

IN THE CIRCUIT COURT OF THE 17TH
JUDICIAL CIRCUIT IN AND FOR
BROWARD COUNTY FLORIDA

CASE NO.:

NELANDES COLES, an individual,
NELMED HOLDINGS, LLC, a
Delaware limited liability company,
and PERRY COMMUNITY HOSPITAL
LLC, a Tennessee limited liability company,

Plaintiffs,

v.

EXPERTUS HEALTH LLC, a
Tennessee limited liability company,

Defendant.

COMPLAINT

COMES NOW, Plaintiffs, NELANDES COLES, an individual, NELMED HOLDINGS, LLC, a Delaware limited liability company, and PERRY COMMUNITY HOSPITAL LLC, a Tennessee limited liability company, by and through the undersigned counsel, hereby sue Defendant, EXPERTUS HEALTH LLC, a Tennessee limited liability company, and respectfully allege, state, and pray as follows:

PARTIES, JURISDICTION AND VENUE

1. This is an action for damages that exceed thirty thousand dollars (\$30,000.00) and is thus within the jurisdictional limitation of this court.
2. Plaintiff, NELANDES COLES (“Coles”), is a resident of Broward County, Florida and is otherwise *sui juris*.

3. At all times material hereto, Plaintiff, NELMED HOLDINGS, LLC¹, was and is a limited liability company organized and existing under and pursuant to the laws of the state of Delaware (“**Nelmed**”), doing business in Broward County, Florida.

4. At all times material hereto, Plaintiff, PERRY COMMUNITY HOSPITAL, LLC, was a limited liability company organized and existing under and pursuant to the laws of the state of (“**PHC**” and together with Coles and Nelmed, the “**Plaintiffs**”).

5. At all times material hereto, Defendant, EXPERTUS HEALTH LLC (“**Expertus**” or “**Defendant**”), was and is a limited liability company organized and existing under and pursuant to the laws of the state of Tennessee.

6. Defendant, Expertus, is subject to the jurisdiction of the Court in that it has breached a contract in this state by failing to perform acts required by a contract to be performed in this state.

7. Venue is appropriate in Broward County, Florida because the contract to which this lawsuit is subject contains a venue provision making Broward County, Florida² the venue for any litigation.

8. All conditions precedent to filing this lawsuit have been performed, waived, or otherwise satisfied.

GENERAL ALLEGATIONS

¹ The name of the entity was misspelled in the Agreement as Nel Med Holdings, LLC.

² Section 15.8 of the Agreement titled Choice of Law and Venue accurately reflects the agreement between Plaintiffs and Defendant and provides that the Agreement is made and entered into in the State of Florida, and shall be governed by the State of Florida, and that the venue is exclusively in the Circuit Court of Broward County, Florida or the United States District Court for the Southern District of Florida. However, due to a drafting error, the parties did not delete a subsection that provides that the of the laws of the State of Tennessee apply.

9. At all times material hereto, Cole was and is the sole owner and member of Nelmed, and Nelmed was the sole owner and member of PHC.

10. At all times material hereto, PHC operated a general acute care hospital known as Perry Community Hospital, and located at 2718 Squirrel Hollow Drive, Linden, Tennessee 37096 (the “**Hospital**”).

11. On or about January 31, 2020, Coles, Nelmed, PHC, and Expertus entered into an Asset Purchase Agreement (the “**Agreement**”), whereby Coles, Nelmed, and PHC agreed to sell to Expertus substantially all of the assets that were directly or indirectly related to, necessary for, or used in connection with the operation of the Hospital. *See Asset Purchase Agreement attached and incorporated herein as Exhibit “A.”*

12. Pursuant to Section 2.1 of the Agreement, the consummation of the transactions contemplated under the Agreement were deemed effective as of 12:00 AM on March 16, 2020 (the “**Effective Time**”).

13. Pursuant to the Agreement, Expertus agreed to pay a total purchase price of five hundred thousand dollars (\$500,000.00) (the “**Purchase Price**”).

14. The Purchase Price was to be paid to Nelmed, in Florida, pursuant to the following payment schedule (set forth in Section 1.6 of the Agreement):

- a. \$100,000.00 within 90 days of the Closing;
- b. \$50,000.00 within 120 days of the Closing;
- c. \$50,000.00 within 150 days of the Closing;
- d. \$100,000.00 within 180 days of the Closing;
- e. \$100,000.00 within 210 days of the Closing; and

- f. \$100,000.00 within 240 days of the Closing;
15. Under the Agreement, Expertus also agreed to assume, as of the Effective Time, the future payment and performance of certain liabilities (the “**Assumed Liabilities**”).
16. Section 1.2 of the Agreement expressly excluded from the assets being sold, all amounts payable to Plaintiffs by third-party payors pursuant to retrospective settlements (including, without limitations, pursuant to Medicare, Medicaid, and TriCare/CHAMPUS costs reports filed or to be filed prior to the Effective Time and retrospective payment of claims that were subject to CMS recovery Audit Contractor appeals) and all appeals and appeal rights of Plaintiffs relating to such settlements, including cost report settlements, for periods prior to the Effective Time (the “**Excluded Assets**”).
17. Per the Agreement, Expertus’ time to make the aforementioned Purchase Price payments began counting as of the Effective Time.
18. However, Expertus failed to make the last two payments due in October and November of 2020 as set forth in the Agreement.
19. Accordingly, on or about October 26, 2020, Plaintiff sent a written notice of default to Defendant giving it a period of five (5) business days to cure said default pursuant to Section 14.1 of the Agreement. **See Letter dated October 26, 2020 attached and incorporated herein as Exhibit “B.”**
20. Despite the aforementioned opportunity to cure, Expertus failed and refused to pay the remaining \$200,000.00 of the Purchase Price due to Plaintiff.
21. Further, in a letter dated October 23, 2020, the Centers for Medicare & Medicaid Services informed PHC that after an examination of a certain cost report, it had

determined that a Medicare reimbursement for a total of \$41,506.00 was due to PHC. **See Letter dated October 23, 2020 attached and incorporated herein as Exhibit “C.”**

22. Pursuant to the Agreement, the \$41,506.00 constitutes an Excluded Asset, and should have been paid to the Plaintiffs.

23. Upon information and believe, Expertus received the \$41,506.00, however, it has failed to issue a payment to Plaintiffs as required by Section 2.1 of the Agreement.

24. Section 15.5 of the Agreement provides that in the event one of the parties thereto elects to enforce any provision of the Agreement by judicial proceeding, the prevailing party will be entitled to recover such legal expenses, including without limitation, reasonable attorneys’ fees and costs.

COUNT I – BREACH OF CONTRACT

Plaintiffs, NELANDES COLES, NELMED HOLDINGS, LLC, and PERRY COMMUNITY HOSPITAL LLC, re-allege and re-adopt the allegations as set forth in paragraphs 1 through 24 above, and incorporate the same as if specifically set forth herein below.

25. Plaintiffs and Defendant entered into a valid contract whereby Plaintiffs agreed to sell to Expertus substantially all of the assets, except for the Excluded Assets, that were directly or indirectly related to, necessary for, or used in connection with the operation of the Hospital. Furthermore, Expertus agreed to the Assumed Liabilities as set forth in the Agreement.

26. Pursuant to the Agreement, Expertus agreed to make installment payments directly to Nelmed in Florida.

27. The Agreement explicitly provides that amounts payable to Plaintiffs by third-party payors pursuant to retrospective settlements or payments from Medicare, or Medicaid costs reports filed prior to the Effective Time were not part of the assets transferred to Defendant.

28. Expertus' failure to pay the Purchase Price as required by the Agreement was a direct violation of the Agreement entered into between Plaintiffs and Defendant and constitutes a material breach of the of the same.

29. Further, upon information and believe, Expertus has accepted and retained a payment from Medicare or Medicaid from costs reports filed prior to the Effective Time, however, it has failed to issue payment for the same to Plaintiff.

30. As a result of Defendant's breaches of the Agreement, Plaintiffs have had to hire the undersigned law firm to collect monies rightfully due to them from Defendant.

31. Plaintiffs are entitled to recover their attorney's fees and costs pursuant to the Agreement.

WHEREFORE, Plaintiffs, NELANDES COLES, NELMED HOLDINGS, LLC, and PERRY COMMUNITY HOSPITAL LLC, pray that this Court enter judgment for damages against the Defendant, EXPERTUS HEALTH LLC, plus attorney's fees and costs, and such other and further relief in equity or in law that Plaintiffs may be entitled to or that this Court deems just and proper.

Dated December 14, 2020.

Respectfully submitted,

Di Pietro Partners, PLLC

901 E Las Olas Blvd., Suite 202
Fort Lauderdale, FL 33301
Primary Service Email:
service@ddpalaw.com
Telephone: (954) 712-3070
Facsimile: (954) 337-3824

/s/ Lisandra Estevez

DAVID DI PIETRO, ESQ.

Florida Bar No.: 10370

david@ddpalaw.com

LISANDRA ESTEVEZ, ESQ.

Florida Bar No.: 11475

lisandra@ddpalaw.com

EXHIBIT A

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②

ASSET PURCHASE AGREEMENT

BY AND BETWEEN

NELANDES COLES,

NEL MED HOLDINGS, LLC

PERRY COMMUNITY HOSPITAL, LLC

AND

EXPERTUS HEALTH LLC,

_____, 2020

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ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (the "Agreement") is made and entered into as of 1-31-2020 2020, , by and among **NELANDES COLES**, an individual resident of Florida ("Coles"), **NEL MED HOLDINGS, LLC**, a Delaware limited liability company ("Nel Med"), and **PERRY COMMUNITY HOSPITAL, LLC**, a Tennessee limited liability company ("PCH") (collectively hereinafter, Coles, Nel Med and PCH are referred to as the "Seller"), and **EXPERTUS HEALTH LLC**, a Tennessee limited liability company ("Buyer") . (Buyer and Seller shall each be referred to herein as a "Party" and collectively as the "Parties").

RECITALS:

WHEREAS, Coles is the sole owner and member of Nel Med;

WHEREAS, Nel Med is the sole owner and member of PCH;

WHEREAS, PCH owns and operates the general acute care hospital known as "Perry Community Hospital" located at 2718 Squirrel Hollow Drive, Linden, Tennessee 37096 (the "Hospital");

WHEREAS, Seller has sole control over and the exclusive right, power and authority with respect to the assets, operations, debts and liabilities of the Hospital; and

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of the assets of Seller that are directly or indirectly related to, necessary for, or used in connection with the operation of the Hospital, except for the Excluded Assets, on the terms and conditions set forth in this Agreement.

AGREEMENT:

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

I. PURCHASE OF ASSETS.

1.1 Assets. Subject to the terms and conditions of this Agreement, as of the Closing (as defined in Section 2.1 hereof), Seller agrees to sell, convey, transfer and deliver to Buyer, or the entity directed by Buyer, and Buyer agrees to purchase, all right, title and interest of Seller in and to all of the assets owned or used by Seller in connection with the operation of the Hospital, other than the Excluded Assets (hereinafter defined), which assets shall include, without limitation, the following (the "Assets"):

(a) fee simple to the real property described on Schedule 1.1(a)(i) hereto, together with all improvements, any construction in progress, any other buildings and fixtures thereon, and all rights, privileges and easements appurtenant thereto (collectively, the "Owned Real Property"), and leasehold title to the real property that is leased by Seller pursuant to the leases described on Schedule

(2)
(16)

1.1(a)(ii) hereto (collectively, the “Leased Real Property”; the Owned Real Property and the Leased Real Property being referred to herein as the “Real Property”);

(b) all tangible personal property, including, without limitation, all major, minor or other equipment, vehicles, furniture and furnishings;

(c) all supplies and inventory located at the Hospital;

(d) assumable deposits, prepaid expenses and claims for refunds;

(e) all accounts receivable (other than receivables from governmental third-party payors which by law may not be assigned) arising from the rendering of services to patients of the Hospital, billed and unbilled, recorded or unrecorded, with collection agencies or otherwise, accrued and existing in respect of services rendered prior to the Effective Time;

(f) all rights to receive funds attributable to patient receivables related to Medicare, Medicaid and other third-party patient claims due from beneficiaries or governmental third-party payors arising from the rendering of services to patients at the Hospital, billed and unbilled, recorded or unrecorded, accrued and existing in respect to services rendered prior to the Effective Time which by law may not be assigned;

(g) all claims, causes of action, and judgments in favor of Seller relating to the condition of the Assets and, to the extent assignable by Seller, all warranties (express or implied) and rights and claims assertable by (but not against) Seller related to the Assets;

(h) all financial, patient, medical staff and personnel records relating to the Hospital (including, without limitation, all equipment records, medical administrative libraries, Medical Staff bylaws, rules and regulations, medical records, documents, catalogs, books, records, files, operating manuals and current personnel records);

(i) all rights and interests of Seller in the contracts, commitments, leases and agreements listed on Schedule 1.1(i) hereto and all Immaterial Contracts (hereinafter defined) (collectively, the “Contracts”);

(j) Seller’s Medicare and Medicaid provider numbers and all rights under the corresponding Medicare and Medicaid provider agreements, to the extent transferable;

(k) all licenses, certificates, registrations, accreditations and permits, to the extent assignable, held by Seller relating to the ownership, development, and operation of the Hospital (including, without limitation, any pending or approved governmental approvals);

(l) all names, trade names, trademarks and service marks (or variations thereof) associated with the Hospital, all goodwill associated therewith, and all applications and registrations associated therewith;

(m) all goodwill associated with the Hospital and the Assets;

(n) (o)

(n) all domain names, websites, phone numbers and fax numbers associated with the Hospital as specified on Schedule 1.1(n);

(o) the assets owned by Affiliates of Seller which are primarily used in connection with the operations of the Hospital;

(p) the electronic funds transfer accounts of the Hospital (the "EFT Accounts") and all information necessary to access the EFT Accounts; and

(q) the interest of Seller in all property of the foregoing types, arising or acquired in the ordinary course of the business of Seller in respect of the Hospital between the date hereof and the Closing.

