor, to the effect that such plan is so qualified and that the plan and the trust related thereto are exempt from federal Income Taxes under Section 401(a) and 501(a), respectively, of the Code; and nothing has occurred since the date of such determination or opinion letter that could adversely affect the qualified status of any Seller Plan.
(j) None of the Seller Plans nor any trust created thereunder or with respect thereto has engaged in any “prohibited transaction” or “party-in-interest transaction” as such terms are defined in Section 4975 of the Code and Section 406 of ERISA that could reasonably be expected to subject any of the Seller Plans, Sellers or the Joint Venture Businesses to a Tax or penalty on prohibited transactions or party-in-interest transactions pursuant to Section 4975 of the Code or Section 502(i) of ERISA.

(k) There are no Proceedings of any nature pending or, to the knowledge of Sellers, threatened against any Seller or the Healthcare Businesses with respect to the Seller Plans.

(l) Each Seller Plan that is subject to Section 409A of the Code has been administered in all material respects in compliance with its terms and the operational and documentary requirements of Section 409A of the Code and all applicable regulatory guidance (including notices, rulings, and proposed and final regulations) thereunder; and none of Sellers, the Healthcare Businesses or the Joint Venture Businesses have any obligation to “gross up” any Person for any Taxes under Section 409A of the Code.

(m) Neither the execution and delivery of this Agreement by Sellers nor the consummation of the Transactions will: (A) entitle any current or former employee of any Seller, the Healthcare Business or the Joint Venture Businesses to severance pay, unemployment compensation, benefits, incentive compensation or any similar payment; (B) accelerate the time of payment or vesting or increase the amount of any compensation due to any such employee or former employee; (C) require any contribution or payment to fund any obligations under any Seller Plan; or (D) directly or indirectly result in any payment made to or on behalf of any Person to constitute a “parachute payment” within the meaning of Section 280G of the Code; and Sellers, the Healthcare Business and the Joint Venture Businesses do not have any obligation to “gross up” any Person for any Taxes under Section 4999 of the Code.

(n) None of Sellers, the Healthcare Business nor the Joint Venture Businesses has incurred any Liability or taken any action, and no action or event has occurred that could reasonably be expected to cause Sellers, the Healthcare Business or the Joint Venture Businesses to incur any Liability (A) under Section 412 of the Code or Title IV of ERISA with respect to any “single-employer plan” within the meaning of Section 4001(a)(15) of ERISA that is not a Seller Plan; or (B) to any multiemployer plan, including on account of a partial or complete withdrawal within the meaning of Sections 4203 and 4205 of ERISA.

2.14 Personnel.

(a) Schedule 2.14(a) sets forth a complete list of names and positions of the Business Employees as of the date set forth therein (which shall be no earlier than 10 Business Days before the date hereof and updated as of no earlier than ten and later than five Business Days before the Closing), and each Business Employee’s salary or wage rates; Accrued Paid Time Off as of such date; recognized date of hire; department; job title; status as part-time, full-time, PRN or temporary; name of employer; work location; exempt or nonexempt classification under federal and state overtime Laws; whether such Business Employee has a permanent or temporary authorization to work in the United States; and whether each such Business Employee is active or on a leave of absence (and, if so, the type of leave). To the knowledge of Sellers, not more than five of the employees set forth on Schedule 2.14(a) were at any time since July 1, 2019 employed by or a contractor to the County in any business other than the Healthcare Businesses.

(b) There are no labor union or collective bargaining agreements in effect with respect to the Business Employees. There is no unfair labor practice complaint against any Seller or any
of their Affiliates pending or, to the knowledge of Sellers, threatened before the National Labor Relations
Board that relates to the Healthcare Businesses or the Business Employees, and no such complaint has
been filed within the past six years. There is no labor strike, slowdown, work stoppage or labor dispute or
labor arbitration pending or, to the knowledge of any Seller, threatened with respect to the Business
Employees or the Healthcare Businesses, and none of the foregoing has occurred during the past six
years. To the knowledge of any Seller, there are no pending or threatened union organizing activities
involving Business Employees and no such activities have occurred during the past six years.

(c) Except as set forth on Schedule 2.14(c): (i) each Seller and each of its Affiliates
is, and has been at all times in the past six years, in compliance in all material respects with all applicable
Laws and Contracts respecting employment and employment practices, labor relations, terms and
conditions of employment, nondiscrimination, nonharassment, whistleblower protections, retaliation,
worker classification, workplace safety and health, immigration, employee Tax withholding and
reporting, workers’ compensation, unemployment insurance, employment termination, overtime pay, and
wages and hours with respect to the Business Employees; (ii) no Seller is engaged, and no Seller has been
engaged in the past six years, in any material unfair labor practices with respect to the Business
Employees; and (iii) there are no pending or, to the knowledge of Sellers, threatened complaints, charges,
lawsuits, actions or investigations related to the Healthcare Businesses before any Governmental Entity or
arbitrator regarding any labor or employment Laws, employment discrimination, harassment, retaliation,
whistleblower claims, wrongful discharge, safety or other employment-related charges or complaints,
affirmative action, or federal or state wage-and-hour claims.

(d) To the knowledge of Sellers, in the last six years, no allegations of sexual
harassment have been made to any Seller or any of its Affiliates against any individual in his or her
capacity as an employee of any Seller or any of its Affiliates at a level of Vice President or above or in
any managerial position.

(e) None of Sellers or any of their Affiliates is party to a settlement agreement with a
current or former officer, employee or independent contractor of any of Sellers or their Affiliates
resolving allegations of sexual harassment by either (i) an officer of any such Person or (ii) an employee
of any such Person. Except as set forth on Schedule 2.14(e), there are no, and in the last six years there
have not been any Proceedings pending or, to Sellers’ knowledge, threatened against Sellers or any of
their Affiliates, in each case, involving allegations of sexual harassment by any employee of Sellers or
any of their Affiliates at a level of Vice President or above or in any managerial position.

(f) During the past six years, no Seller has effectuated (i) a “plant closing” as
defined in WARN or any similar state or local Law affecting any site of employment or one or more
components of the Healthcare Businesses or operating units within any site of employment or facility of
any Seller or (ii) a “mass layoff” as defined in WARN, or any similar state, local or foreign Law,
affecting any site of employment or facility of any Seller.

(g) With respect to the Healthcare Businesses, Sellers are in compliance in all
material respects with the terms and provisions of the Immigration Reform and Control Act of 1986
(“Immigration Act”). Sellers have not been cited, fined, served with a Notice of Intent to Fine or with a
Cease and Desist Order (as such terms are defined in the Immigration Act) at any of the Healthcare
Businesses during the past six years, nor has any Proceeding, audit or review of any type been initiated or,
to the knowledge of Sellers, threatened against any Seller or any of their Affiliates, in each case in
connection with the Healthcare Businesses by reason of any actual or alleged failure to comply with the
Immigration Act during the past six years.
No Seller is delinquent in payments to any Business Employee or other individual who has performed services for the Healthcare Businesses for wages, salaries, commissions, bonuses, fees, or other compensation for any services performed.

2.15 Insurance. Schedule 2.15 sets forth a true and complete list of all self-insurance, or policies or binders of insurance, in force and maintained by Sellers with respect to the operation of the Healthcare Businesses or ownership of the Assets as of the Effective Date ("Insurance Policies"). Sellers maintain, and have maintained, without interruption, at all times during Sellers’ operation of the Healthcare Businesses and ownership of the Assets, self-insurance or policies or binders of insurance covering such risks and events, including personal injury, property damage, malpractice and general liability, to provide adequate and sufficient insurance coverage for all the operations of the Healthcare Businesses. All of the Insurance Policies are in full force and effect. All premiums due and payable on the Insurance Policies have been paid. All Insurance Policies (a) are valid and binding in accordance with their terms; and (b) have not been subject to any lapse in coverage. There are no material claims pending under any of the Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. Sellers have timely provided all notices required to be given under the Insurance Policies to the respective insurer with respect to all material claims and actions covered by insurance, and no insurer has denied coverage of any such claims or actions or reserved its rights in respect of or rejected any such claims. Sellers have not (i) received any written notice or other communication from any insurer canceling or materially amending any of the Insurance Policies, and, to the knowledge of Sellers, no such cancellation or amendment is threatened, or (ii) failed to present any material claim which is still outstanding under any of the Insurance Policies.

2.16 Solvency. No Seller or Seller Subsidiary is insolvent nor will any Seller or Seller Subsidiary be rendered insolvent as a result of any of the Transactions. For purposes of this Section 2.16, the term “solvency” means that: (a) the fair salable value of such Seller’s or Seller Subsidiary’s tangible assets is in excess of the total amount of its liabilities (including for purposes of this definition all liabilities, whether or not reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and whether direct or indirect, fixed or contingent, secured or unsecured, and disputed or undisputed); (b) such Seller or Seller Subsidiary is able to pay its debts or obligations in the ordinary course as they mature; and (c) such Seller or Seller Subsidiary has capital sufficient to carry on its businesses as currently conducted.

2.17 Taxes.

(a) Sellers, the Seller Subsidiaries and the Joint Ventures have each: (i) filed on a timely basis (including valid extensions) all Tax Returns required to be filed and; (ii) timely paid all Taxes and assessments due and payable (whether or not shown on any Tax Return). Sellers have delivered to Buyer true, correct and complete copies of all Income and other material Tax Returns of Sellers, the Seller Subsidiaries and the Joint Ventures for all Tax periods commencing on or after January 1, 2015.

(b) Sellers, the Seller Subsidiaries and the Joint Ventures have each withheld and timely paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any Business Employee, independent contractor, creditor or other third party. All IRS Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed, and Sellers, the Seller Subsidiaries and the Joint Ventures have maintained all documentation, as required by Law, relating to the withholding and remittance of such Taxes.

(c) None of Sellers, the Seller Subsidiaries or the Joint Ventures are currently the subject of any Tax audit or examination, dispute or investigation. Neither Sellers, the Seller Subsidiaries
nor the Joint Ventures, nor any Affiliate of Sellers, the Seller Subsidiaries or the Joint Ventures have received any notice of any proposed or threatened Tax matter, dispute, inquiry, investigation or assessment relating to Taxes or of any proposed adjustments to any Tax Returns previously filed. No claim has been made by any Governmental Entity in writing or, to the knowledge of Sellers, otherwise in any jurisdiction where any Sellers, Seller Subsidiary or Joint Venture does not file Tax Returns that any of them are, or may be, subject to Tax by such jurisdiction. There are no Encumbrances for Taxes on the Assets (including the equity interests or membership interests of any of the Seller Subsidiaries or Joint Ventures) other than Permitted Encumbrances.

(d) None of Sellers, the Seller Subsidiaries or the Joint Ventures have waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency that has not yet expired. None of Sellers, the Seller Subsidiaries or the Joint Ventures are a party to or bound by any Tax-allocation or Tax-sharing agreement. None of Sellers or the Subsidiaries have any Liability for the Taxes of any other Person (i) as a transferee or successor or (ii) by contract, applicable Law or otherwise. None of Sellers, the Seller Subsidiaries or the Joint Ventures has been a member of an “affiliated group” within the meaning of Section 1504(a) of the Code filing a consolidated federal Income Tax Return.

(e) No closing agreements, private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes have been entered into or issued by any Governmental Entity with or with respect to Sellers, the Seller Subsidiaries or the Joint Ventures. None of Sellers, the Seller Subsidiaries and the Joint Ventures have executed any power of attorney with respect to any Taxes, other than powers of attorney that are no longer in force.

(f) None of Sellers, the Seller Subsidiaries and the Joint Ventures are, or have ever been during the last six years, a party to any transaction, Contract, understanding or arrangement described as a “reportable transaction” for purposes of Section 6707A of the Code and Treasury Regulation Section 1.6011-4. Each of Sellers, the Seller Subsidiaries and the Joint Ventures have disclosed on its Tax Returns all positions taken therein that could give rise to a substantial understatement of Tax within the meaning of Code Section 6662 (or any similar Law).

(g) None of the Assets are subject to a lease, safe harbor lease or other arrangement as a result of which such assets are required for federal Income Tax purposes to be treated as owned by a Person other than Sellers, the Seller Subsidiaries or the Joint Ventures.

(h) None of Sellers, the Seller Subsidiaries and the Joint Ventures have distributed the stock of any corporation or had their stock or equity interests distributed by another Person in a transaction satisfying or intending to satisfy the requirements of Section 355 or Section 361 of the Code.

(i) No Seller Subsidiary or Joint Venture will be required to include any item in taxable income or exclude any item of deduction or loss from taxable income for any Post-Closing Tax Period as a result of (i) any “closing agreement” as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign Tax Law) executed on or before the Closing Date; (ii) the long-term contract method of accounting; (iii) any installment sale or open transaction method; (iv) under Section 108(i) of the Code; (v) as a result of any intercompany transactions or any excess loss account described in Treasury Regulations Section 1.1502-19 (or any similar provision of state, local or foreign Law); (vi) any prepaid amount received on or before the Closing Date; (vii) use of an improper method of accounting; (viii) any change in method of accounting (including adjustments pursuant to Section 481 of the Code) for a Pre-Closing Tax Period; (ix) any deferred revenue or prepaid amount received on or before the Closing Date; or (x) as a result of any debt instrument held before the
Closing that was acquired with “original issue discount” as defined in Section 1273(a) of the Code or subject to the rules set forth in Section 1276 of the Code.

(j) None of Sellers, the Seller Subsidiaries or the Joint Ventures engage in activity that creates a permanent establishment in any foreign country, as defined in any applicable Tax treaty or convention between the United States and such foreign country.

(k) None of Sellers, the Seller Subsidiaries or the Joint Ventures have (i) deferred the payment of any “applicable employment taxes” under Section 2302 of the CARES Act or (ii) claimed the “employment retention credit” within the meaning of Section 2301 of the CARES Act or any other Tax credit applicable to employment Taxes under the Families First Coronavirus Response Act of 2020.

(l) NHRMC, for all periods during the last six years, has been an organization described in Section 501(c)(3) of the Code and recognized as exempt from Taxes under Section 501(a) of the Code for all U.S. federal (and, where applicable, state and local) Income Tax purposes. With respect to the Seller Subsidiaries and Joint Ventures, for all periods since their respective organizations, (i) each Joint Venture has been properly treated as a partnership within the meaning of Treasury Regulations Section 301.7701-3(b)(1)(i) for all U.S. federal (and, where applicable, state and local) Income Tax purposes, (ii) each Disregarded Entity has been properly treated as a disregarded entity within the meaning of Treasury Regulations Section 301.7701-3(b)(1)(ii) for all U.S. federal (and, where applicable, state and local) Income Tax purposes and (iii) the remaining Subsidiaries are each an organization described in Section 501(c)(3) of the Code and recognized as exempt from Taxes under Section 501(a) of the Code for all U.S. federal (and, where applicable, state and local) Income Tax purposes. The County is properly classified as a Governmental Entity.

(m) No Joint Venture has elected, pursuant to Section 1101(g)(4) of the Bipartisan Budget Act of 2015 (the “Tax Act”) to “opt in” to the partnership audit regime created under the Tax Act for any taxable year beginning before January 1, 2018.

2.18 Absence of Changes. Since the Interim Balance Sheet Date, Sellers have conducted the Healthcare Businesses in the ordinary course of business and there has not occurred any change in the operation of the Healthcare Businesses or any event or development that, individually or in the aggregate, has had or could reasonably be expected to have, a Material Adverse Effect. Except as set forth on Schedule 2.18, since the Interim Balance Sheet Date, no Seller has taken any action that, if taken after the Effective Date, would constitute a breach of any of the covenants set forth in Section 4.2 or Section 4.3.


(a) Schedule 2.19(a) sets forth an accurate and complete list of the following in respect of the Healthcare Business: (i) all Copyrights, Patents and Marks, in each case to the extent applied for or registered with any Governmental Entity and owned by any Seller or any of Sellers’ Affiliates; (ii) all material unregistered Intellectual Property owned by any Seller or any of Sellers’ Affiliates; and (iii) all Intellectual Property, including Software proprietary to third parties and licensed to Sellers or Sellers’ Affiliates for use in the Healthcare Businesses as currently conducted, and, for the items described in clauses (i)-(iii), identifies all Intellectual Property Agreements associated with them.

(b) Except as disclosed on Schedule 2.19(b), all the Intellectual Property disclosed on Schedule 2.19(a) is owned by Sellers or Sellers’ Affiliates free and clear of all Encumbrances, except Permitted Encumbrances. For all Intellectual Property disclosed on Schedule 2.19(a) that is not owned by Sellers or Sellers’ Affiliates, Sellers or Sellers’ Affiliates have a valid contractual right or license to use the same in the conduct of the Healthcare Businesses as currently conducted, which right or license shall
continue after the Closing. Neither Sellers nor any of Sellers’ Affiliates are obligated to pay royalties to any Person for the use of any Intellectual Property (other than license fees for the Software identified in Schedule 2.19(a)).

(c)  (i) None of the registrations for Copyrights, Patents and Marks identified in Schedule 2.19(a) are subject to a Proceeding to challenge or invalidate such Intellectual Property, and all applications to register any unregistered Copyrights, Patents and Marks so identified are pending and in good standing, all without challenge of any kind; (ii) there are no Proceedings pending or, to the knowledge of Sellers or Sellers’ Affiliates, threatened against Sellers or Sellers’ Affiliates that challenge the validity or ownership of or right to use any Intellectual Property identified in Schedule 2.19(a); (iii) Sellers do not have any knowledge of any facts that would be grounds for any Person to challenge Sellers’ or Sellers’ Affiliates’ ownership of, or otherwise demand an in-license of third-party Intellectual Property in order to exploit, Sellers’ or Sellers’ Affiliates’ Intellectual Property; and (iv) Sellers’ or Sellers’ Affiliates have the right to bring actions for infringement or unauthorized use of the Intellectual Property owned by Sellers or Sellers’ Affiliates.

(d) Sellers, Sellers’ Affiliates and the Healthcare Businesses do not infringe upon or misappropriate the Intellectual Property of any third party, and none of Sellers or Sellers’ Affiliates have received in the last six years any notice asserting that any such infringement or misappropriation has occurred.

(e) There are no agreements, consents or stipulations to which any Sellers or any of Sellers’ Affiliates are subject that would prevent Buyer after the Closing Date from using any of the Intellectual Property currently used in the Healthcare Businesses in connection with the Healthcare Businesses as currently conducted.

(f) Each Seller and each of their Affiliates has taken commercially reasonable steps to protect its Trade Secrets and all other Intellectual Property (all in accordance with such Person’s reasonable business judgment), and as a matter of course enters into customary nondisclosure and confidentiality agreements generally as and when necessary or appropriate under the circumstances, and neither Sellers nor Sellers’ Affiliates have disclosed any Trade Secrets to any other Person except pursuant to a written confidentiality or nondisclosure agreement (other than to employees who are generally required to enter into standard form nondisclosure agreements, or unless a similar duty or obligation then existed), nor, to the knowledge of Sellers or Sellers’ Affiliates, has any employee or officer or any other Person breached any such agreement.

(g) All Public Software used by Sellers or Sellers’ Affiliates in connection with such party’s proprietary Software is set forth on Schedule 2.19(g). Except as set forth on Schedule 2.19(g), Sellers and Sellers’ Affiliates have not made any improvements or changes to any such Public Software that would constitute improvements that Sellers or Sellers’ Affiliates would be obligated to share with other Persons. Except as disclosed in Schedule 2.19(g), the Public Software does not limit, restrict, govern or affect in any material respect Sellers’ or Sellers’ Affiliates’ intellectual property rights in and to Sellers’ and Sellers’ Affiliates’ Intellectual Property, and Sellers and Sellers’ Affiliates are not required under the terms governing such Public Software to make any of Sellers’ or Sellers’ Affiliates’ proprietary Software generally available for the purpose of making derivative works.

(h) None of Sellers’ or Sellers’ Affiliates current proprietary products (excluding any open-source or Public Software contained therein as set forth on Schedule 2.19(g)) that are used in the Healthcare Businesses contain Intellectual Property that is (i) owned by any Governmental Entity or educational institution or (ii) derived from Intellectual Property owned by any Governmental Entity or educational institution. Neither Sellers nor Sellers’ Affiliates have made any written submission or
suggestion to, and is not subject to any agreement with, any standards bodies or other entities that would obligate them to grant licenses to or otherwise impair Sellers’ or Sellers’ Affiliates’ control of their Intellectual Property that is used in the Healthcare Businesses. No current or former employee, consultant or independent contractor of Sellers or Sellers’ Affiliates, who was involved in, or who contributed to, the creation of development of any of Sellers’ or Sellers’ Affiliates’ Intellectual Property that is used in the Healthcare Businesses, has performed services for any Governmental Entity, university, college or other educational institution, research center, security force (other than reserve duty) or other public service during a period of time during which such employee, consultant or independent contractor was also performing services for Sellers or Sellers’ Affiliates in a manner that could reasonably be expected to adversely affect Sellers’ or Sellers’ Affiliates’ Intellectual Property.

(i) Any Software developed by or on behalf of any Seller or any Seller’s Affiliate and used in connection with the Healthcare Businesses has been developed by such Seller or such Seller’s Affiliate through its own efforts or for its own account and is owned exclusively by such Seller or Seller’s Affiliate, except as disclosed in Schedule 2.19(i). With the exception of open source code, the source code for the Software has been maintained in strict confidence and has not been disclosed to any Person other than pursuant to suitable confidentiality agreements. Except as disclosed on Schedule 2.19(i), the Software developed by or on behalf of Sellers or Sellers’ Affiliates related to the Healthcare Businesses does not use or rely upon open source code standards or materials or any source code or standards developed or owned by any other Person. There are no programming defects, errors or bugs in such Software that are outside the scope of programming defects, errors and bugs typically corrected in the ordinary course of Software maintenance procedures and programs or that, if such defects, errors or bugs were not corrected, would materially and adversely affect the Healthcare Businesses.

(j) Except as set forth in Schedule 2.19(i), all Software developed by or on behalf of Sellers or Sellers’ Affiliates related to the Healthcare Businesses was (i) developed by Sellers’ or Sellers’ Affiliates’ employees working within the scope of their employment at the time of such development, all of whom are and were obligated to assign and did assign all rights to Sellers or Sellers’ Affiliates, as applicable, or (ii) developed by independent contractors or other Persons who have executed appropriate instruments of assignment in favor of Sellers or Sellers’ Affiliates, as applicable, as assignee or assignees that have conveyed to Sellers or Sellers’ Affiliates ownership of all of their Intellectual Property rights in the Software.

(k) Each Seller and each of its Affiliates exercises commercially reasonable measures, consistent with applicable industry best practices, to protect the confidentiality, security and operation of its information technology, computer systems, Software, websites, and networks that are used in the operation of the Healthcare Businesses (and the data and transactions transmitted therein) (collectively, the “IT Systems”), including from any unauthorized use, manipulation and access. The IT Systems are sufficient for the Sellers’ and their Affiliates’ current and reasonably anticipated future needs. Each Seller and each of its Affiliates has taken reasonable measures to provide for the back-up and recovery of the systems, data and information, including Personal Information, necessary to conduct the Healthcare Businesses without disruption to, or interruption in, the conduct of the Healthcare Businesses.

(l) During the immediately preceding six-year period, there have been no failures, crashes, substandard performance or other adverse events affecting the IT Systems that have caused, or could reasonably be expected to cause, any disruption in the ability of Sellers and their Affiliates or, after the Closing, Buyer and its Affiliates to operate the Healthcare Businesses, or, in any material respect, to use any of the IT Systems. During the immediately preceding six-year period, there has not been any unauthorized use or intrusion or other security breach of any of the IT Systems, including with respect to the data or databases contained therein or transmitted thereby.
(m) Each Seller and each of its Affiliates has collected, stored, retained, maintained, destroyed and otherwise used all Personal Information owned or maintained by it, and each Seller and each of its Affiliates has protected the IT Systems, in accordance with all Information Privacy and Security Laws and its own policies. Each Seller and each of its Affiliates (i) has implemented and maintains commercially reasonable administrative, technical and physical safeguards, including the adoption, implementation and maintenance of a written information security program, incident response plan, vendor management policy, and disaster recovery and business continuity plans, designed to ensure the protection of systems, networks, Personal Information and Confidential Information against loss, destruction, damage and unauthorized access, use, acquisition and disclosure; (ii) performs vulnerability scans and penetration testing on its IT Systems and networks no less frequently than annually; (iii) timely install Software security patches and other fixes to identified material technical information security vulnerabilities; and (iv) maintains commercially reasonable cybersecurity insurance in coverage types and amounts reasonably sufficient to withstand a breach of security.

2.20 Unlawful Payments. During the last six years, Sellers, the Material Affiliations and each of their respective Affiliates and Representatives have complied in all material respects with the U.S. Foreign Corrupt Practices Act of 1977, the Corruption of Foreign Public Officials Act, the OECD Anti-Bribery Convention and other applicable Laws regarding the use of funds for political activity or commercial bribery. No Seller, Material Affiliation nor any of their respective Affiliates or Representatives has, for or on behalf of any Seller or Material Affiliation, at any time during the last six years, (i) made or caused to be made or provided, directly or indirectly, any type of payment, gift, contribution or similar item to a governmental official, political party or candidate for office for the purpose of influencing a decision, inducing an official to violate their lawful duty, securing an improper advantage, or inducing an official to use their influence to affect a governmental decision or (ii) accepted or received any unlawful payment, gift, contribution or similar item. No Seller, Material Affiliation nor any of their respective Affiliates or Representatives has, during the last six years, directly or indirectly, taken any action in violation of any export restrictions, anti-boycott regulations, embargo regulations or other similar applicable U.S. or foreign Laws. No Seller, Material Affiliation nor any of their respective Affiliates or Representatives is a “specially designated national” or blocked Person under U.S. sanctions administered by OFAC. Neither Sellers nor the Material Affiliations have engaged in any business with any Person or in any country that it is prohibited for a U.S. Person to engage in any business with or under applicable Law or under applicable U.S. sanctions administered by U.S. Department of the Treasury.

2.21 COVID-19 Matters. Schedule 2.21 sets forth the Provider Relief Funds received by any Seller or Material Affiliation relating to the Healthcare Businesses or Joint Venture Businesses. Each Seller and Material Affiliation is in compliance in all material respects with all terms and conditions, audit requirements, reporting obligations and other conditions associated with receipt of any Provider Relief Funds. Sellers have made available to Buyer all attestations, terms and conditions, agreements, applications and other related documentation any Seller or Material Affiliation has executed in conjunction with receipt of any Provider Relief Funds.

2.22 Brokers and Finders. Except for Guidehouse and Ponder & Co., the fees and expenses of which are the joint and several responsibility of Sellers, neither Sellers nor any Affiliate thereof, nor any officer or director thereof, has engaged, hired, employed or otherwise dealt with any finder or broker in connection with the Transactions.

2.23 Disclaimer of Warranties. Except as expressly set forth in this Article 2 (with the exceptions expressly provided in the Disclosure Schedules), no Seller makes, and has not made and shall not be deemed to have made, any representation or warranty in connection with the Transactions. Each Seller expressly disclaims any other representations or warranties of any kind or nature, express or
implied, notwithstanding the delivery or disclosure to Buyer or its Representatives of any documentation or other information (including any financial projections or other supplemental data), including as to the condition, value or quality of the Healthcare Businesses or the Assets. Each Seller specifically disclaims any representation or warranty of merchantability, usage, suitability or fitness for any particular purpose with respect to the Assets, any part thereof, the workmanship thereof, and the absence of any defects therein, whether latent or patent, it being understood that, except as provided in Article 2, the Assets are being acquired “as is, where is” on the Closing Date, and in their present condition, and, except for any intentional misrepresentations or fraud on the part of Sellers, Buyer shall rely solely on its own examination and investigation thereof as well as the representations and warranties of Sellers set forth in this Article 2 and the certificate delivered pursuant to Section 6.8(g).

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to Sellers to enter into this Agreement and to consummate the Transactions, Buyer hereby represents and warrants to Sellers as to the following matters:

3.1 Authorization. Buyer and Novant Health each have full corporate or limited liability company power and authority to enter into this Agreement and has full corporate or other power and authority to carry out the Transactions.

3.2 Binding Agreement. All corporate or other actions required to be taken by Buyer and Novant Health to authorize the execution, delivery and performance of this Agreement, the other Transaction Documents and the Transactions have been duly and properly authorized, taken or obtained by Buyer and Novant Health. No other action on the part of Buyer or Novant Health is necessary to authorize the execution, delivery and performance of this Agreement, the other Transaction Documents and the Transactions. This Agreement and the other Transaction Documents have been (or will be when executed and delivered) duly and validly executed and delivered by Buyer and Novant Health, and, assuming due and valid execution by Sellers, this Agreement and the other Transaction Documents constitutes (or will constitute) a valid and binding obligation of Buyer and Novant Health enforceable in accordance with their terms subject to (a) applicable bankruptcy, reorganization, insolvency, moratorium and other Laws affecting creditors’ rights generally from time to time in effect and (b) limitations on the enforcement of equitable remedies.

3.3 Organization and Good Standing. Buyer is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of North Carolina, and has full limited liability company power and authority to own, operate and lease its properties and to carry on its business as now conducted. Novant Health is a nonprofit corporation duly organized, validly existing and in good standing under the Laws of the State of North Carolina, and has full corporate power and authority to own, operate and lease its properties and to carry on its business as now conducted.

3.4 No Conflict. Neither the execution and delivery by Buyer of this Agreement or any other Transaction Document to which it is a party nor the consummation of the Transactions by Buyer will (i) violate, conflict with or result in a breach of any provision of Buyer’s articles of incorporation or bylaws (or similar governing document) or (ii) violate any Order or material Law applicable to Buyer.

3.5 Brokers and Finders. Except for Wells Fargo Securities, the fees and expenses of which Buyer is solely responsible, neither Buyer nor any Affiliate thereof nor any officer or director thereof has engaged, hired, employed or otherwise dealt with any finder or broker in connection with the Transactions.
3.6 **Legal Proceedings.** Except as described on Schedule 3.6, there is no Proceeding before any Governmental Entity pending, and, to Buyer’s knowledge, there is no Proceeding threatened, against Buyer or any Affiliate of Buyer before any Governmental Entity in which an adverse determination would materially adversely affect Buyer’s ability to consummate the Transactions. Neither Buyer nor any Affiliate of Buyer is subject to any Order or other governmental restriction specifically, as distinct from generally, applicable to Buyer or any Affiliate of Buyer that materially adversely affects Buyer’s ability to consummate the Transactions. There is no action or suit before any Governmental Entity pending, and, to Buyer’s knowledge, there is no Proceeding threatened, against Buyer or any Affiliate of Buyer that: (a) adversely affects or seeks to prohibit, restrain or enjoin the execution and delivery of this Agreement; (b) adversely affects or challenges the validity or enforceability of this Agreement; or (c) challenges the power or authority of Buyer at Closing to carry out the Transactions or to perform its obligations under this Agreement.

3.7 **Ability to Perform.** Buyer has and will have on the Closing Date immediately available funds in cash, which are sufficient to pay the Purchase Price to be paid at Closing and to pay any other amounts payable pursuant to this Agreement and the other Transaction Documents at Closing and to consummate the Transactions.

3.8 **Solvency.** Buyer is solvent and Buyer will not be rendered insolvent as a result of any of the Transactions. For purposes of this Section 3.8, the term “solvency” means that: (a) the fair salable value of Buyer’s tangible assets is in excess of the total amount of its liabilities (including for purposes of this definition all liabilities, whether or not reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and whether direct or indirect, fixed or contingent, secured or unsecured, and disputed or undisputed); (b) Buyer is able to pay its debts or obligations in the ordinary course as they mature; and (c) Buyer has capital sufficient to carry on its businesses as currently conducted.

3.9 **Representations of Sellers.** Buyer is not relying on any representation or warranty (expressed or implied, oral or otherwise) made on behalf of Sellers other than those representations and warranties expressly set forth in Article 2 and in the other Transaction Documents.

3.10 **No Other Representations or Warranties.** Except for the representations and warranties contained in this Article 3 (as modified by the Schedules, as supplemented and amended), Buyer has not made, and does not make, any other express or implied representation or warranty, either written or oral.

**ARTICLE 4**

**COVENANTS OF SELLER**

4.1 **Access and Information; Inspections.** From the Effective Date through the Closing or termination of this Agreement, Sellers shall afford to the representatives of Buyer, which include Buyer’s and Buyer’s Affiliates’ respective officers, directors, trustees, managers, employees, contractors, accountants, attorneys, bankers and other consultants and agents (“Buyer’s Representatives”), reasonable access during normal business hours to and the right to inspect the plants, properties, books, accounts, records and other relevant documents and information with respect to the Assets and Assumed Obligations. From the Effective Date through the Effective Time, Sellers shall furnish Buyer and Buyer’s Representatives with such additional financial and operating data and other information in Sellers’ possession as to businesses and properties of the Healthcare Businesses as Buyer or Buyer’s Representatives may from time to time reasonably request, without regard to where such information may be located. Buyer will exercise Buyer’s right of access and inspection in such a manner as not to interfere unreasonably with the operations of the Healthcare Businesses. Sellers shall permit Buyer and its environmental consultants, at Buyer’s sole cost and expense, to conduct such investigations (including
investigations known as “Phase I” and “Phase II” environmental assessments) of the environmental conditions of the Real Property or the operations thereat (subject to any limitations contained in valid, previously executed leases) as Buyer, in its reasonable discretion, shall deem necessary or prudent ("Buyer’s Environmental Assessment"), so long as (x) Buyer provides Sellers with no less than five Business Days’ advance written notice of any such Buyer’s Environmental Assessment and (y) Buyer’s Environmental Assessment is conducted by a qualified environmental consulting firm, possessing reasonable levels of insurance, in compliance with applicable Laws and in a manner that minimizes the disruption of the operations of the Healthcare Businesses, undertake noninvasive inspections and surveys of the Healthcare Businesses and the Real Property. Notwithstanding the foregoing, all access and inspection activities contemplated by this Section 4.1 shall be subject to the prior reasonable approval of Sellers, which approval shall not be unreasonably withheld, conditioned or delayed, and with respect to access to and inspections of (a) the Owned Real Property, shall be subject to the terms of any applicable Lessor Lease, and (b) the Leased Real Property, shall be subject to the terms of any applicable Tenant Lease; provided, however, that Sellers shall use commercially reasonable efforts to coordinate the access and inspection activities contemplated by this Section 4.1 with Buyer, Buyer’s Representatives and the parties to any Tenant Leases or Lessor Leases; provided, however, that Sellers shall use commercially reasonable efforts to coordinate the access and inspection activities contemplated by this Section 4.1 with Buyer, Buyer’s Representatives and the parties to any Tenant Leases or Lessor Leases; provided, however, that Sellers shall use commercially reasonable efforts to coordinate the access and inspection activities contemplated by this Section 4.1 with Buyer, Buyer’s Representatives and the parties to any Tenant Leases or Lessor Leases, as applicable, such that Buyer and/or Buyer’s Representatives may carry out such inspection activities pursuant to the terms of this Section 4.1. Notwithstanding the foregoing, all disclosures of information shall be consistent with the confidentiality, wall agreements and any other nondisclosure agreements entered into (or to be entered into) among Buyer, its representatives and Sellers (including Affiliates of Sellers). Buyer shall not, except in the ordinary course of business or through the clean room process for purposes of due diligence and integration planning, contact, directly or through one or more intermediaries, any employees of the Healthcare Businesses or any Physicians employed or otherwise affiliated with the Healthcare Businesses without prior written approval from Sellers.

4.2 Conduct of Business. From the Effective Date through the Closing or termination of this Agreement, and except as otherwise consented to or approved by Buyer in writing, which such approval shall not be unreasonably withheld, conditioned or delayed, or as specifically required by this Agreement, Sellers shall, with respect to the operation of the Healthcare Businesses, use their commercially reasonable efforts to:

(a) continue to operate the Healthcare Businesses in the ordinary course of business;

(b) preserve intact their corporate existence and business organizations;

(c) (i) maintain the Assets in a manner consistent with past practices, ordinary wear and tear excepted, and inclusive of substitutions and retirements in the ordinary course of business and

(ii) make repairs and acquire replacements in the ordinary course of business;

(d) Pay all Liabilities of the Healthcare Businesses in the ordinary course of business as they become due and payable, other than those disputed in good faith;

(e) comply in all material respects with all Laws, all Material Contracts, all Leases and other obligations to which Sellers are bound;

(f) maintain, and timely renew, all Governmental Permits and Accreditations used in the Healthcare Businesses; and

(g) keep in full force and effect all Insurance Policies or other comparable self-insurance.
4.3 **Negative Covenants.** From the Effective Date through the Closing or termination of this Agreement, with respect to the operation of the Healthcare Businesses, Sellers shall not, without the prior written consent of Buyer or except as may be required by Law (and, to the extent required by Law, Sellers shall provide written notice to Buyer thereof):

(a) amend or voluntarily terminate any Assumed Contract or Lease, or enter into any new contract or commitment that would constitute an Assumed Contract, or enter into any lease, license or occupancy agreement related to real property, except, in each case, in the ordinary course of business (which shall include renewals of any Assumed Contract or any contract that can be terminated without cause upon notice of 60 calendar days or less);

(b) sell, assign, lease, or otherwise transfer or dispose of any of the Assets, except for the disposition of immaterial Assets in the ordinary course of business and sales or dispositions of Inventory in the ordinary course of business with comparable replacement thereof;

(c) make any material change in personnel, operations, real or personal property, finance or accounting policies, unless Sellers are required to adopt such changes under GAAP or applicable Laws;

(d) except with respect to budgeted expenditures or expenditures incurred in the ordinary course of business make any capital expenditure commitment for additions to property, plant, equipment, intangible or capital assets of the Healthcare Businesses or for any other purpose, the payment for which is to be made after the Closing Date;

(e) mortgage, pledge or subject to any Encumbrance (other than Permitted Encumbrances) any portion of the Assets except for such mortgages, pledges or Encumbrances as shall be extinguished as of the Effective Time;

(f) incur or guarantee any Indebtedness with respect to the Assets outside the ordinary course of business;

(g) fail to keep in force insurance coverage with respect to the Assets or the Healthcare Businesses substantially similar to that which is then in effect for Affiliates of Sellers on a company-wide basis;

(h) (i) other than in the ordinary course of business, increase the compensation or benefits payable or to become payable to any Physician or other Referral Source of any Seller or the Healthcare Businesses, Business Employees or any director, manager, officer or consultant of the Healthcare Businesses; (ii) grant or increase any rights to change-in-control, severance or termination payments or benefits to, or enter into any change-in-control, employment, consulting or severance agreement with, any Business Employee or any other Person, including any director, manager, officer or consultant of the Healthcare Businesses; (iii) grant any equity-based or long-term incentive award; (iv) establish, adopt, enter into, amend, modify or terminate any Seller Plan, except to the extent required by applicable Laws or as required in order to effectuate Buyer’s assumption of the Transferred Plans; or (v) take any affirmative action to amend or waive any performance or vesting criteria or accelerate vesting, exercisability or funding under any Seller Plan;

(i) take or omit to take any action that, individually or in the aggregate, could reasonably be expected to result in any representation or warranty of Sellers to be untrue, result in a breach of any covenant made by any Seller in this Agreement, would require disclosure pursuant to
Section 4.15 or could reasonably be expected to result in any condition set forth in Article 6 not being satisfied;

(j) (i) accelerate or delay collection of notes receivable or Accounts Receivable in advance of or beyond their regular due dates or the dates when the same would have been collected in the ordinary course of business or (ii) delay or accelerate payment of any account payable related to the Healthcare Businesses in advance of or beyond its due date or the date such Liability would have been paid in the ordinary course of business;

(k) acquire (including by merger, consolidation, license or sublicense) any interest in any Person or material portion of the assets or business of any Person, or otherwise acquire any material asset other than in the ordinary course of business;

(l) (i) make loans or advances to, guarantees for the benefit of, or any investments in any Person or (ii) cancel any Indebtedness owed to any Seller or waive any claims or rights of value in respect of the Healthcare Businesses;

(m) enter into any new line of business or make any material change in the Healthcare Businesses or the operation of the Assets;

(n) apply for or accept any Provider Relief Funds, Disaster Relief Funds or AAP Program Amount, other than as required by Law;

(o) hire for or assign to the Healthcare Businesses any employee of or contractor to County who was at any time since July 1, 2019 employed by or a contractor to the County in any business other than the Healthcare Businesses;

(p) waive, release, assign, settle or compromise any material right or claim, or any material Proceeding with respect to the Healthcare Businesses or the Assets; or

(q) alter or subject to any Encumbrance (other than a Permitted Encumbrance) title to any Owned Real Property.

