

# **EXHIBIT 1A**

**Copy of the Declaration of Lisa Hughes,  
Including Exhibits A- through C**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION  
CIVIL ACTION NO. 5:15-cv-00229-BO

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10 LLC,  
HMC/CAH CONSOLIDATED, INC.; and  
RURAL COMMUNITY HOSPITALS OF  
AMERICA, LLC

Defendants.

**EXHIBIT 1**  
**DECLARATION OF LISA HUGHES**

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION  
Civil Action No. 5:15-cv-229

COUNTY OF YADKIN,

Plaintiff,

v.

CAH ACQUISITION COMPANY 10 LLC,

Defendant.

**DECLARATION OF**  
**LISA HUGHES**

I, Lisa Hughes, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am the County Manager/Finance Officer for Plaintiff Yadkin County (the “County”).
2. The County owns the land and fixtures upon which the Yadkin Valley Community Hospital (the “Hospital”) is located. The Hospital is the only hospital in Yadkin County. The next closest hospital for most of the residents of Yadkin County is Hugh Chatham Memorial Hospital in Elkin, which is about 30 minutes by car from the Hospital.
3. On or about April 22, 2010, the County and the previous operator of the Hospital entered into a Sale and Lease Agreement (the “Agreement”) with Defendant CAH Acquisition Company 10 LLC (“Defendant”) pursuant to which Defendant purchased certain assets related to the Hospital and agreed to lease the Hospital and operate the Hospital as a community general hospital.
4. As County Manager, I am familiar with the County’s agreements with Defendant CAH Acquisition Company 10 LLC (“Defendant”). Attached hereto as Exhibit A is a true and correct copy of the Agreement.

5. The County and Defendant subsequently executed a lease agreement dated May 1, 2010, pursuant to which Defendant leased the Hospital from the County (the "Lease"). Attached hereto as Exhibit B are true and correct copies of the Lease, including all amendments thereto.

6. The term of the Lease has been extended by amendment through July 31, 2015.

7. Over the last several months, the County has been in negotiations with Defendant as well as other potential operators to take over operations at the end of the Lease term.

8. On May 22, 2015, the County heard from multiple sources that Defendant intended to close the Hospital on May 23, 2015.

9. The County, through its counsel, delivered a letter to Defendant that same day informing Defendant that it expected Defendant to continue operations through the expiration of the Lease term. A true and correct copy of this correspondence is attached hereto as Exhibit C.

10. Despite this notice, Defendant ceased operations and closed the Hospital sometime during the evening of May 22, 2015 or on May 23, 2015.

11. I have read in news reports that Defendant claims the County evicted the Hospital. The County has never instituted legal proceedings to evict Defendant, and to the best of my knowledge no County employee has taken any steps to interfere with Defendant's use or occupancy of the Hospital premises. To the contrary, the County's goal has been to keep the Hospital open and operating for local residents.

12. Defendant provided no advance public notice of its intent to close the Hospital, nor did it notify its patients that it would be closing. Likewise, Defendant provided no advance notice to the County of its intent to close the Hospital prior to the expiration of the Lease term.

13. As a result, the County has been inundated with calls and communication from concerned citizens, including patients of the Hospital and Hospital employees. I have spoken

with numerous individuals (including those employed by the Hospital) and patients who have had serious problems contacting health care providers, obtaining medical records, getting test results, and arranging for prescription refills.

14. The County has been forced to devote significant resources to dealing with the fallout of the sudden and unexpected closure of the Hospital.

15. Although the County has not re-entered the Hospital, the County understands that there are still medical records and controlled substances in the Hospital and has therefore placed Sheriff's deputies outside the Hospital to ensure that the Hospital premises remain secure.

16. Because the Emergency Room is no longer open and available for patients, the County has had to place EMS staff on site to attend to any patients who might seek treatment at the Emergency Room.

17. Additionally, I have personally had to deal with inquiries from the public on numerous issues related to the closure. For example, I received a call from a vendor on May 27, 2015, requesting access to the Hospital to remove equipment belonging to the vendor. He told me that the CEO of the Hospital, Shawn Bright, gave him my cell phone number and said that he needed to contact me for access to the Hospital. As I told the vendor, the County does not have keys to the Hospital premises and has not retaken the leased premises.

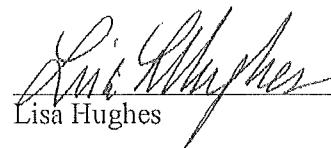
18. It is my understanding that several employees of Defendant have been working at the Hospital the last few days; however, the Hospital remains closed to the public, and the residents of Yadkin County are left without ready access to an emergency room and related hospital functions.

19. Since it has no meaningful alternative, due to the actions of Defendant, the County is taking steps to make alternative arrangements for the operation of the Hospital,

however I do not expect to be able to re-open the Hospital with another operator for at least several weeks.

Pursuant to 28 U.S.C §1746, I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 29, 2015



Lisa Hughes

AGREEMENT TO PURCHASE AND LEASE  
BY AND AMONG  
COUNTY OF YADKIN, NORTH CAROLINA  
HOOTS MEMORIAL HOSPITAL, INC.  
AS SELLER

AND

CAH ACQUISITION COMPANY 10 LLC  
AS PURCHASER

**ORIGINAL**

Exhibit A to Declaration of Lisa Hughes  
Plaintiff's Memorandum In Support of  
Motion For Order To Appear And Show Cause

## **SALE AND LEASE AGREEMENT**

THIS SALE AND LEASE AGREEMENT ("Agreement") is made and entered into as the last date written below (the "Agreement Date") by and between:

CAH ACQUISITION COMPANY 10 LLC, a Delaware limited liability company ("Purchaser"); and

COUNTY OF YADKIN, NORTH CAROLINA, a body corporate and politic, existing under the laws of the State of North Carolina (the "County"); and

HOOTS MEMORIAL HOSPITAL, INC., a North Carolina non-profit corporation (the "Corporation").

Hereinafter, the County and the Corporation are jointly and severally referred to as "Seller", and the Purchaser and Seller are individually referred to as a "Party" and collectively as the "Parties."

### **STATEMENT OF BACKGROUND INFORMATION**

1. Hoots Memorial Hospital is a critical access hospital located at 625 Main Street, Yadkinville, North Carolina 27055 (the "Hospital") that is owned by County and operated by Corporation as a going concern pursuant to the Lease Agreement between Corporation, as lessee, and County, as lessor, dated May 1, 1994 as amended July 1, 2004 (the "Lease").

2. On April 1, 2009, Seller and HMC Management Company LLC ("HMC"), an affiliate of Purchaser, entered the Management Services Agreement dated effective as of April 1, 2009 (the "MSA"), pursuant to which HMC is currently managing the day-to-day business affairs of the Hospital.

3. Seller desires to sell and transfer all of the Assets which are a part of, relate to or are used in the operation of the Hospital to Purchaser, and to lease to Purchaser the Hospital Property pursuant to the terms of the Hospital Lease (defined below).

4. Purchaser desires to purchase from Seller all of the Assets and lease from Seller the Hospital Property upon the terms and conditions set forth in this Agreement and in compliance with the requirements of the Act.

### **STATEMENT OF AGREEMENT**

NOW, THEREFORE, for and in consideration of the foregoing recitals (which are hereby made a part of this Agreement), the mutual representations, warranties, covenants, and agreements contained herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

## Article 1 - Definitions

1.1 Definitions. For purposes of this Agreement, in addition to other terms defined in this Agreement, the following terms shall have the meanings ascribed to such terms below:

"Act" shall mean the Hospital Licensure Act as prescribed in North Carolina General Statutes, Article 5 of Chapter 131E.

"Business of the Hospital" or "Business" shall mean the business of providing inpatient and outpatient hospital services, and related medical, nursing and healthcare services, as well as other operations of Seller conducted at or through the Hospital.

"Certificate of Need Law" means the Certificate of Need Law as prescribed in North Carolina General Statutes, Article 9 of Chapter 131E.

"Certificate of Occupancy" shall mean a certificate of occupancy or other evidence of completion issued by the appropriate Governmental Body in accordance with applicable building codes.

