

## **ASSET PURCHASE AGREEMENT**

**THIS ASSET PURCHASE AGREEMENT** (this "**Agreement**") is made and entered into this 1st day of April, 2016 (the "**Execution Date**") by and among the **SOUTHEAST VOLUSIA HOSPITAL DISTRICT**, a special independent tax district of the State of Florida ("**SVHD**"), **BERT FISH MEDICAL CENTER, INC.**, a Florida not-for-profit corporation ("**BFMCI**"), **SOUTHEAST VOLUSIA MEDICAL SERVICES, INC.**, a Florida not-for-profit corporation ("**SVMS**"), and **SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**, a Florida not-for-profit corporation ("**Adventist**"). SVHD, BFMCI and SVMS are collectively referred to herein as "**Seller**." SVHD, BFMCI, SVMS and Adventist are referred to collectively, as the "**Parties**" and individually, as a "**Party**."

**WHEREAS**, SVHD constitutes the sole member of BFMCI, and BFMCI constitutes the sole member of SVMS;

**WHEREAS**, as of the Execution Date, SVHD, as lessor, and BFMCI, as lessee, are parties to that certain Lease and Transfer Agreement, dated May 1, 1995, as amended on November 4, 2003, and re-enacted as of July 1, 2011 (the "**Existing Lease Agreement**"), whereby BFMCI leases certain land, hospital improvements and furnishings comprising the acute general care facility known as "Bert Fish Medical Center;"

**WHEREAS**, SVHD, BFMCI and Adventist Health System/Sunbelt, Inc. ("**AHSS**") executed a non-binding Letter of Intent dated December 18, 2014, the terms of which describe a proposed transaction whereby AHSS or one or more of its affiliates would enter into a new long-term lease of the land and hospital improvements located at 401 Palmetto Street, New Smyrna Beach, Florida 32168, as memorialized in that certain lease dated the Execution Date;

**WHEREAS**, AHSS has caused Adventist to be formed to enter into a Lease and Transfer Agreement dated the date hereof by and between SVHD as lessor and Adventist as lessee (the "New Lease Agreement");

**WHEREAS**, in recognition of the term of the New Lease Agreement, normal wear and tear of the Hospital's furniture, furnishings and equipment and advancement in technology envisioned to occur during the term of New Lease Agreement, the Parties desire to enter into this Agreement to provide for the acquisition of substantially all of the personal property utilized in association with the operations of the Hospital and the Other Real Property (as defined below);

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this Agreement, the Parties agree as follows:

**ARTICLE I**  
**RECITALS TRUE AND CORRECT**

The recitals set forth above are true and correct and are incorporated herein by this reference.

**ARTICLE II**  
**DEFINITIONS**

Set forth below in this Article II are definitions of certain terms used in this Agreement. Certain other terms used herein are defined in other parts of the Agreement. See Article XVII for a listing of the locations within this Agreement of certain other defined terms used herein.

**2.1** “**Assumed Contracts**” means, to the extent assignable by Seller and transferable to Adventist those Contracts that Adventist has agreed to assume as listed in Schedule 8.2. Any Omitted Contract subsequently assumed by Adventist in accordance with the terms of this Agreement shall, as of the date of assumption, be deemed an Assumed Contract.

**2.2** “**Board of Commissioners**” or “**Board**” means the governing body of SVHD.

**2.3** “**Business Day**” means any day other than a Saturday, Sunday or another day that is a holiday recognized by Adventist Health System Sunbelt Healthcare Corporation (“AHS”).

**2.4** “**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985 the Public Service Act codified as 42 U.S.C. Sections 300bb-1 through 300bb-8 and any similar state or federal continuation of coverage laws.

**2.5** “**Code**” means the Internal Revenue Code of 1986, as amended, and all applicable existing and proposed regulations promulgated thereunder.

**2.6** “**Community Health Clinic**” means the leased site at 508 Palmetto Street, New Smyrna Beach, Florida 32168 (including any subsequent address to which the clinic is relocated, provided such is within the geographic area served by SVHD), at which location BFMCI offers primary health care services to individuals who are eligible to receive health care services at no cost or a reduced fee based on the individual’s ability to pay.

**2.7** “**Contemplated Transaction**” means the transactions that are occurring under this Agreement.

**2.8** “**Contract**” means any legally binding written commitment, promise, contract, lease, sublease, license, sublicense or other agreement or arrangement of any kind which is an enforceable contract entered into in association with the use or operation of the Hospital Real Property or any part of the Included Assets. An oral contract shall not constitute a Contract unless it has been reduced to writing, signed by all parties named therein and a copy provided to Adventist prior to the Effective Time.

**2.9** “**Cost Report**” means any cost report required to be filed in respect of BFMCI or the Hospital pursuant to any Government Program or any third party payor program.

2.10 **“Employee”** means an individual who is a W-2 employee of BFMCI and who was employed to provide services at the Hospital on the date immediately preceding the Closing Date.

2.11 **“Environmental Laws”** means all applicable federal, state or local laws, statutes, ordinances, rules, regulations, codes, permits, consents, approvals, licenses, judgments, orders, decrees, injunctions, agreements or other authorizations or mandates by an applicable governmental entity relating to (a) pollution, waste disposal or the protection, preservation or restoration of the environment, including, without limitation, those relating to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals, or industrial, toxic, infectious or hazardous substances or waste into, among other things, the ambient air, surface water, ground water, drinking water supply, subsurface soil, publicly owned treatment works, septic systems, plant and animal life, land or any other natural resource, and (b) the use, treatment, storage, release or disposal, recycling, generation, processing, labeling, manufacture, production, sale, transportation, or shipment of any hazardous or toxic waste, material, substances, products or by-products; such laws including, without limitation, the Clean Air Act, as amended, 42 U.S.C. Section 7401, et seq. (**“CAA”**), Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. Section 9601, et seq. (**“CERCLA”**), the Resource Conservation and Recovery Act, as amended, 42 U.S.C. Section 6901, et seq. (**“RCRA”**), the Federal Water Pollution Control Act, as amended, 33 U.S.C. Section 1251, et seq., the Toxic Substances Control Act, as amended, 15 U.S.C. Section 2601, the Emergency Planning and Community Right to Know Act, 42 U.S.C. Section 11001, et seq., the Safe Drinking Water Act, 42 U.S.C. Section 300f, et seq. and all equivalent and relevant federal, state and local laws and regulations, as amended, as of the Closing Date.

2.12 **“Excluded Contracts”** means all Contracts, other than the Assumed Contracts identified in **Schedule 8.2.**

2.13 **“Existing Lease Agreement”** means that certain Lease and Transfer Agreement entered into by SVHD and BFMCI as of May 1, 1995, as amended on November 4, 2003 and re-enacted on July 1, 2011.

2.14 **“Federal Fiscal Year”** means any twelve (12) month period beginning on October 1 of a particular calendar year and ended or ending on September 30 of the next calendar year.

2.15 **“GAAP”** means United States generally accepted accounting principles as in effect from time to time.

2.16 **“Government Authority”** means any government or any agency, bureau, board, directorate, commission, court, department, official political subdivision, tribunal, special district or other instrumentality of any government, whether federal, state or local.

2.17 **“Government Program”** means the Medicare program, Medicaid, TRICARE and any other similar or successor federal or state healthcare payment programs with or sponsored by any Government Authority.

**2.18 “Hazardous Substance”** means any substance identified in 42 U.S.C. Section 9601(14), as in effect on the Effective Time, and 42 U.S.C. Section 6903(5), as in effect on the Effective Time, and petroleum (including crude oil or any fraction thereof). “Hazardous Substances” shall not include ordinary office, cleaning or maintenance supplies.

**2.19 “HITECH Act”** means the Health Information Technology for Economic and Clinical Health Act of 2009.

**2.20 “HITECH Payments”** means payments applicable to the Hospital made pursuant to the HITECH Act (and rights to such payments) from Medicare and Medicaid with respect to meaningful use of electronic health records.

**2.21 “Hospital”** means the facility and institution presently known as Bert Fish Medical Center located at 401 Palmetto Street, New Smyrna Beach, Florida 32168.

**2.22 “Hospital Real Property”** means the real property described on Schedule 2.22 and improvements located thereon. For the avoidance of doubt, assets constituting the Hospital Real Property are not assets to be acquired pursuant to this Agreement.

**2.23 “including”** (where not immediately followed by the words “without limitation” or “but not limited to”) means including, without limitation.

**2.24 “Indemnifiable Losses”** means all losses, liabilities, claims, damages, costs (including court costs and costs of appeal) and expenses (including reasonable costs of investigation and defense and reasonable attorneys’ fees) incurred or suffered by an Indemnified Party, whether or not involving a Third-Party Claim that are reasonably foreseeable by the Parties as of the Effective Time.

**2.25 “Knowledge”** means: (i) matters actually known by the chief executive officer, president, chief financial officer, chief operating officer, chief compliance officer, any vice president of BFMCI or any other SVHD Affiliate, or the chair or vice chair of the Board; (ii) matters which any of the aforementioned individuals could reasonably be expected to know or discover in the course of said individual’s employment or position; or (iii) matters reported through any compliance program maintained by a Party to this Agreement.

**2.26 “Liability”** means any direct or indirect, primary or secondary, liability, indebtedness, obligation, penalty, cost or expense (including costs of collection, investigation and defense), claim, deficiency, guaranty or endorsement of or by any Person (other than endorsements of bills, checks, notes and drafts presented for collection or deposit in the ordinary course of business) of any type, whether accrued, absolute or contingent, liquidated or unliquidated, matured or unmatured, or otherwise.

**2.27 “Order”** means any judgment, order, writ, injunction, decree, determination or award of any Government Authority.

**2.28 “Permit”** means any license, permit, approval, consent or certificate required to be issued or granted by any Government Authority in order to own or utilize any part of the Included Assets.

**2.29** “**Permitted Encumbrances**” means those security interests, liens, encumbrances, charges and restrictions set forth in **Schedule 2.29**.

**2.30** “**Person**” means a natural person or any legal, commercial or governmental entity, such as, but not limited to, a corporation, general partnership, limited partnership, limited liability company, joint venture, trust, business association, group acting in concert or any individual acting in a representative capacity to a Person.

**2.31** “**PTO Liability**” means the sum of the accrued liability for vacation, holiday benefits and other paid time off with respect to W-2 employees of BFMCI as of the date immediately preceding the Closing Date.

**2.32** “**Purchase Price**” means the consideration to be paid by Adventist to Seller for the Included Assets.

**2.33** “**Schedules**” means the disclosure schedules to this Agreement.

**2.34** “**SVHD Affiliates**” means BFMCI and SVMS.

### **ARTICLE III**

#### **TRANSFER OF ASSETS; EXCLUDED ASSETS, EXCLUDED LIABILITIES**

##### **3.1** **Assets.**

**3.1.1** **Included Assets.** Excluding the Excluded Assets set forth in **Section 3.1.2**, at the Closing, Seller shall sell, assign, transfer and deliver to Adventist, and Adventist shall purchase, accept and receive the following assets of Seller (the “**Included Assets**”):

(a) good, indefeasible and insurable title to the real property described in **Schedule 3.1.1(a)** hereto (which excludes any real property constituting Hospital Real Property), together with all improvements, buildings and component parts located thereon or therein, (collectively, the “**Other Real Property**”);

(b) all major, minor or other equipment, all personal computers, printers, servers, portable devices, telephone systems, vehicles, furniture and furnishings, and software (including certified electronic health records technology) to the degree the license to such software is assignable, owned by Seller and located at and/or used in association with the Hospital (including the Community Health Clinic) or the Other Real Property, including, without limitation, those items listed in **Schedule 3.1.1(b)** hereto (with the understanding that certain items on **Schedule 3.1.1(b)** may be decommissioned and disposed of on or prior to the Effective Time in accordance with **Section 9.5** and thereafter shall not remain a part of the Included Assets);

(c) Seller’s assignable rights and interests in the Assumed Contracts identified on **Schedule 8.2**;

(d) Seller's inventory of supplies and pharmaceuticals used in the operation of the Hospital (including the Community Health Clinic) and/or the Other Real Property existing at the Closing as set forth in Schedule 3.1.1(d);

(e) prepaid expenses of Seller as set forth in Schedule 3.1.1(e);

(f) the sum of all deposits as reflected on the Balance Sheet of the Seller as of February 29, 2016;

(g) the entire interest of BFMCI in the agreements between Halifax Health Medical Center and BFMCI for the joint operation of an outpatient cancer treatment center; and

(h) all other assets of any of Seller that are not described in Section 3.1.2 or in this Section 3.1.1 above.