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

(a) all amounts payable to Seller in respect of third party payors pursuant to retrospective settlements (including, without limitation, pursuant to Medicare, Medicaid and TriCare/CHAMPUS cost reports filed or to be filed by Seller for periods prior to the Effective Time (hereinafter defined) and retrospective payment of claims that are the subject of CMS Recovery Audit Contractor appeals) and all appeals and appeal rights of Seller relating to such settlements, including cost report settlements, for periods prior to the Effective Time;

(b) all records to the extent relating to the Excluded Assets and Excluded Liabilities (as defined below) to the extent that Buyer does not need the same in connection with the ongoing activities of the Hospital, the Assets, or the Assumed Liabilities (as defined below), as well as all records which by law Seller is required to maintain in its possession;

(c) any reserves or prepaid expenses to the extent related to Excluded Assets and Excluded Liabilities (such as prepaid legal expenses or insurance premiums);

(d) all insurance proceeds arising in connection with the operation of the Hospital or the Assets prior to the Effective Time and all insurance proceeds arising in connection with the Excluded Assets and the Excluded Liabilities;

(e) all rights in connection with and the assets of Seller's employee benefit plans;

(f) all documents, records, operating manuals and film (in format) pertaining to the Hospital which are proprietary to Seller or which by law Seller is required to retain; and

(g) all rights of Seller under this Agreement and its related documents.

1.3 Assumed Liabilities. In connection with the conveyance of the Assets to Buyer, Buyer agrees to assume, as of the Effective Time, the future payment and performance of the following liabilities (the "Assumed Liabilities") of Seller:

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NO

- (a) all obligations under the Contracts accruing, arising or to be performed on or after the Effective Time;
- (b) all liabilities and obligations arising from the ownership, operation or use of the Assets following the Effective Time;
- (c) the capital lease obligations set forth on Schedule 1.3(c) hereto as of the Effective Time;
- (d) potential repayment obligation to BlueCross BlueShield of Tennessee, up to a maximum aggregate amount of Two Million and 00/100 Dollars (\$2,000,000.00), as set forth and further described on Schedule 1.3(d) hereto as of the Effective Time ("BCBST Repayment");
- (e) potential repayment obligation to Cigna, up to a maximum aggregate amount of One Million and 00/100 Dollars (\$1,000,000.00), as set forth and further described on Schedule 1.3(e) hereto as of the Effective Time ("Cigna Repayment");
- (f) all state and local sales taxes and use and transfer tax incurred by Buyer in connection with the purchase of the Assets following the Closing.

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

- (a) any debt, obligation, expense or liability of Seller that is not an Assumed Liability;
- (b) claims or potential claims for medical malpractice or general liability arising from events that occurred prior to the Effective Time;
- (c) those claims and obligations (if any) specified in Schedule 1.4 hereto;
- (d) any liabilities associated with or arising out of any of the Excluded Assets;
- (e) liabilities or obligations of Seller in respect of periods prior to the Effective Time arising under the terms of the Medicare, Medicaid, CHAMPUS/TRICARE, or other third party payor programs, and any liability arising pursuant to the Medicare, Medicaid, CHAMPUS/TRICARE, or any other third party payor programs as a result of the consummation of any of the transactions contemplated under this Agreement;
- (f) federal, state or local tax liabilities or obligations of Seller in respect of periods prior to the Effective Time including, without limitation, any income tax, any franchise tax, any tax recapture, any sales and/or use tax, and any FICA, FUTA, workers' compensation, and any and all other taxes or amounts due and payable as a result of the exercise by the employees at the Hospital of such employee's right to vacation, sick leave, and holiday benefits accrued while in the employ of Seller;
- (g) liability for any and all claims by or on behalf of Seller's employees arising out of or related to any acts, omissions, events or occurrences relating to periods prior to the Effective Time

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NO

including, without limitation, liability for any pension, profit sharing, deferred compensation, or any other employee health and welfare benefit plans, liability for any EEOC claim, ADA claim, FMLA claim, wage and hour claim, unemployment compensation claim, or workers' compensation claim, and any liabilities or obligations to former employees of Seller;

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

(i) any civil or criminal obligation or liability accruing, arising out of, or relating to any acts or omissions of Seller or its directors, officers, employees and agents claimed to violate any constitutional provision, statute, ordinance or other law, rule, regulation, interpretation or order of any governmental entity;

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

(k) all liabilities, including all damages, obligations, overpayments, false claims, penalties, fines, assessments, repayments, recoupments, offsets, recoveries, adjustments or similar liabilities of Seller arising under the terms of the Government Programs or any commercial or private payer accruing prior to the Effective Time (except for the BCBST Repayment and Cigna Repayment), whether alleged or claimed prior to or after the Closing;

(l) any amount in excess of the BCBST Repayment or the Cigna Repayment due and owing to BCBST and/or Cigna;

(m) liabilities or obligations arising out of any breach by Seller prior to the Effective Time of any Contract;

(n) all state and local sales taxes and use and transfer tax incurred by Seller in connection with the sale and purchase of the Assets prior to or following the Closing; and

(o) any debt, obligation, expense, or liability of Seller arising out of or incurred solely as a result of any transaction of Seller occurring after the Effective Time or for any violation by Seller of any law, regulation, or ordinance at any time.

1.5 Purchase Price. The purchase price (the "Purchase Price") for the Assets shall be an amount equal to Five Hundred Thousand and 00/100 Dollars (\$500,000.00).

1.6 Payment of Purchase Price. Subject to the terms and conditions of this Agreement, the Purchase Price shall be paid by Buyer to PCH as follows:

(a) The Purchase Price shall be paid to PCH pursuant to the payment schedule set forth below. Seller hereby agrees that the Purchase Price paid to PCH shall be the only amount paid in connection with this Agreement for the Assets, and neither Nel Med, Coles nor PCH shall have any right to receive any additional amount from Buyer or any of its affiliates for the Assets.

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No

(i) Buyer will pay NelMed in the amount of One Hundred Thousand 00/100 Dollars (\$100,000.00) within Ninety (90) days after Closing;

(ii) Buyer will pay NelMed in the amount of Fifty Thousand 00/100 Dollars (\$50,000.00) within one hundred twenty (120) days after Closing;

(iii) Buyer will pay NelMed in the amount of Fifty Thousand 00/100 Dollars (\$50,000.00) within one hundred fifty (150) days after Closing;

(iv) Buyer will pay NelMed in the amount of One Hundred Thousand 00/100 Dollars (\$100,000.00) within one hundred eighty (180) days after Closing;

(v) Buyer will pay NelMed in the amount of One Hundred Thousand 00/100 Dollars (\$100,000.00) within two hundred ten (210) days after Closing; and

(vi) Buyer will pay NelMed in the amount of One Hundred Thousand 00/100 Dollars (\$100,000.00) within two hundred forty(240) days after Closing.

(b) The Purchase Price has been negotiated in good faith in an arms-length transaction between the Parties in a commercially reasonable manner neither under compulsion to buy or sell, is consistent with fair market value (in consideration of the Assumed Liabilities) and has been determined without regard to the volume or value of any past, present or future referrals that Buyer, as Buyer of the Assets, could derive from Seller.

1.7 Prorations. Except as otherwise provided herein or as settled at the Closing, within ninety (90) days after the Closing Date (hereinafter defined), Seller and Buyer shall prorate as of the Effective Time any amounts which become due and payable on or after the Closing Date with respect to (i) the Contracts, (ii) ad valorem taxes, if any, on the Assets (which shall be prorated as of the Closing), (iii) personal property taxes on the Assets (which shall be prorated as of the Closing), and (iv) all utilities servicing any of the Assets, including water, sewer, telephone, electricity and gas service. Any such amounts which are not available within ninety (90) days after the Closing Date shall be similarly prorated as soon as practicable thereafter.

2. CLOSING.

2.1 Closing. Subject to the satisfaction or waiver by the appropriate party of all of the conditions precedent to Closing specified in Sections 8 and 9 hereof, the consummation of the transactions contemplated by and described in this Agreement (the "Closing") shall take place remotely at 5:00 p.m. local time, on or before March 15th, 2020, or on such other date or at such other location as the Parties may mutually designate in writing (the date of consummation is referred to herein as the "Closing Date"). The Closing shall be effective as of 12:00:01 a.m., local time, on March 16th, 2020, or such other time as the Parties may mutually designate in writing (such time, the "Effective Time").

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

(a) Deeds containing special warranty of title, fully executed by Seller in recordable form, conveying to Buyer fee simple title to the Owned Real Property, and Assignments of Leases, fully executed by Seller, assigning to Buyer leasehold title to the Leased Real Property (the "Assignments of Leases"), subject only to the Permitted Encumbrances (hereinafter defined), and use commercially reasonable efforts to obtain estoppel certificates from third party landlords, or obtain estoppel certificates where required by applicable leases, with respect to the Leased Real Property, in form and substance satisfactory to Buyer, executed by the landlords of the Leased Real Property;

(b) A General Assignment, Conveyance and Bill of Sale, fully executed by Seller, conveying to Buyer title to all tangible and intangible assets which are a part of the Assets, free and clear of all liabilities, claims, liens, security interests and restrictions other than the Assumed Liabilities;

(c) An Assignment and Assumption Agreement (the "Assignment and Assumption Agreement"), fully executed by Seller, conveying to Buyer Seller's interest in the Contracts;

(d) A standard form owner's affidavit (modified as necessary to make such affidavit factually accurate) as required by the Title Company (as defined in Section 7.2 hereof) to issue the Title Policy (as defined in Section 7.2 hereof) as described in and provided by Section 7.2 hereof;

(e) Copies of resolutions duly adopted by Seller, authorizing and approving the performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the documents described herein, certified as true and of full force as of the Closing, by the appropriate officer of Seller;

(f) Certificate of the President or a Vice President of Seller, certifying that each covenant and agreement of Seller to be performed prior to or as of the Closing pursuant to this Agreement has been performed and each representation and warranty of Seller is true and correct on the Closing Date, as if made on and as of the Closing;

(g) Certificate of incumbency for the officers of Seller as of the Closing Date;

(h) Certificate of existence and good standing of Nel Med and PCH dated the most recent practical date prior to the Closing;

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

(j) A Lockbox and Sweep Agreement (the "Lockbox and Sweep Agreement"), fully executed by Seller;

(k) All forms required for the termination or assignment of any trade names used by Seller in the operation of the Hospital and registered with the Tennessee Secretary of State, fully executed by Seller;

(l) Counterpart signature pages to the DEA Limited Power of Attorney;

(m) UCC Termination Statements or evidence that all UCC Termination Statements have been or will be released as appropriate with respect to the Assets;

(n) Evidence, in form and substance reasonably satisfactory to Buyer, of the release of all Liens of any kind on the Assets;

(o) An updated final version of the Schedules hereto edited only as permitted by the provisions of Section 13.1 of this Agreement;

(p) A list of the EFT Accounts, all information necessary to access the EFT Accounts as well as evidence of Seller's provision of instructions to the bank(s) at which such accounts are maintained to transfer Seller's rights to the EFT Accounts to Buyer;

(q) A copy of the R&W Insurance Policy evidencing coverage as required hereunder;
and

(r) Such other instruments, agreements, certificates and documents as Buyer reasonably deems necessary to effect the transactions contemplated hereby.

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

(a) The Assignments of Leases, fully executed by Buyer;

(b) The General Assignment, Conveyance and Bill of Sale, fully executed by Buyer, pursuant to which Buyer shall become the owner of the Assets as herein provided;

(c) The Assignment and Assumption Agreement, fully executed by Buyer, pursuant to which Buyer shall assume the future performance of the Contracts as herein provided;

(d) Copies of resolutions duly adopted by Buyer authorizing and approving its performance of the transactions contemplated hereby and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force as of the Closing, by the appropriate officer of Buyer;

(e) Certificate of the President or a Vice President of Buyer, certifying that each covenant and agreement of Buyer to be performed prior to or as of the Closing pursuant to this Agreement has been performed and each representation and warranty of such Buyer is true and correct on the Closing Date, as if made on and as of the Closing;

(f) Certificate of incumbency for the respective officers of Buyer as of the Closing Date;

(g) Counterpart signature pages to the DEA Limited Power of Attorney;

(h) A Lockbox and Sweep Agreement fully executed by Buyer; and

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(i) Such other instruments and documents as Seller reasonably deems necessary to effect the transactions contemplated hereby, including but not limited to those listed in Schedule ____.

3. REPRESENTATIONS AND WARRANTIES OF COLES. As of the date hereof, and, when read in light of any schedules, which have been updated in accordance with the provisions of Section 13.1 hereof, as of the Closing Date, Coles represents and warrants to Buyer the following:

3.1 Existence and Capacity. Coles has the requisite power and authority to enter into this Agreement, to perform her obligations hereunder and to conduct her business as now being conducted.

3.2 Powers; Consents; Absence of Conflicts with Other Agreements, Etc. The execution, deliver, and performance of this Agreement by Coles and all other agreements referenced herein, or ancillary hereto, to which Coles is a Party, and the consummation of the transactions contemplated herein by Coles:

(a) except as provided in Sections 6.4 and 6.5 below, does not require any approval or consent of, or filing with, any governmental agency or authority bearing on the validity of this Agreement which is required by law or the regulations of any such agency or authority;

(b) except as set forth on Schedule 1.1(i), will neither conflict with, nor result in any breach or contravention of, or the creation of any lien, charge, or encumbrance under, nor result in acceleration of the timing of payment or performance of Coles' obligations under, any indenture, agreement, lease, instrument or understanding to which Coles or Seller is a party or by which she is bound;

(c) will not violate any statute, law, rule, or regulation of any governmental authority to which she or the Assets may be subject; and

(d) will not violate any judgment, decree, writ or injunction of any court or governmental authority to which she or the Assets may be subject.

3.3 Binding Agreement. This Agreement and all agreements to which Coles will become a Party pursuant hereto is and will constitute the valid and legally binding obligations of Coles and is and will be enforceable against Coles in accordance with the respective terms hereof or thereof.

3.4 Full Disclosure. No representation, warranty, covenant, agreement and/or other statement made by Coles in this Agreement and/or any other transaction documents and/or in connection with this transaction contains any untrue statement of material fact or omits to state a material fact necessary to make any such representation, warranty, covenant, agreement and/or other statement, in light of the circumstances in which it was made, not misleading.

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NO

4. **REPRESENTATIONS AND WARRANTIES OF SELLER.** As of the date hereof, and, when read in light of any schedules, which have been updated in accordance with the provisions of Section 13.1 hereof, as of the Closing Date, Seller represents and warrants to Buyer the following:

4.1 Existence and Capacity. Nel Med and PCH are duly organized and validly existing in good standing under the laws of their state of formation, respectively. Seller has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder and to conduct its business as now being conducted.