"Code" shall mean the Internal Revenue Code of 1986, as amended, or any successor law; and regulations issued by the Internal Revenue Service pursuant to the Internal Revenue Code or any successor law.

"Company Plans" shall mean collectively each and every plan, program, arrangement, fund, policy, practice, or contract through which, or under which the Corporation provides benefits or compensation to or on behalf of employees or former employees of the Hospital and dependents of such employees or former employees, whether formal or informal and whether or not written.

"Environmental law" means any federal, state or local law, statute, ordinance, code, rule, regulation, license, authorization, decision, order, injunction, decree, or rule of common law, and any judicial interpretation of any of the foregoing, which pertains to health, safety, any hazardous material (defined below), or the environment (including ground, air, or water pollution or contamination, and underground or above-ground storage tanks) and shall include without limitation: the Solid Waste Disposal Act, 42 U.S.C. § 6901 *et seq.*; the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601 *et seq.* ("CERCLA"), as amended by the Superfund Amendments and Reauthorization Act of 1986 ("SARA"); the Hazardous Materials Transportation Act, 49 U.S.C. § 1801 *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.*; the Clean Air Act, 42 U.S.C. § 7401 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. § 2601 *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f *et seq.* and any other state or federal environmental statutes, and all rules, regulations, orders and decrees now promulgated under any of the foregoing.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, or any successor law; and regulations and rules issued pursuant to that act or any successor law.

"Governmental Body" shall mean any federal, state, local, municipal, or other government or governmental or quasi-governmental authority of any nature, including any governmental agency, bureau, board, commission, branch, department, official, entity, or other instrumentality, and any court or other tribunal.

"Hazardous Material" means: (a) any petroleum or petroleum products, petroleum constituents, petroleum-derived substances or wastes, flammable materials, explosives, radioactive materials, asbestos in any form that is or could become friable, urea formaldehyde foam insulation and transformers or other equipment that contain dielectric fluid containing levels of polychlorinated biphenyls (PCBs); and (b) any other chemical or other material, constituent or substance, exposure to which is prohibited, limited or regulated by any Governmental Body under any Environmental Law, or which could give rise to liability under any Environmental Law.

"Hospital Property" shall mean the real property more particularly described in Schedule 1.1 hereto, including all easements appurtenant thereto and buildings and improvements thereon, plants, fixed assets, buildings, structures, fixtures (including fixed machinery and fixed equipment), mechanical systems, and parking areas located thereon and all rights, easements and appurtenances thereto.

"Includes", "including", and their variant forms are illustrative and not limitative and are synonymous with the phrases "includes but is not limited to", "including but not limited to" and "Including without limitation."

"Knowledge" "knew," and their variant forms mean that an individual will be deemed to have Knowledge of a particular fact or other matter if that (a) individual is actually aware of that fact or matter or (b) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy of any representation or warranty contained in this Agreement. A Person (other than an individual) will be deemed to have Knowledge of a particular fact or other matter if any individual who is serving, or who has at any time served, as a director, officer, or member of that Person (or in any similar capacity) has, or at any time had, Knowledge of that fact or other matter as set forth in (a) and (b) above.

"Liens" shall mean any and all liens, claims, charges, judgments, deeds to secure debt, security interests, and encumbrances of any kind or nature whatsoever.

"Person" shall mean any individual, corporation (including any nonprofit corporation), general or limited partnership, limited liability company, joint venture, estate, trust, association, organization, labor union, or other entity or Governmental Body.

"Release" means any release, spill, escaping, emission, leaking, pouring, dumping, seepage, filtration, pumping, disposal, discharge, leaching or migration into the indoor or outdoor environment, including the movement of Hazardous Materials through ambient air, soil, surface water, groundwater, wetlands, land or subsurface strata.

"Schedule" shall mean those schedules annexed hereto and referenced herein which are incorporated in their entirety by reference in this Agreement.

"Substantial Completion" and its variant forms means the later of (a) the issuance of a license by the State of North Carolina for the operation of the Replacement Hospital (defined below) or (b) the initial opening for business to the public of the Replacement Hospital on a fully operational basis.

## Article 2 – Sale and Lease Agreements

**2.1 Sale of Hospital Business and Assets.** On and subject to the terms and conditions of this Agreement and the Act, at Closing (defined below), County and Corporation, to the full extent of their respective interests therein, shall sell, assign, transfer, and convey to Purchaser, and Purchaser shall purchase, the Hospital Business as a going concern and the Assets as described in Section 2.2 hereof, free and clear of any and all Liens other than the "Permitted Exceptions" which are listed in Schedule 2.1.

**2.2 Description of Assets.** As used herein, the term "Assets" means the following assets, properties and rights used or generated in the conduct of the Business of the Hospital, except for the Excluded Assets (defined below):

- (a) Cash, bank accounts, negotiable securities, certificates, deposits, and other cash equivalents, all prepaid items and prepaid expenses relating to the Assets (including rents, subscriptions, and the like);
- (b) Inventories of supplies, purchased goods, and other disposables or consumables used or maintained in connection with or located in the Hospital on the Closing Date (defined below), including food, cleaning materials, disposables, linens, consumables, office supplies, drugs and medical supplies;
- (c) Accounts receivable, whether or not the same have been charged-off as bad debt, including those arising under the Medicare and Medicaid programs (the "Programs").
- (d) Tangible business and personal property; medical equipment, together with related parts, accessories and the like; and all other equipment, machinery, furniture, furnishings, fixtures, telephones and telephone systems, computer equipment (including hardware and software), copiers, facsimile machines, tools, instruments and other tangible personal property located in the Hospital on the Closing Date;
- (e) To the extent transferable under applicable laws and regulations, all provider numbers and agreements under the Programs (of which Purchaser hereby elects to accept the automatic transfer and assignment), and all other licenses and permits held by Seller relating to the Business which are owned and used by Seller to use the Assets and to conduct the Business of the Hospital;
- (f) All amounts payable to Seller under the Programs applicable to cost reports of the Business filed for services rendered prior to and through the Closing Date, including any amount payable if any gain related to this transaction is deemed to have occurred;
- (g) Cost reports of the Business relating to the Programs and other third-party payors filed for services rendered through the Closing Date, and any correspondence, work papers and other documents related thereto (provided Seller shall

have reasonable access to such documents), including all rights to reopen or appeal any determination of the Programs applicable to cost reports of the Business filed for services rendered through the Closing Date;

(h) Books and records relating to the Assets and the Business of the Hospital, including computerized and other data and databases, files, papers, correspondence, purchase orders, warranties, patient and vendor lists, telephone numbers (including mobile and cellular telephone numbers and pager numbers), telecopier numbers, personnel records, manuals related to the Assets, patient medical records and other patient information, records relating to third-party payors and managed care plans and contracts, documents pertaining to financing of the Hospital or Assets, and all other books, records, manuals, files and papers relating to the Assets and the Business of the Hospital;

(i) Intangible assets associated with the Assets and the Business, including Seller's rights, title and interest, if any, to trademarks, trade names, trade styles, service marks and copyrights, all trade secrets or processes, all confidential or proprietary information, and all other items of intellectual property, all to the extent either owned or licensed by Seller, and rights, judgments, causes of action, claims and demands of Seller, whether or not liquidated, related to the Assets including rights or causes in action under express or implied warranties relating to the Assets, and goodwill of and associated with the Assets and the operation of the Business of the Hospital;

(j) Rights of Seller, including deposits and prepayments, under the leases and contracts listed in Schedule 2.2 and any other leases and contracts entered into by HMC on behalf of Seller pursuant to the MSA (whether or not listed in Schedule 2.2) (collectively, the "Leases and Contracts");

(k) All insurance proceeds (including deductibles, co-payments or self-insured requirements) arising in connection with damage to the Assets and any claims of Seller against third parties relating to the Assets, or the Business, known or unknown, contingent or otherwise;

(l) Refunds, credits and rebates with respect to purchases made by Seller or the Hospital under any of Seller's purchasing programs or group purchasing contracts; and

(m) All other properties and assets, whether tangible or intangible, located at any building or facility used in connection with the Hospital wherever located, and whether or not any such properties and assets are described on the schedules or are carried on Sellers' books.