**3.1.2 Excluded Assets.** Seller is not selling, transferring or assigning to Adventist any of the following assets (collectively, the "Excluded Assets"):

(a) the Hospital Real Property;

(b) any and all rights to settlement refunds, rebates, gifts, retroactive adjustments and rights to offset relating to transactions or events occurring prior to the Effective Time (whether opened or closed) regardless of when the refund claim or right to offset is made or discovered, including cost report adjustments arising from the operations of the Hospital prior to the Effective Time ("SVHD Receivables");

(c) any and all insurance policies and programs, all related premiums and refunds, all self-insured retention amounts related to self-insurance funds, pension plans and other employee benefit plans (including all assets and proceeds of all the foregoing) and records relating thereto;

(d) any and all restricted and unrestricted cash and cash equivalents, certificates of deposit and other short-term and long-term investments;

(e) accounts receivable, notes receivable and amounts receivable from any Person through the Effective Time;

(f) any and all claims, choses in action and judgments in favor of Seller;

(g) any and all amounts which as of the Effective Time are or may become due and payable to Seller under the Medicare, Medicaid, any other federal third party payor program or any other payor (e.g., private payor, commercial insurance company, HMO or PPO) relating to periods prior to the Effective Time;

(h) any and all intra-company accounts, including those between SVHD and a SVHD Affiliate;

(i) any and all membership interests or ownership interests held by SVHD in any entities including, without limitation, BFMCI, Edgewater Properties, LLC; Oak Hill Land, LLC; and Dixie Highway, LLC and any membership interests or ownership interests held by BFMCI in any entities including without limitation, SVMS;

(j) any and all third-party payor settlements arising from the operations of the Hospital prior to the Effective Time;

(k) any and all assets limited as to use including, without limitation, those held by trustees, board-designated funds and donor-restricted assets;

(l) any and all rights or assets held under employer retirement, deferred compensation, health, welfare or benefit plans and programs of Seller and all funds and accounts held under any of the foregoing;

(m) any and all assets of or membership interests in Bert Fish Medical Center Foundation, Inc. (the "Foundation") or Bert Fish Memorial Hospital Auxiliary, Inc., New Smyrna Beach, Florida;

(n) the Excluded Contracts (including any Omitted Contract that is not subsequently assumed by Adventist);

(o) any and all corporate records of Seller, including, without limitation minute books, tax returns, organizational documents, documents subject to attorney-client privilege or work product doctrine, and proprietary information owned by any third party;

(p) any and all rights that accrue or will accrue to Seller under this Agreement and any other agreements, certificates and instruments relating to the Contemplated Transaction;

(q) any and all records which by law any Seller is required to retain in its possession; provided, however, that such Seller, to the extent permitted by law, will deliver copies of such records to Adventist at the Closing;

(r) any and all rights to refunds of taxes;

(s) any and all rights to refunds with respect to the Public Medical Assistance Trust Fund relating to the operations of the Hospital prior to the Effective Time;

(t) any and all rights to refunds with respect to the Florida Hospital Trust Fund or other sources relating to the operations of the Hospital prior to the Effective Time;

(u) any and all warranty claims for corrective work pertaining to an Included Asset performed by or for any Seller prior to the Effective Time, unless the corrective work remains incomplete as of the Effective Time, in which case sums

received shall be dedicated to the correction of the Included Asset, regardless of whether the sum was received prior to, at or after the Effective Time;

(v) prepaid expenses of Seller that are not set forth in Schedule 3.1.1(e);

(w) any amounts to which Seller is entitled under Article XIV; and

(x) those assets of SVHD or a SVHD Affiliate described on Schedule 3.1.2(x).

### **3.2 Title.**

**3.2.1** SVHD shall convey to Adventist good and indefeasible title to the Other Real Property free and clear of any lien, claim, encumbrance or security interest therein, except for those that constitute a Permitted Encumbrance or are acceptable to Adventist.

**3.2.2** SVHD shall transfer and assign to Adventist good title to the Included Assets (other than the Other Real Property [as such is covered by Section 3.2.1]) free and clear of all liabilities, claims, assessments, security interests, liens, restrictions and encumbrances, except for those that constitute a Permitted Encumbrance or are acceptable to Adventist.

### **3.3 Liabilities.**

**3.3.1** Adventist at Closing shall only assume those obligations and liabilities of Seller associated with the Assumed Contracts and then only as to those obligations of Seller required to be performed on or after the Effective Time, and those liabilities that arise out of Adventist's performance or failure to perform its obligations under any Assumed Contract on or after the Effective Time. Adventist shall also assume (i) the PTO Liability, provided, an amount equal to the PTO Liability shall be credited against prepaid rent due for the initial term of the New Lease Agreement; (ii) tuition reimbursement requests of employees of BFMCI pursuant to Section 9.9.9 ("Tuition Reimbursement"); and (iii) health insurance coverage for BFMCI COBRA Beneficiaries pursuant to Section 9.9.3 ("Health Insurance Coverage"). The Assumed Contracts, PTO Liability, Tuition Reimbursement and Health Insurance Coverage are collectively referred to herein as the "Assumed Liabilities". No other liabilities of Seller, other than the Assumed Liabilities shall be assumed by Adventist.

**3.3.2** Except for the Assumed Liabilities and Permitted Encumbrances, the Included Assets shall be transferred by Seller to Adventist free of any obligation on the part of Adventist to pay or assume or become liable for or subject to any other liability of a Seller, whether known or unknown, fixed or contingent, recorded or unrecorded, currently existing or hereafter arising or otherwise, including, without limitation: (a) any claims or potential claims for professional liability by a third party against a Seller, for acts occurring prior to the Effective Time, including, without limitation, those pending and asserted claims specified in Schedule 3.3.2 hereto ("Identified Excluded Claims"); (b) any liability or claim or potential claim under any federal, state or local law in effect prior to the Effective Time concerning the presence, handling or treatment of any Hazardous Substance prior to the Effective Time; (c) any liability or claim in respect of any overpayment received by BFMCI or SVMS prior to the



Effective Time; (d) any claim, payment, or other recovery under any Government Program or any other payor program related to the ownership, use or operation of services offered by a Seller, which claim, payment or other recovery relates back to acts and/or omissions occurring prior to the Effective Time; and (e) pension, retiree health and all retirement and employee benefit plans of any Seller including but not limited to those identified in Section 8.6 (collectively, the “Excluded Liabilities”), it being the intent of the Parties that all liabilities of the Seller of whatever nature and whenever incurred, excluding the Assumed Liabilities, shall constitute Excluded Liabilities and shall remain the obligation of the Seller regardless of whether a third party (e.g., Government Program) seeks a recovery against Adventist.

**3.3.3** As to the capital leases listed on Schedule 3.3.3 (each such capital lease, other than the Other Capital Lease, as in effect under its terms as of the Execution Date, being called a “Capital Lease”, and the capital lease listed on Schedule 3.3.3 as being related to the linear accelerator (Meditract Contract # 1001.791C and asset number 013686) being called the “Other Capital Lease”):

(a) Adventist shall accept an assignment of, and shall assume, the Capital Lease, if the consent of the lessor to the assignment either (i) is not required under the terms of the Capital Lease; or (ii) is so required, and is obtained within ninety (90) days after the Closing Date. If such consent is required, Seller and Adventist shall cooperate reasonably with one another during the ninety (90) day period to obtain the consent of the lessor to the assignment of the Capital Lease. As to any Capital Lease not assumed by Adventist because the lessor refuses to give consent to the assignment during the ninety (90) day period, Seller shall purchase the personal property covered by the Capital Lease (the “Capital Lease Property”), pursuant to the terms of the Capital Lease, and shall deliver to Adventist such title to the Capital Lease Property as Seller receives from the lessor. If the Capital Lease is assumed by Adventist, it shall be deemed to be an Assumed Contract for all purposes under this Agreement. Adventist hereby is deemed to have assumed the Other Capital Lease.

(b) Adventist shall receive a credit at the Closing, as set forth on the Settlement Statement, equal to (i) the aggregate lease payments due under such Capital Lease through the expiration of the current term of the Capital Lease, including interest thereon, plus (ii) the amount included in the Settlement Statement as to the Other Capital Lease (the “Capital Lease Credit”). The Capital Lease Credit, which has been estimated as of February 29, 2016, shall be subject to adjustment pursuant to Section 4.1.

(c) After the Closing Date, if Adventist timely elects, under the terms of the Capital Lease, to purchase the Capital Lease Property, Adventist shall be entitled to receive a payment from Seller equal to the purchase price of the Capital Lease Property, as determined under the terms of the Capital Lease (the “Purchase Payment”). Seller shall pay to Adventist the Purchase Payment within thirty (30) days after Seller’s receipt of an invoice from Adventist, together with a letter from the lessor setting forth the purchase price of the Capital Lease Property, and an explanation of how the purchase price was determined.

(d) After the Closing Date, if Adventist does not timely elect, under the terms of the Capital Lease, to purchase the Capital Lease Property, Adventist shall be entitled to receive a payment from Seller equal to Adventist’s out-of-pocket costs to return the

Capital Lease Property to the lessor (the "Return Payment"). Seller shall pay to Adventist the Return Payment within thirty (30) days after Seller's receipt of an invoice from Adventist, together with reasonable documentation evidencing the amount of the Return Payment and how it was determined.

(e) As to each Capital Lease assumed by Adventist that requires, under its terms, that the lessee pay ad valorem tangible personal property taxes as to the Capital Lease Property covered by such Capital Lease, Seller shall reimburse Adventist for such taxes (at the maximum permissible discount) with thirty (30) days after Seller's receipt of an invoice from Adventist, together with the tax bill evidencing the amount of the ad valorem tangible personal property taxes with respect to such Capital Lease Property.

### **3.4 Assignment of Contracts.**

**3.4.1** Anything contained hereto to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Assumed Contract if an attempted assignment thereof without the consent of another party thereto would constitute a breach thereof or in any material way adversely affect the rights of any Seller thereunder (or the rights of Adventist thereunder following the Effective Time), unless such consent is obtained. If such consent is not obtained, or if an attempted assignment would be ineffective or would materially and adversely affect the rights of any Seller thereunder (or the rights of Adventist thereunder following the Effective Time) so that Adventist would not in fact receive all such rights, SVHD shall upon the request of Adventist cooperate in any reasonable arrangement designed to provide for Adventist the benefits under any such Assumed Contract, including enforcement of any rights of a Seller against the other party or parties thereto arising out of the breach or cancellation by such other party or otherwise. At Adventist's request, any Assumed Contract will be assigned to Adventist notwithstanding the failure to obtain any consent thereto. To the extent Adventist cannot receive the benefit of an Assumed Contract due to the failure or inability to obtain the necessary consent from the counterparty to such Assumed Contract, then, at Adventist's election, such Contract shall be deemed an Excluded Contract, and all liabilities with respect to such Excluded Contract shall be an Excluded Liability.