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

(a) is within its limited liability company powers, is not in contravention of law or of the terms of its organizational documents, and has been duly authorized by all appropriate limited liability company action;

(b) except as provided in Sections 6.4 and 6.5 below, does not require any approval or consent of, or filing with, any governmental agency or authority bearing on the validity of this Agreement which is required by law or the regulations of any such agency or authority;

(c) except as set forth on Schedule 1.1(i), will neither conflict with, nor result in any breach, default or contravention of, or the creation of any lien, charge, or encumbrance under, nor result in acceleration of the timing of payment or performance of Seller's obligations under, any indenture, agreement, lease, instrument or understanding to which it is a party or by which it is bound;

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

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

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

4.4 Financial Statements. Seller has delivered to Buyer copies of the following financial statements of or pertaining to the Hospital and its operations ("Financial Statements"), which Financial Statements are maintained on an accrual basis:

(a) Unaudited Balance Sheet dated as of December 31st, 2019 (the "Balance Sheet Date");

(b) Unaudited Income Statement for the nine (9) month period ended on the Balance Sheet Date; and

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(c) Unaudited Balance Sheets and Income Statements for fiscal year ended December 31, 2018.

Such Financial Statements conform to generally accepted accounting principles ("GAAP") consistently applied, except as set forth in Schedule 4.4. Such Balance Sheets present fairly the financial condition of the Hospital as of the dates indicated thereon, and such Income Statements present fairly the results of operation of the Hospital for the periods indicated thereon.

4.5 Certain Post-Balance Sheet Results. Except as set forth in Schedule 4.5 hereto, since the Balance Sheet Date there has not been any:

- (a) damage, destruction, or loss (whether or not covered by insurance) affecting the Hospital or the Assets having a monetary value in excess of Five Thousand and 00/100 Dollars (\$5,000);
- (b) threatened employee strike, work stoppage, or labor dispute pertaining to the Hospital;
- (c) sale, assignment, transfer, or disposition of any item of property, plant or equipment included in the Assets having a value in excess of Five Thousand and 00/100 Dollars (\$5,000) (other than supplies), except in the ordinary course of business consistent with past practices;
- (d) changes in the accounting methods or practices employed by Seller or changes in depreciation or amortization policies; or
- (e) transaction pertaining to the Hospital by Seller outside the ordinary course of business.

4.6 Licenses. The Hospital is duly licensed as a general, acute care hospital in accordance with the applicable laws of the State of Tennessee. Seller has all other licenses, certificates, registrations, permits, and approvals which are needed or required by law to operate the Hospital. Seller has delivered to Buyer an accurate list and summary description (Schedule 4.6) of all such licenses, certificates, registrations, permits and approvals owned or held by Seller relating to the ownership, development, or operation of the Hospital or the Assets, all of which are now, and as of the Closing shall be, in good standing. There are no provisions in, or agreements relating to, any of the Hospital's licenses, certificates, permits, approvals, or registrations that would preclude or limit the operation of the Hospital or the assets used in connection with the operation of the Hospital as they are currently used or operated after giving effect to the consummation of the transactions contemplated hereby. The Hospital has not received any notice or communication from any Government Entity regarding any violation of any of the licenses, certificates, registrations, permits or approvals. The Hospital has timely filed all applications for the renewal of its respective licenses, certificates, permits, authorizations and approvals and all reports, data and other filings required to be made in connection with such licenses, certificates, permits, authorizations and approvals and have received no indications that any such applications will not be accepted. There are no existing fire or life safety code violations at the Hospital.

4.7 Medicare Participation/Compliance. The Hospital participates in the Medicare, Medicaid and TriCare/CHAMPUS programs, has current and valid provider contracts with such programs, is in compliance in all respects with the conditions of participation in such programs,

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and has received all approvals or qualifications necessary for capital reimbursement for the Hospital. Seller has not been convicted of a felony or any other crime or any offense relating to applicable healthcare laws or the Government Programs or committed any act, and is not currently engaging in any act, that could, with the passage of time and/or otherwise, result in debarment, suspension, sanction or exclusion from, or ineligibility to participate in, the Government Programs. Schedule 4.7 contains a list of all National Provider Identifiers of the Hospital and all provider numbers of the Hospital under the Government Programs. All billing practices of the Hospital with respect to all third-party payors, including the Government Programs and private insurance companies, have been conducted in compliance with all applicable laws, rules, and regulations and the billing guidelines of such third-party payors. All claims, returns, invoices and other forms made by the Hospital to third party payors, including the Government Programs and private insurance companies, are true, complete, correct and accurate. No deficiency in any such claims, returns or other filings, has been asserted in writing or, to the knowledge of Seller, threatened by any Government Entity or any other third-party payor and there is no basis for any such claims or deficiencies except as set forth on Schedule 1.3(d) and Schedule 1.3(e). The Hospital has not knowingly or willfully billed or received any payment or reimbursement in excess of amounts allowed by the applicable laws, rules, and regulations, agreements, or the billing guidelines of any third-party payors, including the Government Programs or any private insurance companies. "Government Programs" means each of the Medicare, Medicaid and/or TRICARE programs and any other federal or state health benefits program. Seller has not been excluded from participation in the Medicare, Medicaid or TriCare/CHAMPUS programs, nor, to Seller's knowledge, is any such exclusion threatened. Except as set forth in a writing delivered by Seller to Buyer which specifically makes reference to this Section 4.7 or as set forth on Schedule 4.7, Seller has not received any notice from any of the Medicare, Medicaid or TriCare/CHAMPUS programs, or any other third party payor programs of any pending or threatened investigations or surveys. Seller (i) is not a party to a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services, (ii) has no reporting obligations pursuant to any settlement agreement entered into with any governmental entity, (iii) has not been, within the past six (6) years the subject of any governmental payer program investigation conducted by any federal or state enforcement agency, (iv) is not nor has been, to Seller's knowledge, within the past six (6) years a defendant in any qui tam/False Claims Act litigation, (v) during the past six (6) years has not been served with or received any search warrant, subpoena, civil investigative demand, or, to Seller's knowledge, contact letter or telephone or personal contact by or from any federal or state enforcement agency, (vi) has not during the past six (6) years received any written complaints from any employee, independent contractor, vendor, physician or other person or organization that would indicate that Seller has violated any law applicable to the Hospital or the Assets, and/or (vii) has not made, is not in the process of making, is not currently considering, and has no obligation to make a self-disclosure under the Medicare self-disclosure protocol established by the Secretary of the U.S. Department of Health and Human Services pursuant to the requirements of the Patient Protection and Affordable Care Act, as amended by the Health Care and Education Reconciliation Act of 2010.

4.8 Accreditations. Schedule 4.8 sets forth a list of all accreditations and certifications held by the Hospital. There is no pending or, to the knowledge of Seller, threatened proceeding by any accrediting body to revoke, cancel, rescind, suspend, restrict, modify, or not renew any such accreditations and certifications. All such accreditations and certifications are and shall be effective, unrestricted and in good standing as of the date hereof and as of the Closing Date. To

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the knowledge of Seller, no event has occurred or other fact exists with respect to such accreditations and certifications that allows, or after notice or the lapse of time or both, would allow, revocation or termination of any such accreditations and certifications, or would result in any other impairment in the rights of any holder thereof.

4.9 *Regulatory Compliance.*

(a) Except as set forth on Schedule 4.9(a), Seller is in compliance with all statutes, rules, regulations, and requirements of the Government Entities having jurisdiction over the Hospital and the operations of the Hospital, including but not limited to the false claims, false representations, anti-kickback and all other provisions of the Medicare/Medicaid fraud and abuse laws (42 U.S.C. § 1320a-7 et seq.), the Deficit Reduction Act of 2005, Public Law 109-171, Public Law 109171 - 42 U.S.C. § 1396a(a)(68) ("DEFRA"), and the Stark Law (42 U.S.C. § 1395nn). None of Seller, the Hospital, nor any of its owner, officers, directors, employees, or agents have engaged in or been the subject of an investigation for any activities that are prohibited under 42 U.S.C. § 1320a-7 et seq. or the regulations promulgated thereunder including, but not limited to, the following:

(i) knowingly making a payment, directly or indirectly, to a physician as an inducement to reduce or limit necessary services to individuals who are under the direct care of the physician and who are entitled to benefits under Medicare, Medicaid or other state healthcare program;

(ii) providing to any person information that is known or should be known to be false or misleading that could reasonably be expected to influence the decision when to discharge a patient;

(iii) offered, paid, solicited, or received any remuneration (including any kickback, bribe, or rebate), in cash or in kind, to, or made any financial arrangements with, any past, present, or potential customers, suppliers, patients, government officials, medical staff members, contractors, or third party payors of the Hospital or any other person or entity in exchange for any business or payments from such persons; or

(iv) knowingly or willfully making or causing to be made or inducing the making of any false statement or representation (or omitting to state a material fact) required to be stated therein (or necessary to make the statement contained therein not misleading) of a material fact with respect to (a) the conditions or operations of the Hospital in order that the Hospital may qualify for Medicare, Medicaid, or other state healthcare program certification or (b) information required to be provided under Section 1124A of the Social Security Act (42 U.S.C. Section 1320a-3a).

As used herein, "Government Entity" means any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local. The Hospital has timely filed all reports, data, and other information required to be filed with the Government Entities.

(b) Except as set forth on Schedule 4.9(b), all of the Hospital's contracts with physicians or other healthcare providers in which physicians or other healthcare providers or any of their

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Affiliates are equity owners (collectively, "Healthcare Providers") involving services, supplies, payments or any other type of remuneration, whether such services or supplies are provided by a Healthcare Provider to the Hospital or by the Hospital to a Healthcare Provider and all of the Hospital's leases of personal or real property with Healthcare Providers, whether such personal or real property is provided by a Healthcare Provider to the Hospital or by the Hospital to a Healthcare Provider, are in writing, signed, if required to be signed by law, and provide for a commercially reasonable fair market value compensation in exchange for such services, space or goods without regard to the volume or value of any referrals or other business generated by the Parties.

Seller has developed a compliance program for the Hospital (the "Compliance Program"). Seller and the Hospital have conducted their operations in accordance with such Compliance Program.

4.10 Equipment. Seller has delivered to Buyer an accurate depreciation schedule as of the Balance Sheet Date (Schedule 4.10), which takes into consideration all the equipment associated with, or constituting any part of, the Hospitals and the Assets.

4.11 Real Property. Seller has not created any mortgages, liens, restrictions, agreements, claims or other encumbrances that will interfere with Buyer's use of the Real Property in a manner consistent with the current use by Seller or adversely impact the value of the Real Property. Seller owns and will convey fee simple title as to the Owned Real Property and a leasehold interest in the Leased Real Property to Buyer subject to (i) any lien for taxes not yet due and payable, (ii) liens securing any indebtedness assumed by Buyer, (iii) any lease obligations assumed by Buyer, (iv) easements, restrictions and other matters of record, so long as such matters do not, collectively or individually, interfere with the operations of the Hospital in a manner consistent with the current use by Seller or adversely impact the value of the Real Property, (v) zoning regulations and other governmental laws, rules, regulations, codes, orders and directives affecting the Real Property, (vi) unrecorded easements, discrepancies, boundary line disputes, overlaps, encroachments and other matters that would be revealed by an accurate survey or inspection of the Real Property, so long as such matters do not, collectively or individually, interfere with the operations of the Hospital in a manner consistent with the current use by Seller or adversely impact the value of the Real Property, (vii) any encumbrances or defects that do not interfere with the operations of the Hospital in a manner consistent with the current use by Seller, or adversely impact the value of the Real Property, and (viii) with respect to the Leased Real Property, any encumbrances that encumber the fee interest in such property (collectively, the "Permitted Encumbrances"). The Owned Real Property is in compliance with all applicable zoning ordinances and regulations permitting the operation of the property for a hospital, professional offices and related purposes. Seller has not received during the past three (3) years written notice from any Government Entity of a violation of any applicable ordinance or other law, order or regulation with respect to the Real Property, including but not limited to the Americans with Disabilities Act and Section 504 of the Rehabilitation Act of 1973, and has not received written notice of any lien, assessment or the like relating to any part of the Real Property or the operation thereof. Seller has not received during the past three (3) years written notice from any Government Entity of any existing, proposed or contemplated plans to modify or realign any street or highway, or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of any part of the Real Property. Schedule 1.1(a)(i) accurately reflects all of the Owned Real Property, there is no real property owned by Seller that is associated with or

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employed in the operation of the Hospital that is not reflected on Schedule 1.1(a)(i), and Seller will convey fee simple title to all of the real property identified on Schedule 1.1(a)(i). Schedule 1.1(a)(ii) accurately reflects all of the Leased Real Property, there is no real property in which Seller holds only a leasehold interest that is associated with or employed in the operation of the Hospital that is not reflected on Schedule 1.1(a)(ii), and Seller will convey a leasehold interest to all of the real property identified on Schedule 1.1(a)(ii).

4.12 Personal Property. Seller presently owns and will hold on the Closing Date good and valid title to all tangible personal property assets and valid title to all intangible assets included in the Assets, free and clear of all mortgages, liens, restrictions, claims or other encumbrances, except the Permitted Encumbrances and the Assumed Liabilities.

4.13 Employee Benefit Plans. All employee pension benefit plans and employee health or welfare benefits plans relating to employees of the Hospital (collectively "Benefit Plans") have been administered in compliance with all applicable laws including, without limitation, the applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). There are no "accumulated funding deficiencies" within the meaning of the Code. No reportable events (within the meaning of ERISA) or prohibited transactions (within the meaning of the Code) have occurred. There is and have been no pending or, to the best knowledge of Seller, threatened investigations, suits, or other proceedings relating to any Benefit Plan. To the best knowledge of Seller, no condition exists that will or could give rise to any liability to Buyer with respect to any Benefit Plan. Consummation of this Agreement and the transactions contemplated herein will not give rise to any liability to Buyer with respect to any Benefit Plan. Except as set forth on Schedule 4.13 hereto, all returns, reports, disclosure statements, and premium payments required to be made under the Code or ERISA with respect to the Benefit Plans have been timely filed or delivered, as applicable.

4.14 Litigation or Proceedings. Seller has delivered to Buyer an accurate list and summary description (Schedule 4.14) of all litigation or proceedings with respect to the Hospital and the Assets. Seller is not in default under any order of any court or federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality wherever located. Except as set forth in a writing delivered by Seller to Buyer, which specifically makes reference to this Section 4.14 or as set forth on Schedule 4.14, there are no claims, actions, suits, proceedings, or investigations pending, or to the best knowledge of Seller, threatened against or related to Seller, the Hospital or the Assets, at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, bureau, agency, or instrumentality wherever located.