Notwithstanding any provision to the contrary contained in this Agreement, neither Section 4.2 nor this Section 4.3 shall be construed to prohibit Sellers from engaging in any act that Sellers reasonably believe in good faith is necessary (i) for patient safety needs or (ii) to comply with the requirements of any Law or Governmental Entity. Sellers shall give Buyer prompt written notice (but no later than three days) subsequent to taking any act described in the immediately preceding sentence.

4.4 Required Governmental Approvals.

(a) From the Effective Date through the Closing or termination of this Agreement, Sellers shall (i) use their commercially reasonable efforts to obtain, as promptly as practicable, all Required Governmental Authorizations required of Sellers to consummate the Transactions, and (ii) reasonably assist and cooperate with Buyer in Buyer’s obtaining, as soon as practicable, the Required Governmental Authorizations required of Buyer to consummate the Transactions.

(b) Notwithstanding the generality of Section 4.4(a), Sellers shall (i) comply at the earliest practicable date with any request for additional information received by Sellers or Sellers’ Affiliates from any Governmental Entity pursuant to applicable Law, (ii) subject to applicable Law, consult and cooperate with Buyer, and consider in good faith the views of Buyer, in connection with any
analyses, appearances, substantive discussions, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of Sellers in connection with Proceedings under or relating to antitrust Law and in connection with resolving any investigation or other inquiry concerning the Transactions commenced by any Governmental Entity, (iii) promptly notify Buyer of any written communication made to or received by Sellers from any Governmental Entity regarding any of the Transactions, and, subject to applicable Law, permit Buyer (or its counsel on an outside-counsel basis) to review and comment in advance on any proposed written communication to the Governmental Entity, incorporate Buyer’s reasonable comments into such proposed written communications to the Governmental Entity, and permit Buyer to participate in any oral communications and meetings with a Governmental Entity, and (iv) not enter into any agreement or understanding with the Governmental Entity without consulting and obtaining written consent from Buyer. Notwithstanding the foregoing or any other term herein, “commercially reasonable efforts”, as used in this Section 4.4, shall not be interpreted to obligate Sellers or their Affiliates to (x) agree to divest or hold separate any Hospital, affiliates, business units, or services or (y) defend or prosecute through any litigation any claim asserted in court by any Person, including any Governmental Entity, in order to avoid entry of, or to have vacated or terminated, any Order (whether temporary, preliminary or permanent) that would prevent the Closing.

4.5 Insurance Policies and Surety Bonds.

(a) Sellers shall obtain supplemental insurance policies (the “Tail Policies”) providing for extended reporting periods for claims made after the Effective Time in respect of events occurring before the Effective Time, in form and substance reasonably acceptable to Buyer, for any claims-made Insurance Policies held for the benefit of the Healthcare Businesses, the Assets or the Practitioners (which are listed on Schedule 4.5(a)), including professional and general liability coverage, relating to all periods before the Effective Time. Such Tail Policies shall extend for the maximum time period permissible by each respective Insurance Policy (but in no event extend less than five years from the Effective Time) and shall provide minimum coverage in an amount no less than the coverage currently maintained under the applicable Insurance Policy. Sellers shall deliver to Buyer evidence of Sellers’ purchase of the Tail Policies at least five Business Days prior to the Closing Date. Sellers and Sellers’ Representatives shall cooperate with Buyer in the assignment of the Tail Policies and the transfer of Broker of Record from Willis of North Carolina Inc. to a broker of Buyer’s choice. The cost of the Tail Policies shall be borne by Sellers.

(b) Sellers shall assign to Buyer the Surety Bonds and the Insurance Policies set forth on Schedule 4.5(b) (the “Transferred Insurance Policies and Surety Bonds”). Sellers agree to provide Buyer with all reasonably requested information and assistance as necessary for Buyer to effectuate the assumption of the Transferred Plans. Sellers and Sellers’ Representatives shall cooperate with Buyer in the transfer of Broker of Record with respect to the Transferred Insurance Policies and Surety Bonds from Willis of North Carolina Inc. to a broker of Buyer’s choice, and in the designation of Buyer as the First Named Insured to be effective on the Effective Time.

4.6 Sellers’ Efforts to Close. From the Effective Date through the Closing or termination of this Agreement, Sellers shall use their reasonable best efforts to satisfy all of the conditions precedent set forth in Articles 6 and 7 to their obligations under this Agreement to the extent that Sellers’ action or inaction can control or influence the satisfaction of such conditions.

4.7 Consents.

(a) As promptly as practicable after the Effective Date, Sellers shall (i) request from the applicable counterparty all consents set forth on Schedule 4.7(a) and (ii) provide all notices set forth on Schedule 4.7(a), in each case required in connection with the Transactions pursuant to any Contract or
Lease, in each case in a form of consent or notice, as applicable, mutually agreed by Buyer and Sellers; provided, however, in connection with any such consent or notice, no Seller shall be obligated to pay any consideration, agree to any undertaking or modification to a Contract or Lease or offer or grant any financial accommodation not expressly required by the terms of such Contract or Lease. Sellers shall use commercially reasonable efforts to obtain all such consents; provided, however, that, with respect to any consent that is not a Required Contract Consent or a Contract and Lease Consent, Sellers’ obligations to use commercially reasonable efforts shall be limited to one follow-up communication with respect to such consent and compliance with the following sentence. At Buyer’s request, Sellers shall promptly make available to Buyer all information, contact information and documents in either of their possession, custody or control related to the counterparty or counterparties to the Contracts and Leases for which consents or notices are to be provided under in this Section 4.7(a) promptly following Sellers’ first solicitation of the relevant consent or notice and that is reasonably necessary to obtain an applicable consent, and Buyer shall be permitted to independently contact any such counterparty to a Contract or Lease for which Sellers have sent a letter or other correspondence pursuant to the provisions in this Section 4.7(a). Buyer and Sellers hereby acknowledge and agree that, unless agreed otherwise by Buyer in Buyer’s reasonable discretion, the form of assignment and assumption agreement set forth in Exhibit I-1 shall be the agreed-upon form of counterparty consent with respect to any Tenant Lease (x) set forth in Schedule 4.7(a) and (y) to be assigned to Buyer pursuant to Section 6.8(c)(i), subject to any commercially reasonable modifications approved by Buyer and Sellers pursuant to Section 6.8(c) in the event the applicable Tenant Lease is a sublease (as opposed to a direct lease).

(b) Notwithstanding anything contained herein to the contrary, this Agreement shall not constitute an agreement to assign any Assumed Contract if an attempted assignment thereof without the consent of a counterparty thereto would constitute a breach thereof or in any material way adversely affect the rights of a Seller thereunder (or the rights of Buyer thereunder following the Effective Time), unless such consent is obtained. If such consent is not obtained, or if an attempted assignment would be ineffective or would materially and adversely affect the rights of a Seller thereunder (or the rights of Buyer thereunder following the Effective Time), then Sellers shall, upon the request of Buyer, cooperate in any reasonable arrangement designed to provide for Buyer the benefits under any such Assumed Contract, including enforcement of any and all rights of any Seller against the counterparty or counterparties thereto. To the extent Buyer cannot receive the benefit of an Assumed Contract due to the failure or inability to obtain the necessary consent from the counterparty to such Assumed Contract, then, at Buyer’s option, such Contract or Lease, as applicable, shall be deemed an Excluded Contract, and all Liabilities with respect to such Contract or Lease, as applicable, shall be Excluded Liabilities.

(c) If, before the Closing, Buyer discovers information regarding an Assumed Contract that causes Buyer to determine in its reasonable discretion that such Assumed Contract may violate applicable Laws or Buyer’s written policies, Buyer shall have the right to designate such Assumed Contract as an Excluded Contract by giving Sellers written notice of such election before the Closing and as a result, such Contract or Lease, as applicable, shall be deemed an Excluded Contract.

4.8 Closing Date Business Employees.

(a) Effective immediately prior to the Effective Time, the Closing Date Business Employees shall cease to be employees of Sellers, and shall be removed from Sellers’ payroll. Sellers shall terminate the active participation of all of the Closing Date Business Employees in all of the Seller Plans in accordance with the terms and conditions thereof, subject to the terms of Section 5.13. Effective immediately prior to the Effective Time, Sellers shall waive any and all restrictive covenants or noncompetition covenants applicable to the Closing Date Business Employees solely to the extent necessary to permit such Closing Date Business Employees to become employees of Buyer, or an Affiliate of Buyer, post-Closing.
(b) After the Effective Time, Sellers shall timely make or cause to be made appropriate distributions to, or for the benefit of, all of the Closing Date Business Employees in respect of the Seller Plans which are in force and effect with respect to the Closing Date Business Employees immediately prior to the Effective Time in accordance with the terms and conditions of the Seller Plans; provided, however, no such distribution shall be required to the extent it is among the Assumed Obligations (unless and to the extent funded by Buyer).

4.9 Termination Cost Reports. Sellers shall file all Medicare, Medicaid, TRICARE, commercial payor and any other termination cost reports for periods ending on or prior to the Effective Time required to be filed as a result of the consummation of the Transactions. All such termination cost reports shall be filed by Sellers in accordance with Law. Sellers will be solely responsible, financially and otherwise, for the contents of all such termination cost reports. Without limiting the generality of the foregoing, Sellers will be solely obligated for all cost report deficiencies related to periods prior to the Effective Time.

4.10 Confidentiality. From and after the Closing Date, Sellers and their Affiliates, except as required for the post-Closing performance of Sellers’ obligations under this Agreement, if applicable, shall not, directly or indirectly, disclose, reveal, divulge or communicate to any third party (other than authorized officers, managers, directors and employees of Buyer) or use or otherwise exploit for its own benefit or for the benefit of any other third party, any Confidential Information. Sellers and their Affiliates shall have no obligation to keep confidential any Confidential Information if and to the extent disclosure thereof is required by Law or in a Proceeding; provided, however, that, if disclosure is required by applicable Law or in a Proceeding, then Sellers and their Affiliates, as applicable, shall, to the extent reasonably possible, provide Buyer with prompt written notice of such requirement before making any disclosure so that Buyer may seek an appropriate protective Order. For purposes of this Section 4.10, “Confidential Information” means all confidential and proprietary information of the Healthcare Businesses and/or Buyer and includes all information that gives the Healthcare Businesses and/or Buyer a competitive business advantage or the opportunity of obtaining such advantage, or the disclosure of which could be detrimental to the interests of the Healthcare Businesses and/or Buyer, all methods of operation, trade secrets, Software, marketing methods, client lists, client information, pricing, strategy, plans, personnel, suppliers, competitors, markets, financial information or other specialized information or proprietary matters. Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (a) becomes a matter of public knowledge or is contained in materials available to the public through no breach of this Agreement by any Seller or any of their Affiliates or Representatives; or (b) is already known to the recipient on a nonconfidential basis at the time of disclosure by Sellers or their Affiliates, as applicable.

4.11 Bond Defeasance. One or more Sellers carry those certain bonds set forth in Schedule 2.11(b) (“Bond Indebtedness”), which are not callable until the respective call dates set forth on Schedule 2.11(b). Contemporaneously with the Closing, the applicable Seller(s) shall extinguish all such Bond Indebtedness, including by placing into escrow (the “Bond Defeasance Escrow”) an amount equal to the Bond Indebtedness principal and interest to accrue prior to the first allowable call date (the “Bond Defeasance Escrow Amount”). Seller(s) shall establish the Bond Defeasance Escrow and complete other tasks necessary to complete the defeasance of the Bond Indebtedness. Seller(s) shall provide Buyer with (i) an escrow agreement among Seller(s) and the escrow agent for the Bond Defeasance Escrow (the “Bond Defeasance Escrow Agent”), (ii) a copy of a verification report required pursuant to Section 1101 of the Bond Order adopted by the Board of Commissioners for the County of New Hanover, North Carolina, as amended (the “Bond Order”), and such report shall include Buyer as an addressee thereto, and (iii) an opinion of bond counsel to the effect that (a) the Bond Indebtedness has been defeased pursuant to the terms of the Bond Order, the governing documents of the Bond Indebtedness and North Carolina Law and that the bond trustee is required to cancel and discharge the lien of the Bond Order, (b)
the deposit of the securities in the escrow funds relating to the defeasance of the Bond Indebtedness, the transfer of the assets to Sellers and the termination of the operating agreement will have no adverse effect on the exemption of interest on the Bond Indebtedness, and (c) the escrow agreement(s) is enforceable against County (the documents described in clauses (i)-(iii), collectively, the “Bond Defeasance Documents”).

4.12 **Use of Net Proceeds.** Sellers agree that the Purchase Price, the Cash Amount, any interest accruing on Sellers’ portion of the Adjustment Escrow Amount or General Escrow Amount, any portion of the Adjustment Escrow Amount paid to Sellers, and any remaining portion of the Escrow Amount paid to Sellers following the expiration of the Escrow Period (collectively, the “Net Proceeds”), shall only and exclusively be used, distributed, directed, invested or allocated in accordance with those terms set forth in Exhibit C.

4.13 **No Shop.**

(a) From the Effective Date until the earlier of (i) the Closing Date or (ii) the termination of this Agreement, Sellers shall not, without the approval of Buyer, directly or indirectly: take any action to (A) offer for sale the Healthcare Businesses (or any material portion thereof) or any ownership interest in any Person owning or owned by NHRMC or its Affiliates, (B) solicit offers to buy all or any material portion of the Healthcare Businesses or any ownership interest in any Person owning or owned by NHRMC or its Affiliates, (C) hold discussions with any third party looking toward such an offer or solicitation or looking toward a merger or consolidation of any Person owning or owned by NHRMC or its Affiliates or (D) enter into any agreement with any third party with respect to the sale, lease or other disposition of the Healthcare Businesses (or any material portion thereof) or any ownership interest in any Person owning or owned by NHRMC or its Affiliates or with respect to any merger, consolidation or similar transaction involving any Person owning or owned by NHRMC or its Affiliates (each, an “Acquisition Proposal”), other than in connection with the Transactions.

(b) From the Effective Date until the earlier of (i) the Closing Date or (ii) the termination of this Agreement, Sellers and their Affiliates shall, and shall cause their respective Representatives not to, directly or indirectly, engage in any negotiations concerning, or provide any confidential information or data to, or have any discussions with, any third party relating to an Acquisition Proposal, or otherwise knowingly encourage or facilitate any effort or attempt to make or implement an Acquisition Proposal.

(c) Sellers and their Affiliates and Representatives must immediately cease and cause to be terminated any existing activities, discussions or negotiations with any third party conducted heretofore with respect to any Acquisition Proposal or the Transactions. Sellers and their Affiliates shall take the necessary steps to promptly inform their respective Representatives of the obligations undertaken in this Section 4.13. Sellers shall notify Buyer promptly, but in any event within 48 hours, if any inquiries, proposals or offers are received by, any information is requested from or any discussions or negotiations are sought to be initiated or continued with, any Seller, any of their Affiliates or any of their Representatives relating to an Acquisition Proposal, indicating, in connection with such notice, the name of such individual seeking such information, and upon request, shall inform Buyer whether any such proposal has been withdrawn or rejected.

4.14 **Cooperation.** On and before the Closing, Sellers will provide reasonable assistance and cooperation in connection with Buyer’s financing arrangements related to the Transaction, as may be reasonably requested by Buyer.
4.15 Notification of Certain Matters. From the Effective Date until the Closing Date, Sellers shall give prompt written notice to Buyer of (a) the occurrence, or failure to occur, of any event, circumstance or fact that is reasonably likely to cause any representation or warranty of Sellers contained in this Agreement to be untrue in any material respect; (b) any failure of a Seller to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement and/or (c) any other material development affecting the Assets or the Assumed Obligations. Such notice shall provide a reasonably detailed description of the relevant circumstances and shall include the amount that Sellers believe, based on facts known to Sellers, would be payable by Sellers pursuant to the indemnification provisions set forth in Article 10. The content of any notice or update delivered by Sellers to Buyer before the Closing Date pursuant to this Section 4.15 shall not be deemed to amend or supplement the Disclosure Schedules or to modify the applicable representations, warranties and covenants contained in this Agreement or the other Transaction Documents for purposes of determining whether applicable conditions precedent in Article 7 are satisfied, for purposes of determining or calculating Sellers’ indemnification obligations set forth in Article 10 or for purposes of Buyer’s termination rights under Article 8.

ARTICLE 5
COVENANTS OF BUYER

5.1 Buyer’s Efforts to Close. From the Effective Date through the Closing or termination of this Agreement, Buyer shall use its reasonable best efforts to satisfy all of the conditions precedent set forth in Articles 6 and 7 to its or Sellers’ obligations under this Agreement to the extent that Buyer’s action or inaction can control or influence the satisfaction of such conditions.

5.2 Required Governmental Authorizations.

(a) From the Effective Date through the Closing or termination of this Agreement, Buyer will: (i) use its commercially reasonable efforts to obtain, as promptly as practicable, all Required Governmental Authorizations required of Buyer to consummate the Transactions and (ii) reasonably assist and cooperate with Sellers in Sellers’ obtaining, as soon as practicable, the Required Governmental Authorizations required of Sellers to consummate the Transactions.

(b) Notwithstanding the generality of Section 5.2(a), Buyer shall (i) comply at the earliest practicable date with any request for additional information received by Buyer or Buyer’s Affiliates from any Governmental Entity pursuant to applicable Law, (ii) subject to applicable Law, consult and cooperate with Sellers, and consider in good faith the views of Sellers, in connection with any analyses, appearances, substantive discussions, presentations, memoranda, briefs, arguments, opinions and proposals made or submitted by or on behalf of any party in connection with Proceedings under or relating to antitrust Law and in connection with resolving any investigation or other inquiry concerning the Transactions commenced by any Governmental Entity, (iii) promptly notify Sellers of any written communication made to or received by Buyer from any Governmental Entity regarding any of the Transactions and, subject to applicable Law, permit Sellers (or their counsel on an outside-counsel basis) to review and comment in advance on any proposed written communication to the Governmental Entity, incorporate Sellers’ reasonable comments into such proposed written communications to the Governmental Entity and permit Seller to participate in any oral communications and meetings with a Governmental Entity, and (iv) not enter into any agreement or understanding with the Governmental Entity without consulting with and incorporating the views of Sellers. Notwithstanding the foregoing or any other term herein, “commercially reasonable efforts”, as used in this Section 5.2, shall not be interpreted to obligate Buyer or its Affiliates to defend or prosecute through any litigation any claim asserted in court by any Person, including any Governmental Entity, in order to avoid entry of, or to have vacated or terminated, any Order (whether temporary, preliminary, or permanent) that would prevent the
Closing. Buyer shall not, and shall cause its Affiliates not to, acquire or agree to acquire, by merging with or into or consolidating with, or by purchasing a portion of the assets of or equity in, or by any other manner, any business or any corporation, partnership, association or other business organization or division thereof, or otherwise acquire or agree to acquire any assets or equity interests, if the entering into of a definitive agreement relating to, or the consummation of such acquisition, merger or consolidation, would reasonably be expected to: (w) impose any delay in the obtaining of, or materially increase the risk of not obtaining, any Required Governmental Authorization; (x) increase the risk of any Governmental Entity seeking or entering an Order prohibiting the consummation of the Transactions; (y) increase the risk of not being able to remove any such Order on appeal or otherwise; or (z) delay or prevent the consummation of the Transactions.

5.3 Excluded Assets. As soon as practicable after the Closing Date, Buyer shall deliver at Sellers’ cost to Sellers or Sellers’ designee any Excluded Assets found at the Healthcare Businesses on and after the Effective Time, without imposing any charge on Sellers for Buyer’s storage or holding of same on and after the Effective Time.

5.4 Confidentiality. The terms of the Confidentiality Agreement shall survive the execution of this Agreement and the Closing for a period of three years and Buyer shall, and shall cause its Affiliates to, continue to comply with the terms of such Confidentiality Agreement; provided, however, that following the Closing, Buyer shall not be restricted under the Confidentiality Agreement with respect to its use in connection with the operation of the Healthcare Businesses of information that is included in the Assets.

5.5 Title Matters.

(a) Buyers will order or have ordered one or more current title commitments for a policy or policies of title insurance with respect to the Owned Real Property (collectively, the “Title Commitment”), from Chicago Title Insurance Company (the “Title Company”), together with legible copies of all exceptions to title referenced therein, sufficient for the issuance of a policy or policies of commercially reasonable title insurance for the Owned Real Property (collectively, the “Title Policy”). Buyer shall promptly upon receipt provide a copy of the Title Commitment and exception documents to Sellers.

(b) Within 180 days after the Effective Date, Buyer may, at its expense, obtain current as-built surveys of the Owned Real Property (each, a “Survey” and, collectively, the “Surveys”) or such portions thereof as Buyer elects. Buyer shall promptly upon receipt furnish a copy of each Survey to Sellers.

(c) The Title Commitment and the Surveys (to the extent obtained by Buyer pursuant to Section 5.5(b)) are collectively referred to as “Title Evidence.” Buyer shall notify Sellers, in writing, within 20 Business Days after Buyer’s receipt of the last of the Title Evidence (the “Title Objection Period”) of any liens, claims, encroachments, exceptions or defects disclosed in the Title Evidence (collectively, “Defects”); provided, however, that the term “Defects” shall not include any liens, claims, encroachments, exceptions or defects that are Permitted Exceptions; provided further, however, that any lien, claim, encroachment, exception or defect that qualifies as a Permitted Exception solely by virtue of being disclosed by the Title Commitment or the Surveys shall not be excluded from the term “Defects”. Any Defect or Encumbrance to which Buyer does not timely object shall be deemed to be a Permitted Exception. Notwithstanding anything herein to the contrary, Sellers agree (i) to satisfy and discharge (including the filing of appropriate satisfaction instruments in connection therewith), at or prior to Closing, all mortgages, deeds of trust, financing statements, mechanics’ liens, judgment liens and similar liens encumbering any Owned Real Property and/or the interest of any Seller in any Owned Real Property
(each, a “Monetary Encumbrance” and, collectively, the “Monetary Encumbrances”), to the extent any such particular Monetary Encumbrance can be satisfied and discharged by the payment of a definite and ascertainable sum of money, and (ii) to cure any other Defects (i.e., any Defects other than Monetary Encumbrances) encumbering or otherwise affecting any Owned Real Property and/or the interest of any Sellers in any Owned Real Property that were communicated in writing within the Title Objection Period and that, individually or in the aggregate, materially and adversely affect the operation of the Healthcare Businesses (collectively, “Non-Monetary Encumbrances”); provided, however, that Sellers shall not be required to expend, in the aggregate, more than One Million Dollars ($1,000,000.00) (the “Non-Monetary Cure Threshold”) to cure the Non-Monetary Encumbrances; provided further, that in the event Sellers are unable to cure any Non-Monetary Encumbrances, either as a result of the total expenses incurred by Sellers with respect to the curing of Non-Monetary Encumbrances exceeding the Non-Monetary Cure Threshold or because such cure is beyond Sellers’ reasonable control despite Sellers’ good faith, commercially reasonable efforts, such inability of Sellers to cure shall not constitute a default of Sellers, and Buyer shall have, as its sole remedy, the right to terminate this Agreement upon written notice to Sellers. Subject to the terms and limitations of this Section 5.5(c), Sellers shall use commercially reasonable efforts to cure any liens, claims, encroachments, exceptions or defects disclosed in the Title Evidence and encumbering or otherwise affecting any Owned Real Property and/or the interest of any Sellers in any Owned Real Property that were communicated to Sellers in writing within the Title Objection Period. As used herein, the term “Monetary Encumbrance” shall not include any encumbrance the removal of which is an obligation of any tenant pursuant to a Lessor Lease, to the extent such particular Lessor Lease expressly permits the lessor thereunder to remove or cure such encumbrance on behalf of the lessee thereunder in the event such lessee fails to do so within a reasonable period of time. For purposes of this section, a Defect shall be deemed cured if the Title Company agrees to (i) delete the Defect from the applicable title policy or (ii) issue an endorsement or other provision to the applicable title policy reasonably acceptable to the Title Company, within the limits of the applicable title policy, to protect Buyer against any loss or damage incurred on account of such Defect.

(d) Section 12.12 shall govern which party or parties shall bear the costs and expenses of the Title Commitment, the Title Policy and the Surveys.

(e) Buyer and Sellers hereby acknowledge and agree that, to the extent required by Title Company, at the Closing, Buyer shall pay, by wire transfer of immediately available funds pursuant to Section 1.1(d)(vi), the portion of the Purchase Price allocated to the transfer of the Owned Real Property to Buyer in the manner set forth in Section 1.4(a) (i.e., the Owned Real Property Purchase Price) to Title Company, in lieu of any other obligation of Buyer contained herein to wire, pay or otherwise provide such portion of the Purchase Price to any other Person or in any other manner, and such portion of the Purchase Price shall be (i) held by Title Company pursuant to a commercially reasonable escrow agreement reasonably approved by Buyer and Sellers and (ii) distributed by Title Company at Closing pursuant to the Funds Flow Memorandum; it being the intent of Buyer and Sellers that the portion of the Purchase Price allocated to the transfer of the Owned Real Property in the manner set forth in Section 1.4(a) shall, to the extent required by Title Company, flow through Title Company in a manner consistent with customary closing procedures of commercial real property acquisitions and dispositions involving title insurance companies in the State of North Carolina.

5.6 Inspection; Repair and Restoration; Insurance. From the Effective Date through the Closing or termination of this Agreement, Buyer shall conduct any inspections, investigations and reviews permitted pursuant to Section 4.1 in a manner that does not materially damage the Real Property or interfere unreasonably with the operations of the Healthcare Businesses. Buyer shall promptly repair any damage that occurs as a result of any inspections, investigations and reviews and shall promptly
restore the Real Property to its prior condition following completion of such inspection, investigation or review. Such repairs and restoration shall be performed at Buyer’s sole expense.

5.7 Consents. Subject to the terms of Section 4.7(b), Buyer will use its commercially reasonable efforts to assist Sellers in obtaining, prior to the Closing Date, the Contract and Lease Consents; provided, however, in connection with any such Consent, Buyer shall not be obligated to pay any consideration, agree to any undertaking or modification to a Contract or Lease or offer or grant any financial accommodation not expressly required by the terms of such Contract or Lease.

5.8 R&W Insurance Policy. Contemporaneous with the Effective Date, Buyer has obtained a buyer-side representations and warranties insurance policy effective as of the Closing (the “R&W Policy”) with an insurance broker selected by Buyer providing for (a) coverage against, inter alia, the inaccuracy or breach of Sellers’ representations and warranties contained in this Agreement (including the Fundamental Representations), (b) an initial retention amount of $12,750,000 (the “Retention”) and (c) waiver of any and all subrogation rights to the insurer in favor of Sellers or any of their respective Affiliates except in the case of fraud or intentional misconduct. The cost of the R&W Policy (including all premiums and excess lines Taxes payable in connection therewith and any fees or expenses incurred by any insurance broker or underwriting insurance company in connection therewith) shall be borne by Buyer; provided, however, the first 50% of the Retention shall be borne by Buyer (“Buyer Retention”) and the second 50% of the Retention, if any is due, shall be the responsibility of Sellers (“Seller Retention”) and paid out of the General Escrow Amount.

5.9 Capital Commitments.

(a) At the Closing, Buyer shall contribute a one-time, lump-sum payment in the total amount of Fifty Million Dollars ($50,000,000) (“Foundation Contribution”) to NHRMC Foundation as further set forth in Section 7.5(b).

(b) As soon as practicable following the Closing, but in any event within the later of (i) one year following Closing and (ii) upon the receipt of any required approvals by any applicable Governmental Entity, Buyer shall cause Novant Health Brunswick Medical Center (“NHBMC”) to become a component hospital of the Healthcare Businesses subject to governance by the Local Board following the Closing. Buyer shall cause the foregoing to occur in a method chosen in its reasonable discretion. The Local Board may establish a subordinate local board for the Hospitals.

(c) In addition to payment of the Purchase Price and the other commitments set forth in this Agreement, Buyer shall make the following Capital Expenditures to the Healthcare Businesses from and after the Closing:

(i) Buyer shall spend no less than Six Hundred Million Dollars ($600,000,000) during the 10-year period immediately following the Closing to fund commercially reasonable routine Capital Expenditures of the Healthcare Businesses (the “Routine Capital Commitment”). In the event the full amount of such Routine Capital Commitment cannot reasonably be expended within such 10-year period due to the lack of commercially reasonable routine Capital Expenditure requirements, as reasonably determined by Buyer, such Routine Capital Commitment period shall be automatically extended for one additional five-year period.

(ii) In addition to the Routine Capital Commitment, Buyer shall make no less than Two Billion Five Hundred Million Dollars ($2,500,000,000) in Capital Expenditures following the Closing to materially implement (A) all of the strategic projects set forth in the
Strategic Plan (to the extent disclosed in reasonable detail), with such strategic projects scheduled to be completed in the five-year period following the Closing to be implemented in a manner materially consistent with target dates and timelines set forth in the Strategic Plan, and (B) such other capital-intensive projects similar to those in the Strategic Plan as may be approved by the Local Board from time to time. In conjunction with implementing the foregoing, the parties agree to periodically consider opportunities to optimize the overall strategic capital plan for the Healthcare Businesses taking into consideration the contribution of NHBMC; provided, however, that any modification to the commitments set forth in Section 5.9 shall require the prior written consent of the Local Board and Buyer. The parties acknowledge and agree that the items and amounts listed in the Strategic Plan are based on projections and estimates and are subject to Buyer’s and the Local Board’s review throughout the implementation of the Strategic Plan; provided, however, for the avoidance of doubt, the foregoing clause shall not be interpreted as limiting, modifying or permitting any modification of Buyer’s aggregate capital commitments set forth in this Section 5.9(c).

5.10 **Improving Access to Care and Wellness.**

(a) Unless otherwise consented to in writing by the Local Board, Buyer shall not, at any time following the Closing, perform or take any actions to discontinue or otherwise eliminate any of the Core Clinical Service Lines of the Healthcare Businesses. Buyer shall use commercially reasonable efforts to further develop, upgrade, and expand the Healthcare Businesses’ clinical service lines, including the Core Clinical Service Lines, which such expansion and development shall be tailored to fill needs identified in the Strategic Plan and the Provider Needs Assessment and shall include upgrades to the Hospital campuses as well as expansion of the Hospitals’ tertiary and quaternary capabilities.

(b) For a period of not less than 10 years following the Closing, Buyer shall use commercially reasonable efforts to ensure that the Healthcare Businesses continue to expand and enhance the scope, level, and areas of services, including any inpatient and outpatient Hospital services, as are offered by the Hospitals and Healthcare Businesses as of the Closing.

(c) As of the Closing, Buyer shall operate the Healthcare Businesses as the “hub” for the provision of all clinical services offered or provided by Buyer within the Service Area and eastern North Carolina. As part of such organizational model, and without limiting the foregoing, the Healthcare Businesses shall retain primary responsibility for all patient care delivered within the Service Area, and Buyer shall make commercially reasonable efforts to make available specialty medical services and patient care support by consultation or otherwise in furtherance and support of such model.

(d) Unless Pender is sooner more fully integrated into the Healthcare Businesses, or NHRMC and Pender County otherwise agree to another structure with respect to Pender prior to Closing (subject to Buyer’s approval), Buyer shall, for a period of not less than three years following the Closing, use commercially reasonable efforts to ensure the continued maintenance and further development of the existing arrangement with Pender Memorial Hospital, Inc. (“Pender”), including, at a minimum, Buyer’s assumption as of Closing of that certain Second Amended and Restated Operating Agreement among NHRMC, Pender County and Pender (“Pender MSA”) and the other contracts between a Seller and Pender set forth on Schedule 1.4(g). For at least three years following the Closing, Pender shall continue to be operated as part of the Healthcare Businesses consistent with the commitments set forth in the Pender MSA, unless Pender County and Buyer agree to a fuller integration of Pender or another appropriate structure.

(e) Within not more than 18 months following the Closing, Buyer shall deploy or otherwise provide the Hospitals and other components of the Healthcare Businesses access to Buyer’s or
Buyer’s Affiliates’ full suite of electronic consumer-facing tools, as such tools exist and are available for deployment at any other Buyer owned, managed or operated facility, and shall cause and facilitate the Healthcare Businesses’ implementation of such tools.

(f) Within not more than 18 months following the Closing, Buyer shall use commercially reasonable efforts to fully implement Buyer’s or Buyer’s Affiliates’ existing telemedicine platform at the Hospitals and the Healthcare Businesses. Buyer shall provide ongoing support and expertise to the Healthcare Businesses relating to such telemedicine program, which shall include the following: (i) technology infrastructure and support; (ii) coding, billing, reimbursement expertise and support; (iii) clinical workflows and protocols; and (iv) access to clinicians, providers and legislative leadership. With respect to telehealth services, Buyer shall use commercially reasonable efforts to integrate into the Healthcare Businesses’ existing contracted payer relationships coverage for on-demand and scheduled virtual visits and office visit parity for synchronous video visits. Buyer shall support the Healthcare Businesses’ development and implementation of an out-of-pocket payment solution for such services. Buyer shall continue to work with legislators at the state and national levels in support of telehealth coverage, including expanded broadband access in rural communities within the Service Area. Buyer shall, through its Physicians and leadership team, provide education on the benefits of telehealth to payer partners and work with the Healthcare Businesses’ internal standing committees to ensure revenue cycle and compliance best practices with respect to telemedicine.

(g) Within not more than 18 months following the Closing, Buyer shall, subject to input from the Local Board, develop and implement a plan to establish the Hospitals’ administration and services as the regional headquarters for Buyer’s health system in the Service Area. Buyer further agrees to share, develop and implement at the Healthcare Businesses industry-recognized best practices, existing capabilities, and innovative tools and dashboards during the development and implementation of the headquarters.

(h) In addition to the commitments in Sections 5.10(a)-(g), Buyer agrees to use commercially reasonable efforts to:

(i) integrate the Hospitals into Buyer’s existing network of health facilities and hospitals within the region to improve patient access to care. Buyer shall further enhance and expand the Hospitals’ existing ambulatory network in accordance with the objectives and timelines identified in the Strategic Plan;

(ii) provide to the Healthcare Businesses and cause and facilitate the Healthcare Businesses’ implementation of, Buyer’s and Buyer’s Affiliates’ existing price transparency tools, including patient cost and point of care price estimation platforms and shall further collaborate with the Hospitals to develop and implement enhanced price transparency tools based on the needs within the Service Area;

(iii) implement an omni-channel digital consumer platform at the Healthcare Businesses, which is scalable and customizable based on consumer needs and shall include, at a minimum, online provider and location directories, virtual triage services, online patient scheduling, online bill payment and secure portals for sharing of information with patients;

(iv) develop and implement corporate health and wellness programs customized to meet the various needs of local employers, including the development and implementation of effective systematic approaches to bring employer services to market; and
(v) create and enhance Buyer’s existing partnerships in the region for post-acute care optimize the current post-acute care capabilities and practices of Pender and New Hanover Regional Medical Center Rehabilitation Hospital.

5.11 Advancing the Value of Care.

(a) Buyer shall provide access to and shall use reasonable best efforts to integrate into the Healthcare Businesses, shared infrastructure, value-based capabilities and corporate services, including patient access solutions, care management, behavioral health and primary care integration, telepsychiatry, documentation excellence, clinical solutions and analytics.

(b) Buyer shall use commercially reasonable efforts to apply Buyer’s health plan and value-based contracting experience to advance NHRMC’s strategy regarding value-based care options. To the extent applicable, Buyer shall use commercially reasonable efforts to provide the Healthcare Businesses with access to health plans that are owned by Buyer or health plans in which Buyer has a material ownership interest and facilitate the Healthcare Businesses’ use of such plans.

(c) Buyer shall use commercially reasonable efforts to expand Buyer’s and Buyer’s Affiliates’ partnership network offering within the Service Area.

(d) Buyer shall assume, and use commercially reasonable efforts to further develop, NHRMC’s existing Medicare Advantage plan and continue to operate the Healthcare Businesses in accordance with NHRMC’s existing Medicare Advantage strategy.

(e) To the extent applicable, Buyer shall include and use commercially reasonable efforts to fully integrate appropriate segments of the Healthcare Businesses, including the Healthcare Businesses’ existing ACO, Physician Quality Partners, within Buyer’s accountable care organization and clinically integrated network structures or through a new legal entity.

(f) Within not more than 18 months following the Closing, Buyer shall use commercially reasonable efforts to perform the following commitments:

   (i) provide the Healthcare Businesses with full access to all of Buyer’s and Buyer’s Affiliates’ patient satisfaction programs and resources; and

   (ii) upon the request of Sellers or the Local Board, fully integrate the Hospitals and Healthcare Businesses, or applicable parts thereof, into Buyer’s and Buyer’s Affiliates’ existing patient satisfaction initiatives.

(g) Buyer shall use reasonable best efforts to position and maintain the Healthcare Businesses in the top 10% nationally in patient satisfaction.

5.12 Promoting Health Equity.

(a) Subject to changes in applicable Law, Buyer shall use reasonable best efforts to expand, and in any event shall maintain, the Healthcare Businesses’ policies on charity and indigent care, as such policies are in existence as of the Closing, and shall continue to increase and expand the scope and level of care provided to indigent and low-income patients beyond the scope and level historically provided by the Healthcare Businesses, consistent with Buyer’s policies on charity care.
(b) Buyer shall not, with respect to any patients of the Healthcare Businesses, engage in any extraordinary debt collection practices, including placing a lien on an individual’s primary residence or real property, seizing of bank accounts or other personal property, bringing civil action against an individual or garnishing of wages.

(c) Buyer shall use reasonable best efforts to fully develop and expand the Healthcare Businesses’ existing partnerships and to establish new partnerships focused on expanding health equity in the Service Area. Buyer shall use commercially reasonable efforts to collaborate with identified key stakeholders to determine optimal community benefit for local residents and to place social workers, case managers, or other care management professionals within clinics of the Healthcare Businesses in accordance with demonstrated need for increased patient support. Buyer shall use commercially reasonable efforts to collaborate with identified key stakeholders to expand existing community outreach programs and social services partnerships in the region.