2.3 Information Systems. The Parties intend that Seller transfer to Purchaser to the extent practicable the existing information processing capabilities, including hardware and software used in the conduct of the Business of the Hospital. Subject to receipt of any necessary third-party consents as described below, Seller agrees to assign and transfer information systems and associated licenses, maintenance and support agreements to Purchaser. To the extent that Seller's rights to any of the affected Information systems or associated licenses or contracts, or the use or benefit thereof, may not be assigned or transferred without the consent of another Person, Seller and Purchaser shall cooperate with

each other in attempting to obtain such consents as are necessary to authorize the actions contemplated by this Agreement.

2.4 Certain Consents. Schedule 2.4 lists the consents that Seller must obtain prior to Closing. To the extent that Seller's rights to any of the Assets to be assigned and transferred to Purchaser hereunder may not be assigned or transferred without the consent of another Person, which consent is not required to be obtained prior to Closing, or may not be assigned or transferred under applicable laws and regulations, this Agreement shall not constitute an agreement to assign or transfer the same if an attempted or actual assignment or transfer would constitute a breach thereof or be unlawful, and Seller, to the maximum extent permitted by law and any terms of or limitations relating to such Asset, shall use its commercially reasonable efforts to obtain for Purchaser the benefits thereunder without violating the terms of such Lease and Contract and without incurring any material expense or otherwise taking any material actions or measures, and shall cooperate with Purchaser in any reasonable arrangement designed to provide such benefits to Purchaser; provided, that, Purchaser shall perform at its sole expense the obligations of Seller to be performed after the Closing under the Lease and Contract in question.

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

2.6 Excluded Assets. Notwithstanding Section 2.2, the Assets shall not include (a) any right, title and interest to the Hospital Property (other than Hospital Lease), (b) Seller's minute book, stock book and similar corporate records, (c) Seller's fiscal and tax records (provided Purchaser shall have reasonable access to such documents), (d) all rights, claims or causes of action against third parties, including, without limitation, all of the foregoing relating to or arising in connection with the satisfaction and discharge of the Excluded Liabilities, (e) this Agreement, including the right to receive the Cash Payment, and all other agreements entered into by Seller in connection with the consummation of the transactions contemplated hereby, (f) all monies and other proceeds from the sale or other disposition of any Excluded Assets and (g) any other assets of Seller not used or generated in the operation of the Business, and all such assets shall be excluded from and shall not be sold or transferred to Purchaser (the "Excluded Assets").

2.7 Assumed Liabilities.

(a) Except as provided in Section 2.8, at Closing, Purchaser shall assume and will become liable for all liabilities and obligations of Seller under the Leases and Contracts, and all other liabilities and obligations of Seller for the Business as the same are recorded in the financial statements of the Hospital on the Closing Date (the "Assumed Liabilities"). Notwithstanding the foregoing sentence, the term "Assumed Liabilities" shall also include liabilities arising from overpayments received by the Hospital from third party payers, including

without limitation, federal health insurance programs, during the time the Hospital has been operated by HMC.

(b) Purchaser shall assume the due and punctual payment, according to its tenor, of the promissory note (the "Promissory Note") made by the Corporation to the County, a true copy of which is attached to Schedule 2.7(b); it being understood and agreed by the Parties that a portion of the proceeds of such promissory note were used by the Corporation to pay certain tax liabilities or obligations with respect to the Business for periods prior to Closing.

2.8 Excluded Liabilities. Seller shall remain responsible for the following debts, liabilities and obligations (collectively, the "Excluded Liabilities"), including the following:

(a) Any liabilities, duties or obligations to Diamond Healthcare Corporation, Inc., ("Diamond Healthcare") except as otherwise provided in the Forbearance and Tolling Agreement dated January 5, 2010;

(b) Any liabilities, duties or obligations under the Affiliation Agreement dated April 1, 2009 by and between North Carolina Baptist Hospital, a North Carolina non-profit corporation ("NCBH"), and Corporation, it being agreed between the Parties that Corporation shall, at the earliest opportunity after the end of the initial term thereof, exercise its right to terminate, without cause;

(c) Any liabilities, duties or obligations under the Membership Transfer and Corporate Reorganization Agreement dated March 25, 2009, by and among NCBH, Corporation, and County;

(d) Any liabilities, duties or obligations under the Lease, it being agreed between Parties that at Closing, Seller shall provide to Purchaser an acknowledgement that all the obligations under the Lease have fully performed and satisfied and that the Lease has been terminated;

(e) Any liabilities for intercompany accounts or other indebtedness due to the members or affiliates of Seller;

(f) Except as otherwise provided in Section 2.7(b) above and except to the extent arising out of or resulting from the breach by HMC of its covenants and agreements under the MSA, any liabilities for Federal, state or local tax liabilities or obligations with respect to the Business or the Assets for periods prior to Closing or resulting from the consummation of the transactions contemplated herein;

(g) Except to the extent arising out of or resulting from the breach by HMC of its covenants and agreements under the MSA, any liabilities for claims by or on behalf of the employees of the Business relating to periods prior to Closing including liability for or arising out of any Seller's Company Plans liability for any EEOC claim, wage and hour claim, unemployment compensation claim or workers' compensation claim, and liability for all employee wages and benefits including severance pay and related taxes or other liability related thereto in respect of employees;

(h) Any liabilities arising out of or in connection with any Seller's Company Plans contributed to by Seller or any affiliate of Seller;

(l) Except to the extent arising out of or resulting from the breach by HMC of its covenants and agreements under the MSA, any liabilities arising out of any breach by Seller prior to Closing of any Contracts and Leases or, at any time, of any contract, lease or agreement not assumed by Purchaser;

(j) Except to the extent arising out of or resulting from the breach by HMC of its covenants and agreements under the MSA, any liabilities attributable to periods prior to the Closing Date and asserted under the federal Hill-Burton program or other restricted grant and loan programs with respect to the ownership or operation of the Business or the Assets;

(k) Except to the extent arising out of or resulting from the breach by HMC of its covenants and agreements under the MSA, any liabilities arising out of or in connection with claims for alleged acts or omissions relating to the ownership or operation of the Business or the Assets that occurred prior to Closing including liabilities relating to any professional malpractice or general liability claim;

(l) Any liabilities arising out of contracts and agreements between Seller or any members or affiliates of Seller;

(m) Any liabilities arising out of or incurred solely as a result of any transaction of Seller occurring after Closing or for any violation by Seller of any law, regulation or ordinance at any time; and

(n) Except to the extent arising out of or resulting from the breach by HMC of its covenants and agreements under the MSA, any liabilities under any environmental law relating to any Release in or on the Hospital Property, or any offsite Release relating to, any Hazardous Material located on in or under the Hospital Property on or prior to Closing.

## 2.9 Lease of Hospital Property.

(a) At Closing, County shall (a) lease to Purchaser the Hospital Property, pursuant to the terms of a lease agreement between Purchaser and Seller in the form attached hereto as Schedule 2.9(a) (the "Hospital Lease") and (b) execute and deliver the landlord waiver between County, Purchaser, and Gemino Healthcare Finance, LLC, in the form attached hereto as Schedule 2.9(b) (the Landlord Waiver").

(b) The Parties acknowledge and agree that it is the intent of the Seller to lease to Purchaser all the real property used in the operation of the Business. If at any time before or after Closing, any tract or parcel of real estate (or improvements and fixtures thereon or any easement, appurtenances or rights related thereto), is misidentified, incorrectly described or identified as being owned or leased by a particular entity or inadvertently not included in the Hospital Lease and such errors are discovered subsequent to execution of this Agreement, Seller agrees that the Hospital Lease shall be amended by mutual agreement to correct such errors.