4.15 Environmental Laws. Except as set forth on Schedule 4.15 hereto, (i) the Owned Real Property is not subject to any environmental hazards, risks, or liabilities, (ii) the Owned Real Property is not in violation of any federal, state or local statutes, regulations, laws or orders pertaining to the protection of human health and safety or the environment (collectively, "Environmental Laws"), including, without limitation, the Comprehensive Environmental Response Compensation and Liability Act, as amended ("CERCLA"), and the Resource Conservation and Recovery Act, as amended ("RCRA"), (iii) Seller has not received any notice alleging or asserting either a violation of any Environmental Law or an obligation to investigate,

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assess, remove, or remediate any property, including but not limited to the Owned Real Property, under or pursuant to any Environmental Law, (iv) no underground storage tanks are present at the Owned Real Property, and (v) no asbestos containing material (as defined under Environmental Law) is contained in or forming part of any building, building component, or structure on the Owned Real Property. No Hazardous Substances (which for purposes of this Section 4.15 shall mean and include polychlorinated biphenyls, asbestos, and any substances, materials, constituents, wastes, or other elements which are included under or regulated by any Environmental Law, including, without limitation, CERCLA and RCRA) have been disposed of on or released or discharged from or onto, or threatened to be released from or onto, the Owned Real Property (including groundwater) by Seller, or to Seller's knowledge, any third party, in violation of any applicable Environmental Law. Neither Seller, nor to Seller's knowledge, any prior owners, operators or occupants of the Owned Real Property, have allowed any Hazardous Substances to be discharged, possessed, managed, processed, released, or otherwise handled on the Owned Real Property in a manner which is in violation of any Environmental Law, and Seller has complied with all Environmental Laws applicable to any part of the Real Property.

4.16 Taxes. Except as set forth on Schedule 4.16, Seller has filed all federal, state and local tax returns required to be filed by it (all of which are true and correct) and have duly paid or made provision for the payment of all taxes (including any interest or penalties and amounts due state unemployment authorities) which are due and payable to the appropriate tax authorities. Except as set forth on Schedule 4.16, no deficiencies for any of such taxes have been asserted or to the knowledge of Seller threatened, and no audit on any such returns is currently under way or to the knowledge of Seller threatened. Except as set forth on Schedule 4.16, there are no outstanding agreements by Seller for the extension of time for the assessment of any such taxes. There are no tax liens on any of the Assets and, to the knowledge of Seller, no basis exists for the imposition of any such liens. As used herein, the term "tax" or "taxes" means the following, as applicable: all federal, state, local, foreign and other income, gross receipts, sales, use, production, ad valorem, transfer, documentary, franchise, registration, profits, license, lease, service, service use, withholding, payroll, employment, unemployment, estimated, excise, severance, environmental, stamp, occupation, premium, property (real or personal), real property gains, windfall profits, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest, additions or penalties with respect thereto and any interest in respect of such additions or penalties.

4.17 Employee Relations. Schedule 4.17 contains a list of the employees who provide services to the Hospital, including their compensation, benefit arrangements, accrued paid time off benefits, period of service, title, and whether such employee is full-time, part-time or on a leave of absence and the type of leave. Except as set forth on Schedule 4.17, all employees of the Hospital are employees of Seller. To Seller's knowledge, there is no threatened employee strike, work stoppage, or labor dispute pertaining to the Hospital. Except as set forth on Schedule 4.17, no union representation question exists respecting any employees of Seller. Except as set forth on Schedule 4.17, no collective bargaining agreement exists or is currently being negotiated by Seller, no demand has been made for recognition by a labor organization by or with respect to any employees of Seller, no union organizing activities by or with respect to any employees of Seller is, to the best knowledge of Seller, taking place, and none of the employees of Seller is represented by any labor union or organization. There is no unfair practice claim against Seller before the National Labor Relations Board, nor any strike, dispute, slowdown, or stoppage pending or

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threatened against or involving the Hospital, and none has occurred within the last five (5) years. Seller is in compliance with all federal and state laws respecting employment and employment practices, terms and conditions of employment, and wages and hours. Seller is not engaged in any unfair labor practices. Seller has complied with all requirements of the Immigration and Reform and Control Act of 1986. Except as set forth on Schedule 4.17, there are no pending or, to the best knowledge of Seller, threatened EEOC claims, OSHA complaints, union grievances, wage and hour claims, unemployment compensation claims, workers' compensation claims or the like. Seller has properly classified individuals providing services to the Hospital as independent contractors or employees, as the case may be.

4.18 The Contracts. Seller has made available to Buyer true and correct copies of the Contracts (including the Immaterial Contracts), and has given, and will give, the agents, employees and representatives of Buyer access to the originals of the Contracts to the extent originals are available. Schedule 1.1(i) lists all of the Contracts which are not Immaterial Contracts. "Immaterial Contracts" are commitments, contracts, leases and agreements which individually involve future payments, performance of services or delivery of goods or material, to or by Seller of any aggregate amount or value less than Fifteen Thousand and 00/100 Dollars (\$15,000) per vendor per year, and that: (i) are not with third party payors, physicians, physician groups or other referral sources, (ii) are not employment or severance agreements, (iii) are not guarantees in respect of any indebtedness or obligation of any person, (iv) do not limit the ability of the Hospital to engage freely in any line of business in any geographic area or to compete with any person, (v) do not relate to any joint venture, partnership or other similar joint ownership entity or arrangement, and (vi) are not between Seller and any of its respective officers, directors or members. Seller represents and warrants with respect to the Contracts that:

- (a) The Contracts constitute valid and legally binding obligations of the Seller and are enforceable against Seller in accordance with their terms;
- (b) Each Contract constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter thereof;
- (c) All obligations required to be performed by Seller under the terms of the Contracts have been performed to the extent such obligations to perform have accrued, and no act or omission by Seller has occurred or failed to occur which, with the giving of notice, the lapse of time or both would constitute a default under the Contracts; and
- (d) Except as expressly set forth on Schedule 1.1(i), no Contract requires consent to the assignment and assumption of such Contract by Buyer.

4.19 Supplies. All the inventory and supplies constituting any part of the Assets are substantially of a quality and quantity usable and salable in the ordinary course of business of the Hospital. The inventory levels are based on past practices of Seller at the Hospital.

4.20 Insurance. Seller has delivered to Buyer an accurate schedule (Schedule 4.20) disclosing the insurance policies covering the ownership and operations of the Hospital and the Assets, which Schedule reflects the policies' numbers, terms, identity of insurers, amounts, and coverage. All such policies are in full force and effect with no premium arrearage. Seller has

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given in a timely manner to its insurers all notices required to be given under its insurance policies with respect to all of the claims and actions covered by insurance, and no insurer has denied coverage of any such claims or actions. Seller has not (a) received any notice or other communication from any such insurance company canceling or amending any of such insurance policies, and no such cancellation or amendment is threatened, or (b) failed to give any required notice or present any claim which is still outstanding under any of such policies with respect to the Hospital or any of the Assets.

4.21 Third Party Payor Cost Reports. Seller has duly filed all required cost reports for all the fiscal years set forth on Schedule 4.21. All such cost reports accurately reflect the information required to be included thereon and such cost reports do not claim, and neither the Hospital nor Seller have received reimbursement in any amount in excess of, the amounts provided by law or any applicable agreement. Schedule 4.21 indicates which such cost reports have not been audited and finally settled and 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. Seller has established adequate reserves to cover any potential reimbursement obligations that Seller may have in respect of any such third-party cost reports, and such reserves are set forth in the Financial Statements.

4.22 Medical Staff Matters. Seller has provided to Buyer true, correct, and complete copies of the bylaws and rules and regulations of the medical staff of the Hospital (the "Medical Staff"), as well as a list of all current members of the Medical Staff. Except as set forth on Schedule 4.22 hereto, there are no adverse actions with respect to any Medical Staff members of the Hospital or any applicant thereto for which a Medical Staff member or applicant has requested a judicial review hearing which has not been scheduled or has been scheduled but has not been completed, and there are no pending or, to the best knowledge of Seller, threatened disputes, peer review investigations or corrective action proceedings with applicants, Medical Staff members, or health professional affiliates, and Seller knows of no basis therefore, and all appeal periods in respect of any Medical Staff member or applicant against whom an adverse action has been taken have expired.

4.23 Condition of Assets. All of the Assets shall be in good working condition without defect, subject to normal wear and tear on the land, buildings, improvements and equipment and normal and customary use and disposal of inventory and supplies in the ordinary course of business up to the Closing Date. Except as set forth on Schedule 4.23, to the knowledge of Seller, the improvements and all major equipment and systems servicing the improvements are in good operating condition and working order, ordinary wear and tear excepted, and are located on the Real Property.

4.24 Accounts Receivable. All accounts receivable constituting a part of the Assets represent and constitute bona fide indebtedness owing to a Seller for services actually performed or for goods or supplies actually provided with no known set-offs, deductions, compromises, or reductions (other than reasonable allowances for bad debts and contractual allowances in an amount consistent with historical policies and procedures of Seller). This representation does not constitute a guaranty that such accounts receivable will be collected.

(2) (NO)

4.25 Experimental Procedures. During the past three (3) years, Seller has not performed or permitted the performance of any experimental or research procedures or studies involving patients in the Hospital not authorized and conducted in accordance with the procedures of the Institutional Review Board of the Hospital.

4.26 Certificates of Need. Except as set forth on Schedule 4.26 hereto, no application for any Certificate of Need, Exemption Certificate (each as defined below) or declaratory ruling has been made by Seller with the Tennessee Department of Health Division of Health Planning (the "State Health Agency") or other applicable agency which is currently pending or open before such agency, and no such application (collectively, the "Applications") filed by Seller within the past three (3) years has been ultimately denied by any commission, board or agency or withdrawn by Seller. Seller has not prepared, filed, supported or presented opposition to any Applications filed by another hospital or health agency within the past three (3) years. Except as set forth on Schedule 4.26 hereto, Seller has neither any Applications pending nor any approved Applications which relate to projects not yet completed. As used herein, "Certificate of Need" means a written statement issued by the State Health Agency evidencing community need for a new, converted, expanded or otherwise significantly modified health care facility, health service or hospice, and "Exemption Certificate" means a written statement from the State Health Agency stating that a health care project is not subject to the Certificate of Need requirements under Tennessee law.

4.27 Certain Representations with Respect to the Hospital.

(a) There is not publicly pending nor, to the knowledge of Seller, threatened, any proceeding, investigation or survey under the Medicare or Medicaid programs involving Seller or the Hospital, nor, to the knowledge of Seller, have any allegations been made against Seller or the Hospital within the past three (3) years by any Government Entity relating to the federal Emergency Medical Treatment and Active Labor Act.

(b) Schedule 4.27(b) contains a complete list of all attestations, certifications, and payments made or received by the Seller in connection with the Medicare or Medicaid EHR Incentive programs. Except as described on Schedule 4.27(b), Seller has not been the subject of an audit regarding a Medicare or Medicaid EHR Incentive program, and Seller has not had funds recouped in connection with a Medicare or Medicaid EHR Incentive program. All attestations and other documents filed by Seller in connection with such programs are and were complete and accurate. As of the Closing Date, the Hospital and its electronic health records systems shall have met and successfully attested to the applicable attestation requirements for the meaningful use period through the date hereof, to the extent applicable.

4.28 HIPAA.

(a) Seller and the Hospital are in compliance with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations as amended by the Health Information Technology for Economic and Clinical Health Act (collectively, "HIPAA"), and Tennessee laws having similar subject matter to HIPAA ("State HIPAA"), and Seller and the Hospital have conducted and continue to conduct their business and activities, including, billing and collection activities, medical records management activities, and general practice management activities, in a manner that complies with HIPAA and State HIPAA.

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(b) All of the workforces (as such term is defined in 45 C.F.R. §160.103) of Seller and the Hospital have received training with respect to compliance with HIPAA and State HIPAA.

(c) The Hospital has entered into business associate agreements with all third parties acting as a business associate as defined in 45 C.F.R. § 160.103.

(d) To the knowledge of Seller, Seller is not under investigation by any governmental entity for a violation of HIPAA or State HIPAA, including the receipt of any notices from the United States Department of Health and Human Services Office of Civil Rights or Department of Justice relating to any such violations.

5. **REPRESENTATIONS AND WARRANTIES OF BUYER.** As of the date hereof, and, when read in light of any Schedules which have been updated in accordance with the provisions of Section 13.1 hereof, as of the Closing Date, Buyer represents and warrants to Seller the following:

5.1 Existence and Capacity. Buyer is a for-profit corporation duly organized and validly existing in good standing under the laws of the state of Tennessee. Buyer has the requisite power and authority to enter into this Agreement, to perform its obligations hereunder, and to conduct its business as now being conducted.

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

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

(b) except as provided in Sections 7.1 below, do not require any approval or consent of, or filing with, any governmental agency or authority bearing on the validity of this Agreement which is required by law or the regulations of any such agency or authority;

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

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

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

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

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

6.1 Information. Seller shall afford to the officers and authorized representatives and agents (which shall include accountants, attorneys, bankers, and other consultants) of Buyer reasonable access to and the right to inspect the properties, books, and records of the Hospital, and will furnish Buyer with such additional financial and operating data and other information as to the business and properties of Seller pertaining to the Hospital as Buyer may from time to time reasonably request without regard to where such information may be located. Buyer's right of access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of the Hospital. Buyer agrees that no inspections shall take place and no employees or other personnel of the Hospital shall be contacted by Buyer without Buyer first providing reasonable notice to Seller and coordinating such inspection or contact with Seller.

6.2 Operations. Seller will:

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

(b) maintain the Hospital and all parts thereof in good operating condition, ordinary wear and tear excepted;

(c) perform all of its obligations under agreements relating to or affecting the Hospital or the Assets;

(d) keep in full force and effect present insurance policies or other comparable insurance pertaining to the Hospital; and

(e) maintain and preserve its business organization intact, retain its present employees at the Hospital and maintain its relationships with physicians, suppliers, customers, and others having business relations with the Hospital.

6.3 Negative Covenants. Seller will not, without the prior written consent of Buyer:

(a) amend or terminate any of the Contracts, enter into any contract or commitment, or incur or agree to incur any liability, except as provided herein or in the ordinary course of business;

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

(c) acquire (whether by purchase or lease) or sell, assign, lease, or otherwise transfer or dispose of any property, plant, or equipment with a value in excess of Ten Thousand and 00/100 Dollars (\$10,000), except in the ordinary course of business with comparable replacement thereof; or

(d) take any action outside the ordinary course of business of the Hospital.