**3.4.2** If Seller discovers at any time that any Contract that exists as of the date hereof is not listed on Schedule 8.2 (an "Omitted Contract"), Seller shall promptly notify Adventist of such fact and provide Adventist with an accurate and complete copy of the Omitted Contract. Adventist may, in its sole discretion, elect to treat any Omitted Contract as an Assumed Contract or an Excluded Contract; provided however, that if the unexpired term of the Omitted Contract has a then value of Twenty Thousand Dollars (\$20,000.00) or less, the terms of the Omitted Contract otherwise complies with state and federal law and will not, as written, conflict with any contract or obligation to which Adventist is then subject, and the counter-party to said Omitted Contract consents to an assignment (or said consent is not required by the terms of the Omitted Contract), Adventist agrees that it will assume the Omitted Contract, provided, however, the obligation of Adventist to assume Omitted Contracts shall be capped at One Hundred Thousand Dollars (\$100,000.00) (i.e., once the value of all Omitted Contracts assumed by Adventist equals One Hundred Thousand Dollars (\$100,000.00), Adventist shall have no further obligation to assume any Omitted Contract, and Adventist may, in its sole discretion, elect to treat an Omitted Contract as either an Assumed Contract or an Excluded Contract). The

assumption by Adventist of any Omitted Contract pursuant to the provisions of this Section 3.4.2 shall be memorialized in a writing, signed by Adventist, after which the Omitted Contract shall be treated as an Assumed Contract.

#### **ARTICLE IV** **CONSIDERATION; PRORATIONS**

**4.1 Consideration.** Subject to the terms and conditions hereof, the consideration to be paid by Adventist for the purchase of the Included Assets (the "Purchase Price") shall be Fourteen Million Seven Hundred Thirty-Six Thousand, Five Hundred Fifty and 67/100 Dollars (\$14,736,550.67), which represents the fair market value of the Included Assets, less the Capital Lease Credit. Within ninety-five (95) days following the Closing Date, the parties shall recompute the amount of the Capital Lease Credit (other than as to the Other Capital Lease) as of the date immediately prior to the Closing Date, with any sum due by either Party to the other Party to be remitted thereafter within fifteen (15) days.

**4.2 Allocation.** The Purchase Price shall be allocated among the Included Assets as set forth on Schedule 4.2.

**4.3 Prorations.** The Parties will use all reasonable efforts to determine the appropriate prorations for each of the items set forth in Schedule 4.3 and on the Settlement Statement. Such prorations shall take into account the relevant period of time prior to the Effective Time and the relevant period of time at and after the Effective Time. To the extent not so prorated at the time of the Closing, the Parties shall make such prorations as soon as practicable thereafter.

#### **ARTICLE V** **REPRESENTATIONS AND WARRANTIES OF ADVENTIST**

Adventist hereby represents and warrants to SVHD and the SVHD Affiliates as follows:

**5.1 Organization.** Adventist is a not-for-profit corporation duly incorporated, validly existing and having active status under the laws of the State of Florida. Adventist has the requisite corporate power and authority and all material governmental licenses, permits and approvals necessary to enter into this Agreement and the other documents contemplated hereby, to perform its obligations hereunder and thereunder, to carry on its business as presently conducted and to own and use the properties owned and used by it.

**5.2 Tax-Exempt Status.** Adventist is: (a) an organization described in Section 501(c)(3) of the Code and is exempt from federal income taxation under Section 501(a) of the Code; (b) in possession of an Internal Revenue Service determination letter or covered under a group ruling confirming that it is an organization described in Section 501(c)(3) of the Code exempt from federal income taxation under Section 501(a) of the Code, which determination letter has not been revoked or otherwise modified and (c) not a "private foundation" as defined in Section 509(a) of the Code. Adventist has no Knowledge of any actions or events that would result in the loss of such tax-exempt status.

**5.3 Binding Agreement.** Adventist has the requisite power and authority to enter into this Agreement and all other agreements and instruments required to be executed and delivered by Adventist in accordance with this Agreement, and to consummate the transactions contemplated hereby and thereby. This Agreement and all other agreements or instruments required to be executed and delivered in accordance with this Agreement constitute the legal, valid and binding obligations of Adventist and are enforceable against Adventist in accordance with the respective terms hereof and thereof.

**5.4 Non-Contravention.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby: (a) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge or other restriction of any Government Authority to which Adventist is subject or any provision of the articles of incorporation or bylaws of Adventist; or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of or create in any party the right to accelerate, terminate, modify or cancel, or require any notice under, any agreement, contract, lease, license, instrument or other arrangement to which Adventist is a Party or by which Adventist is bound or to which any of the assets of Adventist is subject (including the imposition of any security interest upon any of its assets). Except as set forth in Schedule 5.4, Adventist is not required to give any notice to, make any filing with or obtain any authorization, consent or approval of any Government Authority in order to enter into and consummate the transactions contemplated by this Agreement.

**5.5 Brokers.** All negotiations relative to this Agreement have been carried out by Adventist directly with Seller without the intervention of any Person on behalf of Adventist in such manner as to give rise to any valid claim against Seller for a brokerage commission, finder's fee or similar payment as a result of the transactions contemplated by this Agreement.

## **ARTICLE VI**

### **REPRESENTATIONS AND WARRANTIES OF SVHD**

SVHD hereby represents and warrants to Adventist as follows:

**6.1 Organization.** SVHD is a special independent tax district of the State of Florida and is duly authorized to conduct its business, as presently conducted, under the laws of the State of Florida. SVHD has all requisite power and authority and all material governmental licenses, permits and approvals necessary to carry on its businesses as presently conducted and to own and use the properties owned and used by it.

**6.2 Binding Agreement.** SVHD has the requisite power and authority to enter into this Agreement and all other agreements or instruments required to be executed and delivered by SVHD in accordance with this Agreement and to consummate the transactions contemplated hereby and thereby. This Agreement and all other agreements or instruments required to be executed and delivered by SVHD in accordance with this Agreement constitute the legal, valid and binding obligations of SVHD, enforceable against SVHD in accordance with terms hereof and thereof.

**6.3 Non-Contravention.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby: (a) except as provided in Schedule 6.3(a), violates any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge or other restriction of any Government Authority to which SVHD is subject; (b) except as provided in Schedule 6.3(b), conflicts with, results in a breach of, constitutes a default under, results in the acceleration of or creates in any party the right to accelerate, terminate, modify or cancel or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which SVHD is a party or by which SVHD is bound or to which any of its assets are subject (which includes the imposition of any security interest upon any of its assets); and (c) except as set forth in Schedule 6.3(c), requires SVHD to give any notice to, make any filing with or obtain any authorization, consent or approval of any Government Authority in order to consummate the transactions contemplated by this Agreement, except where the failure to give notice, to file or to obtain any authorization, consent or approval would not have a material adverse effect on the business, financial condition, operations or results of operations of SVHD or on the ability of SVHD to consummate the transactions contemplated by this Agreement.

**6.4 Brokers.** All negotiations relative to this Agreement have been carried out by Seller directly with Adventist without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim against Adventist for a brokerage commission, finder's fee, or similar payment as a result of the transactions contemplated by this Agreement.

## **ARTICLE VII**

### **REPRESENTATIONS AND WARRANTIES OF BFMCI**

BFMCI hereby represents and warrants to Adventist as follows:

**7.1 Organization.** BFMCI is a not-for-profit corporation duly organized, validly existing and having active status under the laws of the State of Florida. BFMCI has all requisite corporate power and authority and all material governmental licenses, permits and approvals necessary to carry on its businesses as presently conducted and to own and use the properties owned and used by it.

**7.2 Tax-Exempt Status.** BFMCI is in possession of an Internal Revenue Service determination letter confirming that it is an organization described in Section 501(c)(3) of the Code exempt from payment of federal income taxes under Section 501(a) of the Code, and is not a "private foundation" as defined in Section 509(a) of the Code. BFMCI has no Knowledge of any actions or events that would result in the loss of its tax-exempt status.

**7.3 Binding Agreement.** BFMCI has the requisite power and authority to enter into this Agreement and all other agreements or instruments required to be executed and delivered by BFMCI in accordance with this Agreement and to consummate the Contemplated Transaction. This Agreement and all other agreements or instruments required to be executed and delivered by BFMCI in accordance with this Agreement constitute the legal, valid and binding obligations of BFMCI, enforceable against BFMCI in accordance with their respective terms hereof and thereof.

**7.4 Non-Contravention.** Neither the execution and delivery of this Agreement, nor the consummation of the transactions contemplated hereby: (a) except as provided in Schedule 7.4(a), violates any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge or other restriction of any Government Authority to which BFMCI is subject; (b) except as provided in Schedule 7.4(b), conflicts with, results in a breach of, constitutes a default under, results in the acceleration of or creates in any party the right to accelerate, terminate, modify or cancel or require any notice under any agreement, contract, lease, license, instrument or other arrangement to which BFMCI is a party or by which BFMCI is bound or to which any of its assets are subject (which includes the imposition of any security interest upon any of its assets); and (c) except as set forth in Schedule 7.4(c), requires BFMCI to give any notice to, make any filing with or obtain any authorization, consent or approval of any Government Authority in order to consummate the transactions contemplated by this Agreement, except where the failure to give notice, to file, or to obtain any authorization, consent or approval would not have a material adverse effect on the business, financial condition, operations or results of operations of BFMCI or on the ability of BFMCI to consummate the transactions contemplated by this Agreement.

**7.5 Brokers.** All negotiations relative to this Agreement have been carried out by Seller directly with Adventist without the intervention of any Person on behalf of Seller in such manner as to give rise to any valid claim against Adventist for a brokerage commission, finder's fee or similar payment as a result of the transactions contemplated by this Agreement.

## **ARTICLE VIII**

### **REPRESENTATIONS AND WARRANTIES OF SVHD OR SVHD AFFILIATE**

In addition to the representations and warranties set forth in Article VI and Article VII, SVHD (or, where applicable, a SVHD Affiliate) represents and warrants as follows:

**8.1 Financial Statements.** Correct and complete copies of the audited consolidated financial statements for SVHD, the SVHD Affiliates, and the Foundation as of and for the fiscal years ended September 30, 2014 and September 30, 2015, and the interim unaudited consolidated financial statements of SVHD, the SVHD Affiliates and the Foundation as of February 29, 2016 and for the five (5) month period then ended, are set forth in Schedule 8.1 (collectively, the "SVHD Financial Statements"). The SVHD Financial Statements have been prepared from and in accordance with the books and records of SVHD, the SVHD Affiliates, and the Foundation and fairly present in all material respects the financial position of SVHD, the SVHD Affiliates, and the Foundation as of the dates and for the periods indicated, in each case in accordance with GAAP consistently applied during such periods, except as noted in Schedule 8.1 and, except in the case of the interim unaudited financial statements, for the absence of footnotes and year-end adjustments.

**8.2 Certain Contracts.** Schedule 8.2 lists the Contracts to which SVHD or a SVHD Affiliate is a party which pertain to the ownership or use of the Hospital (including Community Health Clinic and any Included Asset). No officer or commissioner of SVHD has received any written notice that SVHD or a SVHD Affiliate or any other party to a Contract is in default thereunder. All Contracts listed on Schedule 8.2 that are not identified as being assumed by Adventist on Schedule 8.2, shall be deemed an "Excluded Contract."

**8.3 Certain Leases.** Schedule 8.3 lists any leases or subleases that are directly related to the use of any Included Asset. No officer or commissioner of SVHD or a SVHD Affiliate has received any written notice that SVHD, a SVHD Affiliate or any other party to such lease or sublease is in default thereunder.

**8.4 Title to Other Real Property; Personal Property and Related Matters.** Schedule 3.1.1(a) contains a legal description of the Other Real Property and Schedule 3.1.1(b) contains the fixed asset register dated as of March 31, 2016, of the equipment and furniture of Seller utilized in the operation of the Hospital (including Community Health Clinic) or the Other Real Property. SVHD has made available to Adventist copies of any existing surveys and title insurance policies or title insurance commitments in its possession as to all real property comprising the Other Real Property. SVHD has made available to Adventist copies of any engineer reports in its possession relative to structural or mechanical inspections of improvements situated on such Other Real Property.