### Article 3 – Consideration and Closing

3.1 Cash Payment. On the Closing Date, provided that all conditions of Closing as set out in this Agreement are met, a cash consideration of \$1,600,000.00 (the "Cash Payment") shall be paid to Seller for the Assets, as follows:

- (a) The amount due to Diamond Healthcare from Seller under the terms of the Forbearance and Tolling Agreement shall be paid directly to Diamond Healthcare at Closing, as memorialized in the Settlement Agreement executed and delivered contemporaneously with such payment.
- (b) The amount due (if any) to Purchaser from Seller under the terms of the MSA shall taken by Purchaser as a credit against the Cash Payment at Closing.
- (c) After deducting the amounts set out in Sections 3.1(a) and (b) from the Cash Payment, remaining balance due for the Cash Payment is payable by Purchaser to Seller at Closing in immediately available funds, either by official bank check or wire transfer to an account designated by Seller, in writing.

The Cash Payment shall be allocated among the Assets as determined by Purchaser and reasonably acceptable to Seller. Each of the Parties agrees and covenants to report this transaction in accordance with such allocation and not to take a position before any Governmental Body in any way inconsistent with the terms such allocation. All above-referenced closing payments shall be reflected on a closing statement to be executed by the Parties at Closing.

### 3.2 Construction of Replacement Hospital.

(a) Purchaser hereby covenants and agrees with Seller that following Closing, Purchaser shall construct a new facility (the "Replacement Hospital") to replace the existing facility of the Hospital on approximately 15 acres of land in the immediate vicinity of Yadkinville, NC (the "Replacement Site"). The Parties acknowledge and agree that Purchaser's obligations under this Agreement are conditioned upon its ability, concurrent with Closing, to acquire the Replacement Site. Purchaser shall, within its sole discretion, have the right to determine the suitability of the Replacement Site for the development and construction of the Replacement Hospital. Notwithstanding the foregoing, if the Replacement Site is not acquired concurrently with the closing, the Purchaser agrees to waive this condition.

(b) Purchaser shall commence construction of the Replacement Hospital no more than 3 years after the Closing Date and shall achieve Substantial Completion no later than 12 months after the construction commencement date. If Purchaser has been prevented from commencing construction or achieving Substantial Completion by such time periods due to Acts of God, the failure to receive any required consent of a Governmental Body (such failure not being due to Purchaser's negligence or willful misconduct) or delays (notwithstanding good faith and diligent efforts) caused by the inability to obtain either construction or long-term financing for the Replacement Hospital, Purchaser shall promptly notify Seller of such in writing and the time for commencing construction or achieving Substantial Completion shall be extended for the period of any such delay. Purchaser shall, at all times, use good faith efforts to remedy with all reasonable dispatch the cause or causes preventing it from commencing construction and achieving Substantial Completion.

(c) After Substantial Completion of the Replacement Hospital, Seller shall deliver to Purchaser (and if requested, any mortgagee of Purchaser) with a certificate so certifying (the "Completion "Certificate"), and the Completion Certificate shall be deemed to be conclusive evidence that Purchaser has performed its obligation to substantially complete the Replacement Hospital in accordance with the provisions of this Agreement and applicable law. If Seller shall refuse or fail to provide the Completion Certificate in accordance herewith within 30 days after written request therefore by Purchaser, then Seller shall within such 30 day period provide Purchaser with a written statement indicating in adequate detail in what respects Purchaser has failed to achieve Substantial Completion in accordance with the provisions of this Agreement or applicable law, and what measures and acts, in the opinion of Seller, Purchaser shall take or perform in order to obtain the Completion Certificate. The delivery of the Completion Certificate shall not be unreasonably withheld, conditioned or delayed by Seller. If Seller, without reasonable justification (which shall be set forth in a written notice by Seller to Purchaser) and after 30 days additional written notice, shall refuse or fail to provide the Completion Certificate within the time set forth above, then Seller shall be conclusively deemed to have issued the Completion Certificate to the full extent allowable under applicable law.

3.3 Guaranty of Purchaser's Parent. Purchaser shall cause its parent corporation, HMC/CAH Consolidated, Inc. ("Purchaser's Parent"), to guarantee the performance of Purchaser's duties and obligations under this Agreement and the Hospital Lease pursuant to the terms of a guaranty agreement between Purchaser's Parent and Seller in the form attached hereto as Schedule 3.3 (the "Guaranty").

3.4 Specifications of Replacement Hospital. The Replacement Hospital will be constructed in Substantial Compliance with the following specifications subject to any modifications required in order to comply with applicable law:

(a) The Replacement Hospital shall operate as a critical access hospital having 25 beds or less.

(b) The quality and finish of the structure shall be substantially similar to the hospital facility of Drumright Regional Hospital, Drumright, OK. General site work will include all the grading necessary to develop the pad for the structure, parking, storm drainage control, an emergency helipad site, concrete curbs, asphalt paving, concrete sidewalks and grass seed, and sod and plantings.

(c) The structure will be a one story building of approximately 25,000 sq. feet, expandable in the future to 40,000 sq. ft., concrete slab-on-grade with concrete footings. The building frame will be steel columns, bar joists and roof decking with a built-up modified bitumen roof system. The exterior will either be pre-cast concrete, brick veneer, artificial stone accents, artificial stucco (EIFS), with rear and backsides of pre-finished exterior metal panels.

(d) The interior will include partitions, doors, frames and finishes for a functional hospital design and operation. Partitions will be metal stud and gyp-board construction with some masonry block where deemed appropriate for moisture control. Floors will be a combination of vinyl composition tile, sheet vinyl and carpeting. Wall finishes will generally be paint with accents of vinyl fabric. Ceilings will be lay-in acoustical tile to allow access of the ceiling plenum for wiring ductwork, etc. Where required by health code to be hard surfaces, sheet rock ceilings will be provided, painted as a washable surface.

(e) The structure will be fully fire sprinkled. Electrical systems are anticipated to have 480/277/120 volt 3-phase, with low voltage communication systems, fire alarm systems, data and telephone wiring. Mechanical systems are anticipated to be rooftop AHU's, VAV and Constant Volume systems with electric reheat, a ducted supply system for fresh air, and a temperature control system with energy management capabilities.

(f) Medical equipment, furniture and fixtures, will be provided throughout for a functional facility. The Assets will be reused where practical and reasonable to relocate to the Replacement Hospital. New equipment will supplement for a complete installation.

3.5 Closing. The closing of the purchase and sale of the Assets and the lease of the Hospital Property pursuant to this Agreement (the "Closing") shall be held at 10:00 a.m. on April 30, 2010, or at such other time as the Parties mutually agree, but in no event later than June 30, 2010 unless the Parties agree otherwise in writing (the "Closing Date"), at a mutually acceptable location, subject to the satisfaction or appropriate waiver of all conditions precedent as set forth in this Agreement and the Act. The Closing shall be deemed to be effective as of 11:59 p.m. on the Closing Date. In no event shall the Closing Date be set prior to the time that Seller has received from its counsel a legal opinion that the purchase and sale of the Assets and the lease of the Hospital Property is in compliance with § 131E-13 of the Act. At the Closing, the Parties shall deliver or cause to be delivered, or perform the following:

(a) Seller shall deliver to Purchaser (i) all instruments necessary or appropriate to convey good and marketable fee simple title to the Assets subject only to the Permitted Exceptions, (ii) possession of the Assets, (iii) the Hospital Lease and Landlord Waiver duly executed, (iv) written consents and agreements to the assignment of the Leases and Contracts, and such other consents, waivers, releases and other agreements pertaining to the Assets as required in this Agreement, (v) an assignment and assumption agreement in form and substance satisfactory to the Parties with respect to the assumption by Purchaser of the Assumed Liabilities (the "Assumption Agreement"), duly executed, and (vi) such other certificates, instruments, affidavits and other documents as Purchaser or its counsel may reasonably request;

(b) Purchaser shall deliver to Seller (i) the remaining balance if the Cash Payment as determined in Section 3.1(b), (ii) the Assumption Agreement duly executed, (iii) the Hospital Lease and Landlord Waiver duly executed, and (iv) such other documents as Seller or its counsel may reasonably request; and

(c) Seller and Purchaser shall each pay one half (1/2) of any applicable property transfer tax. Any ad valorem, personal property, and excise taxes payable with respect to the Assets, which relate to the 2010 tax year, shall be pro-rated between Purchaser and Seller, and when actual information is available, the final adjustments and pro-rations shall be determined and settlement shall be made between the Parties.