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

6.5 Lockbox Accounts. Effective as of the Closing and continuing thereafter, pursuant to that certain Lockbox Agreement attached hereto as Exhibit B (the "Lockbox Agreement"), Seller shall maintain a depository bank account in which Seller shall deposit all cash, checks, drafts or other similar items of payment received in respect of the Accounts Receivable and the Government Benefits Receivable (the "Seller Account"), and, after the Closing, Seller shall have transferred to, and otherwise vested in, Buyer the exclusive right to receive the funds swept from the Seller Account and shall have instructed the bank that maintains the Seller Account to transfer automatically each business day all available funds held in the Seller Account to an account designated by Buyer. If Seller comes into possession of any payments with respect to any such Accounts Receivable or Government Benefits Receivable, it shall deposit such payments into the Seller Account. The parties acknowledge and agree that, following the Closing, Buyer or its designees shall have sole dominion and control over the Seller Account, including, without limitation, the exclusive right to revoke any instructions given to the bank that maintains the Seller Account and the exclusive right to cancel or change the automatic transfer instructions related to the Seller Account. Notwithstanding anything herein to the contrary, if the bank that maintains the Seller Account has not signed the Lockbox Agreement as of the Closing, Seller agrees to write checks manually to Buyer each Friday until the bank signs the Lockbox Agreement, which checks shall be in an amount equal to the amount that otherwise would have been swept or transferred to Buyer's account on a daily basis under the Lockbox Agreement.

6.6 Additional Financial Information. Within thirty (30) days following the end of each calendar month prior to Closing, Seller shall deliver to Buyer true and complete copies of the unaudited balance sheets and the related unaudited statements of income (collectively, the "Interim Statements") of, or relating to, the Hospital for each month then ended, together with a year-to-date compilation and the notes, if any, related thereto, which shall have been prepared from and in accordance with the books and records of Seller, and shall fairly present the financial position and results of operations of the Hospital as of the date and for the period indicated.

6.7 No-Shop Clause. Seller shall not, and shall direct and use its collective best efforts to cause its respective officers, directors, employees, agents and representatives (including any investment banker, attorney or accountant retained by Seller) not to: directly or indirectly (i) offer for sale or lease the Assets (or any material portion thereof) or any ownership interest in any entity owning any of the Assets, (ii) solicit, accept, respond to or consider any offers to buy all or any material portion of the Assets or any ownership interest in any entity owning any of the Assets, (iii) discuss or negotiate with any person (other than Buyer) regarding any inquires, proposals or offers relating to any disposition of all or any material portion of the Assets or a merger or consolidation of any entity owning any of the Assets, or (iv) enter into any agreement or discussions or negotiations with any party (other than Buyer) with respect to the sale, assignment, or other disposition of the Assets (or any material portion thereof) or any ownership interest in any entity owning any of the Assets or with respect to a merger or consolidation of any entity owning

(b)
(c)

any of the Assets or with respect to any merger, consolidation, or similar transaction involving any entity owning any of the Assets. Seller will promptly reject any inquiry, proposal or offer and will notify Buyer of the same.

6.8 Efforts to Close. Seller shall satisfy all of the conditions precedent set forth in Section 8 to the extent that Seller's action or inaction can control or influence the satisfaction of such conditions, so that the Closing will occur on or before March 15th, 2020.

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

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

7.2 Title Commitment and Survey.

(a) **Title Commitment.** Seller has ordered a current title commitment with respect to the Owned Real Property (the "Title Commitment"), issued by _____, as agent for Title and Escrow of Lawrenceburg (the "Title Company"), together with legible copies of all exceptions to title referenced therein, sufficient for the issuance of an owner's policy of title insurance for the Owned Real Property (the "Title Policy"). Seller shall promptly upon its receipt and, in any event, within ten (10) days of the date of this Agreement, provide a copy of the Title Commitment and exception documents to Buyer.

(b) **Survey.** Seller has ordered an ALTA/ACSM Land Title Survey of the Owned Real Property (the "Survey"). Seller shall promptly upon its receipt and, in any event, within ten (10) days of the date of this Agreement, furnish a copy of the Survey to Buyer.

(c) **Title Defects and Cure.** The Title Commitment and the Survey are collectively referred to herein as the "Title Evidence." If the Title Evidence discloses any liens, claims, encroachments, exceptions, defects or other matters which do not constitute Permitted Encumbrances, Buyer may object to the same by giving written notice of such objections to Seller within fifteen (15) days after Buyer's receipt of the last of the Title Evidence (any such objections being referred to herein as the "Objections"). Seller may elect to either cure the Objections on or before the Closing or not cure the Objections, which election shall be made by written notice to Buyer within ten (10) days after Seller's receipt of Buyer's written notice of the Objections. If Seller fails to timely give such written notice, Seller shall be deemed to have elected not to cure the Objections. If Seller elects not to cure the Objections, Buyer may elect to either waive such Objections and close or terminate this Agreement, which election shall be made by written notice to Seller within twenty (20) days after Seller's receipt of Buyer's written notice of the Objections. If Buyer fails to timely give such written notice, Buyer shall be deemed to have elected to waive such Objections and close. Upon termination of this Agreement under the terms of this Section 7.2(c), no Party to this Agreement shall have any further claims under this

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Agreement against any other Party. Any matters shown by the Title Evidence to which Buyer does not timely object, in accordance with the terms of this Section 7.2(c), or which are waived (or deemed waived) by Buyer as herein provided, shall be deemed to be Permitted Encumbrances. Notwithstanding anything contained in this Section 7.2(c) to the contrary, at the Closing, Seller shall cause all mortgages, deeds of trust, financing statements and other similar liens encumbering Seller's fee interest in the Owned Real Property or Seller's interest in the Leased Real Property and arising by, through or under Seller to be released (other than liens for taxes not yet due and payable and any mechanic's or materialmen's liens relating to Assumed Liabilities).

(d) **Costs.** Section 13.9 shall govern which Party or Parties hereto shall bear the costs and expenses of the Title Commitment, the Title Policy and the Survey.

7.3 Efforts to Close. Buyer shall use its commercially reasonable efforts to satisfy all of the conditions precedent set forth in Section 9 to the extent that Buyer's action or inaction can control or influence the satisfaction of such conditions, so that the Closing will occur on or before the Closing Date.

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

8.1 Representations/Warranties. The representations and warranties of Coles and Seller contained in this Agreement shall be true and correct in all respects when made and, when read in light of any Schedules which have been updated in accordance with the provisions of Section 13.1 hereof, as of the Closing Date as though such representations and warranties had been made on and as of such Closing Date, and (a) the failure of any such representation or warranty to be true and correct or (b) any event, occurrence or condition first disclosed in an update to any Schedule, shall not, or shall not be reasonably likely to, taken individually or in the aggregate, have a material adverse effect on the results of operations, financial condition or business of the Hospital. Each and all of the terms, covenants, and conditions of this Agreement to be complied with or performed by Seller on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all respects.

8.2 Governmental Approvals. All consents, authorizations, orders and approvals of (or filings or registrations with) any Government Entity or other party required in connection with the execution, delivery and performance of this Agreement shall have been obtained or made by Buyer when so required except as for any documents required to be filed, or consents, authorizations, orders or approvals required to be issued, after the Closing Date.

8.3 Title Policy. At the Closing, the Title Company shall be ready, willing and able to issue a pro forma of the Title Policy (or marked Title Commitment) containing no exceptions to title, other than Permitted Encumbrances, to the Owned Real Property to Buyer. The Title Policy shall be issued, at Buyer's expense, on an ALTA Form 2006 Owner's Title Policy and shall inure to Buyer good and marketable title to the Owned Real Property subject only to the Permitted Encumbrances.

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8.4 Actions/Proceedings. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated, and no governmental agency or body shall have taken any other action or made any request of any Party hereto as a result of which Buyer reasonably and in good faith deem it inadvisable to proceed with the transactions hereunder.

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

8.6 Consents. Seller shall have obtained all consents, waivers and estoppels of third parties that are necessary for the consummation of the transactions contemplated in this Agreement as specified in Schedule 8.6 (collectively, the "Consents"). The Consents shall be in form and substance reasonably satisfactory to Buyer. Buyer shall cooperate in the assumption of Seller's Contracts.

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

8.8 Closing Deliveries. Seller shall have delivered to Buyer, in accordance with the terms of this Agreement, all contracts, agreements, instruments, and documents required to be delivered by Seller to Buyer pursuant to Section 2.2.

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

9.1 Representations/Warranties. The representations and warranties of Buyer contained in this Agreement shall be true when made and, when read in light of any Schedules which have been updated in accordance with the provisions of Section 13.1 hereof, as of the Closing Date as though such representations and warranties had been made on and as of such Closing Date. Each and all of the terms, covenants, and conditions of this Agreement to be complied with or performed by Buyer on or before the Closing Date pursuant to the terms hereof shall have been duly complied with and performed in all respects.

9.2 Governmental Approvals. All consents, authorizations, orders and approvals of (or filings or registrations with) any Government Entity or other party required in connection with the execution, delivery and performance of this Agreement shall have been obtained or made by

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Seller, except for any documents required to be filed, or consents, authorizations, orders or approvals required to be issued, after the Closing Date.

9.3 Actions/Proceedings. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated, and no governmental agency or body shall have taken any other action or made any request of any Party hereto as a result of which Seller reasonably and in good faith deem it inadvisable to proceed with the transactions hereunder.

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

9.5 Closing Deliveries. Buyer shall have delivered to Seller, in accordance with the terms of this Agreement, all contracts, agreements, instruments and documents required to be delivered by Buyer to Seller pursuant to Section 2.3.

10. SELLER'S AND COLES COVENANT NOT TO COMPETE. Seller and Coles hereby covenant that at all times from the Closing Date until the fifth (5th) anniversary of the Closing Date, neither Seller nor Coles shall, directly or indirectly, except as a consultant or contractor to or of Buyer (or any Affiliate of Buyer), own, lease, manage, operate, control, or participate in any manner with the ownership, leasing, management, operation or control of any acute care hospital within a 100 mile radius of Perry County, Tennessee, without Buyer's prior written consent (which Buyer may withhold in its sole and absolute discretion). In the event of a breach of this Section 10, Seller and Coles recognize that monetary damages shall be inadequate to compensate Buyer and Buyer shall be entitled, without the posting of a bond or similar security, to an injunction restraining such breach, with the reasonable costs (including reasonable attorneys' fees) of securing such injunction to be borne by the breaching Seller and/or Coles. Nothing contained herein shall be construed as prohibiting Buyer from pursuing any other remedy available to it for such breach or threatened breach. All Parties hereto hereby acknowledge the necessity of protection against the competition of Seller and Coles and that the nature and scope of such protection has been carefully considered by the Parties. Seller and Coles further acknowledge and agree that the covenants and provisions of this Section 10 form part of the consideration under this Agreement and are among the inducements for Buyer entering into and consummating the transactions contemplated herein. The period provided and the area covered are expressly represented and agreed to be fair, reasonable and necessary. The consideration provided for herein is deemed to be sufficient and adequate to compensate for agreeing to the restrictions contained in this Section 10. If, however, any court determines that the foregoing restrictions are not reasonable, such restrictions shall be modified, rewritten or interpreted to include as much of their nature and scope as will render them enforceable.

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11. ADDITIONAL AGREEMENTS.

11.1 Termination Prior to Closing. Notwithstanding anything herein to the contrary, this Agreement may be terminated at any time: (i) on or prior to the Closing Date by mutual consent of Seller and Buyer; (ii) on or prior to the Closing Date by Buyer, if any of the conditions specified in Section 8 of this Agreement will not be satisfied on the Closing Date (unless the failure results primarily from Buyer breaching any representation, warranty, or covenant herein) and shall not have been waived by Buyer; (iii) on or prior to the Closing Date by Seller if any of the conditions specified in Section 9 of this Agreement will not be satisfied on the Closing Date (unless the failure results primarily from Seller breaching any representation, warranty, or covenant herein) and shall not have been waived by Seller; (iv) by Buyer or Seller if the Closing Date shall not have taken place on or before March 15th, 2020 (which date may be extended by mutual agreement of Buyer and Seller), provided that the right to terminate pursuant to this subsection (iv) shall not be available to any party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such date; or (v) by either Seller or Buyer pursuant to Section 13.1 hereof.

11.2 Post-Closing Access to Information. Seller and Buyer acknowledge that subsequent to Closing each Party may need access to information or documents in the control or possession of the other Party(ies) for the purposes of, without limitation, concluding the transactions herein contemplated, audits, compliance with governmental requirements and regulations, and the prosecution or defense of third-party claims. Accordingly, Seller and Buyer agree that for a period of six (6) years after Closing each will make reasonably available to the other's agents, independent auditors, counsel, and/or governmental agencies upon written request and at the expense of the requesting party such documents and information as may be available relating to the Assets for periods prior and subsequent to Closing to the extent necessary to facilitate, without limitation, concluding the transactions herein contemplated, audits, compliance with governmental requirements and regulations, and the prosecution or defense of claims.

11.3 Preservation and Access to Records After the Closing. After the Closing, Buyer shall, in the ordinary course of business and as required by law, keep and preserve in their original form all medical and other records of the Hospital existing as of the Closing, and which constitute a part of the Assets delivered to Buyer at the Closing. For purposes of this Agreement, the term "records" includes all documents, electronic data and other compilations of information in any form. Buyer acknowledges that as a result of entering into this Agreement and operating the Hospital it will gain access to patient and other information which is subject to rules and regulations regarding confidentiality. Buyer agrees to abide by any such rules and regulations relating to the confidential information they acquire. Buyer agrees to maintain the patient records delivered to Buyer at the Closing at the Hospital after Closing in accordance with applicable law (including, if applicable, Section 1861(v)(1)(I) of the Social Security Act (42 U.S.C. § 1395(v)(1)(I)), and requirements of relevant insurance carriers, all in a manner consistent with the maintenance of patient records generated at the Hospital after Closing. Upon reasonable notice, during normal business hours, at the sole cost and expense of Seller and upon Buyer's receipt of appropriate consents and authorizations, Buyer will afford to the representatives of Seller, including its counsel and accountants, full and complete access to, and copies of, the records transferred to Buyer at the Closing (including, without limitation, access to patient records in respect of patients treated by Seller at the Hospital). Upon reasonable notice, during normal

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business hours and at the sole cost and expense of Seller, Buyer shall also make its officers and employees available to Seller at reasonable times and places after the Closing. In addition, Seller shall be entitled, at Seller's sole risk, to remove from the Hospital copies of any such patient records, but only for purposes of pending litigation involving a patient to whom such records refer, as certified in writing prior to removal by counsel retained by Seller in connection with such litigation and only upon Buyer's receipt of appropriate consents and authorizations. Any patient record so removed from the Hospital shall be promptly returned to Buyer following its use by Seller. Any access to the Hospital, its records or Buyer's personnel granted to Seller in this Agreement shall be upon the condition that any such access not interfere with the business operations of Buyer.