**8.5 Insurance.** A list of all policies of insurance of SVHD or a SVHD Affiliate now in effect insuring the Included Assets is set forth in Schedule 8.5.

**8.6 Employee Benefit Plans.**

**8.6.1** Except as shown on Schedule 8.6.1 delivered by SVHD to Adventist, there are no plans of SVHD or a SVHD Affiliate in effect for pension, profit sharing, deferred compensation, severance pay, bonuses, stock options, stock purchases or any other form of retirement or deferred benefit, or for any health, accident or other welfare plan, or any other employee or retired employee benefit plan, program, contract, understanding or arrangement in which any employee, former employee, retired employee or beneficiary of any of them, is entitled to participate. The plans, programs, contracts, understandings and arrangements listed on Schedule 8.6.1 are hereinafter referred to as the “Plans”. Each of the Plans which is intended to qualify under Section 401(a) or 403(b) of the Code is designated on Schedule 8.6.1 as being a “Qualified Plan”.

**8.6.2** SVHD has delivered to Adventist true and complete copies of (or, where copies do not exist, summaries of) each of the Plans, all trust agreements, insurance contracts, investment management agreements and other documents, including, but not limited to, summary plan descriptions currently in effect with respect to the Plans, true and complete copies of any collective bargaining agreements to which SVHD or a SVHD Affiliate is a party, along with the three (3) most recent end-of-Plan-year asset statements of the Plans and true and correct copies of the three (3) most recent valuation reports prepared by the enrolled actuary for each Qualified Plan which is a defined benefit plan.

SVHD and BFMCI will deliver to Adventist information required to comply with the employer mandate provisions of the Patient Protection and Affordable Care Act (“PPACA”) and Sections 4980H and 6056 of the Code, including records related to employee hours of service and determinations of full-time status as defined under PPACA and Section 4980H of the Code.



**8.6.3** Except as provided on Schedule 8.6.3, each of the Plans is in full force and effect and at all times has been operated in material compliance with both its terms and all applicable laws.

**8.6.4** Except as provided on Schedule 8.6.4 and as provided in Sections 8.7, 9.9.4 and 9.9.5 of this Agreement, through the Closing, there will be no changes in the operations of the Plans or in the documents constituting or affecting the Plans.

**8.6.5** Except as described in Schedule 8.6.5, all required governmental filings have been made with respect to the Plans. All contributions to, and payments from, the Plans have been timely made.

**8.6.6** Except as provided on Schedule 8.6.6, there are no pending investigations, proceedings or other matters concerning the Plans before the Internal Revenue Service (the "IRS"), the Department of Labor, Pension Benefit Guarantee Corporation or any other forum, other than determination letter applications filed with the IRS in the normal course of operating the Plans.

**8.6.7** BFMCI has received currently effective favorable determination letters from the IRS with respect to the qualification of the Qualified Plans that are Code Section 401(a) plans, and true and correct copies of these determination letters have been delivered by SVHD to Adventist. To the Knowledge of SVHD or BFMCI, there have been no developments since the dates of the determination letters which would create a material risk of causing the loss of such qualification.

**8.6.8** Except as set forth in Schedule 8.6.8, each Qualified Plan which is a defined benefit plan is exempt from Section 412 of the Code.

**8.6.9** The financial and actuarial statements for each Qualified Plan which is a defined benefit plan reflect, in all material respects, the financial condition and funding of the Plan as of the date of such financial and actuarial statements. An updated statement will be provided prior to Closing for each Qualified Plan which is a defined benefit plan reflecting the value of the plan's assets on a date that is no earlier than thirty (30) days prior to the Closing Date.

**8.6.10** Except as set forth in Schedule 8.6.10, no employees, former employees or retired employees of SVHD or a SVHD Affiliate, as a result of their employment with SVHD or a SVHD Affiliate, are participants in any "multiemployer plan" which is a "pension plan", as such terms are defined in Sections 3(2) and 3(37) of ERISA. Neither SVHD nor a SVHD Affiliate has current, contingent or potential liability of any kind, including withdrawal liability, with respect to any such plan.

**8.6.11** There are no pending or threatened claims by or disputes with any participants or beneficiaries of the Plans, except Plan benefit claims arising in the normal course of the operations of the Plans and as to which no dispute exists.

**8.6.12** Except for the Pension Plan of BFMCI and the retiree medical subsidy payment program, each of the Plans which benefits retired or other former employees of SVHD



or BFMCI may effectively be terminated or amended, in any manner and at any time, without further liability to its participants, by its sponsoring employer.

**8.6.13** Each Plan that is subject to 409A of the Code (a “Section 409A Plan”) as of the Closing is indicated as such on Schedule 8.6.13. Each Section 409A Plan has been administered in compliance with Section 409A of the Code. Neither SVHD nor BFMCI has any obligation to any employee or other service provider with respect to any Section 409A Plan that may be subject to any tax under Section 409A of the Code, nor will any such tax arise as a result of the consummation of the transactions contemplated by this Agreement or the termination of any employee’s employment incident to such consummation.

**8.6.14** Except as set forth in Schedule 8.6.14, the execution of this Agreement and the consummation of the Contemplated Transaction (alone or together with any other event which standing alone, would not by itself trigger such entitlement or acceleration) will not: (a) entitle any person to any payment, forgiveness of indebtedness, vesting, distribution, or increase in benefits under or with respect to any Plan; (b) otherwise trigger any acceleration (of vesting or payment of benefits or otherwise) under or with respect to any Plan; or (c) trigger any obligation to fund any Plan.

**8.6.15** For each Plan which is a health plan subject to PPACA, all common-law employees of BFMCI have been properly classified as employees for purposes of PPACA and Section 4980H of the Code.

**8.6.16** Each health plan that is intended to be a “grandfathered plan”, as that term is defined in PPACA, has continuously satisfied the requirements to be a grandfathered plan since March 23, 2010.

**8.6.17** For each Plan which is a health plan subject to PPACA, a summary of benefits and coverage has been properly distributed in accordance with applicable rules issued under PPACA.

**8.7** Post-Balance Sheet Results. Except as set forth on Schedule 8.7, since September 30, 2015, there has not been any transaction or occurrence in which SVHD and/or a SVHD Affiliate, with respect to such entity’s assets or operations, has:

**8.7.1** suffered any material uninsured damage, destruction or loss in excess of Fifty Thousand Dollars (\$50,000.00) with respect to or affecting any of such entity’s tangible Included Assets;

**8.7.2** written down or written up in any material amount the value of any inventory (including write-downs by reason of shrinkage or markdowns), determined as collectible any individual accounts receivable or portion thereof in excess of Ten Thousand Dollars (\$10,000.00) previously considered uncollectible, or written off as uncollectible any accounts receivable or any portion thereof in excess of One Hundred Thousand Dollars (\$100,000.00) in the aggregate, except for write-downs, write-ups, and write-offs in the ordinary course of business;

**8.7.3** disposed of or permitted to lapse any right to sue regarding any material intellectual property;

**8.7.4** made any material capital expenditure or commitment for additions to property, plant, equipment, intangible or capital assets or for any other purpose in an amount greater than an aggregate amount of One Hundred Thousand Dollars (\$100,000.00), other than for emergency repairs or replacement;

**8.7.5** sold, transferred or otherwise disposed of assets except in the ordinary course of business or having an aggregate net fair market value of greater than Fifty Thousand Dollars (\$50,000.00);

**8.7.6** made any material change in any method of accounting or accounting principle, practice or policy; or

**8.7.7** agreed, so as to legally bind Adventist or affect the Included Assets, whether in writing or otherwise, to take any of the actions set forth in this **Section 8.7** and not otherwise permitted by this Agreement.

## **8.8 Environmental.**

**8.8.1** Copies of all existing environmental assessments or environmental audits for the Other Real Property in the possession of Seller have been provided to Adventist.

**8.8.2** To the Knowledge of Seller, except as disclosed on **Schedule 8.8.2**, SVHD and each SVHD Affiliate has obtained, as applicable, all material governmental permits, licenses and other authorizations which are required with respect to the operation of its respective business on the Other Real Property under applicable Environmental Laws, and has materially complied and is in material compliance with, and all Other Real Property and improvements thereon owned by such entity are in material compliance with all Environmental Laws.

**8.8.3** To the Knowledge of Seller, except as disclosed on **Schedule 8.8.3**, neither SVHD nor any other SVHD Affiliate has received any written claim, demand, allegation or notice pertaining to violations of Environmental Law or the presence of Hazardous Substances at, under, on or emanating from the Other Real Property.

**8.8.4** To the Knowledge of Seller, except as disclosed on **Schedule 8.8.4**: (a) the Other Real Property contains no underground treatment or storage tanks (or underground piping associated with such tanks) used currently or in the past for the management of Hazardous Substances, and (b) no portion of the Other Real Property has been used for the disposal of solid waste or Hazardous Substances.

**8.9 Taxes.** As of June 30, 2015, except as disclosed on **Schedule 8.9**, each SVHD Affiliate has filed all tax returns required by law to be filed by it and has paid all taxes, assessments and other governmental charges shown thereon as due and payable, other than those presently payable without penalty or interest or those being contested in good faith by appropriate procedures. There are no liens with respect to taxes (except for liens with respect to

real property or tangible personal property taxes not yet due and payable) upon any of the assets used by SVHD or a SVHD Affiliate in connection with the operations of BFMCI. SVHD has made available to Adventist copies of any: (a) tax returns for each SVHD Affiliate for fiscal years ended 2013 and 2014; (b) federal, state or local audit reports; (c) federal, state or local tax settlement documents received by or to which a SVHD Affiliate is a party during the last three (3) years; (d) agreements entered into during the last three (3) years which waive or purport to waive the relevant statute of limitations or extend the statute of limitations; and (e) state and local (if applicable) letters, if any, evidencing property (real and personal) tax exemption for any party of the Other Real Property owned by SVHD or a SVHD Affiliate.

#### **8.10 Government Programs.**

**8.10.1** Each SVHD Affiliate(s) eligible to receive payment under Title XVIII of the Social Security Act ("Medicare") and Title XIX of the Social Security Act ("Medicaid") is identified in Schedule 8.10.1 ("SVHD Affiliate Participant"). Except as set forth on Schedule 8.10.1(a), each SVHD Affiliate Participant that participates in the Medicare or Medicaid programs or any other "Federal health care program" (as such term is defined in 42 U.S.C. Sections 1320a-7b(f) (collectively, the "Government Programs") is in material compliance with the conditions of participation and all other applicable certification criteria for the Government Programs. Except for claims, actions and appeals in the ordinary course of business, there are no material claims, actions or appeals pending, nor to the Knowledge of SVHD and the SVHD Affiliates, threatened, before any commission, board or agency, including any fiscal intermediary or carrier, Government Authority or the "Centers for Medicare and Medicaid Services", with respect to any Government Program cost report or claims filed on behalf of a SVHD Affiliate, on or before the date of this Agreement, or any disallowance by any commission, board or agency in connection with any audit of any cost report.

**8.10.2** Except as disclosed on Schedule 8.10.2: (a) no validation review or program integrity review, investigation, proceeding, inspection, examination, audit or other compliance or enforcement activity by or on behalf of any Government Program related to any of the SVHD Affiliate Participants, the operation of the SVHD Affiliate Participants, or the consummation of the Contemplated Transaction, or related to any of the Included Assets has been conducted during the past five (5) years by or on behalf of any Government Authority in connection with the Government Programs; and (b) to the Knowledge of SVHD and the SVHD Affiliates, no such reviews, investigations, inspections, proceedings, examinations, audits or other enforcement activities are scheduled, pending or threatened against or affecting any SVHD Affiliate or any of the officers, directors or commissioners of SVHD or any of the SVHD Affiliates with respect to the SVHD Affiliates or any of their assets, or the consummation of the transactions contemplated by this Agreement.