3.6 Further Assurances. From and after the Closing Date, Seller agrees, without further consideration, to execute and deliver promptly to Purchaser such further consents, waivers, assignments, and other documents and instruments, and to take all such further actions as Purchaser may from time to time reasonably request with respect to the consummation in full of the transactions provided for herein. The foregoing shall survive the Closing.

3.7 Fees and Expenses. Purchaser shall bear its own fees and expenses for legal, financial, accounting and consulting, as well as any other fees and expenses incurred by it. Purchaser shall reimburse Seller for professional consulting fees relating to the development of the Request for Proposal, this Agreement, the lease of the Hospital Property, and purchase and sale of the Assets, whether or not the Closing occurs. Such professional consulting fees shall include, without limitation, legal and accounting fees and expenses related thereto.

#### Article 4 - Representations and Warranties of Seller

Purchaser acknowledges that it is buying the Assets "as is/where is" and that HMC has managed the operations of the Hospital prior to Closing under the terms of the MSA. Accordingly, Purchaser agrees not to claim that Seller breached a representation or warranty when Purchaser or HMC knew the representation or warranty was not accurate as of the Closing Date. Subject to the foregoing, Seller hereby represents and warrants as follows:

4.1 Organization. The County is a body corporate and politic, existing under the laws of the State of North Carolina. The Corporation is nonprofit corporation duly organized, validly existing, in good standing, and is qualified to do business in the State of North Carolina.

4.2 Qualification. Seller has the power and authority to own and operate the Hospital offering all of the services offered by the Hospital as of the Agreement Date, to conduct the Business of the Hospital, and to own and use the Assets and lease the Hospital Property.

4.3 Authority; Execution and Delivery.

(a) Seller has the power and authority to enter into this Agreement and all other agreements, certificates, instruments, affidavits and other documents contemplated herein (collectively, the "Closing Documents") to which it is a party and to consummate the transactions contemplated thereby. The execution, delivery, and performance of this Agreement and the Closing Documents by Seller has been authorized and approved by all necessary action on the part of Seller and this Agreement and each of the Closing Documents executed by Seller is the legal, valid, and binding obligation of Seller enforceable against Seller in accordance with its terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally, and to the exercise of judicial discretion in accordance with general equitable principles.

(b) Neither the execution nor delivery of this Agreement or any of the other Closing Documents executed by Seller, nor the consummation or performance by Seller of any of the transactions contemplated hereby will, directly or indirectly (with or without notice or lapse of time or both):

(i) violate the articles of incorporation, bylaws or other governing document or agreement of Seller;

(ii) violate, contravene or conflict with, any federal, state, local, municipal or other administrative constitution, law, statute, ordinance, regulation, principle of common law, or policy, or any award, decision, injunction, judgment, order, subpoena or verdict

entered, made or rendered by any court, administrative agency, department, official, or other Governmental Body, to which Seller is subject or by which the Hospital or any of the Assets or Business of the Hospital is bound;

(iii) contravene, conflict with, or result in a violation of any of the terms or requirements of, or give any Governmental Body or other Person the right to challenge, revoke, withdraw, suspend, cancel, terminate, or modify, any permit, license or approval that is held by Seller relating to the Hospital, the Business of the Hospital, or the Hospital Property or any of the Assets;

(iv) conflict with, result in a breach of, or constitute a default under any indenture, mortgage, lease, agreement, or other instrument to which Seller is a party or by which Seller, the Hospital, the Hospital Property, or any of the Assets is bound;

(v) result in the imposition or creation of any Lien upon any of the Assets or the Hospital Property; or

(vi) violate any material term or provision of, or result in a default, give rise to any right of termination, cancellation or acceleration, or cause the loss of any right or option, under any of the Leases and Contracts.

#### **4.4 Title and Condition of Assets and Hospital Property.**

(a) Seller has, and on the Closing Date will have, good, valid, marketable and indefeasible title to the Assets and the Hospital Property, free and clear of any and all Liens, except for the Permitted Exceptions.

(b) To the knowledge of Seller, there are no physical conditions of the Assets and the Hospital Property that could have a material adverse effect on Purchaser's operation of the Hospital in the manner currently being used and operated.

#### **4.5 Environmental Matters.**

(a) All operations or activities upon, or any use or occupancy of the Hospital Property, or any portion thereof, by Seller, and any agent or contractor (not including HMC) or employee of Seller ("Agents"), or, to the knowledge of Seller, any tenant or subtenant of Seller of any part of the Hospital Property, are and have been in all respects in compliance with all Environmental Laws except as would not reasonably be expected to have a material adverse effect on the Assets or the Business of the Hospital.

(b) Seller and, to the knowledge of Seller, Agents have kept the Hospital Property free of any Lien imposed pursuant to any environmental law.

(c) Except for use, generation, treatment, temporary storage and disposal of Hazardous Materials reasonably necessary to the customary operation of a hospital and in full compliance with all applicable environmental laws, neither Seller nor, to the knowledge of Seller,

Agents or any prior owners, operators, or occupants of the Hospital Property have allowed the release, manufacture, use, storage or presence of any Hazardous Materials on the Hospital Property that would have a material adverse effect on the Assets or the Business of the Hospital. Seller has obtained all environmental permits and other authorizations and approvals necessary for the operation of a hospital and related activities except where failure to obtain such permits, authorizations and approvals would not reasonably be expected to result in a material adverse effect on the Assets or the Business of the Hospital, all such permits, authorizations and approvals are in good standing and, to the knowledge of Seller, Seller is in compliance with all terms and conditions of such. Seller has no knowledge of any proceedings to substantially modify or revoke any such permits, authorizations or approvals.

(d) Neither Seller nor, to the knowledge of Seller, Agents have received any written communication that alleges that the Corporation is not or was not in compliance with all applicable environmental laws. Neither the Hospital Property, nor any part thereof, nor the Corporation is subject to any pending or, to the knowledge of Seller, threatened investigation or inquiry by any Governmental Body or other third party, or any remedial or removal obligations under any applicable environmental law.

(e) Neither Seller nor, to the knowledge of Seller, Agents have installed or permitted to be installed or have knowledge of friable asbestos or any substance containing asbestos or any other Hazardous Material on the Hospital Property that would reasonably be expected to result in a material adverse effect on the Assets or the Business of the Hospital.

(f) Seller and, to the knowledge of Seller, its Agents have not at any time engaged in, permitted or have knowledge of, nor to the knowledge of Seller, has any tenant or subtenant engaged in or permitted any Release (whether legal or illegal, accidental or intentional) of Hazardous Materials on the Hospital Property that would reasonably be expected to result in a material adverse effect on the Assets or the Business of the Hospital. Seller has not used the Hospital Property as a landfill, garbage or refuse dump site, waste disposal facility, transfer station or other type of facility for the treatment or disposal of solid waste or hazardous materials.

(g) To the knowledge of Seller, no material work, repairs, remedies, construction, or capital expenditure is required by any environmental law or land use laws or regulations with respect to the Hospital Property in order for the continued lawful use of the Hospital Property as a "hospital facility" as such term is defined in § 131E-16(15) of the Act.

(h) To the knowledge of Seller, there are no above-ground or underground storage tanks, or related pipes on any portion of the Hospital Property.

(i) Seller shall promptly notify Purchaser in writing of any order of which it is aware, receipt of any request for information or any notice of violation or noncompliance with any applicable law, rule, regulation, standard or order, any threatened or pending action of which it is aware by any regulatory agency or other Governmental Body, or any claims made by any third party of which it is aware relating to hazardous materials on, releases on or from, or threats of releases on or from any of the Hospital Property which relate to the period prior to Closing;

and shall promptly furnish Purchaser with copies of any correspondence, notices, or legal pleadings in connection therewith.

4.6 Litigation and Absence of Undisclosed Liabilities. Except as listed and described on Schedule 4.6, there are no claims, charges, arbitrations, grievances, actions, suits, proceedings, or investigations pending or, to the knowledge of Seller, threatened against the Corporation or affecting the Hospital or any of the Assets or the Business of the Hospital at law or in equity, or before or by any Governmental Body, which involve the likelihood of any adverse judgment or liability, whether or not fully covered by insurance.