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

11.5 Reproduction of Documents. This Agreement and all documents relating hereto, including, without limitation, (i) consents, waivers and modifications which may hereafter be executed, (ii) the documents delivered at the Closing, and (iii) financial statements, certificates and other information previously or hereafter furnished to Seller or to Buyer, may, subject to the provisions of Section 13.10 hereof, be reproduced by Seller and by Buyer by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process and Seller and Buyer may destroy any original documents so reproduced. Seller and Buyer agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial, arbitral or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by the Seller or Buyer in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

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

11.7 Cost Reports. Seller at its expense, shall prepare and timely file all terminating and other cost reports required or permitted by law to be filed under the Medicare and Medicaid programs or other third-party payor programs for periods ending on or prior to the Effective Time, or as a result of the consummation of the transactions described herein ("Seller Cost Reports"). Buyer shall forward to Seller any and all correspondence relating to the Seller Cost Reports within five (5) business days after receipt by Buyer. Buyer shall remit any receipts of funds relating to the Seller Cost Reports promptly after receipt by Buyer and shall forward to Seller any demand

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for payments within ten (10) business days after receipt by Buyer. Seller shall retain all rights to the Seller Cost Reports including any amounts receivable or payable in respect of such reports or reserves relating to such reports. Such rights shall include the right to appeal any Medicare or Medicaid determinations relating to the Seller Cost Reports. Seller shall retain the originals of the Seller Cost Reports, correspondence, work papers and other documents relating to the Seller Cost Reports. Seller will furnish copies of such cost reports to Buyer upon request.

11.8 *Misdirected Payments, Etc.* Seller and Buyer covenant and agree to remit to the other, with reasonable promptness, any payments received, which payments are on or in respect of accounts or notes receivable owned by (or are otherwise payable to) the other. In addition, and without limitation, in the event of a determination by any governmental or third-party payor that payments to the Seller or the Hospital resulted in an overpayment or other determination that funds previously paid by any program or plan to the Seller or the Hospital must be repaid, Seller shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Effective Time (except for the BCBST Repayment and Cigna Repayment) and Buyer shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered by Buyer or the Hospital after the Effective Time. In the event that, following Closing, Buyer suffers any offsets against reimbursement under any third-party payor or reimbursement programs due to Buyer, relating to amounts owing under any such programs by Seller, Seller shall promptly upon demand from Buyer pay to Buyer the amounts so billed or offset.

11.9 *Employee Matters.* As of the Closing Date, Seller shall terminate all of the employees of the Hospital, and Buyer, subject to Buyer's standard hiring practices and policies (including but not limited to background checks and drug screens), shall offer employment to all active employees (including any employees who are on statutory family or medical leave, military leave, short term disability or other short term leave of up to 90 days) in good standing commencing as of the Closing Date in positions and at compensation levels generally consistent with those then being provided by Seller. Nothing herein shall be deemed to affect or limit in any way normal management prerogatives of Buyer with respect to employees or to create or grant to any such employees third party beneficiary rights or claims of any kind or nature. In respect of the employees employed by Buyer, Buyer shall provide such employees with employee benefits consistent with the benefits generally offered to employees of Buyer and, to the extent Seller has qualified retirement programs for such employees, Buyer shall recognize the existing seniority of all such employees for benefits purposes and shall provide credit under such plans for purposes of determining eligibility and vesting and the rate of benefit accrual (but not actual benefit accrual); provided, however, that no such credit need be given in respect of any new plan commenced or participated in by Buyer in which no prior service credit is given or recognized to or for other plan beneficiaries. In extending such benefits, Buyer shall waive pre-existing conditions limitations in Buyer's welfare benefit plans which might otherwise apply to such employees except to the extent employees have not satisfied such limitations under the current welfare benefit plans of Seller. Buyer shall give credit to all hired employees for their actual accumulated and unused paid time off. Notwithstanding any other provision in this Agreement, nothing herein shall be construed as evidence of an agreement by Buyer to be successor employer in connection with any collective bargaining agreement of Seller in effect at the Hospital, as applicable. Up to and including the Closing Date, Seller shall be responsible for any notifications required under the Worker Adjustment and Retraining Notification Act of 1988, as amended.

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11.10 Indigent Care Policies. Buyer shall adopt and maintain a reasonable policy for the treatment of indigent patients of the Hospital. Buyer shall cause the Hospital to treat any patient presented to the emergency room who has a medical emergency or who, in the judgment of a staff physician, has an immediate emergency need, in compliance with applicable federal and state laws. No such patient will be turned away because of age, race, gender or inability to pay. Buyer shall cause the Hospital to continue to provide services to patients covered by the Medicare and Medicaid programs and those unable to pay for emergent and medically necessary care as required by applicable law. This covenant shall be subject in all respects to changes in governmental policy.

11.11 Use of Controlled Substance Permits. To the extent permitted by applicable law, Buyer shall have the right, for a period not to exceed one hundred eighty (180) days following the Closing Date, to operate under the licenses and registrations of Seller relating to controlled substances, until Buyer is able to obtain such licenses and registrations for itself. In furtherance thereof, Seller shall execute and deliver to Buyer at or prior to the Closing one or more limited powers of attorney substantially in the form of Exhibit A hereto.

11.12 Access to Records Including as to Recovery and Audit Information. If any entity, governmental agency or person makes a claim, inquiry or request to Buyer or Seller relating to Seller's operation of the Hospital prior to the Effective Time (including but not limited to a notice to Buyer or Seller from a person responsible for retroactive payment denials, including recovery audit contractors) of their intent to review Seller's claims with respect to the operation of the Hospital prior to the Effective Time, or otherwise seeks information pertaining to Seller, Buyer shall: (i) comply with all requests from such entity or person in a timely manner; (ii) comply with all other applicable laws and regulations; (iii) forward to Seller all communications and/or documents sent to such person or entity or received from such person or entity within five (5) business days of Buyer's delivery or receipt of such communications and/or documents as permitted by applicable law and (iv) provide Seller and its agents and attorneys upon reasonable request with reasonable access to records, information and personnel necessary for any appeal or challenge regarding any such retroactive payment denials (with the understanding that Seller shall be solely responsible for handling any appeals) as may be permissible under applicable law.

11.13 Continuation of Insurance. For a period of at least six (6) years following the Closing, Seller shall maintain in effect insurance on all claims-made professional and general liability insurance policies of the Hospital for claims related to the period of Seller's ownership and operation of the Hospital. The insurance shall have coverage levels equal to not less than \$1,000,000 per occurrence/\$5,000,000 aggregate with a \$10,000,000 excess liability limit.

12. INDEMNIFICATION.

12.1 Sellers' Right to Indemnification-Advance by Buyer. Buyer acknowledges and agree that it is in the best interest of Company to tender the right to advance and indemnification to Seller. Buyer hereby shall abide by the terms of the *Indemnification-Advance Agreement* entered into by the Buyer and Seller contemporaneously with this Agreement, and such same is incorporated herein in its entirety as though first set forth herein. In the event that a Florida court of competent jurisdiction finds that Seller is not entitled to the rights granted under the terms and agreement of the *Indemnification-Advance Agreement*, then the terms of 12.2-12.5 below shall

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control; otherwise any conflicts or ambiguity by and between the terms herein and the *Indemnification-Advance Agreement* shall be resolved and controlled by the terms of the *Indemnification-Advance Agreement*.

12.2 Indemnification by Buyer. Buyer shall defend, indemnify and hold harmless Seller and its respective officers, employees, agents, attorneys, representatives, or independent contractors (collectively, "Seller Indemnified Parties"), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs, costs of appeal, mediation, arbitration, special proceedings or any other proceedings) and expenses (including, without limitation, reasonable attorneys' fees and fees of expert consultants and witnesses) that such Seller Indemnified Party incurs as a result of, or with respect to (i) any fraud, misrepresentation, inaccuracy, or breach of warranty by Buyer under this Agreement, (ii) any breach by Buyer of, or any failure by Buyer to perform, any covenant or agreement of, or required to be performed by, Buyer under this Agreement, including, without limitation, such representations and warranties set forth in Sections 5 and 9, (iii) any of the Assumed Liabilities, or (iv) any claim made by a third party with respect to the operation of the Hospital by Buyer following the Effective Time.

12.3 Indemnification by Coles and Seller. Seller and Coles shall, jointly and severally, defend, indemnify and hold harmless Buyer and its respective officers, employees, agents, attorneys, representatives, or independent contractors (collectively, "Buyer Indemnified Parties"), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal, mediation, arbitration, special proceedings or any other proceedings.) and expenses (including, without limitation, reasonable attorneys' fees and fees of expert consultants and witnesses) that such Buyer Indemnified Party incurs as a result of, or with respect to (i) any fraud, misrepresentation, inaccuracy or breach of warranty by Seller under this Agreement, including, without limitation, such representations and warranties set forth in Sections 3 and 4 (ii) any breach by Seller of, or any failure by Seller to perform, any covenant or agreement of, or required to be performed by, Seller under this Agreement, (iii) any of the Excluded Liabilities, (iv) any of the Excluded Assets, (v) any claim asserted against Seller or Coles or the assets of any of them, as a result of, or with respect to, the operation of Seller's business or the Hospital prior to the Closing, regardless of when an action, suit, claim or proceeding is filed or made, (vi) any acts or omissions of Seller before the Closing in connection with the operation of the Hospital before the Closing, including, but not limited to, any and all malpractice claims, (vii) any failure of Seller to obtain the necessary approvals to assign any license, permit, etc. necessary to operate the Hospital or to consummate this transaction, (viii) any losses for any overpayment, false claim amounts, self-reports, billing and coding claims and/or liabilities of, and/or otherwise owed by Seller to any person, including without limitation, any governmental or commercial third party payers (except for the BCBST Repayment and Cigna Repayment) or patients, for medical services rendered before the Closing, (ix) without limiting the foregoing, all claims or potential claims made or maintained by a former director, officer, employee and/or member of Seller or other person claiming to be a director, officer, employee, and/or member of Seller, which shall include, without limitation, defense costs incurred with respect thereto, but only to the extent such claims relate to that status of such director, officer, employee, and/or member of Seller and where that status applied before the Closing, or (x) any claim made by a third party with respect to the operation of the Hospital by Seller prior to the Effective Time.

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12.4 Notice and Control of Litigation. If any claim or liability is asserted in writing by a third party against a Party entitled to indemnification under this Section 12 (the "Indemnified Party") which would give rise to a claim under this Section 12, the Indemnified Party shall notify the person giving the indemnity (the "Indemnifying Party") in writing of the same within fifteen (15) days of receipt of such written assertion of a claim or liability. The Indemnifying Party shall have the right to defend a claim and control the defense, settlement, and prosecution of any litigation. If the Indemnifying Party, within ten (10) days after notice of such claim, fails to defend such claim, the Indemnified Party shall (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise, or settlement of such claim on behalf of and for the account and at the risk of the Indemnifying Party, subject to the right of the Indemnifying Party to assume the defense of such claim at any time prior to settlement, compromise, or final determination thereof. Anything in this Section 12.3 notwithstanding, (i) if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right, at its own cost and expense, to defend, compromise, and settle such claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant to the Indemnified Party of a release from all liability in respect of such claim. The foregoing rights and agreements shall be limited to the extent of any requirement of any third-party insurer or indemnitor. All Parties agree to cooperate fully as necessary in the defense of such matters. Should the Indemnified Party fail to notify the Indemnifying Party in the time required above, the indemnity with respect to the subject matter of the required notice shall be limited to the damages that would have resulted absent the Indemnified Party's failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party.

12.5 Notice of Claim. If an Indemnified Party becomes aware of any breach of the representations or warranties of the Indemnifying Party hereunder or any other basis for indemnification under this Section 12, the Indemnified Party shall notify the Indemnifying Party in writing of the same within thirty (30) days after becoming aware of such breach or claim, specifying in detail the circumstances and facts which give rise to a claim under this Section 12. Should the Indemnified Party fail to notify the Indemnifying Party within the time frame required above, the indemnity with respect to the subject matter of the required notice shall be limited to the damages that would have nonetheless resulted absent the Indemnified Party's failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party.

13. DEFAULT PRIOR TO CLOSING

13.1 No Right or Interest in the Property-Buyer. This Agreement confers no present right, title or interest in the Property to Buyer and Buyer agrees not to, and waives its right to, file a lis pendens or other similar notice against the Property. Notwithstanding the foregoing, if Seller terminates this Agreement pursuant to a right given to it hereunder and Buyer takes any action

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which interferes with Seller's ability to sell, exchange, transfer, lease, dispose of or finance the Property or take any other actions with respect thereto (including, without limitation, the filing of any lis pendens or other form of attachment against the Property), then Buyer shall be liable for all loss, cost, damage, liability or expense (including, without limitation, reasonable attorneys' fees, court costs and disbursements and consequential damages) incurred by Seller by reason of such action to contest by Buyer.

14. DEFAULT AFTER CLOSING.

14.1 Default. In the event of a failure by Buyer or Seller to perform any obligation or covenant which either of them is obligated to perform under this Agreement, except for the failure to close in accordance with the terms of this Agreement, which failure shall constitute an immediate default hereunder, no default shall occur until notice thereof is given to the defaulting party by the other party hereto asserting an event of default has occurred, describing the nature of the default, and giving a period of five (5) business days to cure the default, if readily curable by the payment of money, or a period of twenty (20) business days to cure the default, if not readily curable by the payment of money. If after notice and the cure period provided in the preceding sentence, Buyer is in default, then this Agreement shall terminate and either party may seek all remedies available and subject to the terms hereof.

14.2 No Recourse. In all instances hereunder, Buyer shall look solely to the interest of Seller in the hospital for satisfaction of any remedy it may have hereunder or in connection herewith and shall not look to any other assets of Seller or of any other person, firm or corporation. If Seller is a partnership, there shall be absolutely no personal liability on the part of any present or future partner, or any of its successors or assigns, with respect to any obligation hereunder or in connection herewith.

15. MISCELLANEOUS.

15.1 Schedules and Other Instruments. Each Schedule and Exhibit to this Agreement shall be considered a part hereof as if set forth herein in full. From the date hereof until the Closing Date, Seller or Buyer may update their Schedules, subject to the other Party's approval rights described below. Any other provision herein to the contrary notwithstanding, all Schedules, Exhibits, or other instruments provided for herein and not delivered at the time of execution of this Agreement or which are incomplete at the time of execution of this Agreement shall be delivered or completed within ten (10) days after the date hereof or prior to the Closing, whichever is sooner. It shall be deemed a condition precedent to the obligations of the Parties hereto that each of the Schedules, Exhibits and related documents shall meet with the reasonable approval of such Parties. Each of the Parties hereto shall have ten (10) business days following the date of receipt of each Schedule, Exhibit or related document within which to approve or disapprove such item. If within the ten (10) business day period either Party gives written notice to the other of disapproval of any such item, the other Party shall have five (5) business days within which to correct the item disapproved. If the Party to whom notice of disapproval is delivered is either unwilling or unable to correct the disapproved item, then the disapproving Party shall have five (5) business days within which to terminate this Agreement by giving written notice of such termination to the other Party.