**8.10.3** Except as disclosed in Schedule 8.10.3: (a) to the Knowledge of SVHD and the SVHD Affiliates, all billing practices of the SVHD Affiliates with respect to all third party payors, including the Government Programs and private payors, are and, during the last six (6) years (except for any time during the last six (6) years that Adventist or any of its affiliates was in possession of or operating the Hospital) have been in material compliance with all applicable laws, regulations and policies of such third party payors and Government Programs; (b) to the Knowledge of SVHD and the SVHD Affiliates, during the last six (6) years (except for

any time during the last six years that Adventist or any of its affiliates was in possession of or operating the Hospital), SVHD Affiliates have not made any material repayments of any payments or reimbursements that were in excess of, or that were alleged to be in excess of, amounts allowed by law or any such regulations or policies; and (c) to the Knowledge of SVHD and the SVHD Affiliates, during the last two (2) years, there have been no material denials of any amounts that are in excess of, or that are, or have been alleged to be (except for any instances in which any SVHD Affiliate prevailed on an appeal) in excess of amounts allowed by law or any such regulations or policies.

**8.10.4** To the Knowledge of SVHD and the SVHD Affiliates, neither SVHD nor any SVHD Affiliate nor any partner, member, director, commissioner, officer or employee of SVHD or any SVHD Affiliate, nor any agent acting on behalf of or for the benefit of any of the foregoing, has directly or indirectly in connection with SVHD or any of the SVHD Affiliates or SVHD Affiliates' respective assets: (a) offered or paid any remuneration, in cash or in kind, to, or made any financial arrangements with, any past, present or potential customers, past or present suppliers, patients, medical staff members, contractors, third party payors or other patient or business referral source of SVHD or any of the SVHD Affiliates in order to obtain business or payments from such Persons in violation of applicable law; (b) given or agreed to give, or made or agreed to make, any gift or gratuitous payment of any kind, nature or description (whether in money, property or services) to any customer or potential customer, supplier or potential supplier, contractor, third party payor or any other Person in violation of applicable law, other than in connection with immaterial promotional or entertainment activities conducted in the ordinary course of business; (c) made, or agreed to make, any contribution, payment or gift of funds or property to, or for the private use of, any governmental official, employee or agent where either the contribution, payment or gift and the purpose of such contribution, payment or gift is or was illegal under the laws of the United States or under the laws of any state or any other Government Authority having jurisdiction over such payment, contribution or gift; (d) established or maintained any unrecorded fund or asset that is prohibited by law; (e) made any misleading, false or artificial entries on any of its books or records; or (f) made, or agreed to make, any payment to any Person with the intention or understanding that any part of such payment would be used for any purpose other than that described in the documents supporting such payment.

**8.10.5** Except as disclosed in Schedule 8.10.5, to the Knowledge of SVHD and the SVHD Affiliates, neither SVHD nor any of the SVHD Affiliates, nor any partner, member, director, commissioner, officer or employee of SVHD or any of the foregoing, is a party to any contract, lease agreement or other arrangement, written or unwritten (including any joint venture or consulting agreement), related to any of the SVHD Affiliates with any physician, health care facility, hospital, nursing facility, home health agency or other Person who is in a position to make or influence referrals to or otherwise generate business for any SVHD Affiliate with respect to their business, to provide services, lease space, lease equipment or engage in any other venture or activity, to the extent that any of the foregoing is prohibited by law.

**8.11 Unrecorded Liabilities** Except as set forth in Schedule 8.11 or set forth in the SVHD Financial Statements, to the Knowledge of SVHD and the SVHD Affiliates, there are no known unrecorded and undisclosed liabilities (required to be reflected but not reflected on the SVHD Financial Statements) owed by SVHD or a SVHD Affiliate to any third party.

**8.12 Labor Relations.** Except as set forth in Schedule 8.12, to the Knowledge of SVHD and the SVHD Affiliates; (a) there is no pending or threatened employee strike, work stoppage or labor dispute with respect to the Hospital; (b) no union representation effort exists respecting any of their employees, no demand has been made for recognition by a labor organization by or with respect to SVHD or a SVHD Affiliate's employees, no union organizing activities by or with respect to any of such employees are taking place, and none of SVHD or a SVHD Affiliate's employees are represented by any labor union or organization; (c) no collective bargaining agreement exists or is currently being negotiated by SVHD or a SVHD Affiliate; (d) there is no unfair practice claim against either before the National Labor Relations Board, or any strike, dispute, slowdown, or stoppage pending or, to the Knowledge of SVHD and the SVHD Affiliate, threatened against or involving the Hospital and, to the Knowledge of SVHD and the SVHD Affiliates, none has occurred; (e) to the Knowledge of SVHD and the SVHD Affiliates, each is in compliance in all material respects with all laws and Assumed Contracts respecting employment and employment practices, labor relations, terms and conditions of employment, and wages and hours; (f) SVHD and the SVHD Affiliates are not engaged in any unfair labor practices; and (g) there are no pending or, to the Knowledge of SVHD and the SVHD Affiliates, threatened complaints or charges before any Government Authority regarding employment discrimination, safety or other employment-related charges or complaints, wage and hour claims, unemployment compensation claims, workers' compensation claims or the like against the Hospital.

**8.13 Immigration Laws.** Except as disclosed on Schedule 8.13, to the Knowledge of SVHD and the SVHD Affiliates, SVHD and the SVHD Affiliates are in compliance in all material respects with the terms and provisions of the Immigration Act with respect to the Hospital. For each employee for whom compliance with the Immigration Act is required, SVHD or the SVHD Affiliate, as applicable, has obtained and retained a complete and true copy of each such employee's Form I-9 (Employment Eligibility Verification Form) and all other records or documents prepared, procured or retained by SVHD or the SVHD Affiliate pursuant to the Immigration Act to the extent it is required to do so under the Immigration Act. None of SVHD and the SVHD Affiliates have been cited, fined, served with a notice of Intent to Fine or with a Cease and Desist Order (as such terms are defined in the Immigration Act) as to the operations of the Hospital, nor, to the Knowledge of SVHD or any SVHD Affiliate, has any action or administrative proceeding been initiated or threatened against SVHD and the SVHD Affiliates in connection with the Hospital, by reason of any actual or alleged failure to comply with the Immigration Act.

**8.14 Employment Contracts.** Except as disclosed in Schedule 8.14, (a) none of SVHD and the SVHD Affiliates have entered into any written employment Contract, and (b) no Assumed Contract to which SVHD is a party provides for employment for any particular period of time or provides any restriction upon the Hospital's right to terminate employment without any post-termination payment obligation. Except as disclosed in Schedule 8.14, other than cost of living wage or compensation adjustments mandated by agreements existing prior to the Letter of Intent, no binding agreements have been made or entered into between BFMCI and any Hospital employee regarding changes in compensation, promotion or any other change in status.

**8.15 WARN Act.** To the Knowledge of SVHD and each SVHD Affiliate, each has at all times complied in all material respects with the WARN Act and any similar applicable state

law. Schedule 8.15 lists the full name, job, title, job site and unit, date of Employment Loss and type of Employment Loss (termination, layoff or reduction in work hours) of each employee of SVHD or a SVHD Affiliate employed who has experienced an Employment Loss in the ninety (90) days preceding the Closing Date. Except as set forth in this Agreement, SVHD and or a SVHD Affiliate does not presently intend to take any action that would result in an Employment Loss by any of its employees employed at the Hospital between the Execution Date of this Agreement and the Closing Date. “Employment Loss” for this purpose shall mean (a) an employment termination, other than a discharge for cause, voluntary departure or retirement, (b) a layoff exceeding six (6) months or (c) a reduction in hours of work of more than fifty percent (50%), and “employee” for purposes of this Section 8.15 shall mean any employee, including officers, managers and supervisors, but excluding employees who are employed for an average of fewer than twenty (20) hours per week or who have been employed for fewer than six (6) of the preceding twelve (12) months.

## **ARTICLE IX**

### **MUTUAL COVENANTS OF ADVENTIST, SVHD, and BFMCI**

The Parties covenant and agree that, except as otherwise expressly provided herein, each will honor the covenants set forth in Section 9.1 through Section 9.6.1 and Section 9.8 between the Execution Date and the Closing Date, and each will also honor the covenants set forth in Section 9.6.2, Section 9.6.3 and Section 9.7 from the Closing Date until the date on which the covenant has been performed or the covenant, by its terms, expires.

#### **9.1 Notices as to Representations and Warranties.** Prior to the Closing:

**9.1.1** each Party promptly will give notice to the other Parties of any lawsuits, claims, administrative actions or other proceedings commenced or, to its Knowledge, threatened against it, its officers, commissioners, directors or member organizations involving in any material way the disclosing Party’s business or properties; and

**9.1.2** each Party promptly will give notice to the other Parties of any facts or circumstances which come to its attention and which cause, or through the passage of time is reasonably likely to cause, any of the disclosing Party’s representations or warranties in this Agreement to be untrue or misleading in any material respect at any time from the date of this Agreement to the Closing Date.

**9.2 Maintain Business as Going Concern.** Prior to the Closing, each Party shall use commercially reasonable efforts in the ordinary course of business to do or cause to be done all such acts and things as may be reasonably necessary to maintain its business organization(s) intact and to preserve the good will of its suppliers, employees, customers and others having business relations with it.

**9.3 Maintain Books and Accounting Practices.** Prior to the Closing, each Party shall maintain its books of account in the usual, regular and ordinary manner in accordance with GAAP, consistently applied, as to Adventist, and GAAP, consistently applied, as to SVHD and each SVHD Affiliate, and no Party shall make any change in its accounting methods or practices,

except as consented to in writing by the other Parties or as required by applicable accounting standards.

**9.4 Compliance with Laws, Regulatory Consents.** Except as disclosed in Schedule 9.4, prior to the Closing, each Party shall (a) comply in all material respects with all applicable statutes, laws, ordinances and regulations, and (b) use its commercially reasonable efforts in the ordinary course of business to keep, hold and maintain all material certificates, certificates of need, certificates of exemption, accreditations, participations, licenses and other permits necessary for the conduct of its business.

**9.5 Maintenance of Existence and Assets.** Prior to the Closing, each Party shall continue its operations as an operating entity, shall not dissolve and, except for assets having a net fair market value of less than Two Thousand Five Hundred Dollars (\$2,500.00), shall not, unless agreed upon in writing by all Parties hereto, liquidate any of its assets unless said asset is replaced by an asset of the same type and/or having the same purpose and the value of the replacement is equal to or greater than the value of the asset disposed.

**9.6 Access to Books and Records Pre-Closing; Post-Closing Access to Information.**

**9.6.1** Prior to the Closing: (a) Adventist and its counsel, accountants and other representatives, upon reasonable notice and during normal business hours, shall have reasonable access to all properties, books, accounts, records, contracts, leases and documents of or relating to SVHD and/or a SVHD Affiliate, but excluding information and records subject to the attorney-client privilege, attorney work product doctrine, or similar privilege or doctrine; and (b) Adventist, at its cost, shall have the right to cause its agents to conduct such reviews and investigations as Adventist reasonably deems necessary and advisable.

**9.6.2** Following the Closing, upon receiving reasonable notice and during normal business hours, Adventist shall afford to SVHD, including its counsel and accountants, and to Government Authorities, full and complete access to, and the right to make copies of, such information and records as may be in the possession of Adventist relating to the Hospital (including the Community Health Clinic and the Included Assets) in respect of periods after the Effective Time, but excluding information and records subject to the attorney-client privilege, attorney work product doctrine or similar privilege or doctrine or which are restricted by law from disclosure. SVHD agrees that it will bear all copying or other duplication costs incurred in connection with the copying or other duplication or records pursuant to this Section 9.6.2 and will reimburse Adventist for any such costs that Adventist incurs in order to comply with its obligations under this Section 9.6.2. This covenant shall expire on the first anniversary of the Closing Date as to SVHD, and the fourth anniversary of the Closing Date as to Government Authorities.