(d) Buyer shall expand and enhance the Healthcare Businesses’ community outreach efforts and engagement beyond historical levels and scope. Buyer shall continue to expand and enhance the Healthcare Businesses’ existing community benefit programs and partnerships, including, but not limited to those related to financial assistance and health education. The adoption, termination, or amendment of policies and procedures regarding community outreach programs, social services partnerships and other similar programs shall be subject to the approval of the Local Board for no less than five years following the Closing.

(e) Buyer shall continue and fully fund and support, the Healthcare Businesses’ inclusion, anti-discrimination, and diversity programs, or, to the extent Buyer’s programs are reasonably determined to be comparable or better than the Healthcare Businesses’ then-existing programs in all material respects, Buyer shall replace the Healthcare Businesses’ programs with Buyer’s programs.

(f) Buyer shall expand and enhance the Healthcare Businesses’ efforts to identify social determinants of health, and the impacts thereof, in the Service Area. Buyer shall further develop and implement comprehensive strategies to address and mitigate the impacts of such social determinants of health, which shall include development and implementation for the Healthcare Businesses of a data analytics platform and related solutions designed to facilitate the implementation, monitoring and improvement of such strategies.

(g) Without limiting the generality of the foregoing, within not more than one year following the Closing, Buyer shall (i) integrate the Healthcare Businesses’ staff into Buyer’s existing diversity and inclusion programming and (ii) in collaboration with the Local Board, develop a Southeastern North Carolina metric-based scorecard consistent with Buyer’s current analytics to be used to measure the Healthcare Businesses’ progress toward health equity and to identify health disparities, as such scorecard and measuring process may be amended or modified from time to time.

(h) In addition, and without limiting the generality of the foregoing, within not more than one year following Closing, Buyer shall assist the Healthcare Businesses to formalize the creation of the Healthcare Businesses’ Health Equity Department, including the establishment of a Health Equity Budget and a Southeastern North Carolina Community Engagement Team, and establishing the support services to be provided centrally by Buyer. As a component of the Healthcare Businesses’ formal Health Equity Program, Buyer shall, within one year following Closing, assist the Healthcare Businesses in developing a social worker strategy for highest clinical needs.
Section 5.13 Certain Employee Matters.

(a) Buyer or its designated Affiliate shall offer employment to all of the Closing Date Business Employees, subject to Buyer’s standard preemployment screening criteria, as of the Effective Time. Subject to the reasonable application of Buyer’s and Buyer’s Affiliates’ respective employment practices and compensation and benefits policies and procedures, Buyer or its designated Affiliate will offer employment to such Closing Date Business Employees at each such Closing Date Business Employee’s current wage, salary, job title, responsibilities, reporting structure and other conditions of employment. For purposes of this Agreement, “Closing Date Business Employees” means each of the Business Employees as of the Closing Date, whether or not on a leave of absence. No later than 10 days prior to the Closing, Sellers shall deliver to Buyer a schedule specifically referencing this Section 5.13(a) and identifying each of the Closing Date Business Employees, including each such Closing Date Business Employee’s title, job position, location of employment and salary. Any of the Closing Date Business Employees who accept an offer of employment with Buyer as of or promptly after the Effective Time shall be referred to in this Agreement as the “Hired Employees.” Any of the Closing Date Business Employees who do not accept an offer of employment with Buyer as of or promptly after the Effective Time shall be referred to in this Agreement as the “Rejecting Employees.” Any of the Closing Date Business Employees to whom Buyer either (i) does not offer employment as of the Effective Time or (ii) does not offer employment as of the Effective Time on terms and conditions consistent with this Section 5.13(a) shall be referred to in this Agreement as the “Non-Offered Employees.” Buyer covenants and agrees that Buyer shall continue to employ the Hired Employees in accordance with the terms of Section 5.13 for a period of no less than 24 months following the Closing Date, unless (x) Buyer sooner terminates the employment of any Hired Employee for cause, including felony indictment, exclusion from participating in a federal health care program, loss of medical staff privileges or material failure to comply with Buyer’s regular employment policies and procedures applicable to Buyer’s workforce, as a whole, or (y) in the event any Hired Employee voluntarily resigns or retires.

(b) Buyer shall assume certain Seller Plans, which are identified on Schedule 5.13(b) (the “Transferred Plans”). Sellers agree to provide Buyer with all reasonably requested information and assistance as necessary for Buyer to effectuate the assumption of the Transferred Plans. Buyer acknowledges and agrees that from and after the Effective Time, and for a period of not less than three years, (i) Hired Employees shall be eligible for participation in (x) the Transferred Plans in accordance with the eligibility criteria of such plans and/or (y) Buyer’s and Buyer’s Affiliates’ respective comprehensive and market-competitive benefits packages in the same manner as similarly situated employees of Buyer and Buyer’s Affiliates; and (ii) Hired Employees shall be given credit for length of service with Sellers and any Affiliate thereof for purposes of determining eligibility for participation in, vesting, and benefit accrual under the various benefit plans offered by Buyer or its designated Affiliate, including the Transferred Plans, as necessary, following the Effective Time and for purposes of satisfying pre-existing condition limitations and applicable waiting periods with respect to health insurance coverage provided to Hired Employees by Buyer, subject to compliance with applicable Law. In addition, if prior to the Effective Time a Hired Employee or such Hired Employee’s covered dependents paid any amounts towards a deductible or out-of-pocket maximum in Sellers’ medical and health plan’s current plan year, such amounts shall be applied toward satisfaction of the deductible or out-of-pocket maximum in the current plan year of Buyer’s medical and health plan that covers Hired Employees on and after the Effective Time.

(c) Buyer shall carry over and give all Hired Employees full credit for all Accrued Paid Time Off as of the Effective Time by crediting such employees the amount of such Accrued Paid Time Off as determined pursuant to Section 1.1; provided, however, that from and after the Effective Time, each Hired Employee’s paid time off benefits shall be administered pursuant to Buyer’s and Buyer’s Affiliates’ applicable policies and procedures.
Buyer shall be responsible for providing continuation coverage pursuant to the requirements of section 4980B of the Code, and Part 6 of Title I of ERISA (“COBRA coverage”) with respect to each of the Hired Employees (and their dependents) whose qualifying event occurs on or after the date on which such Closing Date Business Employees become Hired Employees. For qualifying events occurring before the date on which such Closing Date Business Employees become Hired Employees, for Rejecting Employees and Non-Offered Employees, and qualifying events occurring by virtue of the closing of the Transactions, Sellers shall provide COBRA coverage in accordance with COBRA and shall continue to be fully responsible for such COBRA coverage; provided, however, that Sellers’ responsibility for COBRA coverage in such circumstances is contingent upon Buyer’s compliance with Section 5.13(a).

After the Closing Date, Buyer’s human resources department will give reasonable assistance to Sellers’ and their Affiliates’ human resources department with respect to Sellers’ and their Affiliates’ post-Closing administration of Sellers’ and their Affiliates’ pre-Closing employee retirement benefit plans and employee health or welfare benefit plans for the Closing Date Business Employees. Within ten 10 Business Days after the Closing Date, Buyer shall provide to Sellers a list of all the Rejecting Employees. After the Closing Date, in addition to, and without limiting any other terms herein, including the terms set forth in Section 5.13(a), Buyer shall retain that number of employees as shall be necessary to avoid triggering applicable provisions and liabilities under WARN or any similar state, local or foreign Law.

5.14 Medical Staff. To ensure continuity of care in the community, Buyer agrees that the Hospital’s medical staff members in good standing as of the Effective Time shall maintain medical staff privileges at the Hospital as of the Effective Time. The foregoing will not limit the ability of Buyer to grant, withhold, or suspend medical staff appointment or clinical privileges in accordance with the terms of the Hospital’s medical staff Bylaws after the Effective Time and subject to the approval of the Local Board, as applicable. On and after the Effective Time, the medical staff will be subject to the Hospital’s Medical Staff Bylaws then in effect. To ensure continuity of care in the Service Area, Buyer shall ensure that the Hospitals’ medical staffs will be substantially unchanged as a result of the Transactions, subject to Buyer’s reasonable policies and procedures. The medical staff of the Hospitals shall remain an open medical staff at all times following the Closing, unless otherwise approved by the Local Board. Without the approval of the Local Board, Buyer shall not take, or cause or permit to be taken, any action that would affect or materially change the medical staff privileges held by members of the medical staffs of the Hospitals as of the Closing; the medical staff bylaws, rules and regulations, or credentialing procedures of the Hospitals as of the Closing; or any agreements with members of the medical staffs, so long as all such relationships are in compliance with applicable state and federal Laws.

5.15 Partnering with Providers.

(a) Following Closing, Buyer shall provide comprehensive administrative and management services for the medical groups and practices associated with the Healthcare Businesses. Buyer shall use commercially reasonable efforts to provide such services with minimal disruption, to the extent solely within Buyer’s control, to such medical groups and practices.

(b) Buyer shall use commercially reasonable efforts to cause and facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s advanced practice provider (“APP”) recruitment and retention resources, including APP recruitment and retention programs and the deployment of team-based care practices emphasizing practice at the top of license for all APPs.

(c) Upon Closing, Buyer shall cause and facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s recruitment infrastructure in order to recruit Physicians to fill
positions identified in the Provider Needs Assessment. Within not more than three years following the Closing, Buyer shall use commercially reasonable efforts to ensure the recruitment of Physicians to fill at least 75% percent of the positions identified in the Provider Needs Assessment.

(d) At the Closing, Buyer shall enter into an academic and clinical affiliation agreement ("New Hanover Academic and Clinical Affiliation Agreement") by and among Buyer, the University of North Carolina Health Care System ("UNCHCS") and The University of North Carolina at Chapel Hill on behalf of its School of Medicine ("UNCHSOM") that, as of the Closing, provides for (i) Buyer’s continued operation of a Graduate Medical Education program ("GME Program") at the Hospitals from and after the Effective Time, which GME Program shall be, at a minimum, commensurate in quality, size and scope with the Hospitals’ GME Program as of the Closing Date; (ii) expansion of the GME Program as reasonably requested by the Local Board and funded by the Healthcare Businesses from time to time; (iii) Buyer’s development, implementation and expansion of a comprehensive medical resident and fellow recruitment program; and (iv) Buyer’s adoption and implementation of educational partnerships, children’s clinical partnerships, research and clinical trial infrastructure, and access to quaternary care. The New Hanover Academic and Clinical Affiliation Agreement shall be based on the Term Sheet for Proposed Academic and Clinical Affiliation for New Hanover Region dated June 23, 2020 attached as Exhibit D. The New Hanover Academic and Clinical Affiliation Agreement shall be prepared in consultation with Sellers.

(e) Buyer shall develop, implement and expand upon the Hospitals’ existing APP graduate medical education program in accordance with the needs identified by the Healthcare Businesses and the Local Board regarding the same.

(f) Within not more than 12 months following the Closing, Buyer shall provide, and facilitate the Healthcare Businesses’ access to, Buyer’s specialty Physicians for electronic consultation on an as-needed basis and in accordance with applicable Business policies and procedures.

(g) Buyer shall cause and facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s process improvement policies, procedures and initiatives, including by implementation of electronic health record system enhancements, clinical workflow management, clinician availability and room utilization and other clinical and administrative tools that operationalize new growth and drive quality.

(h) Buyer shall use commercially reasonable efforts to provide all eligible employees and medical staff members of the Hospitals with access to its provider and leadership development programs and shall facilitate such providers’ utilization of such programs.

(i) Buyer shall, subject to compliance with applicable state and federal Law, Buyer’s compliance standards and the terms of the Assumed Contracts: (i) as of the Closing, offer to, subject to such individual’s consent, if needed, maintain all employment agreements for Sellers’ directly employed Physicians and mid-level providers and cause each such agreement to remain in place with CHA, without material modification in terms; (ii) as of, or subsequent to, the Closing, as applicable and in any event no later than October 1, 2022, to the extent not prohibited by their existing terms of employment, enter into new agreements, each with an initial term of not less than three years from the Closing Date, with those providers set forth on Schedule 5.15(i) who are engaged by the Healthcare Businesses through agreements with third parties, which such new agreements shall be on terms materially similar to those terms that had been included in such providers’ agreements with such third parties; and (iii) assume, maintain and enhance those contracts and arrangements between the Healthcare Businesses and independent community providers set forth on Schedule 5.15(i) (the agreements covered by clauses (i)-(iii) collectively, the “Provider Agreements”). Within the three-year period immediately following
Closing, Buyer agrees not to terminate any Provider Agreement without cause, to provide notice of nonrenewal of any Provider Agreement if such notice would result in the expiration of such Provider Agreement within such three-year period, or to take any action or refrain from taking any action that would be grounds for any provider or practitioner terminating any such Provider Agreement for cause. To the extent applicable, Buyer shall also agree and consent to any renewal of any Provider Agreement described in clauses (i) and (iii) above within such three-year period following Closing. Further, Buyer shall not propose or attempt to implement, within the three-year period following Closing, any material amendment to any Provider Agreement, except for such amendments as are necessary to comply with applicable law or as are otherwise voluntarily agreed to in writing by the applicable provider. Notwithstanding the foregoing, Buyer shall not be in breach of the obligations set forth in this Section 5.15(i) in the event any provider or practitioner terminates any Provider Agreement without cause or in the event Buyer terminates any Provider Agreement for cause. Further, subject to compliance with applicable state and federal Law, Buyer’s compliance standards and the Assumed Contracts, Buyer shall, to the extent agreed to by the applicable third party, assume, maintain and enhance those existing joint venture arrangements to which any Seller is a party with independent community providers for so long as such joint venture arrangements reasonably remain a net benefit to the Healthcare Businesses.

(j) Within not more than 12 months following the Closing, Buyer shall use commercially reasonable efforts to extend and facilitate, as applicable, the opportunity for the Healthcare Businesses to participate in Buyer’s accountable care organization or clinically integrated network to all independent providers who maintain an active arrangement with the Hospitals.

(k) Subject to compliance with applicable state and federal Law and Buyer’s compliance standards, Buyer shall use commercially reasonable efforts to cause and facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s existing Physician alignment models, including by making available to community providers in the Service Area opportunities for shared investments and co-management arrangements.

(l) Buyer shall use commercially reasonable efforts to cause and facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s electronic health record support services and connectivity capabilities, including those certain electronic health records connectivity, referral management connectivity, technical consulting and analytics solutions and services set forth in Schedule 5.15(i). Buyer shall further use commercially reasonable efforts to make such solutions and services available to independent community providers in the Service Area.

5.16 **Driving Quality of Care Throughout the Continuum.**

(a) Buyer shall cause the Hospitals to continue to be accredited by DNV GL Healthcare following the Closing.

(b) From and after the Closing, Buyer shall use commercially reasonable efforts to deploy, cause, and facilitate the Healthcare Businesses’ implementation of Buyer’s care management coordination programs, capabilities and resources. In connection with the foregoing, Buyer, in consultation with the Local Board, shall develop and implement a task force to assess the Healthcare Businesses’ Care Management Platform and develop a plan for implementation of Buyer’s best practice programs and other enhancements, and integrate care management and utilization management functional areas, including platform optimization, all within not more than three years following Closing.

(c) Buyer shall, in coordination and consultation with the Local Board, use commercially reasonable efforts to assume and further develop and expand those certain quality improvement initiatives and best practices focused on Buyer’s best practices programs relating to First,
Do No Harm, Continuous Readiness, Analytics and Informatics, Infection Prevention, Opioid Stewardship, and Clinical Documentation Excellence. Buyer shall, in addition to the foregoing, cause and facilitate the Healthcare Businesses’ adoption and implementation of: (i) Buyer’s clinical transformation guidelines, including preventive guidelines, evidence-based protocols and safety initiatives; (ii) Buyer’s quality improvement infrastructure and resources, including care redesign teams and quality analytics and scorecard; and (iii) those other quality initiatives described on Schedule 5.16(c).

(d) Buyer shall cause and facilitate the Healthcare Businesses’ adoption and implementation of available emerging technologies regarding the quality and safety of care as such technologies become available, in a manner consistent with applicable industry standards.

(e) Buyer shall use reasonable best efforts to cause the Hospitals and other appropriate components of the Healthcare Businesses to satisfy the quality metrics consistent with Buyer’s system-wide quality and safety metrics, which shall include measures relating to patient safety, clinical effectiveness, patient-centeredness, timeliness, efficiency and equity as may be implemented from time to time at the Healthcare Businesses in consultation with the Local Board (collectively, the “Quality Metrics”). In connection with such efforts, Buyer will give consideration to adoption and implementation of all, or parts of, the Hospitals’ Quality Assurance and Performance Improvement Plan. Buyer further shall adopt and implement appropriate protocols for measuring and monitoring the Healthcare Businesses’ performance against such Quality Metrics and shall further implement appropriate technology infrastructure to facilitate such measurement and monitoring, which shall include providing a quality connection to its electronic medical records system to the Healthcare Businesses and independent community Physicians in the Service Area. Buyer shall provide a report to the Local Board concerning the Healthcare Businesses’ performance toward such Quality Metrics on a not less than annual basis, with the format and substance of such report to be determined by Buyer and the Local Board from time to time. Buyer shall use reasonable best efforts to position and maintain the Healthcare Businesses in the top 10% nationally with respect to each such Quality Metric adopted for the Healthcare Businesses.

5.17 Growing the Level and Scope of Care.

(a) Buyer shall use commercially reasonable efforts to facilitate the Healthcare Businesses’ access to and adoption and implementation of, appropriate resources and infrastructure, including a fully staffed call center, to facilitate the transfer of patients among providers and to coordinate expedited transfers. Buyer shall ensure such resources and infrastructure are available to the Healthcare Businesses consistent with Buyer’s current operating hours.

(b) Buyer shall use commercially reasonable efforts to cause and facilitate the Healthcare Businesses’ ongoing adoption and implementation of any existing and emerging innovative care solutions and technologies. Buyer shall further facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s current innovation infrastructure.

(c) Except as otherwise set forth herein, Buyer shall use commercially reasonable efforts to further develop and expand the Healthcare Businesses’ clinical research capabilities existing as of the Effective Time and shall continue and further develop any existing clinical research efforts of the Healthcare Businesses. In addition to the foregoing, Buyer shall facilitate the Healthcare Businesses’ access to and utilization of, Buyer’s expertise, resources and infrastructure related to clinical trials and research. Buyer shall use commercially reasonable efforts to educate and inform providers within the Service Area of clinical trials in which Buyer is participating and, to the extent permitted by Law, shall make available such clinical trials to patients of the Healthcare Businesses. As appropriate, Buyer shall use commercially reasonable efforts to provide the Healthcare Businesses the opportunity to participate as a clinical trial site in ongoing clinical trials to facilitate local access to treatments.
(d) Buyer shall use commercially reasonable efforts to cause and facilitate the Healthcare Businesses’ adoption and implementation of Buyer’s clinical research and grant-funding capabilities, including pre-award and post-award support for local investigators.

5.18 Investing to Ensure Long-Term Financial Security.

(a) Buyer shall cause and facilitate the Healthcare Businesses’ adoption and implementation of certain corporate services and economies of scale, to include, at a minimum, supply chain, access to group purchasing organizations.

(b) Buyer shall not allocate to the Healthcare Businesses any overhead expenses related to the maintenance and operation of Buyer’s graduate or undergraduate medical education programs that provide benefits to Buyer solely outside the Service Area, including any programs maintained through Buyer’s partnership with an accredited medical school. If any such overhead expenses are allocated to the Healthcare Businesses that relate to graduate or undergraduate medical education programs that benefit both the Buyer and the Service Area, such allocation shall be determined according to a methodology used consistently throughout the Novant Health system.

5.19 Strategic Positioning.

(a) From and after the Effective Time, Buyer shall use commercially reasonable efforts to fully integrate the Healthcare Businesses into Buyer’s existing integrated healthcare system.

(b) In furtherance of supporting the availability of quality care in the region and to position the Hospitals as a regional referral center, Buyer shall use commercially reasonable efforts to cause the Hospitals to develop and enter into appropriate and desirable clinical affiliations, clinically integrated provider networks, partnerships and arrangements with unaffiliated hospitals, health systems and other facilities and providers in the region.

(c) Buyer shall not alter, modify or otherwise change the branding associated with the Hospitals or the Healthcare Businesses without the prior consent and approval of the Local Board, except that Sellers acknowledge and anticipate that over time the parties will brand the Healthcare Businesses consistent with Buyer’s current brand. Buyer shall work in collaboration with the Local Board to align branding strategies and marketing initiatives.

Notwithstanding anything to the contrary set forth in Sections 5.9 through 5.19, to the extent a Force Majeure Event renders Buyer’s performance of its obligations set forth in such Sections impossible or commercially unreasonable, Buyer shall (i) within not more than ten Business Days after Buyer’s becoming aware of such Force Majeure Event, provide Sellers with written notice that reasonably describes (A) the nature of such Force Majeure Event and (B) which obligations set forth in Sections 5.9 through 5.19 have been rendered impossible or commercially unreasonable due to such Force Majeure Event, (ii) be temporarily excused from full performance of such obligations to the extent required by such Force Majeure Event, but only for so long as the period of the Force Majeure Event and the applicable Remediation Period, and (iii) continue to use commercially reasonable efforts, taking into account such Force Majeure Event, to perform its obligations under such Sections. For the avoidance of doubt, subject to Buyer’s compliance with the terms of this Section 5.19, Buyer shall not be in breach of its obligations under Sections 5.9 through 5.19 and Sellers shall not be entitled to initiate a Repatriation Transaction (if applicable), during a Force Majeure Event or the Remediation Period and the cure period set forth in Section 10.6 shall be tolled until the end of the Remediation Period.
5.20  Local Board Governance.

(a)  From and after Closing, the Healthcare Businesses shall be governed by a local, community-based board of trustees (the “Local Board”), which may sit at a regional, or then-equivalent, level within Buyer’s organizational structure, and which shall consist of 17 trustees (“Trustees”). Not less than 12 Trustees shall be Community Trustees, and not less than three such Community Trustees shall be Physician Trustees. The balance of the Trustees may be At Large Trustees.

(b)  The individuals to be appointed to serve as the initial Trustees are set forth in Schedule 5.20(b). The Local Board shall retain the sole power and authority to select, nominate, terminate and appoint all subsequent Trustees to the Local Board and, in so doing, shall ensure that the composition of the Local Board, taken as a whole, is materially representative, measured by demographic factors such as race, ethnicity, and sex or sexual orientation, of the Service Area’s resident population served by the Healthcare Businesses; provided, that such appointments shall be subject to ratification by the Novant Health Board of Trustees (“Novant Board”), which such ratification shall not be unreasonably withheld, conditioned or delayed. In the event the Novant Board fails to ratify any appointment made by the Local Board, then the Local Board shall select, nominate and appoint a new proposed Trustee to be submitted for ratification by the Novant Board. All Trustees shall be selected subject to a prospective candidate’s satisfaction of governance best practices and core competencies, which shall include advocacy and public interest; social services and community outreach; financing and investing; accounting, executive leadership; marketing and communications; strategy, planning and consulting; information systems and technology; human resources; quality and safety, and law and regulation, as such standards are described on Schedule 5.20(b) and may be modified from time to time by the Local Board subject to Novant Board ratification.

(c)  Following the Effective Time, the Local Board shall be invested with, and shall retain, the following rights and powers with respect to the Healthcare Businesses (“Reserved Powers”):

   (i)  Approval of the elimination of any Core Clinical Service Line;

   (ii) Development and recommendation of (A) elimination of any service line that is not a Core Clinical Service Line, (B) establishment of new clinical service lines or (C) expansion of existing clinical service lines;

   (iii) Development and recommendation of major operational plans;

   (iv) Approval of the Healthcare Businesses’ initial CEO immediately following the Effective Time, as well as (A) ongoing participation in the evaluation, as well as recommending employment and termination, of the Healthcare Businesses’ CEO and (B) participation in the evaluation of candidates and making recommendations for any CEO appointment subsequent to the initial CEO;

   (v) Oversight and recommendation of management accountability, evaluation, and succession;

   (vi) Approval of any material workforce reduction that would qualify as a “plant closing” as defined in 29 U.S.C. § 2101;

   (vii) Development and approval of annual operating and capital budgets, which budgets shall also be subject to the ratification and approval of the Novant Board;
(viii) Oversight and approval of medical staff matters, including credentialing, adverse actions, and adoption and amendment of medical staff bylaws and policies;

(ix) Development and recommendation of policies for Physician compensation;

(x) Development and recommendation of Physician organization strategies, development, and recruitment;

(xi) Oversight of political and community interaction;

(xii) Selection and engagement of hospital-based Physicians;

(xiii) Approval and development of the Strategic Plan or any other strategic or development plans of the Healthcare Businesses, including approval of any modifications thereto;

(xiv) Approving modifications to the Healthcare Businesses’ charity care and indigent care programs in consultation with the Novant Board or its designee(s);

(xv) Approving the termination or amendment (other than with respect to extension of the term) of the Pender MSA or any successor agreement thereto;

(xvi) Approving the adoption, termination, or amendment of policies or procedures regarding community outreach programs, social services partnerships, and other similar programs in consultation with the Novant Board or its designee(s);

(xvii) Oversight and approval of quality and accreditation matters in consultation with the Novant Board or its designee(s);

(xviii) Approving any direct or indirect sale, transfer, or conveyance of all, or substantially all, of the assets then associated with, or the control of, the Healthcare Businesses to a for-profit third party or, for a 10-year period after the Effective Time, to a non-profit third party; provided, however, that approval of the Local Board shall not be required for any Novant Health Change of Control;

(xix) Approving any modifications to any post-Closing commitments or covenants set forth in this Agreement or the other Transaction Documents;

(xx) Approving any alterations or modifications to the branding associated with the Healthcare Businesses or any component thereof in consultation with the Novant Board or its designee(s); and

(xxi) Oversight of the Healthcare Businesses’ compliance program.

(d) Effective as of the Effective Time, Buyer shall adopt governing documents, or amendments to Buyer’s existing governing documents, which may include articles of incorporation, bylaws or similar documents, reflecting the terms set forth in this Section 5.20 (“Buyer Governing Documents”), which such Buyer Governing Documents shall be in the form set forth in Exhibit E. Buyer shall not, and shall cause its Affiliates not to, amend or consent to the amendment of the Buyer Governing Documents in any manner that materially contravenes any of the terms reflected in this Section 5.20, without the written consent of Sellers.
5.21 Local Representation on Buyer’s Governing Boards and Councils.

(a) Within not more than 90 days after the Effective Time, the Local Board shall nominate and Buyer shall appoint, subject to ratification by the Novant Board (such ratification not to be unreasonably withheld or delayed), two of the Local Board’s then-current Community Trustees to serve as voting trustees on the Novant Board (each, a “Local Representative”). The Local Board shall have the authority to remove a Local Representative from the Novant Board at any time and for any reason and, further, the Local Board shall have the authority to appoint a then-current Community Trustee as a replacement or to fill any vacancy created with respect to a Novant Board position held by any Local Representative, which such appointment shall be subject to the ratification of the Novant Board (such ratification not to be unreasonably withheld or delayed). In the event a Local Representative at any time is no longer a Trustee on the Local Board, for any reason, then such Local Representative shall automatically be removed from the Novant Board as if by voluntary resignation, and the Local Board shall appoint a replacement for such Local Representative, which such appointment shall be subject to the ratification of the Novant Board (such ratification not to be unreasonably withheld or delayed). Within not more than 90 days following the Effective Time, Buyer shall cause Novant Health to adopt amendments to Novant Health’s existing bylaws reflecting and implementing the terms set forth in this Section 5.21(a) (“Novant Governing Documents”), which such Novant Governing Documents shall be in the form set forth in Exhibit F.

(b) Within not more than 90 days after the Closing, the Local Board shall nominate and Buyer shall appoint, one of the Local Board’s then-current Physician Trustees to serve on the Novant Health system Physician leadership council or other similar system-level Physician leadership body. The Local Board shall have the authority to nominate any subsequent replacement for such appointment to the Physician leadership council, which such nomination shall be subject to Buyer’s ratification (such ratification not to be unreasonably withheld or delayed). In consultation with, and subject to the approval of the Local Board, Buyer agrees to amend or modify the governing documents and charter of such council as necessary to effectuate the covenants contained in this Section 5.21(b).

5.22 Right of First Refusal. Following Closing, in the event Buyer at any time receives a bona fide offer (“Third-Party Offer Notice”) to sell, transfer or assign all or substantially all of the assets or operations associated with the Healthcare Businesses, or a direct or indirect controlling interest in the Healthcare Businesses, including the Assets and any after-acquired assets associated with the Healthcare Businesses, excluding the assets and operations of NHBMC (collectively, the “Affected Assets”), to a third party unaffiliated with Buyer (“Third-Party Offeree”), and Buyer desires to accept such offer, then Buyer shall first offer to sell, transfer, or assign such Affected Assets to Sellers, on the same terms and conditions as set forth in the Third-Party Offer Notice, by providing Sellers with written notice (“ROFR Notice”), which shall include a copy of the purchase agreement, or other definitive document, and all ancillary documents. Upon receipt of the ROFR Notice, Sellers shall have the right and option, for a period of 60 days following receipt of such ROFR Notice ("ROFR Option Period") to notify Buyer in writing of Sellers’ intent to acquire the Affected Assets upon the same, or better, terms and conditions as set forth in the ROFR Notice. In the event Sellers provide such notice to Buyer within the ROFR Option Period, then Buyer agrees to accept such offer from Sellers, and the parties shall work in good faith to enter into definitive documents relating to such transaction, on terms consistent with the ROFR Notice as well as such other terms and conditions as are typical of such a transaction, within the period of 90 days following the delivery of such notice by Sellers (the “Purchase Period”). In the event that (a) Sellers fail to provide written notice to Buyer of their intent to purchase the Affected Assets within the ROFR Option Period or (b) the parties fail to agree to definitive documents within the Purchase Period, then Buyer shall have the right to accept the Third-Party Offer Notice and transfer the Affected Assets to the Third-Party Offeree at a price no less than the price set forth in, and otherwise on terms and conditions at least as favorable to Buyer as those contained in, the Third-Party Offer Notice; provided, however, that if Buyer
does not accept the Third-Party Offer Notice or fails to consummate the transaction contemplated thereby within 180 days of the later of the end of the ROFR Option Period or the Purchase Period, as the case may be, then the provisions of this Section 5.22 shall be complied with respect to any subsequent transfers of the Affected Assets. Buyer shall cause any third party acquiring the Affected Assets to assume Buyer’s obligations and covenants set forth in this Article 5 to the extent such obligations and covenants remain in effect. For the avoidance of doubt, this Section 5.22 shall not apply to any Novant Health Change of Control. This Section 5.22 shall survive the Closing for a period of 25 years.

5.23 Statutory Requirements. At all times following the Effective Time, Buyer shall comply in all material respects with all Laws applicable to Buyer in connection with the Transactions, including the terms of N.C. Gen. Stat. § 131E-13(a), as amended, restated or revised from time to time, the language of which as of the Effective Date is set forth in Schedule 5.23. For purposes of this Agreement, all references to “corporation” in N.C. Gen. Stat. § 131E-13(a) shall be read and interpreted to include Buyer, notwithstanding any other statutory definitions. Notwithstanding that the parties have agreed to the foregoing sentence as a contractual matter between them, Buyer acknowledges that the North Carolina Attorney General is empowered to require Buyer to comply with N.C. Gen. Stat. § 131E-13(a) in all respects regardless of the parties’ agreement among themselves to allocate no contractual Liability to Buyer for immaterial noncompliance with such Law.

5.24 Timing and Duration of Post-Closing Commitments. This Article 5 shall survive the Closing indefinitely except as expressly set forth in any Section in Article 5 and except that (notwithstanding anything to the contrary in any such Sections), and other than with respect to Section 5.23, Buyer shall have the ability after 25 years post Closing to reassess and adjust any then-applicable covenants. Buyer shall satisfy its covenants and agreements set forth in Section 5.10 through Section 5.19 within five years of Closing unless a more specific date or timeline is explicitly set forth with respect to any such covenant.

5.25 Insurance Ratings. Sellers shall take all action reasonably requested by Buyer to enable Buyer to succeed to the Workmen’s Compensation and Unemployment Insurance ratings of the Healthcare Businesses, as applicable, and other ratings for insurance or other purposes established by Sellers for the Healthcare Businesses. Buyer shall not be obligated to succeed to any such rating, except as it may elect to do so.

5.26 Casualty. If any material part of the Assets (including any Facility) is damaged, lost or destroyed (whether by fire, theft, vandalism or other cause or casualty), in whole or in part, before the Effective Time (such damaged, lost or destroyed Assets or Facilities, the “Damaged Assets”), Buyer may, at its option, (a) reduce the Purchase Price by the greater of (i) the fair market value of the Damaged Assets (such value to be determined as of the date immediately before such damage, loss or destruction), or (ii) the estimated cost to replace or restore the Damaged Assets, (b) require Sellers to transfer the proceeds (or the right to the proceeds) of the applicable Insurance Policies covering the Damaged Assets (including the business interruption Insurance Policy covering the Healthcare Businesses) to Buyer at the Closing, plus an amount equal to any deductibles paid or incurred by Sellers or (c) if the fair market value of the Damaged Assets is greater than $50,000,000 or if a Facility has suffered damage of greater than $50,000,000, terminate this Agreement. If disputed by the parties, the amount of any reduction in the Purchase Price pursuant to this Section 5.26 shall be determined by a valuation expert experienced in the healthcare business mutually determined by the parties, which the parties shall use all commercially reasonable efforts to have completed as promptly as possible. The fees and expenses of any such expert shall be paid one-half by Sellers, jointly and severally, and one-half by Buyer. Until the Effective Time, Sellers shall bear all risk of loss with respect to the Damaged Assets.
5.27 Transferred Seller Bank Accounts. Between the date of this Agreement and the Closing Date, Sellers shall take such actions, and execute and deliver such documents, as are reasonably necessary or appropriate to transfer at Closing the ownership of the Transferred Seller Bank Accounts (inclusive of all cash in such Transferred Seller Bank Accounts), including facilitating contact between Buyer’s Representatives and any financial institution at which any of such Transferred Seller Bank Accounts is maintained, obtaining any signature guarantees required by any financial institution at which any of such Transferred Seller Bank Accounts is maintained and ensuring that no debits or cash sweeps of whatever kind will be made by or on behalf of Sellers or any Seller Affiliate out of such Transferred Seller Bank Accounts following the Closing.

5.28 Novant Health Guarantee. Novant Health hereby unconditionally and absolutely guarantees the performance by Buyer of each and every obligation, covenant and agreement of Buyer in this Agreement and in each other Transaction Document, and in any amendment and/or modification hereof or thereof and notwithstanding the extension of the time for performance of payment of money pursuant to this Agreement, or of the time for performance of any other obligations, covenants or agreements in this Agreement or any Transaction Document, as amended or modified; provided, however, that this Section 5.28 and Novant Health’s guarantee shall apply, after the Closing, only to the express covenants of Buyer under this Agreement and the other Transaction Documents and not to any other action or obligation of Buyer directed, caused or created by the Local Board (whether pursuant to its Reserved Powers or otherwise) after the Closing.

ARTICLE 6
CONDITIONS PRECEDENT TO OBLIGATIONS OF BUYER

Buyer’s obligation to purchase the Assets and to close the Transactions shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Buyer in whole or in part at or prior to the Closing.

6.1 No Orders; Illegality. No Orders of any Governmental Entity of competent jurisdiction shall be in effect, and no Proceedings by or before any Governmental Entity of competent jurisdiction shall be pending, which restrain, enjoin, impede or otherwise challenge the consummation of the Transactions.

6.2 Representations and Warranties. The representations and warranties of Sellers set forth in Article 2, other than the Fundamental Representations, shall be true and correct on and as of the Closing Date as if made on and as of the Closing Date (except for such representations and warranties that expressly speak only as of a particular date, which shall have been true and correct as of such particular date), except where the failure of such representations and warranties (without giving effect to any qualifications as to materiality or Material Adverse Effect) has not had or would not reasonably be expected to have a Material Adverse Effect in respect of Sellers or the Healthcare Businesses, taken as a whole. The Fundamental Representations of Sellers set forth in Article 2 shall be true and correct in all respects on and as of the Closing Date as if made on and as of the Closing Date, except for Fundamental Representations that expressly speak only as of a particular date, which shall have been true and correct in all respects as of such particular date.

6.3 Performance of Covenants. Each Seller, respectively, shall have in all material respects performed or complied with each of the obligations, covenants, agreements and conditions required to be performed or complied with by each such Seller on or prior to the Closing (including the obligation to cure any Monetary Encumbrance and Non-Monetary Encumbrance that Sellers are required to cure, or otherwise commit to cure, pursuant to the terms of Section 5.5(c)).
6.4 **Required Governmental Authorizations.** Buyer, Sellers and their respective Affiliates shall have obtained the Governmental Permits, waivers and expirations set forth on Schedule 6.4 (the “**Required Governmental Authorizations**”).

6.5 **Material Adverse Effect.** There shall have been no event resulting in a Material Adverse Effect with respect to the Healthcare Businesses or Assets since the Effective Date.

6.6 **Amendments to Governing Documents of Seller Subsidiaries.**

(a) Except as set forth in Section 6.6(b), at or before the Closing, NHRMC shall (i) cause each Seller Subsidiary for which NHRMC holds a membership interest to either adopt and file with the North Carolina Secretary of State’s Office amended and restated articles of incorporation or organization to substitute Buyer as the sole entity holding a membership interest in such Seller Subsidiary, which will take effect at Closing, and/or (b) execute such assignment or other documentation necessary to accomplish the substitution of Buyer as the sole member of each Seller Subsidiary and adopt amended and restated bylaws or other applicable governing documents, which will take effect at Closing, in a form satisfactory to Buyer.

(b) At or before Closing, Sellers shall have completed the corporate actions described on Schedule 6.6(b).

6.7 **Changes to Governing Boards and Amendments to Governing Documents of Certain Seller Subsidiaries.**

(a) At or before the Closing, the board of directors of NHRMC Foundation shall be reconstituted and NHRMC Foundation shall adopt amended and restated bylaws, in each case effective at Closing in a manner satisfactory to Buyer.

(b) At or before the Closing, the board of directors of CHA shall be reconstituted and CHA shall adopt amended and restated bylaws, in each case effective at Closing in a manner satisfactory to Buyer.