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15.2 Additional Assurances. The provisions of this Agreement shall be self-operative and shall not require further agreement by the Parties except as may be herein specifically provided to the contrary; provided, however, at the request of a Party, the other Party or Parties shall execute such additional instruments and take such additional actions as the requesting Party may deem necessary to effectuate this Agreement. In addition, and from time to time after Closing, Seller shall execute and deliver such other instruments of conveyance and transfer, and take such other actions as Buyer reasonably may request, more effectively to convey and transfer full right, title, and interest to, vest in, and place Buyer in legal and actual possession of, any and all of the Hospital and the Assets. Seller shall also furnish Buyer with such information and documents in its possession or under its control, or which Seller can execute or cause to be executed, as will enable Buyer to prosecute any and all petitions, applications, claims, and demands relating to or constituting a part of the Hospital or the Assets. Additionally, Seller shall cooperate and use its best efforts to have its present directors, officers, and employees cooperate with Buyer on and after Closing in furnishing information, evidence, testimony, and other assistance in connection with any action, proceeding, arrangement, or dispute of any nature with respect to matters pertaining to all periods prior to Closing in respect of the items subject to this Agreement.

15.3 Third Party Consents. Anything contained herein to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any claim, right, contract, license, lease, commitment, sales order, or purchase order if an attempted assignment thereof without the consent of the other Party thereto would constitute a breach thereof or in any way affect the rights of Seller thereunder, unless such consent is obtained.

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

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

15.6 Cumulative Remedies. The rights and remedies under this Agreement are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity.

15.7 Equitable Remedies. Buyer acknowledges that a breach or threatened breach by such party of any of its obligations under this Agreement would give rise to irreparable harm to the Seller for which monetary damages would not be an adequate remedy and hereby agrees that in the event of a breach or a threatened breach by such party of any such obligations, the Seller shall, in addition to any and all other rights and remedies that may be available to them in respect of such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specific performance, and any other relief that may be available from a court of competent jurisdiction without any requirement to (i) post a bond or other security, or (ii) prove

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actual damages or that monetary damages will not afford an adequate remedy. Seller agrees that Seller shall not oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Agreement.

15.8 Choice of Law and Venue. The parties further agree that this Agreement is made and entered into in the State of Florida, and shall in all respects be interpreted, enforced and governed under the laws of the State of Florida, without regard to conflict of laws principles; and that venue is exclusively in the Circuit Court of Broward County, Florida or the United States District Court for the Southern District of Florida. The parties further agree that all parts of this Agreement shall in all cases be construed as a whole according to its fair meaning, and not strictly for or against any of the parties herein. The Agreement shall be construed and enforced in accordance with the laws of the State of Florida, without regard to conflicts of law issues.

The Parties agree that this Agreement shall be governed by and construed in accordance with the laws of the State of Tennessee, without regard to conflict of laws principles. The Parties agree that jurisdiction and venue in any action brought by any Party pursuant to this Agreement shall be exclusively in any state or federal court located in the State of Tennessee.

15.9 Benefit/Assignment. Subject to provisions herein to the contrary, this Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective legal representatives, successors, and assigns. Seller may not assign this Agreement without the prior written consent of Buyer, which consent shall not be unreasonably withheld; provided, however, that Buyer may, without the prior written consent of Seller, assign its rights and delegate its duties hereunder to one or more Affiliates (as defined in Section 13.18).

15.10 Expenses. All costs and expenses incurred in connection with this Agreement [and each other agreement, document, and instrument contemplated by this Agreement/and each Transaction Document] and the transactions contemplated hereby [and thereby] shall be paid by the party incurring such costs and expenses[, whether or not the Closing shall have occurred].

15.11 Further Assurances. Each of the parties hereto shall, and, if applicable, shall cause their respective Affiliates to execute and deliver such additional documents, instruments, conveyances, and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and each of the other Transaction Documents and give effect to the transactions contemplated hereby and thereby.

15.12 Interpretation. For purposes of this Agreement, (a) the words "include," "includes," and "including" are deemed to be followed by the words "without limitation;" (b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein: (i) to sections, schedules, and exhibits mean the sections of, and schedules and exhibits attached to, this Agreement; (ii) to an agreement, instrument, or other document means such agreement, instrument, or other document as amended, supplemented, and modified from time to time to the extent permitted by the provisions thereof; and (iii) to a statute means such statute as

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amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the party drafting an instrument or causing any instrument to be drafted. The schedules and exhibits referred to herein shall be construed with, and as an integral part of, this Agreement to the same extent as if they were set forth verbatim herein.

15.6 No Brokerage. Except as set forth on Schedule 13.8, Buyer, Seller and Coles each represent and warrant to the other that it has not engaged a broker in connection with the transactions described herein. Each Party agrees to be solely liable for and obligated to satisfy and discharge all loss, cost, damage, or expense arising out of claims for fees or commissions of brokers employed or alleged to have been employed by such Party.

15.7 Cost of Transaction. Whether or not the transactions contemplated hereby shall be consummated, the Parties agree as follows: (i) Seller shall pay the fees, expenses, and disbursements of Seller and its agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto; and (ii) Buyer shall pay the fees, expenses, and disbursements of Buyer and its agents, representatives, accountants and legal counsel incurred in connection with the subject matter hereof and any amendments hereto. Buyer shall pay the cost of the Title Commitment, the Title Policy and the Survey, and any environmental engineering reports, licensure application fees, and mechanical, structural, electrical and roofing engineering costs related to or arising out of the transactions contemplated by this Agreement. Seller and Buyer shall each pay one-half of any state or local deed, stamp, sales, use, transfer, real estate excise, business and occupation and/or other tax levied, incurred or otherwise imposed in connection with the conveyance of the Assets (excluding income and franchise taxes, as applicable, imposed on each of the Parties). Seller and Buyer shall allocate state and local recording fees and similar costs with respect to the transactions contemplated by this Agreement in accordance with local customs.

15.8 Confidentiality. It is understood by the Parties hereto that the information, documents, and instruments delivered to Buyer by Seller and its agents and the information, documents, and instruments delivered to Seller by Buyer and its agents are of a confidential and proprietary nature. Each of the Parties hereto agrees that both prior and subsequent to the Closing it will maintain the confidentiality of all such confidential information, documents, or instruments delivered to it by each of the other Parties hereto or their agents in connection with the negotiation of this Agreement or in compliance with the terms, conditions, and covenants hereof and will only disclose such information, documents, and instruments to its duly authorized officers, members, directors, representatives, and agents (including consultants, attorneys, and accountants of each Party) and applicable governmental authorities in connection with any required notification or application for approval or exemption therefrom. Each Party may use the other's confidential information only to the extent required to consummate the transactions contemplated by this Agreement and no other rights to such information are granted or implied under this Agreement. As of the Closing Date, all of the confidential information disclosed by Seller to Buyer relating to the Hospital and the Assets shall become the confidential information of the Buyer, and the Seller shall treat it as if disclosed to Seller by Buyer hereunder, and as of the Closing Date, such information shall be deemed Confidential Information of the Buyer for purposes of its treatment pursuant to the Confidentiality Agreement entered into by the parties on October 25, 2019. Each of the Parties hereto further agrees that if the transactions contemplated hereby are not

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consummated, it will return all such documents and instruments and all copies thereof in its possession to the other Parties to this Agreement, except that (A) a copy of the documents and instruments may be retained by the receiving Party or its representatives in the event that receiving Party or its representatives are required to retain a copy of all or part of the documents or instruments in order to comply with any legal, contractual, professional or fiduciary obligation, (B) the receiving Party's representatives shall have the right to regain any documents or instruments prepared by it evidencing their services for the receiving Party for archival purposes, and (C) backup tapes or other media made pursuant to automated archival processes in the ordinary course of business would not be required to be destroyed, deleted or modified. All such retained copies shall be placed in secured files and shall remain subject to the confidentiality obligations set forth in this Agreement. Each of the Parties hereto recognizes that any breach of this Section 13.10 would result in irreparable harm to the other Party to this Agreement and its Affiliates (as defined in Section 13.18 below) and that therefore either Seller or Buyer shall be entitled to seek an injunction to prohibit any such breach or anticipated breach, without the necessity of posting a bond, cash, or otherwise, in addition to all of its other legal and equitable remedies. Nothing in this Section 13.10, however, shall prohibit the use of such confidential information, documents, or information for such governmental filings as in the opinion of Seller's counsel or Buyer's counsel are required by law or governmental regulations or are otherwise required to be disclosed pursuant to applicable state law.

15.9 Public Announcements. Seller and Buyer each agree that neither party shall release, publish, or otherwise make available to the public in any manner whatsoever any information or announcement regarding the transactions herein contemplated without the prior written consent of the other party, which will not be unreasonably withheld, except for information and filings reasonably necessary to be directed to governmental agencies to fully and lawfully effect the transactions herein contemplated or required in connection with securities and other laws.

15.10 Business Days. If any date on which a party is required to make a payment or a delivery pursuant to the terms hereof is not a Business Day, then such party shall make such payment or delivery on the next succeeding Business Day.

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

15.12 Notice. Any notice, demand, or communication required, permitted, or desired to be given hereunder shall be deemed effectively given when personally delivered, when received by receipted overnight delivery, or five (5) days after being deposited in the United States mail, with postage prepaid thereon, certified or registered mail, return receipt requested, addressed as follows:

Seller or Coles:

Perry Community Hospital, LLC
c/o Nelandes Coles
2718 Squirrel Hollow Drive
Linden, TN 37096

With a simultaneous copy to:

Law Offices of Levi Williams
Attention : Levi Williams
Legacy Bank Building
12 S.E. 7th Street
Suite 710
Fort Lauderdale, Florida 33301

Buyer:

Expertus Industries, Inc.
485 N. US Hwy 17-92, Suite 415
Longwood, FL 32750
Attention: Jason Weil, CEO

With a simultaneous copy to:

Butler Snow LLP
6075 Poplar Ave., Suite 500
Memphis, TN 38119
Attention: Scott Shanker

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

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

15.14 Gender and Number. Whenever the context of this Agreement requires, the gender of all words herein shall include the masculine, feminine, and neuter, and the number of all words herein shall include the singular and plural.

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

15.16 Survival. All of the representations, warranties, covenants, and agreements made by the Parties in this Agreement or pursuant hereto in any certificate, instrument, or document shall survive the consummation of the transactions described herein, and may be fully and completely relied upon by Seller, Coles and Buyer, as the case may be, notwithstanding any investigation heretofore or hereafter made by any of them or on behalf of any of them, and shall not be deemed merged into any instruments or agreements delivered at the Closing or thereafter. The representations and warranties contained in or made pursuant to this Agreement shall survive the Closing for a period of four (4) years following the Closing Date; provided, however, each of the representations and warranties set forth in Section 4.7 (Medicare Participation), Section 4.9 (Regulatory Compliance), Section 4.15 (Environmental Laws) and Section 4.16 (Taxes) shall survive the Closing for the statute of limitations. The period from the date hereof until the last

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date on which a representation, warranty, covenant or other obligation survives pursuant to this Section 13.17 shall be known as the "Survival Period." Notwithstanding anything herein to the contrary, the Survival Period shall not apply in the event of fraud.

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

15.18 Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, COMMON LAW OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

15.19 Accounting Date. The transactions contemplated hereby shall be effective for accounting purposes as of 12:01 a.m. on the day following the Closing Date, unless otherwise agreed in writing by Seller and Buyer.

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

15.21 No Third Party Beneficiaries. The terms and provisions of this Agreement are intended solely for the benefit of Buyer and Seller and their respective permitted successors or assigns, and it is not the intention of the Parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other person.

15.22 Entire Agreement/Amendment. With the exception of the Confidentiality Agreement dated as of October 25, 2019, between PCH and Buyer, this Agreement supersedes all previous contracts or understandings, including any offers, letters of intent, proposals or letters of understanding, and constitutes the entire agreement of whatsoever kind or nature existing between or among the Parties respecting the within subject matter, and no Party shall be entitled to benefits other than those specified herein. As between or among the Parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations and agreements contained in this Agreement and no others. All prior representations or agreements, whether written or verbal, not expressly incorporated herein, including, but not limited to those listed on See Schedule _____ and pursuant to Section 2.3(i), are superseded, and no changes in or additions to this Agreement shall be recognized unless and until

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made in writing and signed by all Parties hereto. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

15.23 Coles Guaranty. Coles hereby unconditionally and absolutely guarantees the prompt performance and observance by Seller of each and every obligation, covenant and agreement of Seller arising out of, connected with, or related to, this Agreement or any ancillary documents hereto and any extension, renewal and/or modification thereof. The obligation of Coles under this Section 13.24 is a continuing guaranty and shall remain in effect, and the obligations of Coles shall not be affected, modified or impaired upon the happening from time to time of any of the following events, whether or not with notice or consent of Coles:

(a) The compromise, settlement, release, change, modification, amendment (except to the extent of such compromise, settlement release, change, modification or amendment) of any or all of the obligations, duties, covenants, or agreements or any Party under this Agreement or any ancillary documents hereto; or

(b) 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 under or arising out of this Agreement or any ancillary documents hereto or the extension or the renewal thereof.

15.24 Risk of Loss. Notwithstanding any other provision hereof to the contrary, the risk of loss in respect of casualty to the Assets shall be borne by Seller prior to the Effective Time and by Buyer thereafter.

15.25 Advice of Counsel. The Parties hereto acknowledge that they have had the advice of legal counsel or otherwise have knowingly and intentionally opted not to seek advice of legal counsel before signing this Agreement and any exhibit or subsequent agreements required to facilitate the terms of this Agreement, together referred hereto as the "Agreement," and that they have been afforded the opportunity to consider the terms of this Agreement for a reasonable period of time prior to their execution. The Parties represent that they have carefully read this Agreement and finds that it has been written in language that each understands. The Parties have been given a reasonable period of time to consider whether to accept this Agreement, and has signed it only after reading, considering and understanding it. The parties further acknowledge that they have read this Agreement in its entirety; that they fully understand all of the terms and their significance; that they have signed voluntarily and of their own free will; and that they intend to abide by its provisions without exception.