**9.6.3** Following the Closing, upon receiving reasonable notice and during normal business hours SVHD shall afford to Adventist and its agents, including its counsel and accountants, and to Government Authorities, full and complete access to, and the right to make copies of, such information and records as may be in the possession of SVHD relating to the Hospital (including the Community Health Clinic) and/or the Included Assets in respect of



periods prior to the Effective Time, but excluding information and records subject to the attorney-client privilege, attorney work product doctrine or similar privilege or doctrine or which are restricted by law from disclosure. Adventist agrees that it will bear all copying or other duplication costs incurred in connection with the copying or other duplication of records pursuant to this Section 9.6.3 and will reimburse SVHD for any such costs that SVHD incurs in order to comply with its obligations under this Section 9.6.3. This covenant shall expire on the first anniversary of the Closing Date as to Adventist and the fourth anniversary of the Closing Date as to Government Authorities.

**9.7 Post-Closing Cooperation.** Following the Closing, each Party agrees to cooperate in the delivery and execution of any closing statements or other documents that may be required to be prepared and delivered to the Florida Agency for Health Care Administration and/or any other Government Authority as a result of the consummation of the Contemplated Transaction described herein.

**9.8 Announcements.** Prior to the Closing, no Party shall issue any press release or make any public announcement relating to the execution of this Agreement, the subject matters of this Agreement and/or the Closing of the Contemplated Transaction represented by this Agreement without the prior written approval of the other Parties, which approval shall not be unreasonably withheld. Notwithstanding the aforementioned, any Party may make any public disclosure it believes in good faith is required by applicable law or disclosure obligations, including but not limited to, Florida's Government in the Sunshine Law, Florida Statutes Section 119 and Section 286.011 (collectively, the "Sunshine Law"), and the rules and regulations concerning publicly-traded securities.

**9.9 Employee Matters.**

**9.9.1** As of the Closing Date all employees of BFMCI (each an "Employee") will terminate employment with BFMCI. Excluding any individual who is not eligible for rehire by Adventist or an Adventist affiliate (i.e., previously worked for Adventist or an Adventist institution and was discharged under circumstances precluding a rehire), Adventist agrees automatically to hire and employ on an employment-at-will basis any Employee who is employed as of the Closing Date at a rate of pay of not less than the Employee's current rate and in the same or similar position to the position held by the Employee on the Closing Date, and Adventist shall not terminate any such Employee other than for performance reasons for the ninety (90) day period following the Closing Date. Each Employee's employment with Adventist otherwise shall be in accordance with usual and customary practices for other Employees employed by Adventist (or AHS) and shall be subject to the terms and conditions contained in the Employee Handbook and policies adopted from time to time by AHS for its affiliated entities. Adventist (or AHS) will extend to each Employee identified in Schedule 9.9.1, (each, a "C-Suite Employee") an employment offer letter substantially similar to that described on Schedule 9.9.1(a). Acceptance of Adventist's (or AHS's) employment offer letter shall be conditioned on the C-Suite Employee terminating his/her current employment contract with BFMCI, which for purposes of this Agreement shall be deemed an Excluded Contract. It is expressly understood by the Parties hereto that the following financial conventions shall apply to any post-Closing Date severance pay triggering events that might arise with regard to any one or more C-Suite Employees under the employment offer letters referenced in the prior sentence: (a)



if severance obligations arise due to an involuntary termination of employment by Adventist (or AHS), Adventist (or AHS) shall be responsible for providing for and financing the severance pay and benefits; and (b) if severance obligations arise due to the C-Suite Employee's voluntary termination following the change in control occasioned by the Closing Date, Adventist (or AHS) shall arrange for the severance pay and benefits, with a right to be reimbursed from SVHD or BFMCI for Adventist's (or AHS's) direct costs (i.e., pay and benefits) in an amount equal to the total direct costs multiplied by a fraction, the numerator of which is three hundred sixty five (365) minus the number of days after the Closing Date and during the first year of employment that the C-Suite Employee remains employed by Adventist (or AHS) and the denominator of which is three hundred sixty five (365). Subject to Section 9.9.7, Adventist (directly or through an affiliated organization) shall provide each Employee with employee benefits, including retirement, welfare and paid time off consistent with similarly situated employees employed at other Adventist (or AHS) institutions. Adventist (or AHS) agrees to recognize each Employee's date of hire by SVHD or BFMCI as the anniversary date of record with Adventist (or AHS) and to honor that seniority for purposes of participation in Adventist's employee benefit plans and policies, such as paid time off that extend benefits based on seniority, but excluding Plans provided by Adventist (or AHS) to which an Employee would be entitled based on job classification or an executive benefit plan that is based on service credit earned exclusively with health care organizations recognized as denominational employers by the General Conference of Seventh-day Adventists. Subject to each Employee's election of coverage, participation in Adventist's benefit plans shall be offered, as of the Closing Date, to each Employee who is in an eligible class as defined under Adventist's (or AHS's) plans. With respect to such employee benefits, to the extent lawful and/or otherwise permitted under the respective employment benefit plan, Adventist (or AHS) shall honor the Employee's prior service credit under SVHD's or BFMCI's welfare plans, in effect immediately prior to the Closing Date, for purposes of satisfying pre-existing condition limitations in Adventist's (or AHS's) welfare benefit plans. Subject to any restrictions set forth in the applicable plan, for purposes of vesting and prospective benefit accrual under Adventist's (or AHS's) retirement benefit plans, Adventist (or AHS) shall grant each Employee service credit under such retirement benefit plans in an amount equal to the number of whole twelve (12) month periods elapsed since such Employee's hire date with SVHD or BFMCI.

**9.9.2** SVHD or a SVHD Affiliate shall be responsible for the payment of all earned but unpaid bonus, holiday pay, vacation pay, severance pay, PTO and other like obligations and payments to the employees of BFMCI for all periods ending on or before the Closing Date. Prior to the Closing Date, SVHD shall encourage (but not require) members of the workforce of BFMCI to use and/or "cash out" accrued PTO in excess of eighty (80) hours. The balance of the PTO Liability shall be assumed by Adventist, subject to the terms of Section 3.3.1.

**9.9.3** SVHD or a SVHD Affiliate will comply in all respects with all group health plan continuation coverage requirements under the Consolidated Omnibus Budget Reconciliation Act of 1985, Code Section 4980B and any similar applicable federal or state group health plan continuation coverage law ("COBRA"), including the provision of continuation coverage that arises with respect to employees or former employees of BFMCI who terminate employment with BFMCI prior to or on the Closing Date and who do not become eligible for Adventist group health plan coverage because they do not become employed by

Adventist or because they are ineligible under Section 9.9.7 and the qualified beneficiaries of such employees or former employees (“BFMCI COBRA Beneficiaries”). Adventist acknowledges that neither SVHD nor any SVHD Affiliate shall maintain group health plan coverage for active or former employees after the Closing Date. Adventist agrees to extend coverage to all such BFMCI COBRA Beneficiaries under Adventist’s group health plans in the same manner as Adventist offers continuation coverage rights to similarly situated former employees (and beneficiaries) of Adventist, except that Adventist recognizes that to the extent Adventist’s continuation coverage policies might deviate from COBRA requirements as a result of the inapplicability to Adventist of COBRA, the coverage rights offered to BFMCI COBRA Beneficiaries shall be administered as if COBRA were applicable. For the avoidance of doubt, employees of SVHD or a SVHD Affiliate who become covered under an Adventist group health plan in accordance with Section 9.9.7 due to being an Adventist employee in an eligible class on or after the Closing Date, and the beneficiaries of those employees, shall not be entitled to COBRA or COBRA rights under this Section.

**9.9.4** With regard to the defined benefit pension plan maintained by BFMCI at the time of Closing (“DB Plan”), such DB Plan shall not be amended by any SVHD Affiliate or any successor plan sponsor of the DB Plan at any time to reduce accrued benefits to participants (within the meaning of Code Section 411(d)(6), whether or not such Code Section shall apply to the DB Plan) and SVHD shall engage in reasonable good faith efforts to fully fund the DB Plan prior to 2020. In addition, other than participant statements showing accrued benefit information prepared and delivered in the ordinary course of administration of the DB Plan, neither any SVHD Affiliate nor any successor plan sponsor shall prepare any notification to any DB Plan participant which makes any reference to Adventist or to any Adventist affiliate without Adventist’s advance written consent, except that the following shall be set forth in any written communication regarding the DB Plan in bold print: “THE PLAN THAT IS THE SUBJECT OF THIS COMMUNICATION IS MAINTAINED BY SOUTHEAST VOLUSIA HOSPITAL DISTRICT FOR CERTAIN ELIGIBLE EMPLOYEES WHO WERE EMPLOYEES OF BERT FISH MEDICAL CENTER PRIOR TO APRIL 1, 2016. ADVENTIST HEALTH SYSTEM IS NOT AND HAS NEVER BEEN A PARTY TO THE PLAN. INTERESTED PARTIES ARE ENCOURAGED TO CONTACT THE PLAN REPRESENTATIVES NOTED ON THIS COMMUNICATION.” The covenants in this **Section 9.9.4** shall survive the Closing for so long as the DB Plan shall continue to exist.

**9.9.5** Prior to the Closing Date, SVHD or a SVHD Affiliate shall arrange for BFMCI to terminate its 403(b) plan and its money purchase pension plan and take all appropriate action in connection with the termination, including but not limited to, effecting any plan amendments prepared in connection with such termination, depositing to such plan any and all contributions that have accrued as of the plan termination date but not yet contributed, and fully vesting all participants. SVHD or BFMCI shall make a final contribution to its money purchase pension plan for 2015 within thirty (30) days following the Closing Date. If the Closing Date occurs after January 1, 2016, BFMCI shall contribute to its money purchase pension plan in 2016 through the Closing Date with all BFMCI Employees receiving an allocation under the plan’s normal contribution formula except that any last day of the plan year employment requirement in order to receive an allocation of a contribution shall be replaced with a requirement that the Employee be employed on the Closing Date and except that any requirement that the Employee complete one thousand (1,000) hours of service during the plan year in order to receive an

allocation of a contribution shall be either waived or replaced with a prorated hours of service requirement based on the number of days between January 1, 2016 and the Closing Date.

**9.9.6** During the twelve- (12-) month period following the Effective Time, any Employee whose employment is terminated by Adventist, other than for cause, shall be entitled to participate in outplacement services offered by Adventist or an affiliated organization, which services may include participation in job fairs offered from time to time with other health care organizations; resume reviews and writing assistance; application assistance, interview skills workshops, access to Department of Labor resources coordinated by Adventist, electronic bulletin board job sharing opportunities; and trainings, workshops and information sessions related to job searching.

**9.9.7** For purposes of this Section 9.9.7, Group Insurance Plans consist of medical, dental, vision, life insurance/AD&D, short term disability and long term disability benefits. As of the Closing Date, Adventist shall offer and provide persons who become employees of Adventist (or of one of its affiliates) benefits under the Group Insurance Plans sponsored by Adventist, pursuant to the terms and conditions of the Adventist Group Insurance Plans offered to similarly situated employees of Adventist. If any Employee was entitled to benefits under BFMCI Group Insurance Plans as of the date immediately preceding the Closing Date but would not qualify as of the Closing Date under any Adventist Group Insurance Plan because the eligibility requirement is more strict than that provided under the BFMCI Group Insurance Plan, such Employee shall not receive the Adventist Group Insurance Plan benefit. Coverage of Employees under the BFMCI Group Insurance Plans shall terminate as of the Closing Date and coverage of Employees under the Group Insurance Plans sponsored by Adventist shall become effective as of the Closing Date.