4.7 Permits; Certificate of Need Exemption.

(a) Seller has all permits, consents, licenses and approvals required to operate the Hospital except where the failure to have such permits, consents, licenses and approvals would not reasonably be expected to result in a material adverse effect on the Assets or the Business of the Hospital, and each such permit, consent, license or approval is valid and in full force and effect. The Hospital is being operated, the Assets are being used, and the Business of the Hospital is being conducted in material compliance with the terms of all permits, consent, licenses and approvals and Seller has received no notice of and has no knowledge of any alleged violation of the terms of such.

(b) To the knowledge of Seller, the Hospital and the Business of the Hospital operate in material compliance with the Certificate of Need Law.

4.8 Taxes. Seller has timely filed all federal income tax returns and all state, county and local income, franchise, property, sales, use, and other tax returns relating to the Corporation, the Hospital, the Assets and the Business of the Hospital required to be filed (including any information return, report, statement, schedule, notice, form, or other document or information required to be filed with or submitted to any Governmental Body in connection with the determination, assessment, collection, or payment of any tax). Except as set forth on Schedule 4.8, Seller has paid all federal, state, county and local income, franchise, property, sales, use and all other taxes and imposed, assessed or collected by or under the authority of any Governmental Body that have become or are due with respect to the Corporation, the Hospital, the Assets or the Business of the Hospital regarding any period ended on or prior to the Closing Date. No tax Liens have been filed against the Corporation, the Hospital, the Assets or the Business of the Hospital, and no claim for any additional tax or assessment is being asserted against the Corporation or against or with respect to the Assets or the Hospital or the Business of the Hospital by any taxing authority.

4.9 Company Plans.

(a) Except as set forth on Schedule 4.9, the Corporation does not maintain and never has maintained any "employee welfare benefit plan" (within the meaning of Section 3(1) of ERISA) or any "employee pension benefit plan" (within the meaning of Section 3(2)(A) of ERISA). Seller further warrants that the Corporation maintains, administers, or contributes only to those sick leave, vacation pay, severance pay, salary continuation for disability, deferred

compensation, bonus, incentive compensation, life insurance, and scholarship programs for the benefit of its employees that have been disclosed on Schedule 4.9.

(b) No Company Plan is subject to Title IV of ERISA. No contingent or other liability with respect to which the Corporation has or could have liability exists under Title IV of ERISA to the Pension Benefit Guaranty Corporation or to any Company Plan or any plan sponsored by an employee organization that provides or provided benefits to the Corporation's employees and no assets of the Corporation are subject to a lien under Section 4064 or 4068 of ERISA.

(c) Seller has delivered to or made available for inspection by Purchaser true and complete copies of all plan documents, handbooks, IRS documents and filings, trusts agreements, contracts, correspondence, financial documents and other documents or instruments with respect to each Company Plan.

(d) To the knowledge of Seller, all Company Plans have been administered in compliance with their respective terms in all material respects, and are in compliance in all material respects with the applicable provisions of ERISA, the Code, and all other applicable laws. To the knowledge of Seller, the Corporation is not liable for any excise taxes under the Code or penalties under ERISA with respect to the Company Plans for any act or omission that occurred before the Closing Date.

(e) To the knowledge of Seller, none of the Company Plans have engaged in "prohibited transactions" within the meaning of Section 4975 of the Code or Section 406 of ERISA for which there is no exemption that has not been corrected or in relation to which appropriate excise taxes have not been paid.

(f) To the knowledge of Seller, the consummation of the transactions contemplated by this Agreement will not, alone or together with any other event, entitle any person to severance pay, unemployment compensation or any other payment under any Company Plan.

(g) Seller has no obligation to provide postretirement medical or other benefits to the Corporation's employees or former employees or their survivors, dependents, and beneficiaries, except as may be required under Section 4980B of the Code or Part 6 of Title I of ERISA or applicable state medical benefits continuation law, and Seller may terminate any such postretirement medical or other benefits upon 30 days notice or less without any liability thereunder.

4.10 Labor and Employment Matters. The Corporation is not a party to, nor does the Corporation have any obligation pursuant to, any oral or written agreement, collective bargaining agreement or otherwise, with any party regarding the rates of pay or working conditions of any of the employees of the Hospital, nor is the Corporation obligated under any agreement to recognize or bargain with any labor organization or union on behalf of such employees. The Corporation is in compliance in all material respects with all applicable federal, state, and local laws and regulations concerning the employer-employee relationship. The Corporation is not liable for any unpaid wages, bonuses, or commissions (other than those not

yet due) or any tax, penalty, assessment, or forfeiture for failure to comply with any of the foregoing.

4.11 Insurance. The following have been maintained continuously in full force and effect with respect to the Hospital, the Assets and the Business of the Hospital for the period the County has been the sole member of the Corporation: professional liability and comprehensive general liability and property damage insurance coverage in the minimum amounts and of the types generally maintained for similar businesses in the Industry; and all necessary insurance for the protection of employees of the Corporation as required of employers by the State of North Carolina or otherwise, including unemployment and workers' compensation coverage. Schedule 4.11 sets forth a summary of the Seller's current insurance coverage in connection with the Business of the Hospital. Schedule 4.11 also includes a list of any pending insurance claims relating to the operations, personnel and assets of the Corporation, including the Hospital.

4.12 Related Party Transactions. Except as set forth in Schedule 4.12 hereto, neither the Corporation nor any member of the Corporation's governing body, nor any officer or manager, nor any family member of any of the foregoing persons, has engaged in any prohibited transaction, conflict of interest or otherwise violated the terms of North Carolina General Statutes, §131E-14.2, Conflict of Interest.

4.13 The Programs.

(a) The Hospital is duly certified to participate, holds participation agreements in, and does participate in the Programs. The Hospital is in material compliance with all of the terms, conditions and provisions of the Programs, as well as state and federal laws related thereto.

(b) To the knowledge of Seller, all cost reports required to be filed by the Corporation under the Programs or other programs or any other applicable governmental or private provider regulations have been, or by the due date will be, prepared and filed in accordance with applicable laws, rules and regulations in all material respects, and the Corporation has paid or made provisions to pay through proper recordation of any net liability all Notices of Program Reimbursement received from the Programs, tentative settlements and other adjustments for periods ended prior to the Closing Date.

(c) Other than notices of overpayment received in the ordinary course of business or provided to Purchaser, no notice of overpayment, false claims or any offsets against future reimbursement has been received by Seller and to the knowledge of Seller, there are no pending appeals, adjustments, challenges, audits, litigation, notices of intent to reopen or open cost reports with respect to the Programs or other federal or state governmental health care programs.

(d) Seller has received no notice of any violation of federal or state fraud and abuse or self-referral laws, or any investigation or claim of such violation on the part of Seller, nor does Seller have any knowledge of any such violations in connection with the operation of the Business of the Hospital. Neither Seller nor, to the knowledge of Seller, any manager, director,

governing body member, officer or employee of Seller, nor, to the knowledge of Seller, any other Person (other than HMC pursuant to the MSA) acting on behalf of Seller, has engaged in any activities in connection with the operation of the Business of the Hospital which are prohibited under federal Medicare and Medicaid statutes, the federal CHAMPUS statute or regulations promulgated pursuant to such statutes, civil or criminal false claims, false statements and health care and other fraud statutes, or related state or local statutes or regulations. To the knowledge of Seller, all claims for reimbursement presented to the Programs or other governmental programs by the Corporation have been accurate and in compliance with all applicable statutes, rules and regulations in all material respects.

4.14 Medical Staff. Seller has delivered to Purchaser a complete list of medical staff members and any and all documentation related to (a) any pending or any threatened appeals, challenges, disciplinary or corrective actions, or disputes involving applicants, staff members, or health professionals at the Hospital or (b) any closed, completed or adjudicated disciplinary or corrective action involving present or former applicants, staff members or health professionals at the Hospital during the past 2 years.