6.8 **Items to be Delivered by Sellers at Closing.** At or before the Closing, Sellers shall have delivered to Buyer, or cause to be delivered to Buyer, the following, duly executed by Sellers (and any applicable Subsidiaries or Affiliates of Sellers) where appropriate:

(a) Bills of Sale in the form of Exhibit G (the “**Bills of Sale**”);

(b) Assignment and Assumption Agreements between Sellers and Buyer in the form of Exhibit H (the “**Assignment and Assumption Agreements**”);

(c) (i) with respect to the assignment to Buyer of any Tenant Leases under which a Seller is a lessee (or sublessee) and that require the consent of the applicable landlord thereunder in order to properly effectuate such assignment to Buyer, an assignment and assumption agreement between the applicable Seller (and any applicable Subsidiaries of Sellers), Buyer and such landlord, in the form of Exhibit I-1, (ii) with respect to the assignment to Buyer of any Tenant Leases that do not require the consent of the applicable landlord thereunder in order to properly effectuate such assignment to Buyer, an assignment and assumption agreement between Sellers (and any applicable Subsidiaries of Sellers) and Buyer, in the form of Exhibit I-2 and (iii) with respect to the assignment to Buyer of any Lessor Leases under which a Seller is a lessor (or sublessor), an assignment and assumption agreement between the applicable Seller (and any applicable Subsidiaries of Sellers) and Buyer, in the form of Exhibit I-3 (each
assignment and assumption agreement required by clauses (i), (ii) and (iii) of this subsection (c) are referred to herein as a “Lease Assignment Agreement” and all such agreements shall be collectively referred to herein as the “Lease Assignment Agreements”); provided, however, that in the event the applicable Tenant Lease or Lessor Lease is a sublease (as opposed to a direct lease), the applicable form of Lease Assignment Agreement shall be subject to commercially reasonable modifications reasonably approved by Buyer and Sellers with respect to the status of such Lease as a sublease (as opposed to a direct lease);

(d) special warranty deed(s) in the form of Exhibit J and other appropriate instruments of conveyance (including, to the extent requested by Buyer, quitclaim deed(s) containing the applicable legal description(s) corresponding to the applicable Survey(s) obtained by Buyer), covering each parcel of Owned Real Property, each acknowledged and in recordable form;

(e) a resolution of the governing body of each Seller authorizing Sellers to enter into this Agreement and consummate the Transactions, each of which shall be dated, and delivered to Buyer, as of the Effective Date;

(f) as applicable, a certificate of good standing, or comparable status, of each Seller, issued by the North Carolina Secretary of State, as of a recent date prior to the Closing Date;

(g) a certificate of an officer of each Seller certifying to Buyer that the conditions set forth in Section 6.2 and Section 6.3 have been satisfied with respect to such Seller;

(h) limited powers of attorney for use of DEA and Other Registration Numbers, and DEA Order Forms, in the form of Exhibit K (the “Powers of Attorney”);

(i) the Escrow Agreement;

(j) a duly completed and executed certification of nonforeign status from each Seller pursuant to Sections 1445 and 1446(f)(2)(A) of the Code and Section 1.1445-2(b)(2) of the Treasury Regulations promulgated under the Code;

(k) a custodial agreement in the form of Exhibit L (the “Custodial Agreement”);

(l) the Funds Flow Memorandum;

(m) (i) evidence of termination of the County Lease (including evidence of any consent or approval required in connection with such termination) and any recorded memoranda of lease or similar instruments evidencing the existence thereof, each in a form and of a substance reasonably acceptable to Buyer, and (ii) to the extent requested by Buyer, lease agreements, each in a form and of a substance reasonably acceptable to Buyer, to replace any Leases terminated as a result of the termination of the County Lease (including the Leases set forth on Schedule 6.8(m)), each executed by the applicable counterparty thereto;

(n) written consents to the assignment of the Contracts listed on Schedule 6.8(n) (the “Required Contract Consents”);

(o) Intellectual Property Assignment between Sellers and Buyer in the form of Exhibit M (the “Intellectual Property Assignment”);
(p) evidence reasonably satisfactory to Buyer that Sellers have terminated those Contracts listed on Schedule 6.8(p), in each case without any Liability to Buyer;

(q) the Bond Defeasance Documents, each in form and substance reasonably satisfactory to Buyer;

(r) applications or amendments for filing in appropriate form to abandon or change each of the Acquired Names;

(s) exclusive access rights and permissions to the social media accounts owned or operated by Sellers with respect to the Healthcare Businesses as set forth on Schedule 6.8(s);

(t) payoff letters from all lenders to Sellers for all Indebtedness listed on Schedule 2.11(b), each of which shall contain a covenant from the applicable lender to release all liens on the Assets upon receipt of the payoff amount, in each case, in form and substance reasonably satisfactory to Buyer (collectively, the “Payoff Letters”);

(u) A certified copy of the articles of incorporation filed with the Secretary of State of North Carolina and a copy of the accompanying bylaws for the “public-benefit community foundation” created by the County (the “Foundation”), which has a governance structure consistent with the terms outlined in Exhibit N;

(v) A copy of the IRS determination letter recognizing the Foundation as a tax-exempt organization described in Section 501(c)(3) of the Internal Revenue Code or a copy of the Form 1023, Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code, as filed with the IRS;

(w) A copy of the escrow agreement between Sellers and the Transition Escrow Agent;

(x) an affidavit, indemnity or other evidence sufficient for the Title Company to delete the standard exception to Buyer’s title insurance policy insuring the Owned Real Estate against unrecorded mechanics’ liens;

(y) documentation of the establishment of the Mental and Behavioral Health Fund;

(z) the New Hanover Academic and Clinical Affiliation Agreement, in form satisfactory to Buyer;

(aa) a Transition Services Agreement between Buyer and Sellers in the form of Exhibit O (the “Transition Services Agreement”);

(bb) (i) executed copies of employment or independent contractor agreements with each Physician with whom a verbal or unwritten agreement was disclosed on Schedule 6.8(bb)(i), each in form and substance reasonably acceptable to Buyer; and (ii) lease agreements (or, if applicable and reasonably approved by Buyer, license agreements or similar occupancy agreements), each in a form and of a substance reasonably acceptable to Buyer, to memorialize the terms of the oral leases and other agreements and arrangements set forth of Schedule 6.8(bb)(ii), each executed by the applicable counterparty thereto; and
(cc) all such other documents and items reasonably appropriate to effectuate the Transactions.

ARTICLE 7
CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLERS

Sellers’ obligation to sell the Assets and to close the Transactions shall be subject to the satisfaction of each of the following conditions on or prior to the Closing Date unless specifically waived in writing by Sellers in whole or in part at or prior to the Closing:

7.1 No Orders; Illegality. No Orders of any Governmental Entity of competent jurisdiction shall be in effect, and no Proceedings by or before any Governmental Entity of competent jurisdiction shall be pending or threatened that restrain, enjoin, impede or otherwise challenge or seek to restrain, enjoin, impede or otherwise challenge the consummation of the Transactions.

7.2 Representations and Warranties. The representations and warranties of Buyer set forth in Article 3 shall be true and correct on and as of the Closing Date as if made on and as of the Closing Date, except for representations and warranties that expressly speak only as of a particular date, which shall have been true and correct as of such particular date, except where the failure of such representations and warranties (without giving effect to any qualifications as to materiality or Material Adverse Effect) has not had or would not reasonably be expected to have a Material Adverse Effect in respect of Buyer. The Fundamental Representations of Buyer set forth in Article 3 shall be true and correct in all respects on and as of the Closing Date as if made on and as of the Closing Date, except for Fundamental Representations that expressly speak only as of a particular date, which shall have been true and correct in all respects as of such particular date.

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

7.4 Required Governmental Authorizations. Buyer, Sellers and their respective Affiliates shall have obtained the Required Governmental Authorizations.

7.5 Items to be Delivered by Buyer at Closing. At or before the Closing, Buyer shall have executed and delivered, or cause to be delivered, to Sellers the following:

(a) payment of an amount equal to the Estimated Closing Payment, minus (A) the NHRMC Transition Stabilization Escrow Amount, minus (B) the County Revenue Stabilization Fund Amount, minus (C) the Mental and Behavioral Health Fund Amount, and minus (D) the Bond Defeasance Escrow Amount by wire transfer of immediately available funds to the Foundation to the account(s) specified by Sellers to Buyer in writing;

(b) payment of the Foundation Contribution by wire transfer of immediately available funds to NHRMC Foundation to the account(s) specified by Sellers to Buyer in writing;

(c) payment of the Adjustment Escrow Amount and the General Escrow Amount by wire transfer of immediately available funds to the Escrow Agent to the account(s) specified by the Escrow Agent to Buyer in writing;

(d) payment to (A) the Transition Escrow Agent, or other deposit account designated by Sellers, the NHRMC Transition Stabilization Escrow Amount, (B) the County Revenue Stabilization
Fund, the County Revenue Stabilization Fund Amount, (C) to the Mental and Behavioral Health Fund, the Mental and Behavioral Health Fund Amount, and (D) to the Bond Defeasance Escrow Agent, the Bond Defeasance Escrow Amount the by wire transfer of immediately available funds to the account(s) specified by Sellers to Buyer in writing;

(e) payment to each of the holders of outstanding Indebtedness that are listed on Schedule 2.11(b), cash in the amount set forth in the holder’s respective Payoff Letter;

(f) payment to each of the applicable obligors of the Seller Transaction Expenses Amount to the applicable recipients identified in the Estimated Closing Statement;

(g) a certificate of the President or other officer of Buyer certifying to Sellers that the conditions set forth in Section 7.2 and Section 7.3 have been satisfied;

(h) certificate of good standing, or comparable status, of Buyer, issued by the North Carolina Secretary of State as of a recent date prior to the Closing Date;

(i) a resolution of the governing body of Buyer authorizing Buyer to enter into this Agreement and consummate the Transactions, which shall be dated, and delivered to Sellers, as of the Effective Date;

(j) the Escrow Agreement;

(k) the Assignment and Assumption Agreements;

(l) the Lease Assignment Agreements;

(m) the Intellectual Property Assignment;

(n) the Powers of Attorney;

(o) the Custodial Agreement;

(p) the Funds Flow Memorandum;

(q) the New Hanover Academic and Clinical Affiliation Agreement;

(r) the Transition Services Agreement;

(s) the Buyer Governing Documents; and

(t) the Novant Governing Documents.

Buyer acknowledges that Buyer shall not satisfy the condition precedent set forth in Section 7.5 (as it relates to the delivery of the amount set forth in Section 7.5(a)) unless Buyer initiates the wire transfer of the amount set forth in Section 7.5(a) to Sellers, and provides to Sellers a Federal Reserve wire reference number with respect thereto, on or before 4:00 p.m. (Eastern time) on the Closing Date; provided, that acceptance by Sellers of such wire transfer after such time shall be deemed a waiver by Sellers of such condition.
ARTICLE 8
TERMINATION

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

(a) by the mutual written consent of the parties;

(b) by Sellers by written notice to Buyer if (i) a material breach of this Agreement has been committed by Buyer, (ii) such breach would give rise to the failure of a condition in Article 7 and (iii) such breach has not been (A) waived in writing by Sellers or (B) cured by Buyer to the reasonable satisfaction of Sellers by the earlier of 30 calendar days after service by Sellers upon Buyer of a written notice that describes the nature of such breach or the date that is three calendar days prior to the End Date;

(c) by Buyer by written notice to Sellers if (i) a material breach of this Agreement has been committed by either Seller, (ii) such breach would give rise to the failure of a condition in Article 6, and (iii) such breach has not been (A) waived in writing by Buyer or (B) cured by the applicable Seller to the reasonable satisfaction of Buyer by the earlier of 30 calendar days after service by Buyer upon Sellers of a written notice that describes the nature of such breach or the date that is three calendar days prior to the End Date;

(d) by either Buyer or Sellers if the Closing has not occurred on or prior to December 31, 2021 (the “End Date”); provided, however that the right to terminate this Agreement pursuant to this Section 8.1(d) shall not be available to any party whose breach of a representation, warranty, covenant or obligation under this Agreement has been the principal cause of the failure of the Closing to have been consummated on or before the End Date.

8.2 Termination Consequences; Break Amount.

(a) In the event Closing does not occur as a direct result of Buyer’s material and uncured breach of this Agreement and Sellers terminate this Agreement under Section 8.1(b), then Buyer shall pay the Break Amount to Sellers, by wire of immediately available funds to an account(s) designated by Sellers to Buyer in writing, in full within no more than 30 calendar days following the effective date of termination of this Agreement. Payment of the Break Amount to Sellers shall be in addition to, and not in limitation of, any other remedy to which Sellers may be entitled, and shall not prevent Sellers from pursuing any of their respective other legal rights or remedies that may be granted or available to any such Seller by Law against any other party.

(b) In the event Closing does not occur as a direct result of the County’s material and uncured breach of this Agreement and Buyer terminates this Agreement under Section 8.1(b) then the County shall pay the Break Amount to Buyer, by wire of immediately available funds to an account(s) designated by Buyer to the County in writing, in full within no more than 30 calendar days following the effective date of termination of this Agreement. Payment of the Break Amount to Buyer shall be in addition to, and not in limitation of, any other remedy to which Buyer may be entitled, and shall not prevent Buyer from pursuing any of its legal rights or remedies that may be granted or available to Buyer by Law against any other party. Any Break Amount payable under this Section 8.2(b) shall be paid solely by the County, and NHRMC shall not provide, directly or indirectly, any funding to cover the County’s Break Amount obligations under this Section 8.2(b).
(c) In the event Closing does not occur as a direct result of NHRMC’s material and uncured breach of this Agreement and Buyer terminates this Agreement under Section 8.1(d), then the NHRMC shall pay the Break Amount to Buyer, by wire of immediately available funds to an account(s) designated by Buyer to NHRMC in writing, in full within no more than 30 calendar days following the effective date of termination of this Agreement. Payment of the Break Amount to Buyer shall be in addition to, and not in limitation of, any other remedy to which Buyer may be entitled, and shall not prevent Buyer from pursuing any of its legal rights or remedies that may be granted or available to Buyer by Law against any other party. Any Break Amount payable under this Section 8.2(c) shall be paid solely by NHRMC, and the County shall not provide, directly or indirectly, any funding to cover NHRMC’s Break Amount obligations under this Section 8.2(c).

(d) For the avoidance of doubt, a Seller’s Break Amount obligation under Section 8.2(b) and Section 8.2(c) shall be a several, and not joint, obligation.

(e) If this Agreement is terminated pursuant to Section 8.1, (a) all further obligations of the parties under this Agreement shall terminate, except that the obligations in Sections 4.10 and 5.4 (Confidentiality), 8.2 (Termination Consequences), 12.3 (Governing Law; Jurisdiction), 12.8 (Confidentiality and Publicity), 12.11 (Third-Party Beneficiary), 12.12 (Expenses and Attorneys’ Fees) and 12.14 (Entire Agreement) shall survive, and (b) nothing shall prevent any party from pursuing any of its legal rights or remedies that may be granted to any such party by Law against any other party.

ARTICLE 9
POST-CLOSING MATTERS

The parties agree as follows with respect to the period following the Closing:

9.1 Post-Closing Receipt of Assets or Excluded Assets.

(a) Buyer (or its respective successors-in-interest, assigns or Affiliates) shall transfer, assign or convey to Sellers at Sellers’ cost any Excluded Asset or Excluded Liability (and related mail and other communications) that, post-Closing, is in its possession, custody or control promptly after Buyer becomes aware of such Excluded Asset or Excluded Liability and, in any event, within not more than 90 days following the date following Closing upon which a Buyer knowledge party becomes aware of such Excluded Asset or Excluded Liability. Until such transfer, assignment and conveyance, Buyer (and its respective successors-in-interest, assigns and Affiliates) shall not have any right, title or interest in or obligation or responsibility with respect to such Excluded Asset or Excluded Liability except that Buyer shall hold any such Excluded Asset in trust for the benefit of Sellers. Buyer (and its respective successors-in-interest, assigns and Affiliates) shall have neither the right to offset amounts payable to Sellers under this Section 9.1(a) against, nor the right to contest its obligation to transfer, assign and convey to Sellers because of, outstanding Liabilities asserted by Buyer against Sellers including pursuant to the post-Closing Purchase Price adjustment of Section 1.2 and the provisions of Section 10.2.

(b) Each Seller (or its respective successors-in-interest, assigns or Affiliates) shall transfer, assign or convey to Buyer at Buyer’s cost any Asset or Assumed Obligation that, post-Closing, is in its possession, custody or control promptly after such Seller becomes aware of such Asset or Assumed Obligation and, in any event, within not more than 90 days following the date following Closing upon which a Seller knowledge party becomes aware of such Asset or Assumed Obligation. Until such transfer, assignment and conveyance, Sellers (and their respective successors-in-interest, assigns and Affiliates) shall not have any right, title or interest in or obligation or responsibility with respect to such Asset or Assumed Obligation except that Sellers shall hold such Asset in trust for the benefit of Buyer. Sellers (and their respective successors-in-interest, assigns and Affiliates) shall have neither the right to
offset amounts payable to Buyer under this Section 9.1(b) against, nor the right to contest their obligation to transfer, assign and convey to Buyer because of, outstanding Liabilities asserted by Sellers against Buyer including pursuant to the post-Closing Purchase Price adjustment of Section 1.2 and the provisions of Section 10.3.

(c) Section 9.1 shall survive the Closing for a five-year period.

9.2 Preservation and Access to Records After the Closing.

(a) From the Closing Date until five years after the Closing Date or such longer period as required by Law (the “Document Retention Period”), Buyer shall keep and preserve in the ordinary course of business all medical records, patient records, medical staff records and other books and records that are among the Assets as of the Effective Time, but excluding any records that are among the Excluded Assets. Subject to compliance with applicable Law, Buyer, at Sellers’ sole cost and expense, will afford to the representatives of Sellers, including their counsel and accountants, reasonable access to, and copies of, such records with respect to time periods prior to the Effective Time (including access to records of patients treated at the Healthcare Businesses prior to the Effective Time) during normal business hours after the Effective Time, for legitimate business purposes or in connection with any Excluded Liabilities. The parties acknowledge that, as a result of entering into this Agreement and operating the Healthcare Businesses, Buyer (i) will gain access to patient records and other information which are subject to certain Laws concerning confidentiality and (ii) has obligations with respect to certain Laws relating to the confidential information it acquires.

(b) Each party shall cooperate with the others, their Affiliates and their insurance carriers in respect of the defense of claims by third parties against any other party or any of its Affiliates in respect of events occurring before the Effective Time with respect to the operation of the Healthcare Businesses. Such cooperation shall be at each party’s own cost and expense and may include (i) making the Hired Employees or a party’s other employees reasonably available for interviews, depositions, hearings and trials and (ii) making its employees available to assist in the securing and giving of evidence, in obtaining the presence and cooperation of witnesses, and in the production of related documents and records (all of which shall be done without payment of any fees or expenses to a party or to such employees). In addition, Sellers and Sellers’ Affiliates shall be entitled to, at Seller’s expense, make copies of any such records (to the extent consistent with preserving attorney-client privilege and attorney work product protections) for purposes of pending litigation involving the persons to whom such records refer. Any records so copied shall be promptly returned to Buyer following Sellers’ or their applicable Affiliate’s use of such records.

(c) In connection with (i) the transition of the Healthcare Businesses pursuant to the Transactions, (ii) Sellers’ rights to the Excluded Assets and (iii) Sellers’ obligations under the Excluded Liabilities, Buyer shall after the Effective Time give Sellers, Sellers’ Affiliates and their respective representatives reasonable access during normal business hours and at Sellers’ expense to Buyer’s books, accounts and records and all other relevant documents and information with respect to the assets, liabilities and business of the Healthcare Businesses relating solely to the operation of the Healthcare Businesses prior to the Effective Time as representatives of Sellers and Sellers’ Affiliates may from time to time reasonably request in connection with bona fide business and operational requirements of Sellers related to the Excluded Assets and Excluded Liabilities, all in such manner as not to unreasonably interfere with the operations of the Healthcare Businesses or Buyer’s other businesses, subject to Buyer’s good faith concerns regarding preserving attorney-client privilege and complying with antitrust Law. Sellers acknowledge that they shall conduct their activities contemplated by this Section 9.2(c) only with the prior written consent of the chief executive officer of Buyer or his or her designees.
(d) Buyer and its representatives shall be given access by Sellers during normal business hours to the extent reasonably needed by Buyer for business purposes to all documents, records, correspondence, work papers and other documents retained by Sellers pertaining to any of the Assets or Assumed Obligations or with respect to the operation of the Healthcare Businesses prior to the Effective Time, all in such manner as to not interfere unreasonably with Sellers’ business, subject to Buyer’s good faith concerns regarding preserving attorney-client privilege and complying with antitrust Law. Such documents and other materials shall be, at Sellers’ option, either (i) copied by Sellers for Buyer at Buyer’s expense or (ii) removed by Buyer from the premises, copied by Buyer and promptly returned to Sellers.

(e) Buyer shall reasonably cooperate with Sellers, on a timely basis and as reasonably requested by Sellers, in connection with the provision of all data of the Healthcare Businesses and other information required to be reported by Sellers under the Medicare and Medicaid programs to CMS and to the DNV GL Healthcare USA, Inc. for periods prior to the Effective Time.

(f) To the maximum extent permitted by Law, if any Person requests or demands, by subpoena or otherwise, any documents relating to the Excluded Liabilities for which a Buyer Indemnified Party has sought indemnification hereunder, including documents relating to the operations of the Healthcare Businesses or any of the Healthcare Businesses’ committees prior to the Effective Time, prior to any disclosure of such documents, Buyer shall, to the extent allowable by Law, notify Sellers and shall provide Sellers with a reasonable opportunity to object to, and otherwise coordinate with respect to, such request or demand.

9.3 Change and Use of Restricted Names. No later than 30 days after the Closing Date, Sellers shall file with the applicable Governmental Entity all applications or amendments to abandon or change each of the Acquired Names. Additionally, Sellers shall take such actions and execute such documents as may be necessary for Buyer to make appropriate assumed name filings in order to evidence and protect Buyer’s right to use the Acquired Names in connection with the operation of the Healthcare Businesses after the Effective Time, and Sellers shall take all necessary action to eliminate the Acquired Names from, or paint over or otherwise permanently obscure the Acquired Names on, any signage or other materials (including any publicly distributable documents and other materials bearing such Acquired Names) owned or controlled by Sellers following the Effective Time.

9.4 Post-Closing Discovery of Contracts. Buyer acknowledges that it is assuming the Assumed Contracts as defined in Section 1.4 regardless of whether such Assumed Contracts are set forth on Schedule 1.4(b), 1.4(e), 1.4(f)(i), 1.4(f)(ii) or 1.4(g). If (i) following the Effective Date or the Closing Date, Buyer or Sellers discover (through whatever means) one or more Contracts and/or Leases that have not been scheduled on Schedule 1.4(b), 1.4(e), 1.4(f)(i), 1.4(f)(ii) or 1.4(g) or (ii) if between the Effective Date and the Closing Date, any Seller enters into a Contract or Lease required to be listed on Schedule 1.4(b), 1.4(e), 1.4(f)(i), 1.4(f)(ii) or 1.4(g), then, with respect to discoveries by Sellers pursuant to clause (i) and any Contracts and Leases entered into pursuant to clause (ii), Sellers shall promptly notify Buyer of such fact and provide Buyer with an accurate and complete copy of such Contract or Lease, as applicable. Buyer may, in its sole discretion, designate such Contract or Lease either as an Assumed Contract or Excluded Contract, and if Buyer elects to treat such Contract or Lease as an Assumed Contract, the parties shall update Schedule 1.4(b), 1.4(e), 1.4(f)(i), 1.4(f)(ii) or 1.4(g) accordingly.

9.5 Medicare Bad Debts. Sellers shall be entitled to receive Medicare bad debt reimbursement associated with services furnished prior to the Effective Time (“Sellers’ Bad Debts”). Sellers shall have the right, in their reasonable discretion, to require that Buyer, at Sellers’ sole cost, submit a claim for reimbursement to CMS for a Sellers’ Bad Debt on Buyer’s cost report(s) for the period in which Sellers’ Bad Debt becomes uncollectible by Sellers. If Sellers request that Buyer submit one or more Sellers’ Bad Debt claims to CMS, as contemplated by this Section 9.5, Sellers shall provide to
Buyer a list of Sellers’ Bad Debts to be claimed with a certification reasonably acceptable to Buyer and Sellers. Buyer shall remit to Sellers the full amount of reimbursement received by Buyer for Sellers’ Bad Debts within 30 days of the tentative settlement of any cost report in which Sellers’ Bad Debts have been claimed pursuant to this Section 9.5. The parties shall reconcile the prior payment made based on the tentative settlement pursuant to the immediately preceding sentence, with the final amount set forth in the final settlement of the cost report(s), by the making of a cash payment so as to cause the net aggregate amount paid by Buyer to Sellers with respect to any given Sellers’ Bad Debt to be equal to the amount set forth on the final settlement. Any additional payment due to Sellers by Buyer as a result of the cost report audit of Sellers’ Bad Debts claims submitted by Buyer and/or any final settlement shall be remitted to Sellers within 30 days of Buyer’s receipt of the Notice of Program Reimbursement (NPR) for the cost report in question. Any payment due to Buyer from Sellers with respect to Sellers’ Bad Debts as a result of a report audit and/or final settlement shall be remitted to Buyer after 30 days of written notice regarding the final settlement from Buyer.

9.6 AAP Program Funds. The balance of the amount advanced, if any, to Sellers by CMS under the CMS Accelerated and Advance Payment Program (the “AAP Program”) that is outstanding immediately prior to the Effective Time (the “AAP Program Amount”) shall be treated as follows:

(a) To the extent that Buyer or an Affiliate sustains any Liabilities related to the AAP Program Amount through recoupment by CMS against amounts otherwise due to Buyer or an Affiliate or direct payment following the end of the recoupment period (each such recoupment or payment is referred to herein as a “AAP Program Repayment”), Sellers shall be jointly and severally obligated to pay Buyer the full amount of each AAP Program Repayment as provided herein. Following the end of each month, Buyer shall provide Sellers with a notice that lists the AAP Program Repayments and includes reasonable supporting documentation requested by Sellers. Sellers shall remit the full amount of the AAP Program Repayments owed hereunder within 20 Business Days of receipt of the applicable notice. To the extent that CMS repays Buyer or its Affiliates all or a portion of an AAP Program Repayment for which Sellers have reimbursed Buyer for under this Section 9.6, Buyer shall repay such amount to Sellers within 20 Business Days of receipt.

(b) In the event that the AAP Program is amended or modified to provide for the extension, deferral or forgiveness of all or a portion of the AAP Program Amount, upon request of Sellers, Buyer shall take such action and file such documents to obtain such extension, deferral or forgiveness.

9.7 License to Use Billing Information. Effective as of the Effective Time and to the extent allowed by applicable Laws, Sellers grant Buyer and its Affiliates a license (“Billing Information License”) to use each Seller’s, each Material Affiliation’s and each Facility’s billing identification information (which information shall include each entity’s or Facility’s name, Government Program provider numbers, federal employer identification numbers, and such other information as may be reasonably necessary) for purposes of submitting claims to Government Programs for services provided at the Facilities by Buyer, any Material Affiliation or any of its Affiliates after the Effective Time. Each such Billing Information License shall be effective (a) for purposes of Medicare, until CMS and the applicable CMS Medicare Administrative Contractor approve Buyer’s or its Affiliate’s Medicare change of ownership application and issue a tie-in notice and approval letter acknowledging that Buyer (or its Affiliate) may be reimbursed for claims submitted using Buyer’s (or such Affiliate’s) billing identification information; and (b) for purposes of Medicaid and any other Government Programs, until the applicable Medicaid program(s) or program agent(s) approves Buyer’s (or its Affiliate’s) provider enrollment application and/or approves assignment of the applicable provider contract and issues the appropriate notice acknowledging that Buyer (or its Affiliate) may be reimbursed by the applicable Medicaid or other Government Program for claims submitted using Buyer’s (or its Affiliate’s)
identification information. So long as such Billing Information License remains in effect, Sellers shall not act to: (i) terminate any of their billing identification information except as required by applicable Law; (ii) close any accounts used by Sellers before the Effective Time for purposes of receiving reimbursement; or (iii) cancel any electronic funds transfer agreements with respect to any Government Program. All accounts receivable and monies collected in the name of Buyer and/or its Affiliates or the Facilities for services provided by Buyer (and/or its Affiliates), the Facilities or any Material Affiliation after the Effective Time shall belong to Buyer (and/or its Affiliates).

9.8 **Remittances.** As of the Effective Time, each Seller hereby (i) authorizes Buyer to open any and all mail addressed to any Seller and delivered to the Healthcare Businesses or otherwise to Buyer if received on or after the Effective Time, and (ii) appoints Buyer as its attorney in fact to endorse, cash and deposit any monies, checks or negotiable instruments received by Buyer after the Effective Time with respect to any Accounts Receivable, any other Asset or any accounts receivable relating to services provided by Buyer or the Healthcare Businesses after the Effective Time, as the case may be, made payable or endorsed to any Seller or Seller’s order, for Buyer’s own account.

9.9 **Agreement Not to Compete.** Each Seller covenants and agrees that in order to maintain the goodwill acquired in the Transactions by Buyer and in consideration of the investments in the Service Area that Buyer is committing to and will make, for a ten-year period following the Closing Date, it shall not, directly or indirectly:

(a) engage in any Competitive Activity (as defined below) within or with respect to the Service Area; and/or

(b) as an employee, agent, partner, equityholder, member, manager, investor, director, consultant or otherwise assist any third party to engage in Competitive Activity within or with respect to the Service Area.

(c) “Competitive Activity” means engaging in a business similar to the Healthcare Businesses. Notwithstanding the preceding, beneficially owning the stock or options to acquire stock totaling less than 1% of the outstanding shares in a public company shall not constitute by itself “Competitive Activity”.

(d) Notwithstanding any other term of this Section 9.9, nothing in this Section 9.9 shall, or shall be construed to, prohibit or limit in any way the County’s operations of a county health department and emergency services and the provision of services ancillary thereto so long as such services are not provided as a licensed hospital. The term “Competitive Activity” shall specifically exclude the operation by the County of a county health department and emergency services and the provision of services ancillary thereto so long as such services are not provided as a licensed hospital.

9.10 **Agreement Not to Interfere with the Healthcare Businesses.** Each Seller covenants and agrees that in order to maintain the goodwill acquired in the Transactions by Buyer, ensure that the acquired Healthcare Businesses continue to have key personnel necessary to provide high quality services to patients in the Service Area after the Transactions, and in consideration of the investments in the Service Area that Buyer is committing to and will make, for a seven-year period following the Closing Date, it shall not, directly or indirectly:

(a) solicit, encourage or cause any resident of the Service Area to purchase any services from any third party that are competitive with or a substitute for the services offered by the Healthcare Businesses in the Service Area at any time during the 24-month period immediately preceding the Closing Date;
(b) solicit, encourage or cause any supplier of goods or services who has provided goods or services to the Healthcare Businesses during the 24-month period before the Closing Date not to do business with or to reduce any part of its business with the Healthcare Businesses in the Service Area or Buyer; and/or

(c) (i) hire or engage or attempt to hire or engage for employment or as an independent contractor in the Service Area any person employed by the Healthcare Businesses or Buyer who was employed by or worked in the Healthcare Businesses immediately before the Closing as an executive, manager, Physician, nurse, clinician, department leader or other supervisory employee (each, a “Restricted Employee”); and/or (ii) solicit or encourage any Restricted Employee to terminate his or her employment or independent contractor relationship with the Healthcare Businesses or Buyer. The foregoing restrictions do not apply to any Restricted Employee that responds to a general advertisement or recruitment campaign not specifically directed at such Restricted Employee.

9.11 Closing of Financials. Buyer shall cause the individual(s) acting as the chief financial officer of Buyer after the Effective Time or such other person(s) as may be responsible for financial closings and reconciliations (the “Finance Team”) to complete (or take such action as shall be necessary for Buyer or Sellers to complete) the standardized closing of Sellers’ financial records for the Healthcare Businesses through the Closing Date including the closing of general ledger account reconciliations (collectively, the “Closing of Financials”). Buyer shall cause the Finance Team to use their good faith efforts to complete the Closing of Finances by no later than the date which is 60 days after the Closing Date. The Finance Team and other appropriate personnel shall be reasonably available to Sellers after the Closing Date as reasonably requested by Sellers, including to assist Sellers in the completion of any post-Closing audit by Sellers of Seller’s financial records for the Healthcare Businesses before the Closing Date.

9.12 Archive Copy of VDR. Sellers shall, at Buyer’s sole cost and expense, within five Business Days after the Closing Date, deliver to Buyer a complete archive copy of the VDR hosted by Intralinks as of the Closing Date.

9.13 Survival. Each Section of Article 9 shall survive the Closing for a period of three years unless otherwise expressly stated in such Section.

ARTICLE 10
INDEMNIFICATION; COMPLIANCE MATTERS

10.1 Survival. The representations and warranties of Sellers and Buyer set forth in Sections 2 and 3, respectively, shall not survive the Closing, except that the representations and warranties set forth in Sections 2.1, 2.2, 2.3, 2.8(c), 2.10(a), 2.22, 3.1, 3.2, 3.3, 3.4 and 3.5 (the “Fundamental Representations”) shall continue in full force and effect for 10 years following the Closing. All covenants of Buyer and Sellers herein (including all covenants of Buyer and Sellers required to be performed before the Closing) shall survive Closing indefinitely unless such covenant expires earlier by its express terms. Except as otherwise set forth herein, no hold harmless or indemnification claim arising with respect to a breach of any representation or warranty, to the extent permitted, or any covenant shall be initiated following the applicable expiration date set forth in this Section 10.1; provided, however, that any such hold harmless or indemnification claim made in accordance with this Agreement on or prior to the applicable expiration date, and any obligation under this Article 10 with respect thereto, shall survive and remain in effect notwithstanding the occurrence of the applicable expiration date.

10.2 Sellers’ Indemnification of Buyer.
(a) **Indemnification.** If the Closing occurs, Sellers shall, jointly and severally, and with respect to the County, solely to the extent permitted under applicable Law, and subject to the limitations set forth in Section 10.2(b), indemnify, defend and hold harmless Buyer and each of Buyer’s Affiliates (including the Joint Ventures and Facilities) and its and their respective equityholders, members, Representatives, successors and assigns (collectively, the “**Buyer Indemnified Parties**”) from and against all Damages to the extent arising or resulting from:

(i) any breach of any representation or warranty of any Seller under this Agreement (other than the Fundamental Representations);

(ii) any breach of any Fundamental Representation of any Seller under this Agreement;

(iii) any breach or default by Sellers of any covenant of any Seller under this Agreement;

(iv) any of the Excluded Assets and/or Excluded Liabilities; and/or

(v) any fraud or intentional misconduct on the part of any Seller.

Sellers’ obligations under this Section 10.2 shall remain subject to, and shall be limited by, the provisions contained in this Article 10.

(b) **Limitations.** Sellers’ indemnification, defense and hold harmless obligations under Section 10.2(a) shall be subject to the following limitations:

(i) Buyer’s sole and exclusive remedy for any Damages arising out of Sellers’ breach of representations and warranties under Section 10.2(a)(i) shall be the R&W Policy and Sellers’ payment of the Seller Retention from the General Escrow Account. For the avoidance of doubt, except solely with respect to Sellers’ responsibility for the Seller Retention, Buyer shall have no recourse or remedy against Sellers, and Sellers shall have no obligation to indemnify or hold harmless Buyer, for Damages arising out of or relating to Sellers’ breach of representations or warranties under Section 10.2(a)(i), under common law, or otherwise, including in the event Buyer does not obtain or maintain the R&W Policy for any reason. For the avoidance of doubt, this Section 10.2(b)(i) does not apply to claims for Damages arising under Sections 10.2(a)(ii) – (v).

(ii) Subject to Section 10.4(d), for any and all other Damages arising or accruing under Section 10.2(a) (other than with respect to any Seller’s breach of a post-Closing covenant and other than with respect to fraud or intentional misconduct of any Seller), Buyer’s sole and exclusive remedy for such Damages shall be a disbursement of funds from the General Escrow Amount, and only for so long as sufficient General Escrow Amount funds remain available in the General Escrow Account. For the avoidance of doubt, upon the exhaustion of the General Escrow Amount, Buyer shall have no further recourse from or against Sellers for Damages arising or accruing under Section 10.2(a) (other than with respect to any Seller’s breach of a post-Closing covenant and other than with respect to fraud or intentional misconduct). For the avoidance of doubt, nothing in this Agreement shall preclude any Buyer Indemnified Party from bringing a claim and pursuing Damages as a remedy against the applicable Seller (on a several basis) for such Seller’s breach of a post-Closing covenant or fraud or intentional misconduct after exhaustion of the General Escrow Amount or after the second anniversary of the Closing.
(iii) Buyer shall bring any and all indemnity claims against Sellers prior to the expiration of the Escrow Period; provided, however, that any indemnity claim made in accordance with this Agreement on or prior to expiration of the Escrow Period, and any obligation of Sellers under this Article 10 with respect thereto, shall survive and remain in effect notwithstanding such expiration date.

(iv) Sellers shall be under no obligation to indemnify any Buyer Indemnified Party under Section 10.2(a) and no claim under Section 10.2(a) shall be made unless notice thereof shall have been given by or on behalf of Buyer Indemnified Party to Sellers in the manner provided in Section 10.4, unless failure to provide such notice in a timely manner does not materially impair Sellers’ ability to defend their rights or otherwise protect their interests.

10.3 Indemnification of Sellers by Buyer. If the Closing occurs, Buyer shall indemnify, defend and hold harmless each Seller and each of its Affiliates and their respective equityholders, Representatives, successors and assigns from and against all Damages to the extent arising or resulting from (a) any breach of any representation or warranty of Buyer under this Agreement, (b) any breach of any Fundamental Representation of Buyer under this Agreement, (c) any breach or default by Buyer under any covenant or agreement of Buyer under this Agreement, (d) the Assumed Obligations or (e) any fraud or intentional misconduct on the part of Buyer. Buyer’s obligations under this Section 10.3 shall remain subject to, and shall be limited by, the provisions contained in this Article 10.

10.4 Payment of Claims.

(a) From and after the Closing, any Damages with respect to any claim as to which any Buyer Indemnified Party may be entitled to indemnification from Sellers under Section 10.2(a)(i) shall be satisfied (i) first, toward satisfaction of Buyer’s responsibility for the Buyer Retention, to the extent all, or any portion of, the Buyer Retention remains unsatisfied, (ii) second, toward satisfaction of Sellers’ responsibility for the Seller Retention, to the extent all, or any portion of, the Seller Retention remains unsatisfied, which such amount shall be paid from the General Escrow Account to the extent sufficient General Escrow Amount funds remain, and (iii) third, to the extent such Damages exceed the Buyer Retention and Seller Retention, by recovery under the R&W Policy to the extent such recovery is available.

(b) From and after the Closing, any Damages with respect to any claim as to which any Buyer Indemnified Party may be entitled to indemnification from Sellers under Section 10.2(a)(ii) or Section 10.2(a)(iv), as applicable, shall be satisfied: (i) first, toward satisfaction of Buyer’s responsibility for the Buyer Retention, to the extent all, or any portion of, the Buyer Retention remains unsatisfied, (ii) second, toward satisfaction of Sellers’ responsibility for the Seller Retention, to the extent all, or any portion of, the Seller Retention remains unsatisfied, which such amount shall be paid from the General Escrow Account to the extent sufficient General Escrow Amount funds remain; (iii) third, to the extent such Damages exceed the Buyer Retention and Seller Retention, by recovery under the R&W Policy to the extent such recovery is available; and (iv) fourth, to the extent the R&W Policy limits have been exhausted, by recovery from Sellers via the General Escrow Account, and only for so long as sufficient General Escrow Amount funds remain.

(c) From and after the Closing (other than with respect to any breach by a Seller of a post-Closing covenant and other than with respect to fraud or intentional misconduct), any Damages with respect to any claim as to which any Buyer Indemnified Party may be entitled to indemnification from Sellers under Section 10.2(a) for which recovery under the R&W Policy is not available shall be satisfied solely by claim against the General Escrow Account, and only for so long as sufficient funds remain in the General Escrow Account.
In the case the state of facts giving rise to a claim for indemnification allows any Buyer Indemnified Party to seek recovery for Damages under any of Section 10.2(a)(ii) or 10.2(a)(iv) and Buyer believes in its reasonable judgment that the R&W Policy may reasonably be expected to provide such Buyer Indemnified Party with recovery for such Damages, such Buyer Indemnified Party shall first bring such claim against the R&W Policy and use commercially reasonable efforts to recover its indemnifiable Damages to the greatest extent provided under the R&W Policy; provided, however, in no event shall any Buyer Indemnified Party be obligated to commence a Proceeding against the insurer under the R&W Policy.