**9.9.8** Adventist shall not assume responsibility for the maintaining or processing premiums for voluntary insurance benefits offered to Employees, such as critical illness, cancer, accident, universal life and long-term care.

**9.9.9** On and after the Closing Date, any reimbursement request submitted by Employees under the BFMCI tuition reimbursement or employer career scholarship program for expenses incurred by Employees before the Closing Date will be submitted to and paid by SVHD or a SVHD Affiliate; provided, however, that any reimbursement request submitted by Employees under the BFMCI tuition reimbursement or employer career scholarship program for expenses incurred by Employees after December 31, 2015, but before the Closing Date will be submitted to and paid by SVHD or a SVHD Affiliate, but Adventist shall have a contribution obligation (upon written request by SVHD) to reimburse SVHD based on the portion of the academic period for which reimbursement is sought that falls on or after the Closing Date.

**9.9.10** With regard to the retiree medical insurance subsidy plan maintained by BFMCI at the time of the Closing ("Retiree Subsidy Plan"), for the avoidance of doubt, the Retiree Subsidy Plan shall be an Excluded Contract and shall in no way be assumed by Adventist. In addition, neither any SVHD Affiliate nor any successor plan sponsor shall prepare any notification to any Retiree Subsidy Plan participant which makes any reference to Adventist or to any Adventist affiliate without Adventist's advance written consent, except that the following shall be set forth in any written communication regarding the Retiree Subsidy Plan in

bold print: "THE PLAN THAT IS THE SUBJECT OF THIS COMMUNICATION IS MAINTAINED BY SOUTHEAST VOLUSIA HOSPITAL DISTRICT FOR CERTAIN ELIGIBLE EMPLOYEES WHO WERE EMPLOYEES OF BERT FISH MEDICAL CENTER PRIOR TO APRIL 1, 2016. ADVENTIST HEALTH SYSTEM IS NOT AND HAS NEVER BEEN A PARTY TO THE PLAN. INTERESTED PARTIES ARE ENCOURAGED TO CONTACT THE PLAN REPRESENTATIVES NOTED ON THIS COMMUNICATION." The covenants in this Section 9.9.10 shall survive the Closing for so long as the Retiree Subsidy Plan shall continue to exist.

## **ARTICLE X**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF ADVENTIST**

The obligations of Adventist under this Agreement are subject to the satisfaction, at or prior to the Closing, of the following conditions (any one or more of which may be waived in writing by Adventist, at its discretion, in whole or in part):

**10.1 No Misrepresentation or Breach of Covenants and Warranties.** There shall have been no breach by SVHD and/or a SVHD Affiliate in the performance of any of its material covenants herein; each of the representations and warranties of SVHD and/or a SVHD Affiliate contained in Article VI, Article VII or Article VIII, as the case may be, of this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date; and there shall have been delivered to Adventist a certificate to that effect, dated the Closing Date and signed on behalf of SVHD and each SVHD Affiliate by an appropriate officer.

**10.2 Order Prohibiting Transaction.** No Government Authority shall have issued an Order restraining or prohibiting the Contemplated Transaction; no Government Authority shall have commenced or threatened in writing to commence any proceeding before any Government Authority that seeks to restrain or prohibit the consummation of the Contemplated Transaction. Further, there shall not be any antitrust proceeding pending, threatened or, in the opinion of each party's antitrust counsel, likely that (i) challenges or seeks damages or other relief in connection with any of the transactions contemplated by this Agreement, or (ii) may have the effect of preventing, delaying, making illegal or interfering with any of the transactions contemplated by this Agreement.

**10.3 Closing Items.** Seller shall have executed and delivered to Adventist all of the items required to be delivered by Seller as contemplated by Section 12.2 or otherwise required pursuant to any term or provision of this Agreement.

**10.4 Contracts.** Adventist shall have received consents to the assignment of the Assumed Contracts listed on Schedule 8.2 hereto (the "Contract Approvals").

**10.5 Title Policy with Respect to Other Real Property.** Adventist shall have received a commitment from a title insurance company acceptable to Adventist to issue as of the Effective Time an owner's policy of title insurance for the Other Real Property in the form attached as Attachment 10.5, together with improvements, buildings and fixtures thereon, in an amount equal to the reasonable value assigned to such Other Real Property set forth in Schedule 4.2 hereof, and in the customary form prescribed for use in the State of Florida. The

commitment shall provide for the issuance of such policy to Adventist as of the Effective Time and shall insure fee simple title, subject only to (i) the lien of taxes for the current year, not yet due and payable; and (ii) the Permitted Encumbrances.

**10.6 Documents.** All documents (including all schedules and attachments) necessary to close the Contemplated Transaction shall be in a form and content reasonably satisfactory to Adventist.

## **ARTICLE XI**

### **CONDITIONS PRECEDENT TO OBLIGATIONS OF SVHD AND SVHD AFFILIATES**

The obligations of SVHD and each SVHD Affiliate under this Agreement are subject to the satisfaction, at or prior to the Closing, of the following conditions (any one or more of which may be waived in writing by SVHD, at its discretion, in whole or in part):

**11.1 No Misrepresentation or Breach of Covenants and Warranties.** There shall have been no breach by Adventist in the performance of any of its material covenants herein; each of the representations and warranties of Adventist contained in Article V of this Agreement shall be true and correct in all material respects on the Closing Date as though made on the Closing Date; and there shall have been delivered to SVHD a certificate to that effect, dated the Closing Date and signed on behalf of Adventist by an appropriate corporate officer.

**11.2 Order Prohibiting Transaction.** No Government Authority shall have issued an Order restraining or prohibiting the Contemplated Transaction; no Government Authority shall have commenced or threatened in writing to commence any proceeding before any Government Authority that seeks to restrain or prohibit the consummation of the Contemplated Transaction. Further, there shall not be any antitrust proceeding pending, threatened or, in the opinion of each party's antitrust counsel, likely that (i) challenges or seeks damages or other relief in connection with any of the transactions contemplated by this Agreement, or (ii) may have the effect of preventing, delaying, making illegal or interfering with any of the transactions contemplated by this Agreement.

**11.3 Closing Items.** Adventist shall have executed and delivered to Seller all of the items required to be delivered by Adventist as contemplated by Section 12.1 or otherwise required pursuant to any term or provision of this Agreement.

**11.4 Contracts.** The Contract Approvals shall have been obtained.

**11.5 Documents.** All documents (including all Schedules and Attachments) necessary to close the Contemplated Transaction shall be in a form and content reasonably satisfactory to Seller.

## **ARTICLE XII**

### **THE CLOSING**

The consummation of the Contemplated Transaction (the "Closing") shall take place on the date of this Agreement (the "Closing Date") and will be effective as of 12:00:01 a.m. on the Closing Date (the "Effective Time").

**12.1 Closing Deliveries of Adventist.** At the Closing and unless otherwise waived in writing by Seller, Adventist shall deliver or cause to be delivered to Seller (or, as to **Section 12.1.9**, as provided in the Settlement Statement) the following:

**12.1.1 Purchase Price.** An amount (to be delivered by wire transfer of immediately available funds) equal to the Purchase Price.

**12.1.2 Authorization.** Copies of the resolutions duly adopted by the applicable governing boards of Adventist, authorizing and approving Adventist's execution, delivery and performance of this Agreement and other applicable documents described herein, certified as true and in full force and effect as of the Closing Date by an appropriate officer of Adventist.

**12.1.3 Officer's Certificate.** Duly executed Certificate of Corporate Officer as required under **Section 11.1** of this Agreement, dated as of the Closing Date.

**12.1.4 Opinion of Adventist's Counsel.** The legal opinion of Adventist's counsel dated as of the Closing Date and addressed to Seller in the form attached hereto as **Attachment 12.1.4**.

**12.1.5 Certificate of Active Status.** A certificate of active status of Adventist from the Secretary of State of the State of Florida, dated the most recent practical date prior to the Closing Date.

**12.1.6 Assumption Agreement.** An Assumption Agreement as to the Assumed Contracts, duly executed by Adventist in the form attached hereto as **Attachment 12.1.6**.

**12.1.7 Settlement Statement.** The Settlement Statement, duly executed by Adventist in the form attached hereto as **Attachment 12.1.7** (the "**Settlement Statement**").

**12.1.8 Other Documents.** All documents required of Adventist by any other provision of this Agreement or as reasonably requested to be produced by SVHD.

**12.1.9 Foundation Reverter Contribution.** The amount of Two Million One Hundred and Fifty Thousand Dollars (\$2,150,000.00) payable to SVHD by wire transfer of immediately available funds for use in association with the Closing associated with the Agreement to Release Deed Restrictions.

**12.2 Closing Deliveries of SVHD and BFMCI.** At the Closing and unless otherwise waived in writing by Adventist, SVHD or BFMCI, as the case may be, shall deliver or cause to be delivered to Adventist the following documents:

**12.2.1 Authorization.** Copies of the resolutions duly adopted by the applicable governing boards of SVHD and BFMCI, authorizing and approving SVHD and BFMCI's respective performance of the Contemplated Transaction and the execution, delivery and performance of this Agreement, the Lease Agreement and the applicable documents described herein, certified as true and in full force and effect as of the Closing Date by an appropriate officer of SVHD and BFMCI.

**12.2.2 Officer's Certificate.** Duly executed Certificate of Officer as required under Section 10.1 of this Agreement, dated as of the Closing Date.

**12.2.3 Opinion of SVHD's Counsel.** The legal opinion of counsel for SVHD and BFMCI dated as of the Closing Date and addressed to Adventist in the form attached hereto as Attachment 12.2.3.

**12.2.4 Certificates of Active Status.** A certificate of active status of BFMCI and SVMS from the Secretary of State of the State of Florida, dated the most recent practical date prior to the Closing Date.

**12.2.5 Conveyance Instruments.** One or more deeds conveying special warranty of title, in a form reasonably acceptable to Adventist and SVHD, duly executed by SVHD or the applicable SVHD Affiliate, conveying to Adventist fee simple title to the Other Real Property.

**12.2.6 Bills of Sale.** One or more Bills of Sale, in a form reasonably acceptable to Adventist and SVHD (the "Bill of Sale"), duly executed by SVHD or the applicable SVHD Affiliate, assigning to Adventist title to the personal property comprising the Included Assets.

**12.2.7 Assumption Agreement.** An Assumption Agreement, as to the Assumed Contracts, duly executed by SVHD and/or a SVHD Affiliate, as appropriate in the form attached hereto as Attachment 12.1.6.

**12.2.8 Closing Statement.** The Closing Statement, duly executed by SVHD and BFMCI.

**12.2.9 Other Documents.** All documents required of each of SVHD and SVHD Affiliate by any other provision of this Agreement or as reasonably requested to be produced by Adventist.

**12.3 Contemplated Transaction; New Lease Agreement.** The Parties agree to cooperate with one another in scheduling the Closing under this Agreement to coincide with the Commencement Date of the New Lease Agreement, it being the intent of the Parties that the date and time constituting the Effective Time under this Agreement shall also be the Commencement Time under the New Lease Agreement. Understanding that in order to facilitate the Closing pursuant to this Agreement certain documents may need to be executed by one or more Parties prior to the Closing, the Parties nevertheless agree that all executed documents will remain non-binding against any Party who may have executed same (nor may any money remitted pursuant to said executed document be retained by the receiving Party) until and unless an authorized representative of each Party has executed an "acknowledgement" attesting that the conditions contained in this Agreement, the Agreement to Release Deed Restrictions and the Lease and Transfer Agreement have been met.

**12.4 Schedules and Other Instruments.** Each Schedule and Attachment to this Agreement shall be considered a part hereof as if set forth herein in full.