15.26 Waiver of Terms. The Parties hereto acknowledge that this Agreement has certain documents included herein or otherwise referenced herein as a requirement or a required duty under the terms of this Agreement by virtue of an Exhibit, Schedule, Closing Transactional Documents or Title Documents and more specifically listed on an exhibit hereto titled "Listing of Included Documents Applying to this Transaction." To the extent that said documents are not included with this Agreement at time of signing, this Agreement, inclusive of all exhibits, schedules, or other documents entered into and/or tendered at time of signing shall continue in full force and effect. However, each party shall have no more than sixty calendar (60) days after

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entering into this Agreement to secure the other's acceptance in writing, via an addendum to this Agreement, of those documents that were not tendered or entered into or duty not performed at time of signing of this Agreement. This allowance shall end at end of business (5:00 P.M.) on the sixtieth day and any such documents that have not been properly joined hereto or performance of a duty completed under any term herein shall be considered waived and subject to full indemnification of the non-petitioning party should an action be instituted for its inclusion by the other party.

[signatures follow on the next page]

NOT AN OFFICIAL COPY - PUBLIC ACCESS - NOT AN OFFICIAL COPY

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in multiple originals by their authorized officers or members, as applicable, all as of the date next to each parties' name, becoming effective upon the last date signed by that party.

Nelandes Coles

Nelandes Coles
Nelandes Coles, individual

Dated: 01-31-2020

NelMed Holdings, LLC

Nelandes Coles
Nelandes Coles, Sole Member/Manager

Dated: 01-31-2020

Perry Community Hospital, LLC

Nelandes Coles
Nelandes Coles, Chairman/Owner

Dated: 01-31-2020

Expertus Health, LLC

Jason Weil
Jason Weil, CEO

Dated: 1-31-2020

(20)

(20)

EXHIBIT B

LAW OFFICES
GKH
GRANT KONVALINKA & HARRISON, P.C.

Ninth Floor, Republic Centre
633 Chestnut Street
Chattanooga, Tennessee 37450-0900

October 26, 2020

Telephone 423/756-8400
Facsimile 423/756-6518
www.gkhpc.com

Expertus Industries, Inc.
485 North U.S. Highway 17-92, Suite 415
Longwood, FL 32750
Attn.: Jason Weil, CEO

Via U. S. Mail certified

Re: Asset Purchase Agreement by and between Nelandes Coles, Nel Med Holdings, LLC, Perry Community Hospital, LLC, and Expertus Health, LLC

Dear Mr. Weil:

We represent the sellers in connection with the captioned Asset Purchase Agreement (the "Agreement"). This letter constitutes notice, pursuant to Section 14.1 of the captioned Agreement, of Expertus Health, LLC's default. Specifically, Expertus has failed to make its required \$100,000.00 payments due in October and November. Pursuant to the Agreement, Expertus Health, LLC has five (5) business days within which to cure the default. Please direct payment to the undersigned.

Sincerely,

J. Scott McDearman

cc: Scott Shanker, Esq.
Butler Snow, LLP
675 Poplar Avenue, Suite 500
Memphis, TN 38119

Nelandes Coles

EXHIBIT C

A/B MAC JURISDICTION J

Alabama, Georgia and Tennessee



PALMETTO GBA
A CELERIAN GROUP COMPANY

October 23, 2020

John Avery
Authorized Official
Perry Community Hospital
2718 Squirrel Hollow Dr
Linden, TN 37096-3526

RE: NOTICE OF AMOUNT OF MEDICARE PROGRAM REIMBURSEMENT
FOR: PERRY COMMUNITY HOSPITAL
COST REPORTING FISCAL PERIOD ENDED: DECEMBER 31, 2015
PROVIDER NUMBER: 44-0040

Dear Mr. John Avery:

In accordance with Title 42 of the Code of Federal Regulations (42 CFR), Section 405.1889 and Section 405.1803, this is your Notice of Amount of Medicare Program Reimbursement for the cost reporting period indicated above.

As a result of our examination of this cost report, our determination of your Medicare reimbursement for the indicated period is as follows:

PROVIDER NUMBER:	PART A:	PART B:	TOTAL
440040	(\$27,701)	\$22,043	(\$5,658)
44S040	\$47,164	\$0	\$47,164
44U040	\$0	\$0	\$0
Final Amount Due (Program)/Provider	\$19,463	\$22,043	\$41,506

The amount is scheduled to be paid to your facility within fifteen (15) days. However, if your facility has outstanding liabilities due the Medicare Program, we are obligated to recoup the applicable amounts from the payable above.

If you have questions concerning cost report adjustments, please contact JJCOSTREPORT@palmettogba.com. For questions concerning the collection of overpayments, commencement or suspension of withholdings, extended repayment requests or issuance of checks, please contact the Provider Contact Center at (877) 567-7271.

Sincerely,

Cristen Boles
Supervisor, Government Audit
Palmetto GBA, JJ

Enclosures: Final Cost Report including Adjustment Report
Appeal Rights/Filing Instructions
Reopening Rights/Filing Instructions

**APPEAL RIGHTS/FILING INSTRUCTIONS
NOTICE OF AMOUNT OF MEDICARE PROGRAM REIMBURSEMENT**

If you are dissatisfied with our determination and the amount of program reimbursement in controversy is at least \$1,000.00, you have the right to appeal our determination. To exercise your appeal rights, a written request must be filed within one hundred and eighty (180) calendar days of the date of this Notice of Program Reimbursement.

Effective January 9, 2018, the Jurisdiction J Cost Report Appeals function is performed by Palmetto GBA.

On July 2, 2015, the Centers for Medicare and Medicaid Services (CMS) announced that Federal Specialized Services, LLC (FSS) was awarded the Appeals Support Contract. FSS assumed full responsibility of the appeals support function previously handled by the Blue Cross Blue Shield Association (BCBSA) on September 30, 2015. All Provider Reimbursement Review Board (PRRB) Appeal related Appeal related correspondence and Intermediary (MAC) Appeals related correspondence should be sent to both FSS and Palmetto; please note the change in contact information below.

Effective August 16, 2018, the PRRB Electronic Filing System, **Office of Hearings Case and Document Management System (OHCDMS)**, is available. OHCDMS is a web-based portal for parties to enter and maintain their cases and to correspond with the Provider Reimbursement Review Board. Access to specific cases is limited to the parties of the case and the parties' designated representatives. The PRRB strongly urges the use of OHCDMS for appeal activities. See CMS.gov/Regulations and Guidance/PRRB Review for the most up-to date instructions for filing appeals and the use of OHCDMS.

When unable to use OHCDMS, please use the following instructions:

All correspondence/documentation should be submitted to Palmetto GBA and FSS in electronic format if possible. Ensure that any Adobe attachments are legible. Providers should submit Excel spreadsheets where applicable. The subject line of the email should list the case number, provider name, provider number, fiscal year end and the nature of the correspondence: For example: *Subject: Case No., ABC Provider, Provider No. 12-3456, FYE XX/XX/XXXX, Final Paper*

If situations arise where appeals correspondence cannot be sent electronically to either Palmetto GBA or FSS, please notify Cecile Huggins at 803-382-6242.

For MAC Appeals and all OPO/Histocompatibility Lab Appeals:	For Provider Reimbursement Review Board (PRRB) Appeals:
<p>Amount in controversy:</p> <p>MAC Appeals \$1,000 - \$9,999 OPO and Histo Labs \$1,000 or more</p>	<p>Amount in controversy:</p> <p>\$10,000 or more (\$50,000 or more, in aggregate, for group appeal)</p>
<p>Send request to: Federal Specialized Services (FSS)</p> <p>Electronic submission to FSS: intermediary@fssappeals.com</p> <p><i>If you are unable to send information electronically, send hardcopy correspondence to:</i></p> <p>Regular Mail or Courier Service</p> <p>Intermediary Appeals Federal Specialized Services 1701 S. Racine Avenue Chicago, Illinois 60608-4058</p>	<p>Send request to: Provider Reimbursement Review Board (PRRB)</p> <p>Electronic Submissions – See instructions for OHCDMS as noted above.</p> <p>If you are unable to send information electronically, send hard copy submissions to:</p> <p>Regular Mail or Courier Service Provider Reimbursement Review Board (PRRB) 1508 Woodlawn Drive, Suite 100 Baltimore, Maryland 21207 and Federal Specialized Services (FSS)</p>

Electronic submission to FSS:
prrb@fssappeals.com

*If you are unable to send information electronically,
send hardcopy correspondence to:*

Regular Mail or Courier Service

PRRB Appeals
Federal Specialized Services
1701 S. Racine Avenue
Chicago, Illinois 60608-4058

Send copy to:
Palmetto GBA

Preferred method for delivery:

Via email to:

JJAudit.Appeal@palmettogba.com

*If you are not able to send electronically,
send **unbound** correspondence to:*

Cecile Huggins
Palmetto GBA
Mail Code AG-380
Post Office Box 100307
Columbia, South Carolina 29202-3307

For Courier Service

2300 Springdale Drive, Building One
Camden, South Carolina 29020-1728

Send copy to:

Palmetto GBA

Preferred method for delivery:

Via email to:

JJAudit.Appeal@palmettogba.com

*If you are not able to send electronically, send
unbound correspondence to:*

Cecile Huggins
Palmetto GBA
Mail Code AG-380
Post Office Box 100307
Columbia, South Carolina 29202-3307

For Courier Service

2300 Springdale Drive, Building One
Camden, South Carolina 29020-1728

Information and procedures for filing PRRB appeals are available on the PRRB Website at <https://www.cms.gov/Regulations-and-Guidance/Review-Boards/PRRBReview/PRRB-Instructions.html>. Information and procedures for filing a MAC appeal is available in Part I of the Provider Reimbursement Manual, Chapter 29 (PRM-1).

**NOTICE OF AMOUNT OF MEDICARE PROGRAM REIMBURSEMENT
REOPENING RIGHTS/FILING INSTRUCTIONS**

The issuance of this Notice establishes the date of the MAC's determination of the amount of program reimbursement for the indicated cost reporting period. Under 42 CFR 405.1885 this determination is subject to reopening by the MAC, either on its own motion or at your request, at any time within three (3) years from the date of this determination to correct the amount of program reimbursement as reflected on page two of this notice. This determination may not be reopened after the expiration of this three- (3) year period except as provided in 42 CFR 405.1885(d).

The provider may initiate the reopening of a cost report through written notification to the MAC of an error in the finalized cost report or of new documentation that was not made available to the MAC during review of the cost report and that would revise the MAC's determination. A request by the provider must clearly identify the changes that they believe are necessary and include all of the documentation necessary to support their claim. This documentation must be in detail and complete and include summaries as well as copies of the original documents (invoices, check copies, contracts, etc.)

The provider may initiate the reopening of a cost report within three years of the date of the original Notice of Program Reimbursement. The provider may initiate the reopening of an amended cost report within three years of the date of the Amended Notice of Program Reimbursement, if the issue to be in question was the result of an adjustment made for that amended cost report.

The reopening process is not an appeal process whereby documentation that has already been reviewed by the MAC will be open to a second interpretation. The provider should pursue discussions of the adjustments with the audit supervisor, manager and finally the director, if need, prior to the settlement of the cost report. Argument with the decisions for documentation previously reviewed by the MAC is the domain of the appeals process.

A provider may request the reopening of a finalized cost report under the following conditions:

1. The MAC made an error in the application of the Law, regulations, CMS instructions, or Palmetto GBA policies, or in the posting of an adjustment made to the Medicare cost report as a result of a desk review or field review of the cost report.
2. The provider has acquired documentation that was not available for review by the MAC during the desk review or field review of the cost report.

A provider initiated request to reopen the cost report will **not** be accepted under the following conditions:

1. The provider fails to clearly identify the issues for which the reopening is being requested, i.e., a cover sheet identifying the error or new information being submitted.
2. The provider fails to include all of the documentation to support the request.
3. The documentation that is submitted by the provider was previously reviewed by the MAC as part of the desk review or field review, i.e., no new information provided.
4. The provider is requesting a change in cost report treatment from an acceptable cost report filing option to another acceptable filing option. e.g. a change in statistical basis for allocation of cost.

Note: It is the responsibility of the provider to ensure that the appeal rights are protected. If a reopening request has not been completed to the provider's satisfaction, a request for hearing must be filed timely to ensure that the appeal rights are not lost. In these cases, the MAC has the discretion to complete that reopening within the appeal process or to relinquish all authority to the MAC Hearing Officer or the PRRB.

The review of the provider's request to reopen the cost report will be based only on the documentation submitted prior to the review. If the MAC determines that the documentation supporting the request is not sufficient to support the provider's position, the request will be denied. Since the request was initiated by the provider, they will be notified of the results of the review through a Notice of Reopening or Denial letter from the MAC. It is the provider's responsibility to furnish all of the documentation necessary to support the request, so additional documentation will not be requested from the provider during the review process.

A decision not to reopen a cost report is not subject to appeal by the MAC Hearing Officer or the PRRB. If the provider failed to submit all of the available documentation with the initial request or prior to the MAC's review, the provider may begin the review process again by submitting a new request along with the appropriate documentation. However, if the three-year reopening period expires before a new reopening request is submitted, the new request for reopening will be denied.

All requests to reopen the cost report must be fully documented and prepared for secure transmission via the following options:

Via email at:

JJAudit.Reopening@palmettogba.com.

The subject line of the email should list the provider name, provider number, fiscal year end and the nature of the correspondence. For Example: Subject: ABC Provider, Provider No. 12-3456, FYE XX/XX/XXXX, Reopening Request Ensure that any Adobe attachments are legible. Providers should submit Excel spreadsheets where applicable.

Or regular mail:

Palmetto GBA
Cost Report Reopenings, JJ
Mail Code AG-390
Post Office Box 100307
Columbia, South Carolina 29202-3307

Or for courier service:

Palmetto GBA
Cost Report Reopenings, JJ
Mail Code AG-390
2300 Springdale Drive
BUILDING ONE
Camden, South Carolina 29020-1728

A/B MAC JURISDICTION J

Alabama, Georgia and Tennessee

PROVIDER NAME: PERRY COMMUNITY HOSPITAL
PROVIDER NUMBER: 44-0040
REPORTING PERIOD FROM: JANUARY 1, 2015 TO DECEMBER 31, 2015

We have not audited the provider's Medicare cost report for the cost reporting period captioned above.

Preparation of the cost report and compliance with Medicare laws, regulations, and instructions is the responsibility of the provider's management.

We have performed a limited review of the cost report. The attached Medicare cost report has been adjusted, where required, for items of noncompliance discovered during our limited review. Any such adjustments are listed in the attached adjustment report.

This report is intended for the information of the provider and the Centers for Medicare & Medicaid Services. This restriction is not intended to limit distribution of this report, which is a matter of public record, unless otherwise restricted by applicable laws.

Cristen Boles

Cristen Boles
Supervisor, Government Audit
Palmetto GBA, JJ

NPR DATE: October 23, 2020