Within five Business Days after a Final Determination, Buyer and Sellers shall execute and deliver to the Escrow Agent a joint written direction pursuant to the Escrow Agreement instructing the Escrow Agent to disburse all or a portion of the General Escrow Amount (to the extent there are funds remaining in the General Escrow Account and only up to the amount of such remaining General Escrow Amount funds) in accordance with such Final Determination. For purposes of this Article 10, a “Final Determination” shall exist when (i) the Indemnifying Party and the Indemnified Party have entered into a written settlement agreement with respect to the subject matter of a claim or (ii) a final nonappealable Order has been entered by a court of competent jurisdiction with respect to the subject matter of a claim.

Upon the second anniversary of the Closing, by joint written direction of the parties, an amount equal to (i) $75,000,000, minus (ii) all amounts released from the General Escrow Account before such time pursuant to Final Determinations, minus (iii) an amount equal to the amount in controversy with respect to any then-pending claims under this Article 10 shall be disbursed to a bank account designated in writing by Sellers together with all interest accrued on such amount; provided, however, that, after such date, the amounts retained in the General Escrow Account under clause (iii) shall be released when such claims are finally judicially determined or settled in accordance with this Article 10 and the parties issue a joint written direction to the Escrow Agent designating how such funds are to be disbursed together with interest thereon (consistent with such Final Determination(s)). Upon the fourth anniversary of the Closing, by joint written direction of the parties, all amounts remaining in the General Escrow Account shall be disbursed to a bank account designated in writing by Sellers together with all interest accrued on such amount; provided, however, that, the General Escrow Account shall continue to retain an amount equal to the amount in controversy with respect to any then-pending claims under this Article 10 until such claims are finally judicially determined or settled in accordance with this Article 10 and the parties issue a joint written direction to the Escrow Agent designating how such funds are to be disbursed together with interest thereon (consistent with such Final Determination(s)).

10.5 Method of Asserting Claims for Indemnification. All indemnification claims by any Person entitled to be indemnified under Section 10.2 or Section 10.3 (the “Indemnified Party”) shall be asserted and resolved as follows:

In the event any claim or demand for which a party (an “Indemnifying Party”) would be liable for Damages to an Indemnified Party is asserted against or sought to be collected from such Indemnified Party by a Person other than Sellers, Buyer or their Affiliates (a “Third-Party Claim”), the Indemnified Party shall deliver a notice of its claim (a “Claim Notice”) to the Indemnifying Party within 30 calendar days after the Indemnified Party receives written notice of such Third-Party Claim which Claim Notice specifies in commercially reasonable detail the nature of and basis for such Third-Party Claim, the amount or the estimated amount of such Third-Party Claim (if known) and includes copies of all material written evidence thereof. If the Indemnified Party fails to provide the Claim Notice within such applicable time period after the Indemnified Party receives written notice of such Third-Party Claim and thereby materially impairs the Indemnifying Party’s ability to protect its interests, the indemnity with respect to the subject matter of the Claim Notice shall be limited to the Damages that
would have nonetheless resulted absent the Indemnified Party’s failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party. The Indemnifying Party shall notify the Indemnified Party within 30 calendar days after receipt of the Claim Notice (the “Notice Period”) whether the Indemnifying Party desires, at the sole cost and expense of the Indemnifying Party, to defend the Indemnified Party against such Third-Party Claim. Notwithstanding anything to the contrary in this Section 10.5, with respect to (x) any claim under Section 10.2(a)(i) or (y) any claim under Section 10.2(a)(ii) or 10.2(a)(iv) with respect to which a Buyer Indemnified Party has determined under Section 10.4(d) to make a claim against the R&W Policy, if the underwriter under the R&W Policy so requires, the underwriter or the Buyer Indemnified Party, as applicable, shall control the defense of such Third-Party Claim and settle such claim in its sole discretion so long as such settlement is satisfied from the R&W Policy (subject to the application of any of the Buyer Retention and/or Seller Retention).

(i) If the Indemnifying Party notifies the Indemnified Party within the Notice Period that the Indemnifying Party desires to defend the Indemnified Party with respect to the Third-Party Claim pursuant to this Section 10.5(a), then the Indemnifying Party will have the right to defend, at its sole cost and expense, with counsel selected by the Indemnifying Party (provided, that such counsel is reasonably acceptable to the Indemnified Party), such Third-Party Claim by all appropriate Proceedings, which Proceedings will be prosecuted by the Indemnifying Party to a final conclusion or will be settled at the discretion of the Indemnifying Party; provided, however, that the Indemnifying Party may not settle any such Third-Party Claim without the prior written consent of the Indemnified Party if the settlement involves any admission of Liability, guilt, or culpability by the Indemnified Party, or otherwise would require the Indemnified Party to pay money or incur any other obligation. Except as set forth in this Section 10.5 (including the last sentence of the foregoing paragraph), the Indemnifying Party will have full control of such defense and Proceedings, including any compromise or settlement thereof, and the Indemnified Party shall agree to any settlement, compromise or discharge of any Third-Party Claim that the Indemnifying Party may recommend that (A) by its terms obligates the Indemnifying Party to pay the full amount of the Liability in connection with such Third-Party Claim (subject to the indemnification limitations in this Article 10), (B) releases the Indemnified Party completely in connection with such Third-Party Claim, (C) does not provide for injunctive or other nonmonetary relief affecting the Indemnified Party or its Affiliates and representatives and (D) does not require any statement or admission of Liability or culpability by the Indemnified Party or its Affiliates or Representatives. Notwithstanding the foregoing, the Indemnified Party may, at its sole cost and expense, file during the Notice Period any motion, answer or other pleadings that the Indemnified Party may deem necessary or appropriate to protect its interests or those of the Indemnifying Party and which is not materially prejudicial, in the reasonable judgment of the Indemnifying Party, to the Indemnifying Party. Except as provided in Section 10.5(a)(ii), if an Indemnified Party takes any such action that is materially prejudicial and causes a final adjudication that is adverse to the Indemnifying Party, the Indemnifying Party will be relieved of its obligations hereunder solely to the extent such Third-Party Claim is materially prejudiced by the Indemnified Party’s action. If requested by the Indemnifying Party, the Indemnified Party agrees, at the sole cost and expense of the Indemnifying Party, to reasonably cooperate with the Indemnifying Party and its counsel in contesting any Third-Party Claim that the Indemnifying Party elects to contest, or, if appropriate and related to the Third-Party Claim in question, in making any counterclaim against the Person asserting the Third-Party Claim, or any cross-complaint against any Person (other than the Indemnified Party or any of its Affiliates). The Indemnified Party may participate in (including engaging counsel of its choice, at its expense), but not control, any defense or settlement of any Third-Party Claim controlled by the Indemnifying Party pursuant to this Section 10.5(a)(i), and except as specifically provided in this
Section 10.5(a)(i), the Indemnified Party will bear its own costs and expenses with respect to such participation.

(ii) If (A) the Indemnifying Party fails to notify the Indemnified Party within the Notice Period that the Indemnifying Party desires to defend the Indemnified Party pursuant to this Section 10.5(a), (B) the Indemnifying Party gives such notice but fails to prosecute diligently or settle the Third-Party Claim, (C) the Indemnifying Party fails to give any notice whatsoever within the Notice Period or (D) the Third-Party Claim is asserted by a Governmental Entity for a violation of Law or involves a provider or material supplier or a Third-Party Claim that could reasonably be expected to result in the imposition of specific performance on Buyer or the Healthcare Businesses, then the Indemnified Party will have the right to defend, at the sole cost and expense of the Indemnifying Party, the Third-Party Claim by all appropriate Proceedings, which Proceedings will be promptly and reasonably prosecuted by the Indemnified Party to a final conclusion or will be settled at the discretion of the Indemnified Party. The Indemnified Party will have full control of such defense and Proceedings, including any compromise or settlement thereof; provided, however, that, if requested by the Indemnified Party, the Indemnifying Party agrees, at the sole cost and expense of the Indemnifying Party, to cooperate with the Indemnified Party and its counsel in contesting any Third-Party Claim that the Indemnified Party is contesting, or, if appropriate and related to the Third-Party Claim in question, in making any counterclaim against the Person asserting the Third-Party Claim, or any cross-complaint against any Person (other than the Indemnifying Party or any of its Affiliates). Notwithstanding the foregoing provisions of this Section 10.5(a)(ii), if the Indemnifying Party has notified the Indemnified Party with reasonable promptness that the Indemnifying Party disputes its Liability to the Indemnified Party with respect to such Third-Party Claim and if such dispute is resolved in favor of the Indemnifying Party, the Indemnifying Party will not be required to bear the costs and expenses of the Indemnified Party’s defense pursuant to this Section 10.5(a)(ii) or of the Indemnifying Party’s participation therein at the Indemnified Party’s request. Subject to the above terms of this Section 10.5(a)(ii), the Indemnifying Party may participate in, but not control, any defense or settlement controlled by the Indemnified Party pursuant to this Section 10.5(a)(ii), and the Indemnifying Party will bear its own costs and expenses with respect to such participation. The Indemnified Party shall give sufficient prior notice to the Indemnifying Party of the initiation of any discussions relating to the settlement of a Third-Party Claim and allow the Indemnifying Party to participate therein.

(b) If the Indemnifying Party does not notify the Indemnified Party within 30 calendar days following its receipt of a Claim Notice that the Indemnifying Party disputes its Liability to the Indemnified Party hereunder, such claim specified by the Indemnified Party will be conclusively deemed a Liability of the Indemnifying Party hereunder and the Indemnifying Party shall pay the amount of such Liability to the Indemnified Party on demand, or on such later date (i) in the case of a Third-Party Claim, as the Indemnified Party suffers the Damages in respect of such Third-Party Claim or (ii) in the case of an Indemnity Notice in which the amount of the claim is estimated, when the amount of such claim becomes finally determined.

(c) The Indemnified Party agrees to give the Indemnifying Party reasonable access to the books and records and employees of the Indemnified Party in connection with the matters for which indemnification is sought hereunder, to the extent the Indemnifying Party reasonably deems necessary in connection with its rights and obligations hereunder.

(d) The Indemnified Party shall assist and cooperate with the Indemnifying Party in the conduct of litigation, the making of settlements and the enforcement of any right of contribution to which the Indemnified Party may be entitled from any Person in connection with the subject matter of any
litigation subject to indemnification hereunder. In addition, the Indemnified Party shall, upon request by the Indemnifying Party or counsel selected by the Indemnifying Party (without payment of any fees or expenses to the Indemnified Party or an employee thereof), attend hearings and trials, assist in the securing and giving of evidence, assist in obtaining the presence or cooperation of witnesses, and make available its own personnel; and shall do whatever else is necessary and appropriate in connection with such litigation. The Indemnified Party shall not make any demand upon the Indemnifying Party or counsel for the Indemnifying Party in connection with any litigation subject to indemnification hereunder, except a general demand for indemnification as provided hereunder. If the Indemnified Party shall fail to perform such obligations as Indemnified Party hereunder or to cooperate fully with the Indemnifying Party in Indemnifying Party’s defense of any suit or Proceedings, such cooperation to include attendance at all depositions and the provision of all documents relevant to the defense of any claim, then, except where such failure does not materially affect the Indemnifying Party’s defense of such claims, the Indemnifying Party shall be released from all of its obligations under this Agreement with respect to that suit or Proceedings and any other claims which had been raised in such suit or Proceedings.

(e) Following indemnification as provided for hereunder, the Indemnifying Party shall be subrogated to all rights of the Indemnified Party with respect to all persons or entities relating to the matter for which indemnification has been made; provided, however, that the Indemnifying Party shall have no subrogation rights to seek reimbursement through or from the Indemnified Party’s insurance policies, programs, coverage, carriers or beneficiaries.

(f) The failure of the indemnified party to give reasonably prompt notice of any claim shall not release, waive or otherwise affect the Indemnifying Party’s obligations with respect thereto, except to the extent that the Indemnifying Party can demonstrate that the Indemnifying Party’s ability to defend or resolve such claim is adversely affected in a material manner thereby.

(g) Any payment made to an Indemnified Party under this Agreement shall be treated by the parties as an adjustment to the Purchase Price for Tax purposes, allocable to the Assets of such Seller to which the payment relates, unless otherwise required by Law.

(h) To the extent Sellers, as an applicable Indemnifying Party, are obligated for any costs or expenses under this Section 10.5, Buyer’s sole recourse for such amounts shall be the General Escrow Amount, and only for so long as sufficient funds remain.

(i) If the Indemnified Party is entitled to recover any sum, whether by payment, discount, credit or otherwise, from any third party or policy of insurance, which, with respect to Buyer, shall include the Transferred Insurance Policies and Surety Bonds, in respect of any matter for which an indemnification claim could be made hereunder, the Indemnified Party shall use its commercially reasonable efforts to recover such sum from such third party or policy of insurance, and any sum recovered will reduce the amount of the indemnification claim accordingly. If the Indemnifying Party pays to the Indemnified Party an amount in respect of a claim, and the Indemnified Party subsequently recovers from a third party a sum that relates to that claim, the Indemnified Party shall promptly repay to the Indemnifying Party so much of the amount paid by it as does not exceed the sum recovered from the third party less all reasonable costs, charges and expenses incurred by the Indemnified Party in obtaining payment in respect of that claim and in recovering that sum from the third party. Nothing in this Section 10.5(i) shall require any party to commence litigation against any third party, including any insurance carrier.
10.6 Repatriation.

(a) If at any time following the Effective Time, Buyer (i) is in material default with respect to more than 50% of its obligations under Section 5.9(c), (ii) materially breaches any of Buyer’s covenants set forth in Sections 5.10 or 5.12 or (iii) fails to comply in all material respects with the terms of N.C. Gen. Stat. § 131E-13(a), as amended, restated or revised from time to time (“Fundamental Covenants”) and such material default or breach has not been waived in writing by Sellers or cured by Buyer to the reasonable satisfaction of Sellers within 90 calendar days after service by Sellers upon Buyer of a written notice that describes the nature of such material default or breach, then Sellers may at Sellers’ election in Sellers’ sole and unrestricted discretion, purchase, or take assignment of, all, and not less than all, of the Assets transferred to Buyer hereunder, including the Hospitals and all assets associated with the operation of the Hospitals and all other components of the Healthcare Businesses, and further including any assets acquired post-Closing and used by Buyer primarily in connection with the operation of the Healthcare Businesses, excluding NHBMC and all related assets (collectively, the “Repatriation Assets”) (the “Repatriation Transaction”); provided, however, that the Repatriation Assets and the Repatriation Transaction shall not include the assets and operations of NHBMC. Sellers may exercise such right to purchase such Repatriation Assets by delivering written notice to Buyer at any time during the 45-day period immediately following the expiration of the cure period set forth above (“Purchase Notice”).

(b) Upon Sellers’ delivery to Buyer of a Purchase Notice, the parties shall use their respective reasonable best efforts to enter into definitive documents relating to such Repatriation Transaction within not more than 90 days following Buyer’s receipt of the Purchase Notice. The Repatriation Assets shall be transferred and assigned to Sellers or Sellers’ designees pursuant to terms that shall be consistent with the following in all material respects:

(i) All rights, benefits, and obligations of Buyer to the Repatriation Assets and operations associated with the Healthcare Businesses shall revert to Sellers, and following such reversion, Sellers shall be the owner and operator of the Repatriation Assets and Healthcare Businesses.

(ii) Buyer shall transfer to Sellers to the extent permitted by Law, all rights of Buyer under any Governmental Permits as are necessary to allow the continued operation of the Healthcare Businesses.

(iii) Buyer shall assign to Sellers all of Buyer’s executory contracts with third parties that are Repatriation Assets, to the extent such contracts are assignable, and Sellers shall assume the same.

(iv) Sellers shall offer to employ all employees of Buyer associated with the Healthcare Businesses, including Physicians, on substantially the same terms and conditions as they are then employed under and with the same pay and benefits, and Buyer shall waive, and refrain from enforcing, any covenants or restrictions otherwise applicable to such employees acceptance of such offers from Sellers. Buyer shall further waive, and refrain from enforcing, all restrictive covenants applicable to third parties, including independent contractor Physicians, which would prohibit any such third party from continuing to provide services to the Healthcare Businesses following the closing of the Repatriation Transaction.

(v) Buyer shall assign to Sellers 100% of Buyer’s equity, membership or control rights with respect to any subsidiaries and joint ventures that are Repatriation Assets.
Buyer and Sellers shall use reasonable best efforts to obtain all necessary governmental and third-party authorizations associated with any such Repatriation Transaction within not more than 90 days following execution of definitive documents.

The Repatriation Assets shall be transferred to Sellers by bill of sale, deed, assignment and assumption agreement, or other appropriate document of transfer upon payment by Sellers to Buyer of an amount equal to the Repatriation Purchase Price. “Repatriation Purchase Price” means an amount equal to the fair market value of the Repatriation Assets. The fair market value of the Repatriation Assets shall be determined by a nationally recognized independent valuation firm experienced in valuing healthcare assets and operations selected according to the mutual agreement of the parties (“Valuation Firm”) and shall take into account the Liabilities assumed and capital investments made by Buyer. If the parties are unable to agree to such Valuation Firm within 20 days following Sellers delivery of the Purchase Notice, then each party shall select a valuation firm, and the valuation firms selected by the parties shall thereafter select the Valuation Firm. Sellers shall pay the Repatriation Purchase Price by wire transfer of immediately available funds at the closing of the Repatriation Transaction. Notwithstanding the foregoing, unless otherwise waived by Sellers, Buyer shall use reasonable best efforts to continue to operate the Healthcare Businesses pursuant to the terms set forth in this Agreement and to cooperate in good faith with Sellers until the Healthcare Businesses are transitioned back Sellers.

Each party to the Repatriation Transaction shall bear its own costs and expenses.

The terms of this Section 10.6 shall survive the Effective Time.

10.7 Liquidated Damages. In the event that (a) County brings or initiates any Proceeding, or makes a counterclaim in any Proceeding, challenging the legality of, or alleging the illegality of, County’s obligation to indemnify, defend or hold harmless any Buyer Indemnified Party under this Agreement on the basis that County’s obligation to indemnify, defend or hold harmless under this Agreement is unconstitutional, infringes upon County’s sovereign/governmental immunity or is otherwise not permitted by applicable Law or (b) any third party or Governmental Entity brings or initiates any Proceeding challenging the legality of, or alleging the illegality of, County’s obligation to indemnify, defend or hold harmless any Buyer Indemnified Party under this Agreement on the basis that County’s obligation to indemnify, defend or hold harmless is unconstitutional, infringes upon County’s sovereign/governmental immunity or is otherwise not permitted by applicable Law and, as the final, non-appealable result of such third-party or Governmental Entity Proceeding (or written settlement related thereto), the General Escrow Amount, or any portion thereof, is no longer available as a source of recourse for the Buyer Indemnified Parties (each of the conditions set forth in clauses (a) and (b), a “Liquidated Damages Trigger Event”), then, as a condition and inducement to Buyer’s willingness to enter into this Agreement, Sellers shall immediately forfeit any and all of Sellers’ rights, title, and interest in and to the then-remaining balance of the General Escrow Amount (“Liquidated Damages Amount”), and all of Sellers’ right, title, and interest in and to such Liquidated Damages Amount shall immediately and automatically transfer to Buyer. Within five Business Days after a Liquidated Damages Trigger Event, Buyer and Sellers shall execute and deliver to the Escrow Agent a joint written direction pursuant to the Escrow Agreement instructing the Escrow Agent to disburse the Liquidated Damages Amount to Buyer and if any Seller refuses to sign such joint written direction, Buyer may either sign it on such Seller’s behalf or present to the Escrow Agent either (x) with respect to a Liquidated Damages Triggering Event described in clause (a), written evidence of the County initiated Proceeding or counterclaim or (y) with respect to a Liquidated Damages Triggering Event described in clause (b), a copy of the final, nonappealable judgment or settlement, whereupon the Escrow Agent will, pursuant to the Escrow Agreement, disburse the Liquidated Damages Amount to Buyer. Buyer shall have the right to specific performance to enforce
Sellers’ obligations under this Section 10.7. This Section 10.7 shall not apply, and no Liquidated Damages Trigger Event shall be deemed to have occurred, with respect to any Proceeding other than those described in clauses (a) and (b) above, including any challenge or dispute in which any Seller challenges a specific indemnity obligation of any Seller arising under this Agreement on the basis that (i) a Buyer Indemnified Party has not incurred Damages for which a Seller is obligated to indemnify such Buyer Indemnified Party hereunder, (ii) Sellers dispute the amount of Damages claimed or (iii) Sellers are not contractually obligated to indemnify the applicable Buyer Indemnified Party for such specific indemnity claim under the terms set forth in Article 10.

10.8 Specific Performance. The parties hereby acknowledge and agree that (a) the rights of each party to consummate the Transactions, and the covenants of each party contemplated by this Agreement are special, unique and of extraordinary character, (b) if any party violates or fails or refuses to perform any covenant or agreement made by it herein, the non-breaching party or parties would suffer irreparable harm and be without an adequate remedy at law, and (c) except as otherwise expressly provided in this Agreement, if any party violates or fails or refuses to perform any covenant or agreement made by such party herein, the non-breaching party or parties shall, subject to the terms hereof and in addition to any other remedy at law for Damages or other relief, be entitled to specific performance of such covenant or agreement, or to any other equitable relief, all without the requirement of posting bond or proving the inadequacy of monetary Damages.

10.9 Exclusive. From and after the Closing, other than claims for equitable relief, which equitable relief claims are nevertheless subject to Section 10.1, or for fraud or intentional misconduct, any claim arising under this Agreement or in connection with or as a result of the Transactions or any Damages or injury alleged to be suffered by any party as a result of the actions or failure to act by any other party shall be governed solely and exclusively by the provisions of this Article 10.

ARTICLE 11
TAX; COST REPORT MATTERS; HITECH PAYMENTS; COMPLIANCE MATTERS

11.1 Tax Matters.

(a) Preparation of Pre-Closing Tax Returns. Sellers shall cause Sellers’ tax preparation firm to prepare to the extent any Seller is required to file a Tax Return, at the sole cost and expense of Sellers, all federal, state or local Tax Returns for taxable periods that close on or before the Closing Date ("Pre-Closing Tax Returns"). All Pre-Closing Tax Returns for such period shall be marked as “final” to the fullest extent permissible under applicable Law. Any such Pre-Closing Tax Return shall be prepared in a manner consistent with past practice (unless otherwise required by a Law) and without a change of any election or any accounting method and shall be submitted by Sellers to Buyer (together with schedules, statements and, to the extent reasonably requested by Buyer, supporting documentation) for review and comment at least 60 days prior to the due date (including extensions) in the case of Income or franchise Pre-Closing Tax Returns or at least five days prior to the due date (including extensions) in the case of other Pre-Closing Tax Returns. If Buyer objects to any item on any such Pre-Closing Tax Return, Buyer shall notify Sellers in writing within 20 days after Buyer’s receipt of such Pre-Closing Tax Return that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If a notice of objection is duly delivered, Buyer and Sellers shall negotiate in good faith and use their commercially reasonable efforts to resolve such items. If Buyer and Sellers are unable to reach such agreement within ten days after receipt by Sellers of such notice, the disputed items shall be resolved by the Independent Accountants and any determination by the Independent Accountants shall be final. The Independent Accountants shall resolve any disputed items within 30 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountants are unable to resolve any disputed items before the due date for such Pre-
Closing Tax Return, the Pre-Closing Tax Return shall be filed as prepared by Sellers and then amended to reflect the Independent Accountants’ resolution. The costs, fees and expenses of the Independent Accountants shall be borne equally by Buyer and Sellers, except if the Independent Accountants resolves the matter fully in favor of the position of one party, then the other party shall bear all the costs fees and expenses of the Independent Accountants in full.

(b) Preparation of Straddle Period Returns. Buyer shall prepare, or cause to be prepared, all Tax Returns not described in Section 11.1(a) required to be filed with respect to the Healthcare Businesses after the Closing Date with respect to Straddle Periods (“Straddle Period Returns”), and Buyer and Sellers shall be responsible for their share of the Taxes and costs attributable to such Straddle Period Returns as determined in this Section 11.1(b) and in accordance with the methodology prescribed in Section 11.1(c). Any such Straddle Period Returns shall be prepared in a manner consistent with past practice (unless otherwise required by Law) and without a change of any election or any accounting method and shall be submitted by Buyer to Sellers (together with schedules, statements and, to the extent requested by Sellers, supporting documentation) at least 45 days prior to the due date (including extensions) of such Straddle Period Returns that are in the nature of Income or franchise Tax Returns and at least five days prior to the due date (including extensions) in the case of other Straddle Period Tax Returns. If Sellers object to any item on any such Straddle Period Return, it shall, within ten days after delivery of such Straddle Period Return that is in the nature of an Income or franchise Tax return and at least two days prior to the due date (including extensions) in the case of other Straddle Period Tax Returns, notify Buyer in writing that it so objects, specifying with particularity any such item and stating the specific factual or legal basis for any such objection. If Sellers do not timely provide Buyer with a written notice of objection, Sellers shall be deemed to accept such Straddle Period Return as prepared by Buyer. If Sellers do not timely provide Buyer with a written notice of objection, Sellers shall be deemed to accept such Straddle Period Return as prepared by Buyer. If a written notice of objection is duly delivered, Buyer and Sellers shall negotiate in good faith and use their commercially reasonable efforts to resolve such items. If Buyer and Sellers are unable to reach such agreement within ten days after receipt by Buyer of such notice, the disputed items shall be resolved by the Independent Accountants and any determination by the Independent Accountants shall be final. The Independent Accountants shall resolve any disputed items within 30 days of having the item referred to it pursuant to such procedures as it may require. If the Independent Accountants are unable to resolve any disputed items before the due date for such Straddle Period Return, the Straddle Period Return shall be filed as prepared by Buyer and then amended to reflect the Independent Accountants’ resolution. The costs, fees and expenses of the Independent Accountants shall be borne equally by Buyer and Sellers, except if the Independent Accountants resolves the matter fully in favor of the position of one party, then the other party shall bear all of the costs fees and expenses of the Independent Accountants in full. The parties shall allocate the economic responsibility for Taxes in the case of Straddle Period Returns in accordance with the methodology prescribed in Section 11.1(c).

(c) Tax Methodology. For purposes of this Agreement, in the case of Taxes that are payable with respect to a Straddle Period, the portion of any such Tax that is allocable to the portion of the taxable period ending on the Closing Date shall be:

(i) in the case of Taxes that are either (A) based upon or related to income or receipts; or (B) imposed in connection with any sale or other transfer or assignment of property (real or personal, tangible or intangible) (other than a Transfer Tax covered by Section 11.1(f)), deemed equal to the amount that would be payable (after giving effect to amounts that may be deducted from or offset against such Taxes) if the taxable period ended on the Closing Date;

(ii) in the case of Taxes imposed on a periodic basis or otherwise measured by the level of any item, deemed to be the amount of such Taxes for the entire Straddle Period
(after giving effect to amounts that may be deducted from or offset against such Taxes) (or, in the case of such Taxes determined on an arrears basis, the amount of such Taxes for the immediately preceding period), multiplied by a fraction the numerator of which is the number of days in the period ending on the Closing Date and the denominator of which is the number of days in the entire Straddle Period; and

(iii) in the case of any Tax based upon or measured by capital (including net worth or long-term debt) or intangibles, any amount thereof required to be allocated under this Section 11.1(c) shall be computed by reference to the level of such items on the Closing Date. All determinations necessary to effect the foregoing allocations shall be made in a manner consistent with prior practices of Sellers as relating to the Healthcare Businesses.

(d) **Cooperation and Exchange of Information.** Sellers and Buyer shall provide each other with such cooperation and information as any of them reasonably may request of the others in filing any Tax Return pursuant to Section 11.1 or in connection with any audit or other Proceedings in respect of Taxes of the Healthcare Businesses. Such cooperation and information shall include providing copies of relevant Tax Returns or portions thereof, together with accompanying schedules, related work papers and documents relating to rulings or other determinations by tax authorities. Sellers and Buyer shall retain all Tax Returns, schedules and work papers, records and other documents in their possession relating to Tax matters of the Healthcare Businesses for any taxable period beginning before the Closing Date until the expiration of the statute of limitations of the taxable periods to which such Tax Returns and other documents relate, without regard to extensions except to the extent notified by the other parties in writing of such extensions for the respective Tax periods. Sellers shall retain possession of the Tax Returns, schedules and work papers, records and other documents in their possession prior to the Closing Date relating to Tax matters of the Healthcare Businesses.

(e) **Tax Proceedings.**

(i) **Generally.** Each of Buyer, on one hand, and Sellers, on the other hand, shall promptly notify the other in writing upon receipt (including receipt by Affiliates of Buyer or any Seller) of any written notice of any audit or other Proceeding by any Governmental Entity that might be reasonably expected to affect the Tax Liabilities of any party (each, a “Tax Proceeding”) with respect to any Pre-Closing Tax Period.

(ii) **Pre-Closing Tax Proceedings.** Sellers shall have the right to control any Tax Proceeding relating to a taxable period ending on or before the Closing Date. Sellers shall provide Buyer copies of any written correspondence received from the Governmental Entity or provided to the Governmental Entity in respect of such Tax Proceeding and shall allow Buyer reasonable opportunity to participate (at its own cost) in the defense of such audit. Sellers shall consider in good faith any written comments provided by Buyer in respect of such Tax Proceeding. Sellers shall be entitled to settle any such Tax Proceeding without consent of Buyer, except to the extent the settlement of such Tax Proceeding would adversely impact Buyer in the Post-Closing Tax Period, in which case Sellers shall not settle such Tax Proceeding without first obtaining the consent of Buyer, which consent shall not be unreasonably withheld. If Sellers fail to timely take control of a Tax Proceeding relating to a tax period ending on or before the Closing Date, Buyer shall have the right to control such Tax Proceeding, and shall be entitled to settle any such Tax Proceeding without consent of Sellers, except to the extent the settlement of such Tax Proceeding would adversely impact the indemnification obligation of Sellers hereunder, in which case Buyer shall not settle such Tax Proceeding without first obtaining the consent of Sellers, which consent shall not be unreasonably withheld.
(iii) **Straddle Period Tax Proceedings.** Buyer shall have the right to control (at its own cost) any Tax Proceeding relating to a Straddle Period. Buyer shall provide Sellers copies of any written correspondence received from the Governmental Entity or provided to the Governmental Entity in respect of such Tax Proceeding and shall allow Sellers reasonable opportunity to participate (at Sellers’ own cost) in the defense of such Tax Proceeding. Buyer shall consider in good faith any written comments provided by Sellers in respect of such Tax Proceeding. Buyer shall be entitled to settle any such Tax Proceeding without consent of any Seller, except to the extent the settlement of such Tax Proceeding would adversely impact the indemnification obligation of Sellers hereunder, in which case Buyer shall not settle such Tax Proceeding without first obtaining consent of Sellers, which consent shall not be unreasonably withheld.

(f) **Transfer Taxes.** Sellers shall be responsible, at Sellers’ sole cost and expense, for the payment of all Transfer Taxes associated with the Transactions, if any, and the filing of Tax Returns in respect of such Transfer Taxes. Notwithstanding anything to the contrary contained herein, the parties hereby acknowledge and agree that Sellers are exempt from Transfer Taxes with respect to the conveyance of the Owned Real Property to Buyer pursuant to the terms hereof, and therefore Buyer shall not be required to pay any such Transfer Taxes in connection with such conveyance of the Owned Real Property to Buyer.

(g) **Tax-Sharing Agreements.** All Tax-sharing agreements or similar agreements with respect to or involving NHRMC, the Seller Subsidiaries and Joint Ventures shall be terminated as of the Closing Date, and, after the Closing Date, the Subsidiaries shall not be bound thereby or have any Liability thereunder.

(h) **Closing of the Books.** NHRMC shall cause, or timely request in writing to the applicable governing board to cause, each Joint Venture to adopt the interim “closing of the books” method for the taxable year of such Joint Venture in which the Closing Date occurs for purposes of determining allocations of profit, income, gain, deduction, and loss of such Joint Venture.

(i) **Tax Elections under the Partnership Audit Rules.** At Buyer’s request, NHRMC shall cause, or timely request in writing to the applicable governing board to cause, each Joint Venture to make an election pursuant to (i) Section 6221(a) of the Code to elect out of the application of the Partnership Audit Rules, if possible, and (ii) Section 6226(a) of the Code if such election described in clause (i) is not possible, in each case, with respect to such Joint Venture’s taxable year that includes the Closing Date and for all prior years in which such Joint Venture is subject to the Partnership Audit Rules.

(j) **Code Section 754 Election.** At Buyer’s request, NHRMC shall cause or timely request in writing to the applicable governing board to cause, each Joint Venture to make a timely election under Section 754 of the Code (and under any corresponding or similar provisions of state or local Tax Law) (“Section 754 Election”) effective as of the taxable period of such Joint Venture in which the Closing Date occurs if such Closing Date does not already have a Section 754 Election in effect for such period.

11.2 **Cost Report Matters.**

(a) Buyer, at Sellers’ cost and expense, shall prepare and timely file all cost reports relating to Sellers and the Facilities for periods ending prior to the Effective Time or as may be required as a result of the consummation of the Transactions, including those relating to Government Programs and Private Programs that settle on a cost report basis (the “Seller Cost Reports”). Buyer shall provide copies to Sellers of all material correspondence relating to the Seller Cost Reports or rights to settlements
and retroactive adjustments on the Seller Cost Reports (“Agency Settlements”). Buyer will forward any demand for payments with respect to the Agency Settlements or the Seller Cost Reports within 10 Business Days of receipt by Buyer. Sellers shall retain all rights, Liabilities and obligations associated with Agency Settlements and the Seller Cost Reports, including any amounts receivable or payable in respect of such reports or reserves relating to such reports. Sellers shall retain the right to control the appeal of any Medicare or Medicaid determinations relating to any of the Seller Cost Reports at Sellers’ sole cost and expense. Sellers shall retain, for the applicable statute of limitations period, the originals of the Seller Cost Reports, correspondence, work papers and other documents relating to the Seller Cost Reports. Sellers shall furnish copies of the Seller Cost Reports, correspondence, work papers and other documents to Buyer upon reasonable request, at the sole cost and expense of Sellers. After the Closing Date, Sellers shall reasonably cooperate with Buyer, at the sole cost and expense of Seller, to the extent that Buyer has questions about, or otherwise needs pertinent information relating to, the Seller Cost Reports.

(b) Except as required by Law, Sellers shall not open, re-file or amend any Seller Cost Report without the prior written consent of Buyer, not to be unreasonably withheld, conditioned or delayed. In the event that any Government Program offsets, withholds or recoups any amounts payable or paid to Buyer as a result of any Liabilities or obligations of Seller, any Material Affiliation or their respective predecessors in respect of periods ending at or before the Effective Time arising under the terms of the Government Programs (including as a consequence of a Seller’s failure to timely file any terminating Cost Report), Sellers shall tender to Buyer an amount equal to the amount offset, withheld or recouped within five Business Days after Sellers’ receipt of written notice from Buyer of such offset, withholding or recoupment. Sellers, at their own cost and expense, shall timely prepare and file any other required reports for the Facilities with respect to any reportable period ending at or before the Effective Time.

(c) Upon reasonable notice and during normal business office hours, Sellers, at Sellers’ expense, shall cooperate with Buyer in regard to Buyer’s preparation and filing of the Seller Cost Reports. Upon reasonable notice and during normal business office hours, Sellers shall cooperate with Buyer, at Sellers’ expense, in connection with any cost report audits, appeals, disputes and/or other claim adjudication matters relative to Governmental Program reimbursement. Such cooperation shall include obtaining files at the Healthcare Businesses and Sellers’ provision to Buyer of data and statistics, and the coordination with Buyer pursuant to reasonable notice of Medicare and Medicaid exit conferences or meetings.

(d) If any party receives any amount from patients, Third-Party Payors, group purchasing organizations or suppliers that, under the terms of this Agreement, belongs to the other party, the party receiving such amount shall remit within 10 Business Days the full amount (net of any Taxes incurred by such party as a result of receiving any such amount) so received to the other party.

(e) Sellers shall cooperate with Buyer in all reasonable respects in providing pre-Closing patient data and any documents Buyer reasonably believes are necessary or appropriate to file with respect to North Carolina Medicaid disproportionate share hospital surveys and any other required supplement program surveys for the fiscal periods before and after the Effective Time.

11.3 HITECH Payments.

(a) After the Closing Date, Buyer will cooperate with Sellers in all reasonable respects in providing documents or data that Sellers reasonably believe are necessary or appropriate to file with respect to receiving payments (and rights to receive such payments) under the Medicare EHR Incentive Program and the applicable Medicaid EHR Incentive Program, with respect to demonstrating
“meaningful use” of certified electronic health records technology (as these terms are defined under the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), pursuant to the requirements of the implementing regulations under the HITECH Act) at the Healthcare Businesses or Joint Venture Businesses (“HITECH Payments”), or to substantiate Sellers’ claim for HITECH Payments, including (i) making available to Sellers all information and records necessary for the preparation of attestations or other filings, (ii) providing the services of Buyer’s employees as reasonably required to assist Sellers in preparing such reports, (iii) coordinating with Sellers in regards to applicable Medicare and Medicaid conferences or meetings and (iv) providing to appropriate parties, as determined to be reasonably necessary by Sellers, a letter acknowledging that Sellers have retained all rights to the HITECH Payments, that Buyer agrees that Sellers have the right to pursue such HITECH Payments, either on Sellers’ behalf or, to the extent required by Law, as Buyer’s representative, and that Sellers have the right to submit all attestations with respect to such HITECH Payments for such periods, either on Sellers’ behalf or, to the extent required by Law, as Buyer’s representative. In the event that Buyer provides personnel pursuant to this Section 11.3(a), Buyer shall be entitled to reimbursement from Sellers for all reasonably incurred out-of-pocket costs and expenses. Buyer shall forward to Sellers any and all correspondence relating to HITECH Payments within 10 Business Days after receipt by Buyer. In the event that there is any state or federal audit related to any attestation or other filing contemplated by this Section 11.3(a), Buyer shall reasonably cooperate with Sellers with respect to any such audit.

(b) If Buyer or any of its Affiliates receives any HITECH Payment that is an Excluded Asset, Buyer will pay Sellers an amount equal to such HITECH Payments received by Buyer or its Affiliates. Buyer will make all such payments promptly, and in any event within 10 Business Days of receipt of the applicable payments.

(c) With respect to HITECH Payments for the federal fiscal year in which the Effective Time occurs, the parties agree that (i) such HITECH Payments (including all rights to pursue such payments and/or appeal any decisions regarding such payments) are included in the Assets and shall become the property of Buyer as of the Effective Time; provided, that Buyer agrees to share any HITECH Payments for such federal fiscal year with Sellers on a pro rata basis (based upon the number of days during such federal fiscal year that Sellers operated the Facilities); (ii) Buyer shall remit Sellers’ pro rata share of funds relating to such HITECH Payments to Sellers within 10 Business Days after receipt by Buyer; and (iii) to the extent Buyer is required to refund or repay any portion of the HITECH Payments, Sellers shall pay to Buyer Sellers’ pro rata portion of the amount of the required refund or repayment within 10 Business Days after Buyer refunds or remits such amount to Medicare or Medicaid, as applicable.