4.15 Hill-Burton and Other Liens. Neither the Corporation nor any of its predecessors have received any loans, grants or loan guarantees pursuant to the Hill-Burton Act program, the Health Professions Educational Assistance Act, the Nurse Training Act, the National Health Pharmacy and Resources Development Act, and the Community Mental Health Centers Act, as amended, or other, similar laws or acts providing for the recovery of any public funds advanced under the provisions of such laws or acts relating to health care facilities for which the Corporation has any outstanding obligations; provided, however, Purchaser acknowledges that to the extent the Hospital is a recipient of Hill-Burton Act funds, the Hospital shall remain subject to the Hill-Burton Act's community service assurance.

## **Article 5 - Representations and Warranties of Purchaser**

Purchaser represents and warrants to Seller as follows:

5.1 Organization and Qualification. Purchaser is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware and has all corporate power and authority to conduct its business, to own, lease, or operate its properties in the State of North Carolina.

5.2 Authority.

(a) Purchaser has the power and authority to enter into this Agreement and all Closing Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. The execution, delivery, and performance of this Agreement and the Closing Documents by Purchaser has been authorized and approved by all necessary action on the part of Purchaser and this Agreement and each of the Closing Documents executed by Purchaser is the legal, valid, and binding obligation of Purchaser enforceable against Purchaser in accordance with its terms, except as enforceability may be limited by applicable equitable principles or by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting

creditors' rights generally, and to the exercise of judicial discretion in accordance with general equitable principles.

(b) Neither the execution nor delivery of this Agreement or any of the Closing Documents by Purchaser nor the consummation by Purchaser of the transactions contemplated hereby or thereby will directly or indirectly (with or without notice or lapse of time or both): (i) violate Purchaser's Articles of Organization or Bylaws; or (ii) violate, contravene or conflict with, or give any Governmental Body or other person the right to challenge any of the contemplated transactions or to exercise any remedy or obtain any relief under, any federal, state, local, municipal or other administrative constitution, law, statute, ordinance, regulation, principle of common law, or policy, or any award, decision, injunction, judgment, order, ruling, subpoena or verdict entered, issued, made or rendered by any court, administrative agency, department, official, or other tribunal or Governmental Body, to which Purchaser is subject.

5.3 Litigation. There is no suit, action, proceeding, claim or investigation pending, or, to Purchaser's knowledge, threatened, against Purchaser which would have a materially adverse effect on the assets, business, goodwill, or financial condition of Purchaser or which would prevent Purchaser from consummating the transactions contemplated by this Agreement.

5.4 Brokers and Finders. Purchaser has not incurred any obligation or liability to any party for brokerage fees, agent's commissions, or finder's fees in connection with the transactions contemplated hereby which have not been paid in full.

5.5 Correctness of Seller's Representations. Purchaser acknowledges that HMC has managed the operations of the Hospital prior to Closing and that to its or HMC's knowledge, no representation or warranty of Seller in this Agreement or in any schedule, exhibit, certificate or agreement attached hereto or furnished pursuant hereto, contains as of the Agreement Date any untrue statement of fact or omits to state any fact necessary in order to make the statements contained therein not misleading.

#### Article 6 – Actions Prior to Closing

6.1 Covenants of the Parties Relating to Actions Prior to Closing. Except as otherwise expressly contemplated by this Agreement, during the period from the Agreement Date to the Closing Date, Seller and Purchaser covenant and agree as follows:

(a) Seller will use reasonable efforts to satisfy the conditions to the Closing set out in Article 8 of this Agreement and Purchaser will use its best efforts to satisfy the conditions to Closing set out in Article 7 of this Agreement;

(b) Except as otherwise expressly provided in this Agreement, prior to the Closing Date, without the prior written consent of Purchaser, Seller will not (i) create or assume any Lien with respect to the Hospital or the Assets, whether now owned or hereafter acquired, (ii) sell, assign, lease, transfer or otherwise dispose of the Hospital, or sell, assign, lease, transfer or otherwise dispose any of the other Assets except in the ordinary course of business, (iii) make any change to the bylaws of the Hospital, or make

any change to the articles of incorporation, bylaws or other governing documents of Seller that inhibit this transaction, or (iv) take any action or omit to take any action that would cause any representation or warranty of Seller set out in this Agreement to become inaccurate or untrue in any material respect;

(c) Seller will maintain in effect with respect to the Assets and the Business the insurance policies set out in Schedule 4.11 hereto, except that with the prior consent of Purchaser, Seller shall be entitled to obtain and shall thereafter maintain insurance coverage substantially equivalent to that provided under such policies; or

(d) Seller shall not directly or indirectly enter into any agreement or understanding, written or oral, which would prevent the consummation of the transaction contemplated by this Agreement.

(e) Purchaser shall cause HMC to perform its obligations under the MSA in accordance with the terms therein.

#### Article 7 - Conditions Precedent to the Obligations of Seller

The obligations of Seller to sell the Assets and lease the Hospital Property, and otherwise carry out the terms of this Agreement are subject to the satisfaction, at or prior to Closing, of each of the following conditions, any or all of which may be waived in writing, in whole or in part, by Seller.

7.1 Accuracy of Representations and Warranties. Each and every representation, warranty and statement of Purchaser contained in this Agreement shall have been and are true, complete and correct in all material respects on the Agreement Date and on the Closing Date, and Seller shall have received the certificate of Purchaser to such effect.

7.2 Compliance; Termination. Purchaser shall have duly performed and complied with, in all material respects, all of the agreements, covenants, conditions, acts and undertakings required by this Agreement to be performed or complied by Purchaser at or prior to the Closing. Seller shall have received written acknowledgement signed by HMC that the MSA has been terminated effective as of the Closing Date.

7.3 Opinion of Counsel. Seller has received from its counsel a legal opinion that the purchase and sale of the Assets and the lease of the Hospital Property is in compliance with § 131E-13 of the Act.

7.4 Litigation. There shall not be any action, proceeding, investigation, regulation or legislation pending or overtly threatened which seeks to enjoin, restrain or prohibit the consummation of the transactions contemplated hereby, or to obtain damages from Seller in respect of the consummation of such transactions.

## Article 8 - Conditions Precedent to the Obligations of Purchaser

The obligations of Purchaser to purchase the Assets and lease the Hospital Property, and otherwise carry out the terms of this Agreement are subject to the satisfaction, at or prior to the Closing, of each of the following conditions, any or all of which may be waived in writing, in whole or in part by Purchaser.

8.1 Accuracy of Representations and Warranties. Each and every representation, warranty and statement of Seller contained in this Agreement (including any exhibits and schedules hereto) shall have been and are true, complete and correct in all material respects on the Agreement Date and on the Closing Date except for such breaches as do not have a material adverse effect on the Assets or the Business of the Hospital, and Purchaser shall have received certificates of the Seller to such effect.

8.2 Material Adverse Change Prior to Closing. The Corporation shall not have suffered any material adverse change since the Agreement Date in the Hospital, the Assets or the Business of the Hospital or the results of operation thereof, nor shall there have occurred since the Agreement Date any event that has had or is reasonably expected to have a material adverse effect on the Hospital, the Assets or the Business of the Hospital or the results of operations thereof.

### 8.3 Compliance; Terminations.

(a) Seller shall have duly performed and complied with in all material respects all of the agreements, covenants, conditions, acts and undertakings required by this Agreement to be performed or complied with by Seller at or prior to the Closing.

(b) Purchaser shall have received written acknowledgement signed by Seller that the MSA has been terminated effective as of the Closing Date.

(c) Purchaser shall have received a written acknowledgement signed by Seller that all the obligations under the Lease have fully performed and satisfied and that the Lease has been terminated.

8.4 Consents and Waivers. Purchaser shall have received each consent and waiver listed on Schedule 2.4 and Purchaser shall be reasonably satisfied with the terms of each such consent, waiver and agreement.

8.5 Instruments of Transfer. Seller shall have delivered to Purchaser such deeds, bills of sale, endorsements, assignments, and other instruments of conveyance and transfer necessary or appropriate to vest in Purchaser all of Seller's right, title and interest in and to the Assets, free and clear of all Liens other than Permitted Exceptions, all in form and substance reasonably satisfactory to counsel for Purchaser.