(d) Subject to Buyer’s satisfaction of its obligations under Section 11.3(b), to the extent that Buyer is required to refund or repay any portion of the HITECH Payments, including any amounts related to refunds, penalties or interest, that the Healthcare Businesses receive, or any other amount associated with HITECH Payments that are, or would be, Excluded Assets, Sellers shall pay Buyer 100% of any amounts that Buyer is required to refund or repay within 10 Business Days after Buyer refunds or remits such amount to Medicare or Medicaid, as applicable.

11.4 CMS Reporting, Payment Adjustments and Share Savings/Bundled Payments Reconciliation.

(a) Following the Effective Time, Sellers shall cooperate with Buyer in all reasonable respects in providing pre-Closing documents or data that Buyer reasonably believes are necessary or appropriate to file with respect to CMS Reporting for the federal fiscal year in which the Effective Time occurs and any subsequent federal fiscal year. Sellers shall forward to Buyer any and all
correspondence from CMS relating to CMS Reporting for such federal fiscal years within 10 Business Days after receipt by a Seller.

(b) To the extent Buyer, a Facility or any Material Affiliation incurs a penalty or reduction in fees paid by CMS for hospital or Physician services based on CMS Reporting (or failure to report) for services rendered by any Seller before the Effective Time, then Sellers shall pay to Buyer the payment differential attributable to such reduction in fees paid under CMS Reporting within 10 Business Days after notice to Sellers of such amount due.

(c) To the extent Buyer, a Facility or any Material Affiliation is required to refund, reimburse or repay any portion of an increased Medicare payment or Medicaid payment based on CMS Reporting or any portion of a CMS Reporting bonus paid to any Seller before the Effective Time, then Sellers shall pay to Buyer the amount of the required refund, reimbursement or repayment within 10 Business Days after Buyer refunds, reimburses or remits such amount to Medicare or Medicaid, as applicable.

(d) To the extent Buyer, a Facility or any Material Affiliation is required to submit any payment to any Government Program or any participant participating with Seller in any bundled payment or shared savings program, Sellers shall pay Buyer the amount of the required payment within 10 Business Days after Buyer remits such amount to any Government Program or any participant, as applicable.

(e) Notwithstanding the foregoing, nothing in this Agreement shall require Buyer to prepare, file or otherwise participate in any Government Program or Private Program appeal relating to the operations of Sellers, Material Affiliations or the Facilities before the Effective Time.

11.5 Waiver Program Payments. Buyer and Sellers shall prorate any payments received by the Facilities after the Effective Time under waiver or supplemental payment programs as follows:

(a) Any such amounts that correspond to federal fiscal years before the federal fiscal year during which the Effective Time occurs will be paid to Sellers;

(b) Any such amounts that correspond to federal fiscal years after the federal fiscal year during which the Effective Time occurs will be paid to Buyer; and

(c) Any such amounts that correspond to the federal fiscal year during which the Effective Time occurs will be allocated between Buyer and Sellers on a pro rata basis (based upon the number of days during such year that Sellers operate the Facilities and the number of days during such year that Buyer operates the Facilities).

11.6 Compliance Matters. Following the Effective Time, if any compliance matter is identified by a party, whether through internal audit or otherwise, for which another party may bear responsibility or exposure (a “Compliance Matter”), such party shall provide prompt written notice to such other party (and such other party’s parent organization, if applicable). Because any such Compliance Matter may impact Buyer and Sellers, the parties acknowledge that both Buyer and Sellers shall have a common interest in fully resolving all such Compliance Matters and cooperating in good faith to do so. To the extent necessary to preserve attorney-client privilege and attorney-work-product doctrine relating to the investigation or resolution of any Compliance Matter, the parties agree that a common interest privilege shall exist with respect to any communications relating to the investigation and resolution of the Compliance Matter and, to the extent necessary and requested by any party or its counsel, the parties and their respective counsel shall enter into a written agreement to memorialize this
common interest privilege existing among them relating to the Compliance Matter. The parties will thereafter cooperate reasonably with each other in any internal investigations or audits and shall make available to the other, as reasonably requested, any and all relevant information and, further, shall provide personnel as may be necessary and appropriate for purposes of analyzing and resolving such Compliance Matter. In order to ensure the accuracy of any report of any compliance issue to a third party, the parties agree that Sellers shall not make any such report or disclosure to, or in respect of, any federally funded or state-funded healthcare program, including Medicare, Medicaid, TRICARE, NC Health Choice or with any Third-Party Payor with respect to any Compliance Matter that might give rise to any Liability of Buyer, any Facility or any Material Affiliation without at least 30 days’ prior written notice to, and participation and approval of the report by, Buyer, such approval not to be unreasonably withheld, conditioned or delayed. Buyer may determine in its sole discretion whether or not a self-report is required, whether or not to self-report and whether or not to repay funds related to a Compliance Matter has been directed to report such Compliance Matter of a type contemplated by this Section 11.6. In the event that Buyer submits a self-disclosure of any Compliance Matter in accordance with the terms and provisions of Section 11.6 to any Governmental Entity, such self-disclosure shall be submitted, and any resulting settlement with such Governmental Entity shall be negotiated and finalized, as determined by Buyer in its sole discretion. All parties agree to cooperate fully and in good faith as necessary in the resolution of all Compliance Matters, and Buyer and Sellers shall each bear their own expenses in connection therewith.

ARTICLE 12
MISCELLANEOUS PROVISIONS

12.1 Further Assurances and Cooperation. Sellers shall execute, acknowledge and deliver to Buyer any and all other assignments, consents, approvals, conveyances, assurances, documents and instruments reasonably requested by Buyer at any time and shall take any and all other actions reasonably requested by Buyer at any time for the purpose of more effectively assigning, transferring, granting, conveying and confirming to Buyer the Assets. After the Closing, the parties agree to reasonably cooperate with each other and take such further actions as may be necessary, appropriate or desirable to effectuate, carry out and comply with all of the terms of this Agreement, the other Transaction Documents and the Transactions.

12.2 Assignment; Successors and Assigns. No party may assign this Agreement or any of such party’s rights, duties, or obligations hereunder to any Person without the prior written consent of the other parties; provided, however, that Buyer may assign this Agreement and the other Transaction Documents, and any of Buyer’s rights, duties, or obligations hereunder or thereunder, to (a) one or more of Buyer’s Affiliates without the requirement of consent (provided, that (i) Buyer shall remain primarily liable to Sellers hereunder and no such assignment shall relieve Buyer of its obligations hereunder and (ii) Buyer shall provide Sellers with written notice of such assignment), or (b) for collateral security purposes, to provide financing to Buyer or any of its Affiliates. All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the respective successors and assigns of the parties; provided, however, that no party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other parties.

12.3 Governing Law; Jurisdiction.

(a) This Agreement shall be governed by and construed and enforced in accordance with the Laws of the State of North Carolina as applied to contracts made and performed within the State of North Carolina without application of any conflicts-of-law principles. The parties hereby waive their right to claim in any Proceeding involving this Agreement, any other Transaction Document or the Transactions that the Law of any jurisdiction other than the State of North Carolina shall apply to such
dispute; and the parties hereby covenant that they shall assert no such claim in any dispute arising under this Agreement, any other Transaction Document or the Transactions.

(b) Each party absolutely and unconditionally waives, to the fullest extent permitted by Law, any and all rights to trial by jury in connection with any Proceeding arising out of or relating to this Agreement, any other Transaction Document or the Transactions.

(c) The parties agree that jurisdiction and venue in any Proceeding brought by any party in connection with this Agreement, any other Transaction Document or the Transactions, or the performance of the obligations imposed hereunder or thereunder (each, an “Action”) shall properly and exclusively lie in the North Carolina General Court of Justice; provided, however, that the parties agree and consent to designate any such Action as a complex business case to be assigned to a special superior court judge of the North Carolina Business Court to the fullest extent permitted by N.C. Gen. Stat. § 7A-45.4, General Rules of Practice 2.1 and 2.2, and the North Carolina Business Court Rules. Each party also agrees not to bring any such Action in any other court and not to bring any such Action without designating such Action as a complex business court case pursuant to this Section 12.3(c). By execution and delivery of this Agreement, each party irrevocably submits to the jurisdiction of such courts with respect to any such Action. The parties irrevocably agree that venue would be proper in any such court, and hereby waive any objection that any such court is an improper or inconvenient forum for the resolution of such Action. The parties further agree that the mailing by certified or registered mail, return receipt requested, of any process required by any such court shall constitute valid and lawful service of process against them, without necessity for service by any other means provided by statute or rule of court.

12.4 Amendments. This Agreement may not be amended other than by written instrument signed by the parties and Novant Health. No joint written direction pertaining to the Escrow Account may be signed by Buyer without the approval of Novant Health.

12.5 Exhibits and Disclosure Schedules.

(a) The Disclosure Schedules and all Exhibits referred to in this Agreement shall be attached hereto and are incorporated by reference herein.

(b) From the Effective Date until the Closing, Sellers may update any information in the Disclosure Schedules as necessary to reflect matters first arising during the course of conducting the Healthcare Businesses after the Effective Date (any such update, a “Schedule Update”) and Sellers will provide any documents related to such Schedule Updates promptly with the Schedule Updates. Unless Buyer notifies Sellers before the earlier of the Closing Date or the date that is ten days after Sellers deliver a Schedule Update and applicable documents related to such Schedule Update that the information contained in such Schedule Update has had or would reasonably be expected to have a materially detrimental effect on the Healthcare Businesses, then such Schedule Update shall be deemed to have amended the appropriate section(s) of the Disclosure Schedules as of the Effective Date; provided, however, that the foregoing shall not apply to Schedule Updates with respect to the Assumed Contracts Schedules listed in Section 9.4, which shall be governed by Section Error! Reference source not found.. No information contained in any Schedule Update shall have any effect for the purpose of determining whether the conditions set forth in Articles 6 and 7 have been satisfied. Sellers may also update any writing provided to Buyer pursuant to Article 2 in accordance with the mechanism set forth above in this Section 12.5 with respect to the updating of the Disclosure Schedules.

(c) From the Effective Date until the Closing, Buyer may, by written request to Sellers, require Sellers to update any information in Schedules 1.5(f) and 1.5(s).
12.6 Notices. Any notice, demand or communication required, permitted or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by email, one Business Day after being deposited with a nationally or internationally recognized overnight courier or five calendar days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

If to NHRMC: New Hanover Regional Medical Center
2131 S. 17th Street
Wilmington, North Carolina 28401
Attention: John Gizdic, Chief Executive Officer
Lynn Gordon, Chief Legal Officer & General Counsel
Email: John.Gizdic@nhrmc.org
Lynn.Gordon@nhrmc.org

With a copy to: Hall, Render, Killian, Heath & Lyman, LLP
3015 Carrington Mill Blvd.
Suite 450
Morrisville, North Carolina 27560
Attention: Joseph M. Kahn
Robert A. Hamill
Email: JKahn@hallrender.com
RHamill@hallrender.com

If to the County: New Hanover County
230 Government Center Drive
Suite 175
Wilmington, North Carolina 28403
Attention: Chris Coudriet, County Manager
Wanda Copley, County Attorney
Email: ccoudriet@nhcgov.com
wcopley@nhcgov.com

If to Buyer
or Novant Health: Novant Health, Inc.
2085 Frontis Plaza Blvd.
Winston-Salem, North Carolina 27103
Attention: Chief Financial Officer
Email: fmhargett@novanthealth.org
12.7 Headings. The section and other headings contained in this Agreement, the Disclosure Schedules, and the Exhibits to this Agreement are included for the purpose of convenient reference only and shall not restrict, amplify, modify or otherwise affect in any way the meaning or interpretation of this Agreement, the Disclosure Schedules or the Exhibits hereto.

12.8 Confidentiality and Publicity.

(a) The parties acknowledge and agree that, upon execution, this Agreement shall be publicly available consistent with applicable Law. Notwithstanding the foregoing, however, the parties shall keep confidential all information, communications, negotiations, draft documents and any other documents, information or materials exchanged that concern or relate in any way to, the Transactions and other actions of the parties contemplated hereunder, all pursuant to the terms of that certain Confidentiality Agreement between Buyer and Sellers, dated January 15, 2020, which shall remain in effect and shall be binding upon the parties in accordance with its terms.

(b) Prior to the Closing, the parties shall cooperate in good faith regarding any public announcements regarding this Agreement or the Transactions. To the extent that any press releases or public announcements are to be issued or made following the Closing to patients, customers, vendors, and employees relating to the Transactions, the timing and content of such press releases and public announcements shall be determined according to the mutual agreement of the parties.

12.9 Construction. This Agreement shall be construed according to its fair meaning and shall not be construed for or against any party by virtue of draftsmanship.

12.10 Number; Construction. For purposes of this Agreement, the following rules of interpretation shall apply:

(a) All references to the singular shall include the plural and vice versa, where applicable.
(b) The word “including” or any variation thereof means “including, without limitation” and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(c) The words “herein,” “hereof” and “hereunder” and words of similar import refer to this Agreement as a whole and not to any particular provision of this Agreement.

(d) References to a “party” means each of Sellers and Buyer and includes references to such party’s successors and permitted assigns; and references to a “third party” means a Person that is not a party to this Agreement or an Affiliate thereof.

(e) Unless the context requires otherwise, any reference to any Law will be deemed also to refer to all amendments and successor provisions thereto and all rules and regulations promulgated thereunder, in each case as in effect from time to time.

(f) References to “ordinary course of business” means the ordinary course of business consistent with past practice.

12.11 Third-Party Beneficiary. None of the provisions contained in this Agreement are intended by the parties, nor shall they be deemed, to confer any benefit on any Person not a party to this Agreement.

12.12 Expenses and Attorneys’ Fees. Except as otherwise expressly provided in this Agreement, each party shall bear and pay its own costs and expenses relating to the preparation of this Agreement and the other Transaction Documents and to the Transactions contemplated by, or the performance of or compliance with any condition or covenant set forth in, this Agreement, including, the disbursements and fees of their respective attorneys, accountants, advisors, agents and other representatives incidental to the preparation and carrying out of this Agreement, whether or not the Transactions are consummated. The parties expressly agree that the following shall be borne by Buyer: (a) all costs and expenses of Sellers in obtaining title reports and surveys obtained by Buyer; (b) all costs of any environmental surveys obtained by Buyer; (c) the fees of the Escrow Agent; (d) all fees and expenses for economist and consultant (other than Sellers’ counsel and any economist or consultant retained by any Seller) required in connection with obtaining any Required Governmental Authorizations, (e) all costs associated with the R&W Policy (other than the Seller Retention), (f) any escrow fees that may be charged by any title company in its role as escrow agent relating to the transfer of Real Property; (g) the total cost of owner’s and any lender’s title insurance and of all endorsements to such owner’s and lender’s title insurance; (h) all costs associated with the purchase money financing Buyer obtains, if any; (i) all fees for recording the deeds conveying the Owned Real Property to Buyer; and (j) all Taxes (including documentary and/or Transfer Taxes) that become payable by reason of the transfer of the Assets (including the Real Property).

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

12.14 Entire Agreement. Other than the Confidentiality Agreement, this Agreement, the Disclosure Schedules, the Exhibits to this Agreement, and the other Transaction Documents contain the entire understanding between the parties with respect to the Transactions and supersede all prior or
contemporaneous agreements, understandings, representations and statements, oral or written, between
the parties on the subject matter hereof, including that certain Letter of Intent among the parties dated July
13, 2020, which shall be of no further force or effect.

12.15 No Waiver. Any term, covenant or condition of this Agreement may be waived at any
time by the party that is entitled to the benefit thereof but only by a written notice signed by the party
expressly waiving such term or condition. The subsequent acceptance of performance hereunder by a
party shall not be deemed to be a waiver of any preceding breach by any other party of any term,
covenant or condition of this Agreement, other than the failure of such other party to perform the
particular duties so accepted, regardless of the accepting party’s knowledge of such preceding breach at
the time of acceptance of such performance. The waiver of any term, covenant or condition shall not be
construed (a) as a waiver of any other term, covenant or condition of this Agreement or (b) as a waiver of
any subsequent breach of the same term, covenant or condition. Notwithstanding the foregoing, Buyer
may not waive any term, covenant or condition of this Agreement without the prior written consent of
Novant Health, which may be withheld in its sole discretion.

12.16 Severability. If any term, provision, condition or covenant of this Agreement or the
application thereof to any party or circumstance is held to be illegal, invalid or unenforceable under any
present or future Law, and if the rights or obligations of Sellers or Buyer under this Agreement will not be
materially and adversely affected thereby, (a) such provision will be fully severable, (b) this Agreement
will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised
a part hereof, (c) the remaining provisions of this Agreement will remain in full force and effect and will
not be affected by the illegal, invalid or unenforceable provision or by its severance here from, and (d) in
lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this
Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or
unenforceable provision as may be possible.

12.17 Definitions. For the purposes of this Agreement:

“Accrued Paid Time Off” means the value of vested accrued paid time off earned but not taken
with respect to the Hired Employees as of the Effective Time, in an amount not to exceed $32,000,000 in
the aggregate.

“Adjustment Escrow Amount” means Thirty-Five Million Dollars ($35,000,000).

“Affiliate” means any Person directly or indirectly controlling, controlled by or under common
control with a second Person (including, for purposes of this Agreement a Person’s Subsidiaries); provided,
however, an “Affiliate” shall not include any officer or director of any Person. The term
“control” (including the terms “controlled by” and “under common control with”) means the possession,
direct or indirect, of the power to direct or cause the direction of the management and policies of a
Person, whether through the ownership of voting securities, by contract or otherwise.

“Assumed Contracts” means the Tenant Leases, the Lessor Leases, the Capital Leases, the
Personal Property Leases and the Contracts.

“At Large Trustees” means individual persons who will be chosen based on the Local Board’s
need for financial, legal, public relations, planning, fund-raising, healthcare, or other expertise and who
may, but are not required to, fulfill the qualifications of Community Trustees or Physician Trustees. At
least one At Large Trustee, which shall be one of the 12 Community Trustees, shall be an individual in a
position to represent the interests of NHBMC.
“Books and Records” means originals, or where not available, copies (including in electronic format), of books and records maintained in connection with the Healthcare Businesses or the Assets, including books and records relating to books of account, ledgers and general financial accounting records, Physician records, medical staff records, personnel records, machinery and equipment maintenance files, patient and customer lists, price lists, distribution lists, supplier lists, quality control records and procedures, customer and patient complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Entity), sales material and records, strategic plans, marketing plans, internal financial statements and marketing and promotional surveys, pricing and cost information, material and research that relate to the Healthcare Businesses and/or the Assets.

“Break Amount” means Twenty-Five Million Dollars ($25,000,000).

“Business Day” means any day other than a Saturday, Sunday or a day on which commercial banks in New York, New York are authorized or required to be closed for regular business.

“Business Employees” means all full-time and part-time employees of Sellers that are engaged solely in the operation of the Healthcare Businesses (including the Hospital’s management team).

“Buyer’s knowledge” or “the knowledge of Buyer” means the actual knowledge of, and what would reasonably be expected to have been known after reasonable inquiry by, Frank E. Emory, Jr. and Fred Hargett.

“CAHs” means all critical access hospitals owned, leased, managed or operated by a Seller, any Material Affiliation or any of their respective Affiliates.

“Capital Expenditures” means expenditures made in the Healthcare Businesses or in the Service Area that are limited to: (i) those capitalized in accordance with GAAP, (ii) reasonable incremental operating losses associated with ambulatory growth strategies (including Physician practices), (iii) reasonable costs arising from information technology, data analytics and digital strategy integration, implementation and/or improvement, (iv) reasonable expenses for right-of-use assets related to the Strategic Plan, (v) reasonable expenses related to medical education, inter-professional education, healthcare worker pipeline programs, faculty appointments, development and oversight, graduate medical student education, research and clinical trials, clinical affiliations and capital investments related to any of the foregoing, which shall include the actual amount of aggregate financial commitment payments and related payments made under the New Hanover Academic and Clinical Affiliation Agreement, in excess of those incurred by Sellers in the last full fiscal year prior to Closing, (vi) reasonable costs arising from deployment of value-based care arrangements and (vii) merger and acquisition and joint venture activity entered into for the benefit of the Healthcare Businesses. Notwithstanding the foregoing, Capital Expenditures: (a) shall not include routine day-to-day operating losses not associated with investment in the Healthcare Businesses; (b) may include funding for operating losses solely to the extent such operating losses arise out of commercially reasonable working capital and operating expenses incurred in connection with implementing the capital projects described in clauses (ii)-(vi) of this definition for the corresponding reasonable start-up period; and (c) shall be for the specific benefit of the Healthcare Businesses and shall not include any allocation of corporate or system-wide capital expenses or overhead that is not incurred for the specific benefit of the Healthcare Businesses.

“Cash Amount” means the cash (other than Restricted Cash) of NHRMC and its Affiliates (other than, for the avoidance of doubt, the Joint Ventures or the NHRMC Foundation) determined in accordance with GAAP, as of the Effective Time and held in the Transferred Seller Bank Accounts. For the avoidance of doubt, Cash Amount shall include all cash in physical custody or control plus amounts in
bank accounts and investment accounts. These amounts will be (a) reduced by (i) issued but uncleared checks and drafts, (ii) the Excess Accrued Paid Time Off and (iii) a cash amount equal to the value of all Restricted Cash that cannot be transferred to Buyer and (b) increased by checks, credit cards and drafts deposited but not reflected on the bank or investment statements.


“Certificate of Need” means a written statement issued by a Governmental Entity pursuant to N.C. Gen. Stat. § 131E-175 et seq. evidencing community need for a new, converted, expanded, relocated or otherwise significantly modified healthcare facility or health service.

“Closing Liabilities Amount” means the aggregate amount of all Excluded Liabilities that are assumed or paid by Buyer at Closing.

“Closing Net Working Capital” means Net Working Capital as of immediately prior to the Effective Time.

“CMS Reporting” means any cost, quality and performance payment program reporting requirements implemented by CMS pursuant, but not limited, to the Social Security Act, the Patient Protection and Affordable Care Act of 2010, the Health Care and Education Reconciliation Act of 2010, the Pathway for Sustainable Growth Reform (SGR) Act of 2013, the Protecting Access to Medicare Act of 2014, the Improving Medicare Post-Acute Care Transformation Act of 2014, American Taxpayer Relief Act of 2012 (ATRA), Balanced Budget Act of 1997 (BBA), the Medicare, Medicaid and SCHIP (State Children’s Health Insurance Program) Balanced Budget Refinement Act of 1999 (BBRA), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) and/or the Medicare Access & CHIP Reauthorization Act of 2015 (MACRA), each applicable at such time as healthcare services are rendered.


“Community Trustees” means individual persons who reside within the Service Area and rely upon the Hospitals and Healthcare Businesses for regular and recurrent healthcare services.

“Confidentiality Agreement” means that certain Confidentiality Agreement, dated as of January 15, 2020, by and between Buyer and Sellers.

“Core Clinical Service Lines” means medical-surgery; obstetrics; pediatrics; outpatient and emergency services, including emergency services for the indigent; cardiovascular health; orthopedics; oncology; and trauma care; women’s health; behavioral health; primary care; neonatal intensive care; and neurosciences, inclusive of neurology, neurosurgery, neuroinvasive care and stroke care.

“Cost Report” means any cost report required to be filed in respect of the Healthcare Businesses, Joint Venture Businesses or the Facilities pursuant to a Government Program or any Private Program.

“County Lease” means that certain Lease Agreement by and between the County and NHRMC, dated as of October 1, 1993, as amended by that certain First Amendment to Lease Agreement dated as of June 15, 1996; as further amended by that certain Second Amendment to Lease Agreement dated as of February 15, 1999; as further amended by that certain Third Amendment to Lease Agreement dated December 1, 2005; as further amended by that certain Fourth Amendment to Lease Agreement dated as of September 1, 2006; as further amended by that certain Fifth Amendment to Lease Agreement dated as of October 1, 2008; as further amended by that certain Sixth Amendment to Lease Agreement dated as of
June 1, 2009; as further amended by that certain Seventh Amendment to Lease Agreement dated as of September 1, 2011; as further amended by that certain Eighth Amendment to Lease Agreement dated as of July 1, 2013; and as further amended by that certain Ninth Amendment to Lease Agreement, dated as of June 1, 2017.

“County Revenue Stabilization Fund” means the fund established at or before Closing to hold the County Revenue Stabilization Fund Amount.

“County Revenue Stabilization Fund Amount” means $300,000,000.

“COVID-19” means severe acute respiratory syndrome coronavirus (SARS-CoV-2) also known as the novel coronavirus, and the disease caused thereby, COVID-19.

“Damages” means all losses, damages, claims, penalties, fines, settlement payments, Liabilities, Taxes, costs (including court costs and costs of any appeals) and expenses (including reasonable attorneys’ fees), whether or not arising out of a Third-Party Claim, excluding punitive damages (except to the extent awarded or paid to an unaffiliated third party).

“Disclosure Schedules” means the disclosure schedules delivered by Sellers to Buyer and attached hereto.

“Disaster Relief Funds” means any payments received before or after the Effective Time that are intended to compensate any Seller or the Healthcare Businesses for costs incurred or revenue lost as a result of hurricanes or other natural disasters occurring prior to the Effective Time, where such payments are derived from programs established or funded directly or indirectly by or through FEMA, other federal agencies, or state and local agencies.

“Disregarded Entity” or “Disregarded Entities” means those business entities set forth on Schedule 1.4(x) that are limited liability companies for which NHRMC owns 100% of the equity interests.

“Encumbrance” means any lien, pledge, claim, charge, mortgage, deed of trust, security interest, covenant, easement, encroachment or other restriction or encumbrance of any kind.

“Environmental Laws” means all applicable state, federal or local Laws relating to Hazardous Substances or to the protection of the environment, including Laws relating to the storage, treatment and disposal of medical and biological waste.


“ERISA Affiliate” means any entity treated as a single employer with Sellers, the Healthcare Businesses or the Joint Venture Businesses for purposes of Section 414 of the Code or Section 4001 of ERISA.

“Escrow Agent” means Truist Bank.

“Escrow Amount” means the Adjustment Escrow Amount and the General Escrow Amount.

“Estimated Cash Amount” means Sellers’ good faith written estimate of the Cash Amount as of the Effective Time.
“Estimated Closing Liabilities Amount” means Sellers’ good faith written estimate of Closing Liabilities Amount as of the Closing.


“Estimated Closing Payment” means an amount equal to (i) Base Cash Consideration, minus (ii) Estimated Closing Liabilities Amount, minus (iii) the Estimated Seller Transaction Expenses Amount, minus (iv) the Estimated Indebtedness Amount, plus (v) the amount (if any) by which Estimated Closing Net Working Capital exceeds the Net Working Capital Target, minus (vi) the amount (if any) by which the Net Working Capital Target exceeds Estimated Closing Net Working Capital, plus (vii) the Estimated Cash Amount, minus (viii) the Adjustment Escrow Amount, minus (ix) the General Escrow Amount.

“Estimated Indebtedness Amount” means Sellers’ good faith written estimate of the Indebtedness Amount as of the Closing.

“Estimated Purchase Price” means (i) Base Cash Consideration, minus (ii) the Estimated Closing Liabilities Amount, minus (iii) the Estimated Seller Transaction Expenses Amount, minus (iv) the Estimated Indebtedness Amount, plus (v) the Estimated Closing Net Working Capital Adjustment (if a positive number); plus (vi) the Estimated Cash Amount.

“Estimated Seller Transaction Expenses Amount” means Sellers’ good faith written estimate of Seller Transaction Expenses Amount as of the Closing.

“Excess Accrued Paid Time Off” means the amount of Accrued Paid Time Off in excess of $32,000,000.

“Facilities” means the Hospitals, HHAs, Hospices and all other healthcare facilities, healthcare operations or Physician practices owned, leased, managed or operated by any Seller or Material Affiliation related to or associated with the Healthcare Businesses or Joint Venture Businesses and all assets and operations ancillary to or associated with any of the foregoing.


“Force Majeure Event” means an event or effect that either cannot be anticipated or cannot be controlled, including acts of nature (including fire, flood, earthquake, hurricane, tornado, lightning and/or other natural disaster), war, terrorist activities, sabotage, government prohibition, pandemic, epidemic, labor dispute, strike, lockout, partial or entire failure of utilities or other vital supplies, acts or omissions of any Governmental Entity or Laws, or changes in Laws, issued by any Governmental Entity.

“Foundation” means the Foundation established by County to hold and administer a portion of the Purchase Price.


“GAAP” means United States generally accepted accounting principles and practices as in effect from time to time.
“General Escrow Amount” means $100,000,000.

“Governmental Entity” means any local, state or federal government or authority, including each of their respective branches, departments, agencies, commissions, boards, bureaus, courts, instrumentalities, contractors or other subdivisions, including the North Carolina Department of Health, NC Health Choice, North Carolina Department of Justice, the Medicare and Medicaid programs (including their respective fiscal intermediaries or administrative contractors) and TRICARE.

“Governmental Permit” means any license, registration, permit, certificate, order, grant, certificate of need, franchise, registration, authorization, consent or approval of any Governmental Entity, including provider agreements with the Medicare and Medicaid programs (including their respective fiscal intermediaries or administrative contractors) and TRICARE.

“Hazardous Substances” means (i) any hazardous or toxic waste, substance, or material defined as such in (or for the purposes of) CERCLA and/or the Resource Conservation and Recovery Act (42 U.S.C. §6901, et. seq.), and/or the Hazardous Materials Transportation Act (49 U.S.C. §1801, et. seq.), and/or the Toxic Substances Control Act (15 U.S.C. §2601, et. seq.), and/or the Clean Air Act (42 U.S.C. §7401, et. seq.), and/or the Clean Water Act (33 U.S.C. §1251, et. seq.), and/or any corresponding state Law, (ii) asbestos-containing material, (iii) medical and biological waste, (iv) polychlorinated biphenyls, (v) petroleum products, including gasoline, fuel oil, crude oil and other various constituents of such products, and (vi) any other chemicals, materials or substances, exposure to which is prohibited, limited or regulated by any Environmental Laws.

“Healthcare Laws” means Title XVIII of the Social Security Act, 42 U.S.C. §§1395-1395hhh (the Medicare statute), including 42 U.S.C. §1395nn or any regulations promulgated pursuant thereto (collectively, the “Stark Law”); Title XIX of the Social Security Act, 42 U.S.C. §§1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. §1320a-7(b); the False Claims Act, 31 U.S.C. §§3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. §1320a-7; the Federal False Claims Act, 31 U.S.C. §3729; the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d-1329d-8, as amended by the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 (collectively, “HIPAA”); Information Privacy and Security Laws; any Laws applicable to the Provider Relief Funds; Laws applicable to the use, handling, control, storage, transportation and maintenance of controlled substances, pharmaceuticals or drugs; and all applicable implementing regulations, rules, ordinances and Orders; and any similar or other state and local Laws; and all applicable federal, state and local licensing, certificate of need, regulatory and reimbursement, and Orders applicable to healthcare service providers or other Persons providing the items and services similar to those provided by Sellers, Facilities, Material Affiliations, Joint Venture Businesses or the Healthcare Businesses.

“HHAs” means all home health agencies owned, leased, managed or operated by a Seller, any Material Affiliation or any of their respective Affiliates.

“Hospices” means all hospice agencies owned, leased, managed or operated by a Seller, any Material Affiliation or any of their respective Affiliates.

“Immediate Family Member” means husband or wife; birth or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law or sister-in-law; grandparent or grandchild; and spouse of a grandparent or grandchild.
“Income Tax” means any federal, state, local or foreign Tax measured or imposed on net income, including any interest, penalty or addition thereto, whether disputed or not.

“Income Tax Return” means any Tax Return relating to Income Taxes, including any schedule or attachment thereto.

“Indebtedness” means, as at a specified date, without duplication, (i) the amount of all obligations for borrowed money of Sellers with respect to, arising from or related to the Healthcare Businesses (including any unpaid principal, premium, unpaid interest, prepayment penalties, commitment and other fees, reimbursements, indemnities and all other amounts payable in connection therewith), (ii) Liabilities of Sellers with respect to the Healthcare Businesses evidenced by bonds, debentures, notes or other similar instruments or debt securities, (iii) all obligations, contingent or otherwise, of Sellers with respect to, arising from or related to the Healthcare Businesses in respect of any letters of credit or bankers’ acceptances (to the extent drawn), (iv) any interest rate swap, forward contract or other hedging arrangement of Sellers, (v) obligations to pay the deferred purchase price of property or services or assets in each case, together with all accrued interest thereon and any applicable prepayment, redemption, brokerage, make-whole or other premiums, fees or penalties with respect to which any Seller is liable, contingently or otherwise, as obligor or otherwise (except trade accounts payable to suppliers arising in the ordinary course of business), including all deferred purchase price Liabilities related to past acquisitions, whether contingent or otherwise (including the maximum potential amount payable with respect to any “earn-out”, purchase price adjustment or similar payments or obligations); (vi) indebtedness or other obligations of others of the type described in this definition guaranteed by any Seller or any of their Affiliates (to the extent there is a demand for payment of any such guarantee); and (vii) all obligations (including accrued interest) of Sellers with respect to the Healthcare Businesses without duplication under a lease agreement that would be capitalized pursuant to GAAP, including payment obligations assumed by Buyer or paid at Closing by Buyer under Capital Leases, but excluding any breakage costs, prepayment penalties or fees or other similar amounts payable in connection with any capitalized leases related to any post-Closing event, (viii) the AAP Program Amount and (ix) any accrued and unpaid interest, fees and other expenses owed with respect to the foregoing, including prepayment penalties and breakage fees.

“Indebtedness Amount” means the aggregate amount of all Indebtedness of Sellers related to the Healthcare Businesses outstanding as of the Effective Time.

“Independent Accountants” means Ernst & Young.

“Information Privacy and Security Laws” means HIPAA, all other Laws concerning the privacy or security of Personal Information, including state data breach notification Laws, state health privacy and information security Laws, the FTC Act, the FTC Red Flag Rules and state consumer protection Laws and applicable industry standards, including Payment Card Industry Data Security Standard 3.0 or higher.

“Intellectual Property” means all intellectual property rights arising under the Laws of the United States or any other jurisdiction with respect to the following: (i) trade names, trademarks and service marks (registered and unregistered), trade dress and similar rights and applications to register any of the foregoing (collectively, “Marks”); (ii) inventions, whether or not patentable, and all patents, patent applications and rights in respect of utility models or industrial designs (collectively, “Patents”); (iii) works of authorship, whether or not copyrightable, and copyrights and registrations and applications therefor (collectively, “Copyrights”); (iv) domain names and social media accounts; (v) all computer programs (including any and all software implementation of algorithms, models and methodologies, whether in source code or object code), databases and compilations (including any and all data and
collections of data) and all documentation therefor (including user manuals and training materials relating to the foregoing) (“Software”); (vi) know-how, discoveries, methods, processes, technical data, specifications, research and development information, technology, data bases and other proprietary or confidential information, including customer lists, in each case that derives economic value from not being generally known to other Persons who can obtain economic value from its disclosure, but excluding any Copyrights or Patents that cover or protect any of the foregoing (collectively, “Trade Secrets”); and (vii) any similar, corresponding or equivalent rights to any of the foregoing anywhere in the world, including moral rights and publicity rights.

“Intellectual Property Agreements” means all licenses, sublicenses and other agreements by or through which other Persons grant any Seller or any of its Affiliates, or any Seller grants any other Persons, any exclusive or nonexclusive rights or interests in or to any Intellectual Property that is necessary for use in connection with the Healthcare Businesses.

“Iron Gate” means Iron Gate Surgery Center, LLC.

“Joint Venture(s)” means those business entities set forth on Schedule 1.4(w) that are limited liability companies for which NHRMC owns less than 100% of the equity interests.

“Joint Venture Businesses” means the operation of the Material Affiliations and all assets and operations ancillary to or associated with any of the foregoing as currently conducted.

“Law” means any federal, state, local or foreign law, statute, code, ordinance, order, rule, regulation, code, directive, judgment, binding administrative guidance or interpretation, constitutional provision, accreditation, standard ruling or decree of any Governmental Entity.

“Liability” means any liability, Indebtedness, obligation, deficiency, interest, Tax, penalty, fine, claim, demand, judgment, cause of action or other losses (including loss of benefit or relief), cost or expense of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute, fixed, or contingent, accrued or unaccrued, liquidated or unliquidated, recorded or unrecorded, due or to become due or otherwise, and regardless of when asserted.

“Material Adverse Effect,” as used in this Agreement with respect to Sellers, the Assets, and the Healthcare Businesses, means any event, change, fact, effect, condition or occurrence that individually or in the aggregate with all other events, changes, facts, effects, conditions or occurrences, (i) has had, results in or would reasonably be expected to have a material adverse effect on the condition (financial or otherwise), business, assets, liabilities, properties, operations or results of operations of the Healthcare Businesses, taken as a whole, or (ii) has prevented or materially delayed, or would reasonably be expected to prevent or materially delay, the consummation by Sellers of the Transactions, but excluding any effect resulting or arising from (a) any change that is generally applicable to the healthcare industry, (b) any actual changes in Law, (c) any change in general business, economic or market conditions, (d) any national or international political event or natural disaster, including acts of war, terrorism, pandemics, epidemics, hurricanes, floods, storms and other natural disasters, (e) the entry into, or compliance with the terms of, this Agreement or the announcement of the Transactions, (f) any action taken by Buyer or Sellers that are required to be taken by this Agreement, (g) any omission to act or action taken that is specifically required by this Agreement, (h) any changes in GAAP or (i) any failure by Sellers to meet any internal or published projections or predictions with respect to the Healthcare Businesses (whether such projections or predictions were made by Sellers or independent third parties) for any period ending on or after the Effective Date (it being understood that the facts or occurrences giving rise to or contributing to such failure may be deemed to constitute, or be taken into account in determining whether there has been or will be, a Material Adverse Effect); provided, however, that any event, change, fact,
effect, condition or occurrence referred to in the foregoing clauses (a), (b), (c), (d) and (h) may be taken into account in determining whether there is or would reasonably be expected to be a Material Adverse Effect to the extent that Sellers or the Healthcare Businesses have been or would reasonably be expected to be disproportionately affected thereby relative to other participants in the industry in which Sellers operate the Healthcare Businesses. “Material Adverse Effect” as used in this Agreement with respect to Buyer, means any one or more events, developments, circumstances, occurrences, changes or effects that, individually or in the aggregate, has prevented or materially delayed, or would reasonably be expected to prevent or materially delay, the consummation by Buyer of the Transactions.

“Material Affiliation” means (a) any Person in which NHRMC, directly or indirectly, owns at least 50% of the equity interests, is the sole member or manages or controls by contract or otherwise, including those Persons set forth in Schedule 1.4(w) and (b) any arrangement or agreement between any of the Healthcare Businesses and Carolinas Physicians Network, Inc.

“Mental and Behavioral Health Fund” means the fund established at or before Closing to hold the Mental and Behavioral Health Fund Amount.

“Mental and Behavioral Health Fund Amount” means $50,000,000.

“Net Working Capital” means the excess of (a) the current assets of the Healthcare Businesses included in the line items set forth on Exhibit P as of the determination date (excluding the Cash Amount and Restricted Cash), over (b) the current liabilities (including (i) Accrued Paid Time Off minus (ii) Excess Accrued Paid Time Off) of the Healthcare Businesses included in the line items set forth on Exhibit P as of such date, in each case calculated in accordance with GAAP. An example calculation of Net Working Capital as of June, 2020 is attached as Exhibit P.

“Net Working Capital Target” means $102,000,000.

“NHRMC Transition Stabilization Escrow Amount” means $200,000,000.

“Novant Health Change of Control” means, with respect to Novant Health, (i) any transaction or series of related transactions that results in an independent third party, directly or indirectly, (a) becoming the beneficial owner of more than 50% of the then-outstanding voting securities or other voting ownership or membership interests of Novant Health, (b) having the power or authority to elect or appoint more than 50% of the governing board or body, or otherwise direct the affairs and policies of Novant Health, or (c) otherwise having control (as defined in the definition of Affiliate, above) of Novant; (ii) the sale, transfer or lease of all or substantially all of the assets of Novant Health in any single transaction or series of related transactions, to an independent third party; and/or (iii) any joint venture, management arrangement, or similar transaction between Novant Health and an independent third party that results in such independent third party owning or controlling all, or substantially all, of the assets of Novant Health.

“OWP4” means OWP4, LLC.

“Order” means any order, injunction, decree, ruling, writ, opinion, assessment or arbitration award.

“Payor Agreement” means any Contract between any entity and a Government Program or a Private Program under which the Healthcare Businesses, Joint Venture Businesses, any Material Affiliation or any Seller or any of its Affiliates directly or indirectly receives payments for medical services provided to such program’s beneficiaries.
“Permitted Encumbrances” means Permitted Exceptions and (i) statutory liens for current Taxes not yet due or delinquent (or which may be paid without interest or penalties) or the validity or amount of which is being contested in good faith by appropriate Proceedings in accordance with applicable Law that are properly accrued for on the books of the applicable Seller and set forth on Schedule 12.17(a), (ii) mechanics’, carriers’, workers’, repairers’ and other similar liens arising or incurred in the ordinary course of business relating to obligations as to which there is no default on the part of Sellers, (iii) pledges, deposits or other liens securing the performance of bids, trade contracts, leases or statutory obligations (including workers’ compensation, unemployment insurance or other social security Laws), in each case in the ordinary course of business, and (iv) with respect to Owned Real Property only, any Defects identified in writing during the Title Objection Period that are subsequently cured by Sellers in accordance with the terms and conditions of Section 5.5(c) or waived by Buyer, in Buyer’s sole and absolute discretion.

“Person” means any natural person, partnership, corporation, limited liability company, association, trust or other legal entity.

“Personal Information” means any information with respect to which there is a reasonable basis to believe that the information can be used to identify an individual, including “individually identifiable health information” as defined in 45 C.F.R. § 160.103, “personally identifiable information” (as such term, or similar term in purpose or effect, may be defined by any applicable Information Privacy and Security Laws), demographic information and Social Security numbers.

“Physician” means a doctor of medicine or osteopathy, a doctor of dental surgery or dental medicine, a doctor of podiatric medicine, a doctor of optometry, or a chiropractor, as defined in Section 1861(r) of the Social Security Act.

“Physician Trustees” means individual licensed physicians then currently maintaining active privileges on the Hospitals’ medical staff and who reside, and practice primarily, in the Service Area.

“Post-Closing Tax Period” means any taxable period beginning after the Closing Date and, with respect to the Straddle Period, the portion of such taxable period beginning after the Closing Date.

“Pre-Closing Tax Period” means any taxable period ending on or before the Closing Date and, with respect to the Straddle Period, the portion of such taxable period ending on and including the Closing Date.

“Proceeding” means any action, arbitration, charge, claim, counterclaim, complaint, demand, dispute, audit, grievance, hearing, inquiry, investigation, self-disclosure, litigation, proceeding, qui tam action, suit (whether civil, criminal, administrative, judicial, or investigative) commenced, brought, conducted, or heard by or before, or otherwise involving, any (a) Governmental Entity, (b) Medicare fiscal intermediary or administrative contractor, recovery audit contractor, zone program integrity contractor or (c) arbitrator, whether at law or in equity.

“Provider Needs Assessment” means Sellers’ current provider needs assessment, which is attached as Schedule 12.17(b).

“Provider Relief Funds” means any payments received prior to the Effective Time that are intended to compensate any Seller or the Healthcare Businesses for costs incurred or revenue lost as a result of their COVID-19 response, where such payments are derived from programs established or funded, directly or indirectly, by or through the Coronavirus Aid, Relief, and Economic Security Act (the “CARES Act”), including payments received through the Public Health and Social Services Emergency
Fund and through state and local programs funded through federal appropriations under the Coronavirus Relief Fund defined under the CARES Act Title V Section 601, and any other payments received through programs funded directly or indirectly by other Governmental Entities, including FEMA or the North Carolina Medicaid program, or through subsequent Congressional appropriations.

“Public Software” means any open source Software used by Sellers or Sellers’ Affiliates, including any Software that contains, or is a derivative work of, any Software that is distributed under an open source license as defined by the Open Source Initiative or a free Software license as defined by the Free Software Foundation including any of the following licenses: (i) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL), (ii) the Artistic License (e.g., PERL), (iii) the Mozilla Public License, (iv) the Netscape Public License, (v) the Sun Community Source License (SCSL), (vi) the Sun Industry Standards License (SISL), (vii) the BSD License and (viii) the Apache License.

“Referral Source” any of the following: (a) a Physician, an Immediate Family Member of a Physician, or an entity owned in whole or in part by a Physician or by an Immediate Family Member of a Physician; (b) any other Person who (i) makes, who is in a position to make, or who could influence the making of referrals of patients to any healthcare facility; (ii) has a provider number issued by Medicare, Medicaid or any other Government Program; or (iii) provides services to patients who have conditions that might need to be referred for clinical or medical care, and participates in any way in directing, recommending, arranging for or steering patients to any healthcare provider or facility; or (c) any Person or entity that is an Affiliate of any Person or other entity described in clause (a) or (b).

“Remediation Period” means, with respect to any occurrence of Force Majeure Event, the period following such occurrence that Buyer reasonably requires to remediate any Damage resulting from such Force Majeure Event and/or the period that Buyer reasonably requires to resume operations or other status or activity that have been stopped, curtailed or otherwise disrupted as a result of such Force Majeure Event, including the period of any delay in construction resulting from such Force Majeure Event.

“Representatives” means, with respect to any Person, the officers, directors, employees, agents, attorneys, accountants, advisors, bankers, financing sources and other authorized representatives of such Person.

“Restricted Cash” means any cash of a type (a) recorded, in accordance with GAAP, by NHRMC or any of its Affiliates (other than, for the avoidance of doubt, the Joint Ventures or the NHRMC Foundation) under the ledger items named “Restricted Cash” and “Restricted Investments” on the Financial Statements or (b) otherwise subject to legal or contractual restriction on the ability to freely transfer or use such cash (e.g., in a cash escrow or reserve account).

“Securities Act” means the Securities Act of 1933.

“Sellers” means County and NHRMC as well as each of its Subsidiaries and Affiliates (other than the NHRMC Foundation and Material Affiliations); provided, however, that for purposes of Sections 1.4 and 1.6, Sellers shall not include Pender, it being understood and agreed by the parties that Pender is not transferring, leasing, selling or conveying any of its assets or Liabilities to Buyer (rather, Buyer will substitute as the member of Pender at the Closing).

“Sellers’ knowledge” or “knowledge of Sellers” means the actual knowledge of, and what would reasonably be expected to have been known after reasonably inquiry in the performance of such individual’s duties in their respective office by, John Gizdic (CEO), Heidi Berger (Deputy General Counsel), Mary Ellen Bonczek (Chief Nurse Executive), Andre Boyd (Chief Operating Officer), Philip Brown, M.D. (Chief Physician Executive), Schorr Davis (NHRMC Foundation Executive Director),
“Seller Subsidiary” means a Subsidiary or Affiliate, including NHRMC Foundation, of any Seller or any Subsidiary of any Seller.

“Seller Taxes” means any Liability for Taxes (or the nonpayment thereof) (a) imposed on or payable by (i) Sellers, any Seller Subsidiary or Joint Venture regardless of the taxable period to which such Taxes relate, (ii) any member of an affiliated, consolidated, combined or unitary group of which Sellers, any Seller Subsidiary or any Joint Venture (or any Seller’s, any Seller Subsidiaries’ or any Joint Venture’s respective predecessors, whether by merger, conversion or otherwise) is or was a member on or before the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar Law, or (iii) any Person (other than Sellers or any Seller Subsidiary or Joint Venture) imposed on or payable by Sellers, Seller Subsidiary or Joint Venture as a transferee or successor, by Contract or pursuant to any Law which Taxes relate to an event or transaction occurring before the Closing Date; or (b) imposed on the Assets that are incurred in, or attributable to, any Pre-Closing Tax Period.

“Seller Transaction Expenses” means the aggregate amount, as of the Effective Time, of: (a) all unpaid fees, expenses, costs, commissions and disbursements of any broker, finder, financial advisor, consultant, accountant, legal counsel or other professional incurred by or on behalf of any Seller or any of their Affiliates in connection with this Agreement, the Transaction Documents and/or the Transactions; (b) the unpaid fees of the Transition Escrow Agent and the Bond Defeasance Escrow Agent, (c) any and all unpaid severance, transaction, retention, success, change-of-control or similar bonuses payable (including the employer’s share of any employment, payroll or similar Taxes related thereto) to any Business Employee, director or consultant of any Seller or any of their Affiliates as a result of the Transactions, if any; provided, however, that in no event shall any payments made pursuant to an offer letter or other Contract entered into by Buyer (or by NHRMC at the written direction of Buyer) whether before, on or following the date of this Agreement be considered a Seller Transaction Expense or otherwise reflected as a current liability of any Seller in calculating Net Working Capital; and (d) the aggregate amount of any loans or other obligations owed by any Business Employee to any Seller or any of their Affiliates that are forgiven by a Seller or one of its Affiliates in connection with the Transactions.

“Seller Transaction Expenses Amount” means an amount equal to all Seller Transaction Expenses that have been incurred or accrued on or before the Closing but have not been paid as of the Closing, whether or not a Seller or any of its Affiliates has been billed for such expenses.

“Service Area” means the Healthcare Businesses’ current primary and secondary service areas as of the Closing, New Hanover, Pender, Brunswick, Columbus, Onslow, Duplin and Bladen Counties and any other primary or secondary service areas into which the Healthcare Businesses expand following Closing.

“Straddle Period” means any taxable period beginning on or before the Closing Date and ending after the Closing Date.

“Strategic Plan” means NHRMC’s Strategic Master Plan dated as of April 23, 2019 as further reflected in the PAG’s February 20, 2020 presentation, which is attached as Schedule 12.17(c).

“Subsidiary” or “Subsidiaries” of any Person means any corporation, partnership, limited liability company or other legal entity in which such Person (either alone or through or together with any
other Subsidiary), (i) owns or holds, directly or indirectly, 50% or more of the stock, membership or other equity or ownership interests, the holder of which is generally entitled to elect a majority of the board of directors or other governing body of such legal entity, or (ii) is entitled to appoint, elect or has the ability to control the appointment or election of a majority of the board of directors or other governing body of such legal entity, each of which are set forth on Schedule 1.4(x).

“Tax” or “Taxes” means any federal, state, local or foreign taxes, charges, fees, duties, tariffs, levies or other assessments, including income, gross receipts, net proceeds, ad valorem, turnover, real property, personal property, sales, use, franchise, excise, value added, goods and services, license, payroll, unemployment, environmental, customs duties, capital stock, disability, stamp, user, transfer, fuel, excess profits, occupational and interest equalization, windfall profits, alternative or add-on minimum, estimated, registration, withholding, social security (or similar), or other tax of any kind whatsoever, whether computed on a separate or consolidated, unitary or combined basis or in any other manner, including any interest, penalty, or addition thereto, whether disputed or not, together with any installments with respect thereto and any estimated payments or estimated taxes and whether disputed or not, including any Liability for Taxes as a result of being a member of a consolidated, combined, unitary or aggregate group for any taxable period and any Liability for Taxes of another Person pursuant to a contract, as a transferee or successor, or under Treasury Regulations Section 1.1502-6 or analogous state, local or foreign Law or otherwise, and including any Liability for abandoned or unclaimed property.

“Tax Return” means any return, declaration, report, statement, estimate, claim for refund and other document filed or required to be filed or provided to a payee in respect of Taxes, including any schedules or attachments thereto or amendments thereof.

“Third-Party Payor” means any third-party purchaser of healthcare services other than any Government Programs.

“Transaction Documents” means this Agreement, the Bills of Sale, the Assignment and Assumption Agreements, the Lease Assignment Agreements, the special warranty deed(s), the Intellectual Property Assignment and all other written agreements, documents and certificates expressly required by any of the foregoing documents to be delivered to another party on the date hereof or at the Closing.

“Transactions” means the transactions contemplated by the Transaction Documents.

“Transfer Taxes” means any sales, use, stock transfer, value added, real property transfer, real property gains, transfer, stamp, registration, documentary, recording or similar duties or taxes together with any interest, penalties, additions to tax or additional amounts with respect thereto incurred in connection with the Transactions.

“Transition Escrow Agent” means Truist Bank, unless otherwise designated by Sellers in writing.

“Waiver/Supplemental Payment Program Receivables” means amounts recorded as a receivable by the Facilities under any waiver or supplemental payment programs for periods on or before the Effective Time consistent with historical accounting practices.

Certain terms listed below are defined elsewhere in this Agreement and, for ease of reference, the section containing the definition of each such term is set forth opposite such term.
| Compliance Matter                                                               | Section 11.6                  |
| Confidental Information                                                        | Section 4.10                  |
| Construction Contracts                                                        | Section 2.4(b)(xxi)           |
| Contract and Lease Consents                                                    | Section 2.5(a)                |
| Contracts                                                                      | Section 1.4(g)                |
| Copyrights                                                                    | Definition of Intellectual Property |
| County                                                                        | Introductory Paragraph       |
| County Commissioners                                                          | Fourth Recital                |
| Custodial Agreement                                                           | Section 6.8(k)                |
| Damaged Assets                                                                | Section 5.26                  |
| Defects                                                                       | Section 5.5(c)                |
| Document Retention Period                                                     | Section 9.2(a)                |
| Easements                                                                    | Section 2.8(h)                |
| Effective Date                                                                | Introductory Paragraph       |
| Effective Time                                                                | Section 1.3                  |
| Elderhaus                                                                     | Section 2.9(dd)               |
| End Date                                                                      | Section 8.1(d)                |
| Environmental Permits                                                         | Section 2.7                  |
| Escrow Agreement                                                              | Section 1.9                  |
| Escrow Period                                                                 | Section 1.9                  |
| Estimated Closing Statement                                                   | Section 1.1.1                |
| Excluded Assets                                                               | Section 1.5                  |
| Excluded Contracts                                                            | Section 1.5(e)                |
| Excluded Liabilities                                                          | Section 1.7                  |
| Excluded Records                                                               | Section 1.5(f)                |
| Federal Fiscal Year                                                           | Section 2.9(n)                |
| Final Determination                                                           | Section 10.4(d)              |
| Final Purchase Price                                                          | Section 1.2(b)                |
| Finance Team                                                                  | Section 9.11                 |
| Financial Statements                                                         | Section 2.11(a)               |
| Foundation                                                                    | Section 6.8(u)                |
| Foundation Contribution                                                       | Section 5.9(a)                |
| Fundamental Covenants                                                        | Section 10.6(a)               |
| Fundamental Representations                                                   | Section 10.1                 |
| Funds Flow Memorandum                                                        | Section 1.1(c)                |
| General Escrow Account                                                       | Section 2.11(d)(i)            |
| GME Program                                                                   | Section 5.15(d)               |
| Government Programs                                                           | Section 2.9(g)                |
| Healthcare Businesses                                                         | First Recital                 |
| Hired Employees                                                               | Section 5.13(a)               |
| HITECH Act                                                                    | Section 11.3(a)               |
| HITECH Payments                                                               | Section 11.3(a)               |
| Hospitals                                                                     | First Recital                 |
| Immigration Act                                                               | Section 2.14(g)               |
| Improvements                                                                  | Section 2.8(g)                |
| Indemnified Party                                                             | Section 10.5                  |
| Indemnifying Party                                                            | Section 10.5(a)               |
| Insurance Policies                                                            | Section 2.15                  |
| Insurer Application                                                           | Section 2.9(x)                |
| Intellectual Property Assignment                                              | Section 6.8(o)                |
| Intended Tax Treatment                                                        | Section 1.12(a)               |
Section 2.11(a)
Section 2.11(a)
Section 1.4(h)
Section 2.13(b)
Section 2.19(k)
Section 2.3(d)
Section 6.8(c)
Section 1.4(b)
Section 2.4(a)
Section 1.4(e)
Section 1.4(d)
Section 10.7
Section 10.7
Section 5.20(a)
Section 5.21(a)
Seventh Recital
Definition of Intellectual Property
Section 2.4(b)
Section 2.9(e)
Section 2.9(u)
Section 5.5(c)
Section 2.9(w)
Section 4.12
Section 5.15(d)
Section 5.9(b)
Introductory Paragraph
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Section 1.4(s)
Section 5.5(c)
Section 5.5(c)
Section 5.13(a)
Section 1.4(j)
Section 10.5(a)
Section 5.20(b)
Section 5.21(a)
Introductory Paragraph
Section 1.4(d)
Section 1.2(b)
Section 2.9(k)
First Recital
Section 1.4(a)
Section 1.12(d)
Section 1.12(d)
Section 2.9(dd)
Section 2.9(dd)
Section 2.9(dd)
Fifth Recital
Section 12.10
Definition of Intellectual Property
Section 6.8(t)
Section 5.10(d)
Pender MSA .......................................................... Section 5.10(d)
Permitted Exceptions ................................................. Section 2.8(d)
Personal Property .................................................. Section 1.4(c)
Personal Property Lease ........................................... Section 1.4(f)
Powers of Attorney ................................................ Section 6.8(h)
Practitioner(s) ........................................................ Section 2.9(e)
Pre-Closing Tax Returns .......................................... Section 11.1(a)
Prepaid Expenses .................................................. Section 1.4(q)
Private Program ..................................................... Section 2.9(g)
Provider Agreements .............................................. Section 5.15(i)
Purchase Notice ..................................................... Section 10.6(a)
Purchase Period ..................................................... Section 5.22
Purchase Price ...................................................... Section 1.1(a)
Purchase Price Allocation Schedule .......................... Section 1.12(b)
Purchase Price Allocation Schedule .......................... Section 1.12(b)
Quality Metrics ..................................................... Section 5.16(e)
R&W Policy .......................................................... Section 5.8
Real Property ....................................................... Section 1.4(b)
Rejecting Employees .............................................. Section 5.13(a)
Repatriation Assets ................................................ Section 10.6(a)
Repatriation Purchase Price ..................................... Section 10.6(b)(vii)
Repatriation Transaction ........................................ Section 10.6(a)
Required Contract Consents .................................... Section 6.6(n)
Required Governmental Authorizations ..................... Section 6.4
Reserved Powers .................................................... Section 5.20(c)
Respondents ........................................................ Fifth Recital
Restricted Employee .............................................. Section 9.10(c)
Retention ............................................................. Section 5.8
RFP ................................................................. Fourth Recital
ROFR Notice ........................................................ Section 5.22
ROFR Option Period .............................................. Section 5.22
Routine Capital Commitment ................................... Section 5.9(c)(i)
Schedule Update .................................................. Section 12.5(b)
Section 754 Election .............................................. Section 11.1(j)
Seller Cost Reports ............................................... Section 11.2(a)
Seller Plan(s) ........................................................ Section 2.13(a)
Seller Retention ..................................................... Section 5.8
Sellers’ Bad Debts .................................................. Section 9.5
Software ............................................................. Definition of Intellectual Property
Solvency or solvency (as to Sellers) ............................. Section 2.16
Solvency or solvency (as to Buyer) ............................... Section 3.8
Stark Law ............................................................. Definition of Healthcare Laws
Straddle Period Returns .......................................... Section 11.1(b)
Survey ............................................................... Section 5.5(b)
Tail Policies .......................................................... Section 4.5(a)
Tax Act ............................................................... Section 2.17(m)
Tax Proceeding ..................................................... Section 11.1(e)
Tenant Leases ........................................................ Section 1.4(b)
Third Party .......................................................... Section 12.10(d)
Third-Party Claim .................................................. Section 10.5(a)
Third-Party Offer Notice ......................................... Section 5.22
12.18 **Time is of the Essence.** Time is of the essence for all dates and time periods set forth in this Agreement and each performance called for in this Agreement.

[Remainder of page intentionally left blank]
IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written by the parties’ duly authorized representatives.

BUYER:

NOVANT HEALTH NEW HANOVER REGIONAL MEDICAL CENTER, LLC

By:____________________________________
Name:___________________________________
Title:____________________________________

Solely for purposes of Section 5.28:

NOVANT HEALTH, INC.

By:____________________________________
Name:___________________________________
Title:____________________________________

SELLERS:

NEW HANOVER REGIONAL MEDICAL CENTER

By:____________________________________
Name:___________________________________
Title:____________________________________

NEW HANOVER COUNTY

By:____________________________________
Name:___________________________________
Title:____________________________________
Exhibit C

Use of Net Proceeds

The Purchase Price, the Cash Amount, any interest accruing on Sellers’ portion of the Adjustment Escrow Amount or General Escrow Amount, any portion of the Adjustment Escrow Amount paid to Sellers, and any remaining portion of the General Escrow Amount paid to Sellers following the expiration of the Escrow Period (collectively, the “Net Proceeds”) will be used, distributed, directed, invested, or allocated in accordance with the terms set forth in this Exhibit C.

1. Initial Allocations. Out of the aggregate Net Proceeds, the Sellers shall make initial allocations at Closing as follows (the “Initial Allocations”):

   (a) General Escrow and Adjustment Escrow Amounts. $100 Million will be deposited into the General Escrow Account for a 48-month period to address certain trailing liabilities associated with pre-Closing operations of the Healthcare Businesses. On the second anniversary of the Closing, an amount equal to (i) $75,000,000 minus (ii) all amounts released from the General Escrow Account before such time, minus (iii) an amount equal to the amount in controversy with respect to any then-pending claims shall be disbursed to Sellers. Upon the fourth anniversary of the Closing, all amounts remaining in the General Escrow Account shall be disbursed to Sellers, provided, however, that, the General Escrow Account shall continue to retain an amount equal to the amount in controversy with respect to any then-pending claims. Any portion of the General Escrow Amount accruing to Sellers shall be allocated to the Foundation and NHRMC Foundation, with the Foundation and NHRMC Foundation each receiving 50% of such amount. In addition, in conjunction with the reconciliation of the Net Working Capital adjustments, an amount equal to $35 Million will be placed into the Adjustment Escrow Amount, to be used to address any payment owed by the Sellers, if any, related to the Net working Capital reconciliation adjustments. Any amount remaining from the Adjustment Escrow Amount will be distributed to the Foundation and the NHRMC Transition Stabilization Escrow, with the Foundation and NHRMC Transition Stabilization Escrow each receiving 50% of such amount.

   (b) NHRMC Transition Stabilization Escrow. Funds in the aggregate estimated amount of approximately $200 Million shall be deposited into an escrow account or reserve fund established and controlled by the successor to NHRMC to address transition stabilization initiatives associated with post-Closing matters, including, but not limited to:

   i. A Team Investment and Resiliency Fund providing funds necessary to (1) administer NHRMC’s existing pension plan following its transfer to the County, (2) provide for certain payments to be made, over time, to affected NHRMC employees to mitigate adverse impacts associated with such employees’ transition from NHRMC’s existing pension plan to Buyer’s retirement benefits plan, (3) provide stabilization payments for NHRMC employees to facilitate the transition of the Business from Sellers to Buyer, and (4) address the staff and provider resiliency funding needs of the organization.

   ii. Payments for tail insurance associated with terminated Seller policies.
iii. Funding for certain support administrative services necessary to facilitate the wind-down of NHRMC, as well as other miscellaneous costs and expenses associated with the transition and wind-down (e.g., trailing cost report matters, filings, etc.).

(c) County Revenue Stabilization Fund. Funds in the aggregate amount of $300 Million shall be deposited into a reserve fund or escrow account established and controlled by the County for revenue stabilization purposes. Such funds may be allocated toward County revenue stabilization initiatives upon the affirmative vote of the County Commissioners. Revenue stabilization initiatives may include:

i. Retirement of voter and non-voter approved debt;

ii. Establish pay-as-you-go financing for certain capital assets and projects;

iii. Reserve for unexpected emergency spending needs (e.g. natural disasters and pandemics);

iv. Reserve funds to address budget shortfalls during economic downturns; and

v. Minimization of tax and fee increases in future years.

(d) Distributions from the Revenue Stabilization Fund shall be made from interest earned on such funds, and any draw-downs from the principal of the Revenue Stabilization Fund shall only be for specifically defined purposes and shall be made only upon the vote of at least four out of five County Commissioners.

2. Mental and Behavioral Health and Substance Use Disorder Treatment Fund. Funds in the amount of $50 Million shall be earmarked and allocated to the following mental and behavioral health and substance use disorder treatment initiatives:

(a) Capital funding for long-term, residential substance abuse treatment programs;

(b) Sustained grant funding commitments to support evidence-based programs (e.g., Tides, Inc.); and

(c) Expanding access to mental health services independent of state assistance.

3. Foundation Allocations.

(a) Fund Assets. Following the Initial Allocations, the Sellers shall grant the entirety of the remaining Net Proceeds, which remaining amount is currently estimated to be approximately $1.25 Billion (subject to adjustments) (“Fund Assets”), to the Foundation.

(b) Purpose. The Foundation shall manage the assets and consider as such sacred and
protected for the community in perpetuity. The Foundation will provide financial support to benefit the residents of New Hanover County and region ("Defined Beneficiaries"). The Foundation will establish an Endowment (as defined below), and the Endowment shall be designated to provide financial support in the following areas in furtherance of the mission and initiatives of the County: (1) public primary, secondary, and post-secondary education, (2) health and social equity, (3) community development, and (4) community safety. Except for those monies required for the administration of the Foundation, all other Fund Assets shall be allocated to the Endowment.

(c) Foundation Board of Directors. The Foundation will be governed by an 11-member Board of Directors ("Foundation Board"). The County Commissioners shall appoint five of the directors ("Foundation Directors") and the Local Board shall appoint six of the Foundation Directors. All Foundation Directors shall be subject to satisfaction of applicable governance best practices, core competencies, and diversity considerations. No Foundation Director may simultaneously hold an elected office. Routine actions of the Foundation Board shall require the vote of a majority of the Foundation Board. The adoption or modification of policies and procedures regarding the investment or distribution of Fund Assets (defined below), and the retention or termination of the Investment Manager (defined below) shall each require supermajority approval of the Foundation Board, which shall be defined as not less than 75% of the Foundation Board ("Supermajority Vote"). Further, the governing documents of the Foundation shall provide that the establishment or modification of the Endowment, or the amendment or modification of any governing or charter documents applicable to the Endowment, shall require a Supermajority Vote of the Foundation Board. The Foundation shall not assign, transfer or otherwise convey any Foundation assets except as defined herein.

(d) Administration and Fund Management. The daily operations of the Foundation shall be overseen by the Foundation Board. The Fund Assets shall be invested under the supervision and management of an experienced institutional investment manager ("Investment Manager") chosen by the Foundation Board, which Investment Manager role may, but does not have to be, contracted through a third-party firm.

(e) Endowment.

(i) In conjunction with its formation, the Foundation will establish a single endowment ("Endowment") consisting initially of the Fund Assets. In addition to the Fund Assets contributed by the Sellers, the Foundation may also accept donations. The Endowment will make annual Unitrust payments not to exceed 4% of the fair market value of the Endowment, based upon a rolling five year average of the fair market value as of December 31 for the prior five (5) years, or until 2025, for as many prior years as the Endowment has existed. Distributions may be paid quarterly or monthly, as the Foundation Board may decide. Fund Distributions shall only be paid pursuant to the strictly prescribed purposes and rules to be a part of the Endowment charter and governing documents ("Fund Distributions").

(ii) Fund Distributions shall take the form of grants and other financial support for projects and initiatives of non-profit, governmental, or community organizations that are specifically focused on, and shall use such funds exclusively in furtherance of, the explicit purposes of the Endowment. For the avoidance of doubt, 100% of all Fund Distributions shall be
used exclusively for purposes benefiting the Defined Beneficiaries. The specific purposes of the Endowment shall be to make available Fund Distributions to support community wellbeing and other public purposes that are consistent with the then-current County Strategic Plan and for the benefit of the Defined Beneficiaries. Notwithstanding the broad purposes described in this Section 2(e), it is intended that Fund Distributions shall be made only to supplement programs that are primarily funded by a governmental agency, Fund Distributions shall not be used to replace existing governmental support of projects, and this limitation shall be incorporated into the Foundation’s governing documents. By way of further illustration, and subject to adjustment based on the then-current County Strategic Plan, the initial Endowment shall support and promote the following focus areas:

A. **Public Primary, Secondary and Post-Secondary Education.** The following are illustrations of possible initiatives:
   
   (1) High quality universal pre-kindergarten with wrap-around services;
   
   (2) Comprehensive, no-cost broadband connectively county-wide;
   
   (3) Comprehensive access to modern technology for all learners;
   
   (4) Local Teacher Fellows program for traditional and charter school graduates committed to returning to local public schools;
   
   (5) Access to scholarships for post-secondary education attainment; and
   
   (6) School facilities designed for mid-21st Century education delivery.

B. **Health and Social Equity.** The following are illustrations of possible initiatives:

   (1) Eradicate food deserts across the county;

   (2) Expand access to high quality, fair cost physical and mental health clinics for county residents;

   (3) Funding support to eliminate disparities in health outcomes focused initially on diabetes and obesity;

   (4) On-demand, cost effective transit system for dependent and choice riders; and
(5) Funding for new senior resource centers and other support for senior citizens based on the county’s strategic master plan for aging adults.

C. **Community Development.** The following are illustrations of possible initiatives:
   (1) Workforce housing trust fund;
   (2) Small business micro-loan program;
   (3) Minority and Women Owned Business support programs; and
   (4) Open space and public water access preservation.

D. **Community Safety** The following are illustrations of possible initiatives:
   (1) Next generation 911 services developed and deployed;
   (2) Rapid response fire rescue and emergency medical services;
   (3) Support and resources for community-led restorative justice programs;
   (4) Modern development and training of law enforcement, to include cultural competency and implicit bias; and
   (5) Comprehensive flood, storm surge and wind mitigation investments.

4. **Miscellaneous.**
   
   (a) In the event of dissolution of the Foundation, all net assets of the Foundation shall accrue solely to the benefit of the County.
   
   (b) The Foundation shall provide the County with an annual report summarizing the Foundation’s activities and grants in the prior year.
   
   (c) With the exception of the appointment authority for the Foundation Directors and the limited approval requirements explicitly set forth herein, the Local Board shall not, nor shall any other third-party, have any reserved powers or governance rights or benefits associated with the Foundation. For clarity, notwithstanding the Local Board’s appointment authority for Foundation Directors, the Foundation shall not be considered an affiliate, unit or division of the Buyer or Novant Health, and neither the Buyer, Novant Health, nor any of their Affiliates shall be permitted to consolidate the Foundation.
(d) The Fund Assets held in the Endowment shall never be used as collateral nor be pledged as any form of security for any type of loan or guarantee.

(e) All Fund Distributions must be made pursuant to and accompanied by a plan of accountability to ensure that Fund Distribution is used in full for the designated purposes (the “Plan of Accountability” or “POA”). The POA shall be accepted, agreed to and signed by the individual at the recipient organization who will be responsible for the use of the funds and for accounting for the funds. The POA shall require that the individual provide an acceptable and complete accounting to the Foundation, submitted and signed under penalty of perjury. Further, the misuse of the funds by any person, or the failure of the responsible person to provide a complete accounting within six months after the end of the year in which the Fund Distribution occurred, may result in both civil and criminal penalties.

(f) The officers and Foundation Directors of the Foundation shall be subject to a Conflicts of Interest Policy and each such person will be required to sign such Conflicts of Interest Policy annually to confirm his or her understanding and acceptance of the Conflicts of Interest Policy’s requirements.

(g) The Foundation’s Articles of Organization shall provide for the broadest indemnification and reimbursement provisions for the actions of the Officers and Directors made in good faith and allowed under NC law.
Exhibit D

New Hanover Academic and Clinical Affiliation Agreement Term Sheet

[See Attached]
Term Sheet for Proposed Academic and Clinical Affiliation for the New Hanover Region between Novant Health, UNC Health, and UNC School of Medicine

June 23, 2020

Novant Health, Inc. ("Novant"), University of North Carolina Health Care System ("UNC Health"), and the University of North Carolina at Chapel Hill on behalf of its School of Medicine ("UNC SOM") seek to develop a long-term academic and clinical affiliation to bring together the leading education, research and clinical programs of UNC Health and the UNC SOM with Novant to serve the New Hanover region. UNC Health and UNC SOM have long served the people of the New Hanover region, including educating and training medical professionals in southeastern North Carolina, and investing in a clinical infrastructure that helps keep high quality health care close to home. This proposed affiliation will (1) further develop a local capability to recruit and train the health profession workforce needed to serve southeastern North Carolina into the future, (2) extend the clinical research infrastructure and capabilities of UNC Chapel Hill and the UNC SOM to support Novant’s partnership with New Hanover Regional Medical Center ("NHRMC"), and (3) enhance local pediatric care to make the region a destination for children’s health care.

Novant, UNC Health, and UNC SOM may hereinafter be referred to as a “party,” “each party,” or collectively as “the parties.” This term sheet ("Term Sheet") is binding, unless otherwise noted.