8.6 Litigation. There shall not be any action, proceeding, investigation, regulation or legislation pending or overtly threatened which seeks to enjoin, restrain or prohibit the

consummation of the transactions contemplated hereby, or to obtain damages from Purchaser in respect of the consummation of such transactions.

8.7 Opinion of Seller's Counsel. Purchaser has received from counsel for Seller, a written opinion, dated as of the Closing Date, addressed to Purchaser and satisfactory to counsel for Purchaser in form and substance, that:

(a) The corporate existences of Seller are as stated in Section 4.1 and Seller has the power and authority to sell, assign, transfer, convey and deliver to Purchaser the Business and the Assets;

(b) The purchase and sale of the Assets and the lease of the Hospital Property is in compliance with § 131E-13 of the Act;

(c) The execution, delivery and performance by Seller of this Agreement and any other agreements, documents or instruments to be executed and delivered by Seller pursuant to this Agreement have been duly authorized, executed and delivered by Seller and are the legal, valid and binding obligations of Seller, enforceable in accordance with their terms, subject to customary exceptions;

(d) To the best of such counsel's knowledge without inquiry, neither the execution and delivery of this Agreement by Seller, nor the consummation by Seller of the transactions contemplated by this Agreement, require the consent or approval of, the giving of notice to, registration, filing or recording with or the taking of any other action by Seller in respect of any Governmental Body; and

(e) To the best of such counsel's knowledge without inquiry, neither the execution and delivery of this Agreement or the Closing Documents by Seller shall (i) violate the terms of the organizational documents of Seller or (ii) any applicable law or regulation of the United States of America or State of North Carolina or, based solely on a certificate of Seller, any judicial or administrative judgment, order, writ, injunction or decree of any Governmental Body of the United States of America or the State of North Carolina that names the Corporation and is specifically directed to the Corporation and its properties and that is known to such counsel.

8.8 Certified Ordinances and Resolutions. Purchaser shall have received a certificate of the officials or officers of Seller containing a true and correct copy of the ordinances or resolutions duly adopted by the Seller, approving and authorizing this Agreement and each of the transactions contemplated hereby and thereby. The official or officers of Seller shall also certify that such ordinances or resolutions have not been rescinded, revoked, modified, or otherwise affected and remain in full force and effect.

#### Article 9 - Additional Conditions; Covenants; Post Closing Matters

9.1 Compliance with Act. In compliance with § 131E-13(a) of the Act, Purchaser acknowledges and agrees that the purchase and sale of the Assets and the lease of the Hospital Property are subject to the following conditions:

(a) Purchaser shall continue to provide the same or similar clinical hospital services to its patients in medical, surgery, pediatrics, outpatient and emergency treatment, including emergency services for the indigent that the Hospital provided prior to Closing, and such services may be terminated only as prescribed by the Certificate of Need Law, or, if Certificate of Need Law is inapplicable, by review procedure designed to

guarantee public participation pursuant to rules adopted by the Secretary of the Department of Health and Human Services;

(b) Purchaser shall ensure that indigent care is available to the population of the municipality or area served by Hospital at levels related to need, as previously demonstrated and determined mutually by Seller and Purchaser;

(c) Purchaser shall not enact financial admission policies that have the effect of denying essential medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment;

(d) Purchaser shall ensure that admission to and services of the Hospital are available to beneficiaries of the Programs without discrimination or preference because they are beneficiaries of those programs; and

(e) Purchaser shall prepare an annual report that shows compliance with the above requirements.

Purchaser further agrees that if Purchaser fails to substantially comply with the conditions set forth in (a) through (e) above, or if Purchaser fails to operate the Hospital as a community general hospital open to the general public and free of discrimination based on race, creed, color, sex, or national origin unless relieved of this responsibility by operation of law, or if Purchaser dissolves without a successor Person to carry out the terms and conditions of this Agreement, all ownership or other rights in the Hospital, including the building, land and equipment associated with the Hospital, shall revert to Seller or successor entity; provided that any building, land, or equipment associated with the Hospital that Purchaser has constructed or acquired since the Closing may revert only upon payment to Purchaser of a sum equal to the cost less depreciation of the building, land, or equipment.

9.2 Hospital Advisory Board of Directors. Following Closing, a Board of Advisory Directors shall be appointed to provide advice and assistance to Purchaser's Managing Board of Directors with regard to the business and affairs of the Hospital, in accordance with the following provisions:

(a) The Advisory Board shall consist of not more than seven (7) Advisory Directors. A candidate for Advisory Director must be at least eighteen years of age. Advisory Directors shall be selected for their experience, relevant areas of interest and expertise, and ability and willingness to participate effectively in fulfilling the Advisory Board's responsibilities. Selection of an Advisory Director is made with no restriction as to race, creed, sex, color or national origin. Physicians may serve as Advisory Directors;

(b) Seller shall appoint three individuals and Purchaser's Parent shall appoint four (4) individuals to fill the positions of Advisory Directors;

(c) Each Advisory Director shall hold office for a term of one (1) year and until his or her successor is duly appointed, unless he or she sooner resigns or is removed;

(d) Any Advisory Director appointed by Seller may be removed from office by Seller with cause or without cause. Any Advisory Director appointed by Purchaser's

Parent may be removed from office by Purchaser's Parent, with cause or without cause; and

(e) The Advisory Board and the Advisory Directors shall not have any authority to bind, or otherwise take any actions on behalf of the Managing Board of Directors or Purchaser. Specifically, and without limiting the foregoing, the Advisory Board does not perform administrative duties, establish policy, or hire, dismiss, discipline employees, or advise on personnel matters.

9.3 Maintenance of Books and Records. Seller and Purchaser shall preserve until the later of (a) the period required by applicable law or (b) the 6<sup>th</sup> anniversary of the Closing Date, all books and records possessed or to be possessed by such Party relating, to any of the Assets, liabilities or Business of the Hospital prior to the Closing Date. After the Closing Date, where there is a legitimate purpose, each Party shall provide the other Party with access, upon prior reasonable written request specifying the need therefor, to the books of account and records of such Party but, in each case, only to the extent relating to the Assets, the Hospital or the Business of the Hospital prior to the Closing Date, and the other Party shall have the right to make copies of such books and records, except where prohibited by law or regulation.

9.4 Employees. Effective as of the Closing Date, Seller shall terminate all Hospital employees and Purchaser shall extend offers of employment to such employees at substantially the same level of compensation and benefits (the "Hired Employees"). Hired Employees shall be eligible for participation in Purchaser's health insurance programs and retirement savings programs as of the date of hire of such Hired Employees. Purchaser shall credit each Hired Employee with his or her years of service and seniority with the Hospital. All Hired Employees are employees at-will and for indefinite terms and there is no outstanding agreement or arrangement with respect to severance payments or termination pay due any employee of the Hospital as a result of the termination of such employee's employment by Seller, or as a result of such employee declining Purchaser's offer of employment hereunder. Purchaser will exercise its best efforts to retain Hired Employees for a period of 6 months after the Closing Date, provided that nothing in this Section 9.4 shall abridge or prevent Purchaser from terminating the employment of any of Hired Employee for cause at any time after the Closing Date, or prevent Purchaser from exercising its rights as an employer to vary the compensation, duties and benefits of any Hired Employee for any reason permitted under applicable state and federal employment laws and in accordance with Purchaser's personnel policies. No employee of Seller or Purchaser, and no dependent thereof, or any other person, shall be a third party beneficiary with respect to the provisions of this Section 9.4. Purchaser shall assume all accrued and vested vacation, personal, sick and other leave entitlements of or with respect to all Hired Employees.

9.5 Post-closing Cost Reports and Terminating Cost Report. Within the time required by statute and regulation, Purchaser will prepare and file with respect to the Hospital all cost reports relating to periods ending prior to or on the Closing Date, including terminating cost reports for the Programs and other applicable governmental and private health benefit plans.

9.6 Post-closing Termination of Affiliation Agreement. At the earliest opportunity after the end of the initial term of the Affiliation Agreement, Corporation shall exercise its right to