<table>
<thead>
<tr>
<th>Term</th>
<th></th>
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<tbody>
<tr>
<td>1. Transaction Structure</td>
<td>The parties seek to jointly develop a long-term academic and clinical affiliation agreement (&quot;New Hanover Academic and Clinical Affiliation Agreement&quot;) and shall negotiate in good faith to arrive at a mutually acceptable New Hanover Academic and Clinical Affiliation Agreement, contingent upon:</td>
</tr>
<tr>
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<td>(1) Novant successfully affiliating with NHRMC as the outcome of the current Request for Proposal (RFP) process, and</td>
</tr>
<tr>
<td></td>
<td>(2) NHRMC considering this Term Sheet as part of Novant’s offer to affiliate with NHRMC and, as part of the Novant/NHRMC transaction, NHRMC’s agreement to be bound by all of the core commitments described in this Term Sheet</td>
</tr>
<tr>
<td>2. Transaction Intent</td>
<td>The parties seek to negotiate a collaborative arrangement to provide opportunities for medical education and clinical services at the newly constituted NHRMC (&quot;New NHRMC&quot;) and at such Novant facilities around the region as mutually agreed by Novant, UNC Health and UNC SOM, and the newly constituted NHRMC. The objectives of this affiliation are to secure and expand medical school education sites in New Hanover and to partner to expand sub-specialty clinical offerings, initially in children’s care, in New Hanover County and adjacent counties.</td>
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</tbody>
</table>
3. Educational Partnership in New Hanover

- Medical Student Education
  - All SOM accreditation requirements of the LCME must be met at the clinical site
  - Continue and expand upon the current program of 18 medical students for core clerkship year, all invited to stay for senior year training in Wilmington
  - Increase to 21 medical students/class for the incoming class of the 2023 academic year (start March 2022)
  - Increase to 24 medical students/class for the incoming class of the 2024 academic year
  - Increase to 27 medical students/class for the incoming class of the 2025 academic year
  - Increase to 30 medical students/class for the incoming class of the 2026 academic year
  - Faculty to be employed by NHRMC and recognized with faculty appointments at the UNC SOM
  - New NHRMC to provide educators with protected academic time and incentives for academic success
  - **Protected time must meet or exceed requirements from accrediting bodies**
  - **Example of protected time minimums**

<table>
<thead>
<tr>
<th>Position</th>
<th>Protected Time</th>
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<tbody>
<tr>
<td>Campus Director</td>
<td>50% FTE</td>
</tr>
<tr>
<td>Site clerkship director in core disciplines (6)</td>
<td>20% FTE</td>
</tr>
<tr>
<td>Full time preceptor in ambulatory setting (6)</td>
<td>10% FTE</td>
</tr>
<tr>
<td>Clinical Academic Resource Director</td>
<td>25%</td>
</tr>
<tr>
<td>Learning Environment Liaison</td>
<td>10%</td>
</tr>
<tr>
<td>Residency Program Director</td>
<td>Minimum 50% or as required by ACGME</td>
</tr>
<tr>
<td>Residency Program Core Faculty</td>
<td>10% FTE</td>
</tr>
<tr>
<td>Designated Institutional Officer</td>
<td>Minimum 50% or as required by ACGME</td>
</tr>
</tbody>
</table>

- Coordinator support for student and resident program administration must also be provided
- Comparability with the curriculum and its delivery at the UNC SOM must be maintained in order to meet accreditation standards

- **Rural workforce pipeline**
  - Parties to discuss expanding programs such as the Kenan Scholars, with focus in southeastern NC
  - Parties to discuss making Medical Student Scholarships and Kenan Rural Fellowships available for residency graduates to provide enhanced training for those serving rural populations

- **Pipeline Programs**
  - UNC will deploy pipeline programs for potential students from the region toward the goal of expanding the reach and number of health care workers and improving health in underserved communities in Southeast NC

- **Faculty Development and Oversight**
  - Wilmington-based faculty who teach or perform significant research will have faculty appointments in the UNC SOM (as appropriate and consistent with UNC SOM requirements including meeting job performance expectations) and will have access to development opportunities provided for our Chapel Hill-based faculty

Confidential, Exempt from disclosure
• UNC SOM will provide ongoing programs for leadership development on topics such as: teaching techniques, research skills, leadership skills, sub-specialty clinical training, skills work in new technologies, and others as requested locally
• Grand Rounds and/or other similar academic opportunities in clinical departments will be shared to advance the opportunity for Continuing Medical Education and enhance the connection to the faculty community

**Business Education**

- Currently, in partnership with the Cameron School of Business at UNC-W, all UNC SOM medical students on the Wilmington campus also earn a certificate in health care leadership. Parties will use commercially reasonable efforts to continue the partnership with the Cameron School of Business and to expand the program to include additional medical students as program size increases.
- Work toward developing an MD/MBA dual degree track for some UNC School of Medicine Wilmington Campus students (MBA through UNC-Wilmington "UNC-W")

**Residencies and Fellowships**

- Current Residencies structure will be evaluated
- Strengthen existing residencies to create a stronger pipeline for a physician workforce in southeastern North Carolina
- Support and collaborate on growth opportunities in strategic areas such as rural health, psychiatry and geriatrics
- Deploy the FIRST program (3-year graduation pathway into local residencies)
- Deploy the Health System Science curriculum for all GME trainees (data science)
- Offer reciprocal rotation opportunity to ensure long-term viability of programs at New Hanover and continuity with existing UNC SOM residency programs
  - New Hanover post-grad residents can rotate at UNC Hospitals in Chapel Hill for needed exposure
  - New Hanover/NHRMC provide sites for UNC Hospitals’ residents as needed

**Inter-professional Education Expansion – UNC Health Sciences at SEAHEC**

- Similar to MAHEC in Asheville, UNC-Chapel Hill leaders envision a Wilmington branch campus model for each health profession school that prepares a comprehensive and expert health profession workforce
- Explore expansion of Allied Health programs such as Physical Therapy, Speech and Hearing Sciences, Rehabilitation Counseling, Radiologic Science Program, Occupational Therapy, Physician Assistant Training, and others offered at UNC-Chapel Hill as desired by UNC-W and SEAHEC
- Explore partnerships with UNC Adams School of Dentistry and the UNC Eshelman School of Pharmacy to develop collaborative branch campuses for dentistry and pharmacy health profession training in Wilmington
- Explore additional partnerships between the UNC Gillings School of Global Public Health and UNC-W public health programs
- Explore expansion of nursing education through partnerships with local and system training entities, in particular the UNC-W School of Nursing, Cape Fear Community College, UNC-Chapel Hill School of Nursing (UNC-CH SON) and UNC Health nursing professional development programs. The UNC School of Nursing offers degree options including Family Nurse Practitioner, Adult-Gerontology Primary Care Nurse Practitioner, Pediatric Nurse Practitioner, and Psychiatric Mental Health Nurse Practitioner

**Capital Investment**
<table>
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<tr>
<th>Term</th>
<th>4. Children’s Clinical Partnership in New Hanover</th>
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<tbody>
<tr>
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<td><strong>Children’s Clinical Partnership:</strong></td>
</tr>
<tr>
<td></td>
<td>- Novant and UNC Children’s shall enter into a service-line partnership for all children's care at Novant-affiliated sites in New Hanover County and adjacent counties</td>
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<tr>
<td></td>
<td>- Clinical staff recognized with meaningful faculty appointments at UNC SOM (as appropriate and consistent with UNC SOM requirements)</td>
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<tr>
<td></td>
<td>- UNC Children’s to:</td>
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<tr>
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<td>- Help recruit on-site faculty to provide clinical specialties such as Cardiology, Endocrinology, Gastroenterology, Genetics, Hematology/Oncology, Neurology, Pulmonology, Allergy/Immunology, Developmental &amp; Behavioral, and Mental Health, potentially in conjunction with independent local providers</td>
</tr>
<tr>
<td></td>
<td>- Create outreach clinics and/or provide telehealth from Chapel Hill for clinical specialties not requiring or practical to have continuous local provider presence (examples may include nephrology, neurosurgery, rheumatology, urology, infectious disease, ENT, adolescent medicine, dermatology)</td>
</tr>
<tr>
<td></td>
<td>- Provide facilitated access to highly differentiated services (e.g., cystic fibrosis, inflammatory bowel disease)</td>
</tr>
<tr>
<td></td>
<td>- Support hospital-based and procedural services (e.g., subspecialty surgeries, chemotherapy infusions, echocardiograms, EEGs)</td>
</tr>
<tr>
<td></td>
<td>- New NHRMC to serve as regional hub for pediatric care for UNC Health, Novant and New NHRMC, and Novant providers will work closely with providers at the North Carolina Children’s Hospital in Chapel Hill for patients requiring quaternary care beyond the scope provided at New NHRMC</td>
</tr>
<tr>
<td></td>
<td>- Pediatrics service line to have UNC Health branding prominently included and featured (e.g., UNC Children’s Wilmington)</td>
</tr>
</tbody>
</table>

UNC Health and UNC SOM becomes Novant’s partner-of-choice for sub-specialty program expansion and development of new programs through a right of first refusal in New Hanover County and adjacent counties.
<table>
<thead>
<tr>
<th>Term</th>
<th></th>
</tr>
</thead>
</table>
| **5. Research and clinical trials infrastructure development**      | * Collaborate on clinical trials and population health studies run jointly by UNC SOM and UNC Health investigators with New NHRMC and its providers; New NHRMC to develop and support the IT infrastructure to enable efficient use of these capabilities; UNC SOM to afford access to supporting administrative infrastructure such as the UNC SOM Clinical Research Support Office and the Clinical Trials Management System.  
* Place academic emphasis on relevant community health challenges such as COVID-19, Narcotic Addiction, Social Determinants of Health, and Health Equity. UNC-Chapel Hill has launched a Data Science Initiative which aligns expertise in Computer Sciences, Artificial Intelligence, Epidemiology, Statistics, the social sciences, and other disciplines with our nationally leading health profession schools to assess and influence optimal outcomes for people and populations. At the discretion UNC-Chapel Hill, New NHRMC will have access to and be included in UNC Chapel Hill's Data Science Initiative. |
| **6. Access to Quaternary Care**                                     | For the benefit of the New Hanover community, the parties will use good faith efforts to develop a facilitated pathway to provide New NHRMC patients access to higher-level quaternary care available at UNC Health facilities that is not available at New NHRMC. |
Term 7. Financial Commitments

- UNC SOM will continue to maintain the current funding provided by UNC SOM to support medical education programs in New Hanover, increasing it as appropriate for up to 18 medical students per year for New Hanover
- UNC Health and UNC SOM commit to working with Novant to secure additional local, state, federal, philanthropic and other grant support where available
- UNC Health/UNC SOM and Novant will use commercially reasonable efforts to have the New NHRMC board reallocate Novant's strategic capital commitment to New NHRMC to cover as many of the expenses described below for as many years as possible:
  - In support of the expanded medical education programs described in Term 3, expanded clinical and research activities in Term 3, expanded research opportunities and access in Term 5, access to UNC SOM and UNC Health expertise in these areas, and branding rights, granted in Term 8, Novant/New NHRMC will provide financial support and performance payments to UNC Health/UNC SOM anticipated to approximate the following schedule:
    - Year 1: $17,500,000
    - Year 2: $19,750,000
    - Year 3: $26,000,000
    - Year 4: $28,500,000
    - Year 5: $30,500,000
    - Year 6 and beyond: ongoing funding consistent with the growth and success of the partnership, as well as inflationary increases
  - Additional administrative costs may be added to the above amounts, as mutually agreed.
- These amounts do not include the capital Novant intends to invest in SEAHEC facilities, but do include any related programmatic support for the UNC SOM
- NHRMC or Novant (as applicable) may provide other funding for the academic and clinical affiliation, as mutually agreed by the parties.
  - Should NHRMC/New NHRMC fail to approve this funding as part of Novant’s strategic capital commitment, Novant will provide this funding directly

Term 8. Use of and Names and Logos; Publicity

- Education and clinical programs offered in partnership with Novant may license UNC SOM and UNC Health branding at sites with active partnerships and subject to prior approval by UNC SOM and/or UNC Health (as applicable) provided UNC SOM and UNC Health maintain rights & control of brands’ use
- UNC Health and UNC SOM shall work with Novant to develop licensing guidelines for the uses of the UNC Health and UNC SOM names and brands by Novant
- Outside of these guidelines, each Party shall obtain the other’s written consent prior to any publication, presentation, public announcement, press release, or other public announcement concerning the business relationship of the Parties or the existence or terms and conditions of this Term Sheet.
<table>
<thead>
<tr>
<th>Term</th>
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</thead>
<tbody>
<tr>
<td>9. Oversight and Guidance</td>
</tr>
<tr>
<td>• To the extent required by applicable law or licensure or accreditation requirements, oversight of academic programs will be under the direct control of UNC SOM Dean and UNC Health CEO. This includes but is not limited to:</td>
</tr>
<tr>
<td>o The dean of the medical school is administratively responsible for the conduct and quality of the medical education program and for ensuring the adequacy of faculty at each campus. The principal academic officer at each campus is administratively responsible to the dean</td>
</tr>
<tr>
<td>• Clinical programs will be jointly overseen by UNC Health and Novant, with a joint leadership structure that includes physician and administrative leaders from UNC Health and Novant (or a Novant designee)</td>
</tr>
<tr>
<td>o UNC Health and Novant will also jointly appoint a physician leader dedicated to providing quality oversight and leadership for pediatric clinical programs at NHRMC and in the community</td>
</tr>
<tr>
<td>• The parties will work to develop an advisory board to provide oversight and counsel for academic affiliations to the Dean of the UNC SOM</td>
</tr>
<tr>
<td>• The parties recognize that certain activities required to effectuate the commitments described herein may require future approval by the NHRMC Board or the equivalent governing body that oversees NHRMC. In such cases, Novant agrees to use commercially reasonable efforts to cause the NHRMC Board, or its equivalent to covenant to take such actions as reasonably necessary to approve and implement such activities.</td>
</tr>
<tr>
<td>10. Governance of NHRMC</td>
</tr>
<tr>
<td>Novant will use commercially reasonable efforts to cause the NHRMC Board to reserve a seat on the NHRMC Board for UNC Health CEO / UNC SOM Dean to appoint one ex-officio, voting member of the NHRMC Board</td>
</tr>
<tr>
<td>11. Term</td>
</tr>
<tr>
<td>• This Term Sheet is effective from the date first above referenced and shall remain in effect until the earliest to occur of the following:</td>
</tr>
<tr>
<td>o the Parties’ execution and delivery of the New Hanover Academic and Clinical Affiliation Agreement; or</td>
</tr>
<tr>
<td>o July 31, 2021</td>
</tr>
<tr>
<td>• The parties intend to complete and execute the New Hanover Academic and Clinical Affiliation Agreement by October 31, 2020.</td>
</tr>
<tr>
<td>• Initial Term of New Hanover Academic and Clinical Affiliation Agreement of Twenty-five (25) years with auto-renew for successive ten (10) year renewal terms with four (4) year required written notice of non-renewal</td>
</tr>
<tr>
<td>12. Exclusivity</td>
</tr>
<tr>
<td>Attached as SCHEDULE 1</td>
</tr>
<tr>
<td>Term</td>
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<tr>
<td>Term</td>
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<tr>
<td>14. Non-Solicitation</td>
</tr>
<tr>
<td>During the term of the Term Sheet and for one (1) year following its termination, each of Novant and the UNC Parties agrees that it will not, directly or indirectly, initiate contact with, solicit or recruit for employment any employee of the other party who is involved in the negotiation of this Term Sheet or who provides direct clinical or administrative support for the services provided pursuant to this Term Sheet. Nothing in this Term Sheet restricts the Parties’ normal advertising, application, and hiring processes. Any modification of this provision must be made in writing and signed by all parties.</td>
</tr>
</tbody>
</table>
SCHEDULE 1

New Hanover Region Exclusivity Provisions

Restrictions on Educational Activities

The Parties mutually agree, during the term of this Term Sheet (or the New Hanover Academic and Clinical Affiliation Agreement intended to replace the Term Sheet, as applicable) and for a period of one year following the termination or expiration of the Term Sheet or the New Hanover Academic and Clinical Affiliation Agreement (whichever occurs later), to exclusively collaborate with one another on new medical education partnerships to train medical students, residents, sub-specialty fellowships and/or allied health trainees ("Trainees") and/or establish branch campuses within New Hanover, Brunswick, Columbus, Bladen, and Pender Counties (the "Service Area") with the following exceptions:

(i) In the event that the Term Sheet terminates because the contingencies in Term 1 are not met, the exclusivity commitment would terminate immediately;

(ii) In the event the Term Sheet is terminated prior to the execution of the New Hanover Academic and Clinical Affiliation Agreement, or the New Hanover Academic and Clinical Affiliation Agreement is terminated, the Parties may make arrangements to develop alternative sites within the Service Area to minimize the disruption to the trainees at that location or those who entered training with the expectation of the availability of that (those) training site(s);

(iii) Sites may be excepted with the mutual consent of the Parties;

(iv) Each Party acknowledges that the other Party cannot contractually or otherwise obligate managed or minority-owned joint venture affiliates to abide by the terms of these restrictions but will use commercially reasonable efforts to encourage these entities to engage in discussions with the other Party hereto regarding any new medical education partnerships proposed within the Restricted Area as partnership opportunities arise;

(v) Nothing in this Term Sheet will be construed to place limitations on the statewide operations of AHEC; and,

(vi) Recognizing the public nature of UNC Health and UNC SOM, nothing in this agreement will contravene or otherwise thwart legislated requirements of the Parties.

Restrictions on Clinical Activities

In order to improve the quality and availability of specialized care in Southeastern North Carolina, the Parties agree to exclusively collaborate with one another on Pediatrics within the Service Area.

UNC Health and UNC SOM shall not recruit, employ or place Pediatric specialists in the Service Area without Novant's express consent.

Novant will not recruit, employ or otherwise collaborate with any other provider to recruit or employ Pediatric specialists or form clinical collaborations for specialized Pediatrics services in tertiary and quaternary care without UNC Health's express consent.

The Parties recognize the following exceptions:

(i) The Parties may work with existing groups within the Service Area to improve the quality and availability of specialized care within the Service Area;

(ii) Nothing in this Term Sheet will be construed to place limitations on the statewide operations of AHEC;
SCHEDULE 1.1

Hospitals

1. New Hanover Regional Medical Center ("NHRMC"), a general acute care hospital with locations at:
   a. NHRMC Main campus: 2131 South 17th Street, Wilmington, North Carolina 28401;
   b. NHRMC Orthopedic Hospital: 5301 Wrightsville Avenue, Wilmington, North Carolina 28403;
   c. NHRMC Rehabilitation Hospital: 2131 South 17th Street, Wilmington, North Carolina 28401;
   d. NHRMC Behavioral Health Hospital: 2131 South 17th Street, Wilmington, North Carolina 28401; and
   e. NHRMC Betty H. Cameron Women's & Children's Hospital: 2131 South 17th Street, Wilmington, North Carolina 28401;
   f. NHRMC Surgical Pavilion: 2131 South 17th Street, Wilmington, North Carolina 28401;
   g. NHRMC Zimmer Cancer Center: 2131 South 17th Street, Wilmington, North Carolina 28401; and
   h. NHRMC Heart Center: 2131 South 17th Street, Wilmington, North Carolina 28401

2. Pender Memorial Hospital, Inc. ("PMH"), a critical access hospital located at 507 East Fremont Street, Burgaw, North Carolina 28425
SCHEDULE 1.2

Other Businesses

1. NHRMC Wound Care Clinic: 2259 South 17th Street, Wilmington, North Carolina 28401;
2. NHRMC Clinics: 1725 New Hanover Medical Park Drive, Wilmington, North Carolina 28403;
3. NHRMC Atlantic Fetal Medicine: 2150 Shipyard Boulevard, Wilmington, North Carolina 28403;
4. NHRMC Atlantic SurgiCenter, 9104 Market Street, Wilmington, North Carolina 28411;
5. NHRMC Coastal Family Medicine Center: 2523 Delaney Avenue, Wilmington, North Carolina 28403;
6. NHRMC Independence Rehabilitation Center: 2800 Ashton Drive, Wilmington, North Carolina 28412;
7. NHRMC ED North: 151 Scotts Hill Medical Drive, Wilmington, North Carolina 28411;
8. NHRMC Health & Diagnostics – Brunswick Forest: 1333 South Dickinson Drive, Leland, North Carolina 28451;
9. NHRMC Health & Diagnostics – Military Cutoff: 1135 Military Cutoff Road, Wilmington, North Carolina 28405;
10. NHRMC Health & Diagnostic – Scotts Hill: 151 Scotts Hill Medical Drive, Wilmington, North Carolina 28411;
11. Cape Fear Heart – Outpatient Services: 1415 Physicians Drive, Wilmington, North Carolina 28401;
12. NHRMC Cardiac Rehab: 1415 Physicians Drive, Wilmington, North Carolina 28401;
13. NHRMC Health & Diagnostics – Medical Mall: 2221 and 2243 South 17th Street, Wilmington, North Carolina 28401;
14. NHRMC Radiation Oncology – Brunswick: 545 Ocean Highway West, Supply, North Carolina 28462;
15. NHRMC Radiation Oncology 16th Street: 1988 South 16th Street, Wilmington, North Carolina 28401;
16. NHRMC Nunnelee Pediatric Specialty Clinics: 510 Carolina Bay Drive, Suite 200, Wilmington, North Carolina 28403;
17. NHRMC Oleander Rehabilitation Center: 5220 Oleander Drive, Wilmington, North Carolina 28403;
18. NHRMC Cape Fear Cancer Specialist: 1333 South Dickenson Drive, Suite 200, Leland, North Carolina 28411;
19. NHRMC Home Care, a home health agency located at 7864 US Highway 117 South, Suites B and C, Rocky Point, North Carolina 28457.
20. Diagnostic Imaging Partners, PLLC ("DIP") (Jacksonville)
21. Porters Neck Imaging, LLC ("PNI") (Scotts Hill H&D – ED North)
22. Physician Quality Partners, LLC ("PQP") (2507 Delaney Ave., Wilmington, NC)
23. New Hanover Health, LLC
24. Atlantic Surgicenter, LLC ("ASC")
25. Carolina Healthcare Associates, Inc. ("CHA"), physician practice at multiple locations (including but not limited to the locations set forth below) and Hanover GI and NHRMC Endoscopy Center, an ambulatory clinic located at 1520 Physicians Drive, Wilmington, North Carolina 28401.
   a. Atlantic Urology – 1814 New Hanover Medical Park Drive, Wilmington, NC
   b. Atlantic Urology AND Cape Fear Heart Associates – St. James Wellness Center, 3009 Medical Plaza Lane, Southport, NC
   c. Glen Meade OBGYN – Autumn Hall, 510 Carolina Bay Drive, Wilmington, NC
   d. New Hanover Medical Group - Autumn Hall, 510 Carolina Bay Drive, Wilmington, NC
e. [Various departments of CHA] – 1333 South Dickinson Drive, Leland, North Carolina 28451
f. Cape Fear Cancer Specialists – 509 Olde Waterford Way, Units 302 and 304, Leland, NC
g. Cape Fear Cancer Specialists – 509 Olde Waterford Way, Unit 102, Leland, NC
h. Cape Fear Cancer Specialists – 509 Olde Waterford Way, Unit 303, Leland, NC
i. Cape Fear Heart Associates – 584 Hospital Drive, NE, Bolivia, NC
j. Cape Fear Heart Associates – 800 Jefferson Street, Suite 112, Whiteville, NC
k. Coastal OB/GYN Specialists and Midwifery – 2221 S. 17th Street
l. Coastal Pulmonary Medicine – 1090 Medical Center Drive, Wilmington, NC and extra parking
m. Coastal Pulmonary Medicine – 330 Military Cutoff, Units B1, B2 and B4, Wilmington, NC
n. Colon and Rectal Surgery – Med Mall, 2221 S. 17th Street
o. Glen Meade OB/GYN – 1810 Glen Meade Road, Wilmington, NC
p. Glen Meade OB/GYN – 1809 Glen Meade Road, Wilmington, NC
q. New Hanover Medical Group - Jacksonville Medical Office Building, 2000 Brabham Avenue, Jacksonville, NC
r. New Hanover Medical Group – Administration. 5155 S. College Road, Wilmington, NC
s. New Hanover Medical Group – 1960 S. 16th Street, Wilmington, NC
t. New Hanover Medical Group – 5145 S. College Road, Wilmington, NC
u. New Hanover Medical Group – 7420 Market Street, Wilmington, NC
v. NHRMC PG – Neurology – 1515 Doctors Circle, Wilmington, NC
w. NHRMC PG – Neurology, Nephrology & Rheumatology – 1509 Doctors Circle, Wilmington, NC
x. NHRMC PG – Administration – 1505 Doctors Circle, Wilmington, NC
y. NHRMC Physical Therapy - YMCA on Market Street – 2710 Market Street, Wilmington, NC
z. Pender Primary Care – 7910 U.S. Highway 117, Rocky Point, North Carolina

aa. Wrightsville Beach Family Medicine – 1721 Allen's Lane, Suite 100, Wilmington, NC
bb. SMAT - 312 Raleigh Street, Wilmington, NC
c. Mary Ann Allgood – 317 Jefferson Street, Whiteville, NC
dd. 311 West Wallace Street, Burgaw, NC

27. Provider-Led Patient-Centered Care, LLC
28. South Atlantic Radiation Oncology, LLC (“SARO”)
29. New Hanover Regional Medical Center Foundation, Inc. (“NHRMC Foundation”)
30. Health Sciences Foundation, Inc.
31. Doshier/NHRMC, LLC (St. James)
32. NHRMC OP Lab and Infusion 1415 Medical Center Drive, Wilmington, NC 28401
33. Pender Memorial Hospital Health & Diagnostics – Rocky Point: 7910 US Highway 117 South, Suite 100, Rocky Point, North Carolina 28457.
34. Autumn Hall – 510 Carolina Bay Drive, Wilmington, NC
35. Brunswick Forest: 1333 South Dickinson Drive, Leland, North Carolina 28451
36. Business Center – 3151 South 17th Street, Wilmington, NC
37. Business Center, Building B – 3147 S. 17th Street, Wilmington, NC
38. Canterbury Annex – 2212 S. 17th Street, Wilmington, NC
39. Employee Fitness Center and Employee Pharmacy – 2250 Shipyard Blvd., Wilmington, NC
40. Hospital Plaza Parking Lot – Cameron Parking Deck
41. Jacksonville Medical Office Building – 2000 Brabham Avenue, Jacksonville, NC
42. NHRMC Lease from Pender Memorial Hospital, Inc. – 306 S. Campbell Street, Burgaw, NC
43. NHRMC Physicians Specialists - Clinics - OB/GYN Specialists – 2150 Shipyard Blvd., Wilmington, NC
44. SEAHEC Housing – 633 Creekway Circle SE, Bolivia, NC
45. SEAHEC Housing – 31 Bunker Court, Oak Island
46. EMS Station 1 – 7375 Market Street, Wilmington, NC
47. EMS Station 2 – 218 N. 2nd Street, Wilmington, NC
48. EMS Station 3 – Wilmington Fire Station #2, 3403 Park Ave., Wilmington, NC
49. EMS Station 4 – 5636 Carolina Beach Rd., Wilmington, NC
50. EMS Station 5 – 1300 Bridge Barrier Road, Carolina Beach, NC
51. EMS Station 6 – 3030 Juvenile Center Road, Castle Hayne, NC
52. EMS Station 8 – 601 Eastwood Road, Wilmington, NC
53. EMS Station 12 – 8310 Shiraz Way, Wilmington, NC
54. Kitty Hawk Storage Facility - 3126 Kitty Hawk Road, Units #2 and #3, Wilmington, NC
55. NHRMC HIV Care Team – Onslow - 600 Court Street, Jacksonville, NC
56. NHRMC HIV Care Team – Columbus – 304 Jefferson Street, Whiteville, NC
57. Coastal Thoracic Surgical Associates – 1912 Tradd Court, Wilmington, NC
## SCHEDULE 1.4(a)

### Owned Real Property

<table>
<thead>
<tr>
<th>Building Name</th>
<th>Location</th>
<th>City</th>
<th>Use</th>
<th>CHA/NHRMC Owned/ NHRMC Leased</th>
<th>Approximate Facility Size / Square Footage (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Main Hospital</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>New Hanover County (“NH County”) owned - leased to NHRMC</td>
<td>563,619.95</td>
</tr>
<tr>
<td>Cameron Education Center</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>84,403.04</td>
</tr>
<tr>
<td>Behavioral Health</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>43,556.65</td>
</tr>
<tr>
<td>Cardiac Care Unit</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>50,201.86</td>
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<tr>
<td>Medical Mall</td>
<td>2221 and 2243 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>28,955.53</td>
</tr>
<tr>
<td>Physical Plant</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>11,893.78</td>
</tr>
<tr>
<td>Rehab</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>67,047.30</td>
</tr>
<tr>
<td>Surgical Pavillion</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>179,435.41</td>
</tr>
<tr>
<td>Women's &amp; Children's</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>195,113.21</td>
</tr>
<tr>
<td>Zimmer Building</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>97,585.71</td>
</tr>
<tr>
<td>Wound Care Clinic</td>
<td>2259 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>3,000.00</td>
</tr>
<tr>
<td>Property Description</td>
<td>Address Details</td>
<td>City</td>
<td>Location</td>
<td>Ownership Details</td>
<td>Value</td>
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<tr>
<td>New Tower</td>
<td>2131 S. 17th St.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NH County owned - leased to NHRMC</td>
<td>136,712.00</td>
</tr>
<tr>
<td>Emergency Water Well Tract – Pump Building</td>
<td>1923 Glen Meade Rd.</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NHRMC owned</td>
<td>1,140.00</td>
</tr>
<tr>
<td>Former Health Department Tract</td>
<td>2029 S. 17th Street</td>
<td>Wilmington</td>
<td>Main campus</td>
<td>NHRMC owned</td>
<td>5.56</td>
</tr>
<tr>
<td>Atlantic Surgicenter (ASC)</td>
<td>9104 Market Street</td>
<td>Wilmington</td>
<td>Surgicenter</td>
<td>NHRMC owned</td>
<td>17,941.65 (building); 4.75 (land)</td>
</tr>
<tr>
<td>Autumn Hall - Land</td>
<td>Autumn Hall Medical Park - 121 Dungannon Blvd. and adjacent 1.43 acre lot</td>
<td>Wilmington</td>
<td>Future facility &amp; parking deck</td>
<td>NHRMC owned</td>
<td>5.75</td>
</tr>
<tr>
<td>Business Center Annex (including Station 10)</td>
<td>2001 S. 17th St.</td>
<td>Wilmington</td>
<td>Office space</td>
<td>NHRMC owned</td>
<td>17,500.00</td>
</tr>
<tr>
<td>Cape Fear Heart (Whole Building)</td>
<td>1415 Physicians Drive</td>
<td>Wilmington</td>
<td>Cardiology practice, NHRMC Cardiac Rehab, Cardiac Testing and specialists</td>
<td>NHRMC owned, sublease to CHA</td>
<td>64,177.00 (whole bldg.) 27,619.00 (NHRMC) 36,558.00 (CFH clinic)</td>
</tr>
<tr>
<td>Critical Support Facility</td>
<td>2201 and 2221 JR Kennedy Drive (including SMAT)</td>
<td>Wilmington</td>
<td>Critical Support Facility</td>
<td>NHRMC owned</td>
<td>290,254.00</td>
</tr>
<tr>
<td>Emergency Department North and NHRMC H&amp;D North</td>
<td>151 Scott's Hill Medical Drive (26.94 acres at 9110 Market Street per tax records)</td>
<td>Wilmington</td>
<td>Emergency Department &amp; Imaging</td>
<td>NHRMC owned</td>
<td>27,564.81</td>
</tr>
<tr>
<td>Hospitality House (old one)</td>
<td>1612 Medical Center Dr.</td>
<td>Wilmington</td>
<td>Parking Lot</td>
<td>NHRMC owned</td>
<td>8,502.00</td>
</tr>
<tr>
<td>Hospital Plaza Parking Lot</td>
<td>2026 S. 16th Street</td>
<td>Wilmington</td>
<td>Parking lot</td>
<td>NHRMC owned</td>
<td>4.6 acres</td>
</tr>
<tr>
<td>Oleander Rehab Center</td>
<td>5220 Oleander Dr.</td>
<td>Wilmington</td>
<td>Outpatient rehab</td>
<td>NHRMC owned (Oleander Rehab - 1st)</td>
<td>14,220.00</td>
</tr>
<tr>
<td>Description</td>
<td>Location</td>
<td>Type</td>
<td>Ownership</td>
<td>Value</td>
<td></td>
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<tr>
<td>Orthopedic Hospital - includes all buildings onsite (including all Cape Fear buildings at 5305 A – N Wrightsville Ave. and Station 7)</td>
<td>5301 Wrightsville Avenue</td>
<td>Wilmington</td>
<td>Hospital, Emergency Department &amp; Imaging</td>
<td>NH County owned, leased to NHRMC</td>
<td>201,401.74</td>
</tr>
<tr>
<td>Physician Quality Partners - (PQP) Building</td>
<td>2507 Delaney Avenue</td>
<td>Wilmington</td>
<td>Office space</td>
<td>NHRMC owned, sublease to PQP</td>
<td>4,533.00</td>
</tr>
<tr>
<td>SEAHEC Condominiums</td>
<td>Savanna Court (1803, 1805, 1807, 1809, 1819, 1835, 1837, 1839, 1841, 1849, 1853, 1857, 1861, 1865)</td>
<td>Wilmington</td>
<td>Resident housing</td>
<td>NHRMC owned</td>
<td>Varies</td>
</tr>
<tr>
<td>SEAHEC Main</td>
<td>2511 Delaney Avenue</td>
<td>Wilmington</td>
<td>Office space</td>
<td>NHRMC owned</td>
<td>20,520.00</td>
</tr>
<tr>
<td>SEAHEC Parking Lot</td>
<td>2514 &amp; 2516 Delaney Avenue</td>
<td>Wilmington</td>
<td>Parking lot</td>
<td>NHRMC owned</td>
<td>N/A</td>
</tr>
<tr>
<td>SECU Family House</td>
<td>1523 Physicians Dr.</td>
<td>Wilmington</td>
<td>Family house</td>
<td>NHRMC owned</td>
<td>17,687.00</td>
</tr>
<tr>
<td>Additional raw land in New Hanover County &amp; Pender County - Scott’s Hill area</td>
<td>Includes tracts of 8.03 acres, 0.87 acres, 0.71 acres, 4.22 acres, 3.53 acres, and 2.44 acres acquired from SENCA Properties, LLC</td>
<td>Wilmington</td>
<td>Future medical campus</td>
<td>NHRMC owned</td>
<td>19.80</td>
</tr>
<tr>
<td>Parking Lot</td>
<td>Corner of Glen Meade &amp; Delaney Ave.</td>
<td>Wilmington</td>
<td>Parking lot - (overflow for Med Mall)</td>
<td>NH County owned, leased to NHRMC</td>
<td>N/A</td>
</tr>
<tr>
<td>5313 Wrightsville Avenue</td>
<td>5313 Wrightsville Avenue</td>
<td>Wilmington</td>
<td>Empty lot - (retaining wall)</td>
<td>NHRMC owned</td>
<td></td>
</tr>
<tr>
<td>5302</td>
<td>5302</td>
<td>Wilmington</td>
<td>Empty lot -</td>
<td>NHRMC owned</td>
<td></td>
</tr>
<tr>
<td>Wrightsville Avenue</td>
<td>Wrightsville Avenue</td>
<td>(corner lot)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------------------</td>
<td>---------------------</td>
<td>--------------</td>
<td>---</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1635 Doctors Circle</td>
<td>1635 Doctors Circle</td>
<td>Wilmington</td>
<td>Driveway for NHRMC owned parking lot</td>
<td>NHRMC owned</td>
<td></td>
</tr>
</tbody>
</table>
Construction Contracts

Construction in progress via the current, on-going construction projects as detailed in the following agreements:

1. Standard Form of Agreement between NHRMC and Norris & Tunstall Consulting Engineers P.C. (“Norris & Tunstall”) dated November 18, 2019 for Hospital Plaza Drive Parking Deck & Walkway (Project No. 1520004)
2. Agreement for the Provision of Limited Professional Services between NHRMC and Norris & Tunstall dated August 8, 2019 for preliminary engineering services for new parking deck with pedestrian bridge (Project No. 19089)
3. Standard Form of Agreement between NHRMC and Bowman Murray Hemingway Architects dated December 6, 2019 for construction of five-level parking structure to be located on the surface parking lot on 17th Street across from the hospital
4. Agreement between NHRMC and Dewberry Engineers Inc. dated November 11, 2019 for renovation of pharmacy (Project No. 50105567)
5. Agreement between NHRMC and Dewberry Engineers Inc. dated November 14, 2019 for evaluation of existing conditions of North Emergency Department Pharmacy
6. Agreement between NHRMC and Dewberry Engineers Inc. dated February 24, 2020 for renovation of pharmacy, as amended by Contract Modification #1 dated March 13, 2020 (Project No. 50119814)
7. Standard Form of Agreement between NHRMC and Monteith Construction dated June 10, 2020 for pharmacy renovation (Project No. 151200004)
8. Standard Form of Agreement between NHRMC and Baker Roofing Company dated May 1, 2020 for roofing work at 2131 S. 17th Street, as supplemented by Project Meetings (Section 01 0200) dated January 8, 2020, Vapor Barrier/Temp Roofing (Section 07 0191) dated January 8, 2020, Addendum #1 dated January 17, 2020, Addendum #2 dated January 27, 2020, Addendum #3 dated January 31, 2020, Addendum #4 dated February 4, 2020, Addendum #5 dated February 6, 2020, and Addendum #6 dated February 19, 2020
10. Agreement between NHRMC and Crowley dated March 23, 2020 for identification and documentation of hurricane damage
11. Agreement for the Provision of Limited Professional Services between NHRMC and Norris & Tunstall dated October 8, 2019 for preliminary engineering services for NHRMC Scots Hill Tract due diligence (Project No. 19116)
12. Proposal for Subsurface Exploration and Geotechnical Engineering between NHRMC and ECS Southeast, LLP dated September 16, 2019 for providing subsurface exploration and geotechnical engineering services for project at Autumn Hall
13. Letter Proposal between LS3P and NHRMC dated September 10, 2019 for program verification and conceptual design development for the orthopedic services expansion
15. Letter Proposal between LS3P and NHRMC dated August 23, 2019 for design services for Brunswick Forest Medical Office Building Oncology Renovations

16. Letter Proposal between LS3P and NHRMC dated November 26, 2019 for design services for Brunswick Forest Medical Office Building Urology Renovations

17. Standard Form of Agreement between NHRMC and Monteith Construction dated February 12, 2020 for work at Brunswick Forest Urology and Glen Meade OB/GYN (Project No. 12020012)

18. Standard Form of Agreement between NHRMC and Rodgers Builders Inc. dated October 1, 2019 for NHRMC CEP Integration

19. Agreement between NHRMC and Crowley dated May 17, 2019 for identification and documentation of hurricane damage

20. Letter Proposal between Kahler Slater and NHRMC dated March 18, 2019 for FEMA-compliant hardening assessment of Pender Memorial Hospital


22. Letter Proposal between Bowman Murray Hemingway and NHRMC dated February 26, 2020 for architectural and engineering services

23. Standard Form of Agreement between NHRMC and Dewberry Engineers Inc. dated May 27, 2020 for MRI Equipment/Renovation 2020

24. Letter Proposal between LS3P and NHRMC dated March 30, 2020 for design services for Brunswick Forest Medical Office Building NHMG Phase 2 renovations

25. Letter Proposal between NHRMC and Becker Morgan Group, Inc. dated June 7, 2019 for permit and construction documents and construction phase services for 2221 J.R. Kennedy Drive, and all documentation associated therewith

26. Standard Form of Agreement between Syska Hennessy Group and NHRMC dated December 17, 2018 for mechanical, electrical, and plumbing engineering services for 23rd Street warehouse, and all documentation associated therewith

27. Proposal between ECS Southeast, LLP and NHRMC dated May 10, 2019 for construction materials testing and special inspection services (ECS Proposal No. 22:23293)

28. Standard Form of Agreement between NHRMC and Norris & Tunstall dated June 28, 2019 for Critical Support Facility (Project No. 16017001)

29. Standard Form of Agreement between NHRMC and Woods Engineering dated November 19, 2018 for Critical Support Facility (Project No. 16017001)

30. Standard Form of Agreement between NHRMC and Carolina Lead Abatement Inc. dated August 27, 2018 for NMHRMC Distribution/EMS Center (Project No. 16017001)

31. Standard Form of Agreement between NHRMC and Johnson Controls dated September 26, 2019 for NMHRMC Distribution/EMS Warehouse (Project No. 16017001), and all documentation associated therewith

32. Standard Form of Agreement between NHRMC and McKinley Building Corporation dated January 29, 2019 for NMHRMC Distribution/EMS Warehouse (Project No. 16017001), and all documentation associated therewith
33. Standard Form of Agreement between NHRMC and Norris & Tunstall dated November 18, 2019 for Hospital Plaza Drive Parking Deck & Walkway (Project No. 1520004), and all documentation associated therewith

34. Standard Form of Agreement between NHRMC and Rodgers Builders dated April 3, 2020 for Health Department Parking Lot (Project No. 15220003), and all documentation associated therewith
SCHEDULE 1.4(w)

Joint Venture Interests

1. South Atlantic Radiation Oncology, LLC
   a. NHRMC 50%
   b. 3 Other Members: 50%
      i. Martin B Meyerson, MD (16 2/3%)
      ii. Patrick D. Maguire, MD (16 2/3%)
      iii. Charles R. Neal, MD (16 2/3%)

2. Porters Neck Imaging, LLC
   a. NHRMC 50%
   b. Delaney Radiologists Group, P.L.L.C. 50%

3. Dosher/NHRMC, LLC
   a. NHRMC 50%
   b. J. Arthur Dosher Memorial Hospital 50%

4. Assuring Affordable Quality Healthcare in North Carolina, LLC
   a. NHRMC 10%
   b. 9 Other Members 90%
      i. Medical Mutual Insurance Company of North Carolina (10%)
      ii. MAG Mutual Insurance Company (10%)
      iii. Wake Forest University Baptist Medical Center (10%)
      iv. Rex Hospital, Inc. d/b/a Rex Healthcare (10%)
      v. Novant Health, Inc. (10%)
      vi. Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System (10%)
      vii. Mission Health System (10%)
      viii. University Health System East (10%)
      ix. WakeMed (10%)

5. Provider-Led Patient-Centered Care, LLC
   a. NHRMC 8.33%
   b. 11 Other Members 91.67%
      i. CaroMont Health, Inc. (8.33%)
      ii. The Charlotte-Mecklenburg Hospital Authority d/b/a Atrium (8.33%)
      iii. Cumberland County Hospital System, Inc. d/b/a Cape Fear Valley Health System (8.33%)
      iv. The Moses H. Cone Memorial Operating Corporation d/b/a Cone Health (8.33%)
      v. Duke University Health System, Inc. (8.33%)
      vi. Mission Health System, Inc. (8.33%)
      vii. Novant Health, Inc. (8.33%)
      viii. University Health Systems of Eastern Carolina, Inc. d/b/a Vidant Health (8.33%)
      ix. Wake Forest University Baptist Medical Center (8.33%)
      x. WakeMed d/b/a WakeMed Health & Hospitals (8.33%)
      xi. University of North Carolina Health Care System (8.33%)

6. Diagnostic Imaging Partners, PLLC
   a. NHRMC 50%
   b. 16 Other Members 50%
      i. Larry N. Beard Jr., MD (3.1746%)
      ii. John A. Black, MD (3.1746%)
      iii. Brian K. Brodwater, MD (3.1746%)
iv. Steven T. Crawford, MD (3.1746%)
v. Evan D. Evans, MD (3.1746%)
vi. Ha N. Evans, MD (3.1746%)
vii. Michael J. Fisher, MD (3.1746%)
viii. Andrew J. Hall, MD (3.1746%)
ix. Willard G. Hession, MD (3.1746%)
x. Michael D. McCullough, MD (3.1746%)
xi. Sandip J. Patel, MD (3.1746%)
xii. Stuart W. Point, MD (3.1746%)
xiii. John L. Remington, MD (3.1746%)
xiv. Fred A. Scialabba, MD (3.1746%)
xv. Lewis P. Warren Jr., MD (2.381%)
xvi. Joseph J. Wehner, MD (3.1746%)
SCHEDULE 1.4(x)

Disregarded Entities; Subsidiaries

Disregarded Entities:

1. Physician Quality Partners, LLC
2. New Hanover Health, LLC
3. ASC, LLC

Subsidiaries:

2. Pender Memorial Hospital, Inc.
3. NHRMC Home Care
4. New Hanover Regional Medical Center Foundation, Inc.
5. Physician Quality Partners, LLC
6. New Hanover Health LLC
7. ASC, LLC
8. OWP4, LLC
9. Iron Gate Surgery Center, LLC