## **ARTICLE XIII**

### **TERMINATION**

**13.1 Termination.** This Agreement may be terminated and the Contemplated Transaction may be abandoned at any time prior to the Closing as follows:

**13.1.1** by mutual written consent of Adventist and SVHD; or

**13.1.2** by either SVHD or Adventist, by giving notice to the other Party, if a final nonappealable Order permanently enjoining, restraining or otherwise prohibiting the Closing shall have been issued by a Government Authority of competent jurisdiction.

Notwithstanding the aforementioned neither Party shall be in default under this Agreement if it refuses to close based on a request received from either the Federal Trade Commission/US Department of Justice or the Florida State Attorney General.

**13.2 Effect of Termination.** Upon termination of this Agreement pursuant to Section 13.1, the provisions of this Agreement shall be of no further force or effect, and no Party shall have any further liability under this Agreement; provided, however, the obligations of the Parties contained in this Section 13.2, Article XV (Indemnification) and Article XVI (Miscellaneous) shall survive such termination. A termination of this Agreement under Section 13.1 shall not relieve any Party of any liability for a material breach of, or for any material misrepresentation under, this Agreement, or be deemed to constitute a waiver of any available remedy for any such breach or misrepresentation.

In the event of a termination of this Agreement, each Party agrees to return to the other Parties all due diligence materials and shall destroy all copies of such materials, including all analyses or other manipulations or compilations of those materials, whether in hard copy or electronic format; provided, however, that an archival copy of such items may be retained by counsel for such Party as may be necessary to comply with law.

## **ARTICLE XIV**

### **PAYMENT MATTERS**

To ensure that revenues retained by or due to SVHD or a SVHD Affiliate, which constitutes an Excluded Asset, are accurately processed, the parties agree as follows:

#### **14.1 Patient Accounts.**

**14.1.1** To appropriately allocate payments received by Adventist with respect to services rendered and medicine, drugs and supplies provided by BFMCI or Adventist, as the case may be (the "Straddle Patient Services") to patients admitted to the Hospital prior to the Effective Time but not discharged until at or after the Effective Time (the "Straddle Patients"), Adventist shall prepare and bill claims (the accounts receivable resulting from such claims, the "Straddle Patient Receivables") for the Straddle Patients following their discharge from the Hospital. If Adventist receives any payments on any Straddle Patient Receivable, Adventist will pay to SVHD an amount equal to: (a) the payments (including deposits, deductibles and co-



payments, received by Adventist) with respect to the applicable Straddle Patient Receivable multiplied by a fraction, the numerator of which shall be the total charges for the Straddle Patient Services provided to the applicable Straddle Patient prior to the Effective Time, and the denominator of which shall be the sum of the total charges of the Straddle Patient Services provided to the applicable Straddle Patient prior to, at or after the Effective Time (including charges for medicine, drugs and supplies); minus (b) any deposits, deductibles or co-payments paid by the applicable Straddle Patient prior to the Effective Time (which will be retained by SVHD as an Excluded Asset). If SVHD or a SVHD Affiliate receives any payments on any Straddle Patient Receivable, SVHD or a SVHD Affiliate, as applicable, will pay Adventist an amount equal to the payments (including deposits, deductibles and co-payments received by SVHD or any SVHD Affiliates) with respect to the applicable Straddle Patient Receivable multiplied by a fraction, the numerator of which shall be the total charges for the Straddle Patient Services provided to the applicable Straddle Patient, at and after the Effective Time, and the denominator of which shall be the sum of the total charges of the Straddle Patient Services provided to the applicable Straddle Patient prior to, at and after the Effective Time, (including charges for medicine, drugs and supplies).

**14.1.2** Notwithstanding the provisions of Section 14.1.1, to the extent a third party payor requires the Parties to submit split bills for the Straddle Patients (i.e., a bill for the portion of the Straddle Patient Services provided prior to the Effective Time and a separate bill for the portion of the Straddle Patient Services provided at or after the Effective Time, (a) the provisions of Section 14.1.1 will not apply to billing and collection for such Straddle Patient Services, (b) SVHD will be responsible for billing and collection for all Straddle Patient Services prior to the Effective Time (and the accounts receivable for such Straddle Patient Services will be retained by SVHD as Excluded Assets), and (c) Adventist will be responsible for billing and collection for all Straddle Patient Services performed at or after the Effective Time (and the accounts receivables for such Straddle Patient Services will be the property of Adventist).

**14.1.3** Adventist will make all payments it is required to make to SVHD or a SVHD Affiliate pursuant to this Section 14.1 within ten (10) Business Days after the close of the prior month's books by depositing such amounts into an account specified in writing by SVHD, and shall provide SVHD with sufficient documentation to support the sum deposited.

**14.1.4** SVHD or a SVHD Affiliate will make all payments it is required to make to Adventist pursuant to this Section 14.1 within ten (10) Business Days after the close of the prior month's books by depositing such amounts into an account specified in writing by Adventist, and shall provide Adventist with sufficient documentation to support the sum deposited.

**14.1.5** In addition to the other payments contemplated by this Section 14.1 (or elsewhere in this Agreement): (a) if SVHD or a SVHD Affiliate receives any amount from patients or Government Program or other third party payors which relates to services rendered by Adventist at or after the Effective Time, SVHD or a SVHD Affiliate will remit such amount to Adventist within ten (10) Business Days after SVHD or a SVHD Affiliate receives such amount; and (b) if Adventist or any of its affiliates receives any amount from patients, Government Program or other third party payors which relates to services rendered by SVHD or a SVHD

Affiliate prior to the Effective Time, Adventist will remit such amount to SVHD within ten (10) Business Days after Adventist or its affiliate receive such amount.

**14.2 Cost Reports; Other Reports.** SVHD shall timely prepare and file and will pay any amounts due pursuant to all Cost Reports relating to BFMCI and the Hospital for periods ended prior to the Effective Time or required as a result of the consummation of the Contemplated Transaction including terminating Cost Reports for the Government Program and for any other cost based payors (collectively, the “SVHD Cost Reports”). Adventist shall forward to SVHD any and all correspondence relating to SVHD Cost Reports within ten (10) Business Days after receipt by Adventist. Adventist shall remit to SVHD any receipts of funds relating to SVHD Cost Reports promptly after receipt by Adventist and shall forward to SVHD any demand for payments within ten (10) Business Days after receipt by Adventist. Seller shall retain all rights, liabilities, and obligations associated with SVHD Receivables and SVHD Cost Reports (the “SVHD Settlements”) including any amounts receivable or payable in respect of such SVHD Cost Reports or reserves relating to such SVHD Cost Reports. Such rights shall include the right to appeal any Medicare determination relating to SVHD Settlements and SVHD Cost Reports. SVHD shall retain the originals of SVHD Cost Reports, correspondence, work papers and other documents relating to SVHD Cost Reports and the SVHD Settlements.

**14.3 HITECH Payment Matters.**

**14.3.1** Adventist shall cooperate with SVHD in all reasonable respects in providing documents or data that SVHD reasonably believes are necessary or appropriate to file with respect to Medicare and Medicaid Health Information Technology for Economic and Clinical Health payments (and rights to such payments) from Medicare and Medicaid with respect to meaningful use of electronic health records at the Hospital (the “HITECH Payments”) for all periods ended prior to the Effective Time or to substantiate SVHD’s claims for HITECH Payments for such periods. Adventist shall forward to SVHD any and all correspondence relating to such HITECH Payments within ten (10) Business Days after receipt by Adventist. Notwithstanding the aforementioned, Adventist shall not be responsible for providing documents or data that pertain to a reporting period prior to the Effective Time, except to the degree said records were entrusted to Adventist by SVHD pursuant to the Records Custodian Agreement as described in the New Lease Agreement.

**14.3.2** With respect to HITECH Payments for the Federal Fiscal Year in which the Effective Time occurs, the Parties agree that (a) such HITECH Payments (including all rights to pursue such payments and/or appeal any decisions regarding such payments) are included in the Excluded Assets and shall remain the property of SVHD; provided, however, that SVHD agrees to share any HITECH Payments it is entitled to for such Federal Fiscal Year with Adventist on a pro rata basis (based upon the number of days during such Federal Fiscal Year that Adventist operated the Hospital (the “Adventist Pro Rata HITECH Payments”) and the number of days during such Federal Fiscal Year that BFMCI operated the Hospital (the “BFMCI Pro Rata HITECH Payments”)); and (b) Adventist shall remit to SVHD the BFMCI Pro Rata HITECH Payments within ten (10) Business Days after receipt by Adventist; and (c) to the extent Adventist is required to refund or repay any portion of the HITECH Payments for the period of the Federal Fiscal Year in which BFMCI operated the Hospital, SVHD will pay Adventist its pro rata portion of the amount of the required refund or repayment but not more

than the amount of such required repayment within ten (10) Business Days after Adventist refunds or remits such amount to Medicare or Medicaid as applicable.

**14.3.3** If Adventist receives any HITECH Payments relating solely to Federal Fiscal Years ended prior to the Effective Time, Adventist will pay to SVHD an amount equal to such HITECH Payments. If SVHD receives any HITECH Payments relating solely to the Federal Fiscal Year in which the Effective Time occurs (or any subsequent Federal Fiscal Year), SVHD will pay Adventist an amount equal to Adventist's proportionate share of such HITECH Payments as determined in accordance with Section 14.3.2. The applicable Party will make all payments that it is required to make under this Section 14.3.3 promptly and in any event within ten (10) Business Days of receipt of the applicable payments.

**14.4 Misdirected Payments.** If any Party hereto receives any amount from patients, third party payors, group purchasing organizations or suppliers which, under the terms of this Agreement, belongs to another Party hereto, the Party receiving such amount shall remit within ten (10) Business Days such full amount to the Party to whom it is due.

**14.5 RAC and Other Business Audit Procedures.**

**14.5.1** Without limiting any other provision of this Agreement in the event of any RAC Audit or other business audit which occurs following the Closing but which relates to payments for services provided prior to the Effective Time: (a) Adventist shall forward to SVHD any and all correspondence relating to the pre-Effective Time aspects of such audits within ten (10) Business Days of receipt by Adventist; (b) SVHD shall be solely responsible for responding to any such correspondence to the extent it relates to periods prior to the Effective Time (the "Pre-Effective Time Periods"); (c) SVHD shall be solely responsible for and control any appeals or administrative actions required to be taken in connection with any such audit to the extent it relates to Pre-Effective Time Periods; (d) SVHD shall be solely responsible for all costs and expenses arising out of or incurred in connection with such audit to the extent it relates to Pre-Effective Time Periods, including any responses required in connection therewith and any repayments required as a result thereof; and (e) SVHD and Adventist shall take such actions and execute such documents as SVHD reasonably requests and which are reasonably necessary to enable SVHD to rebut, defend and appeal proposed and/or actual denials of claims resulting from such audit to the extent it relates to Pre-Effective Time Periods.

**14.5.2** After the Closing, Adventist will reasonably cooperate with SVHD in regard to the preparation, filing, handling response to, and appeals of, the SVHD Cost Reports or any pre-Effective Time audit. Such cooperation shall include the provision of reasonable access by SVHD employees and representatives for any legitimate business reason to: (a) the business offices of Adventist regarding the Hospital; (b) Adventist's data and business office staff for assistance reasonably required by SVHD; and (c) the business files at Adventist's offices to the extent the files relate to the Hospital's pre-Effective Time operations. Adventist shall give reasonable assistance to SVHD in respect of exit conferences or meetings with regulatory representatives, including the cooperation and attendance at such meetings of the Hospital's Chief Executive Officer, Chief Financial Officer and Chief Compliance Officer (or the equivalent). Adventist will provide reasonable access by SVHD to all records of the Hospital relating to pre-Effective Time periods for any legitimate business reason and will allow SVHD to

copy any documents relating to the Hospital's pre-Effective Time operations, the SVHD Cost Reports or any RAC Audit and appeals thereof.

## **ARTICLE XV**

### **SURVIVAL AND INDEMNIFICATION**

**15.1 Survival of Representations and Warranties.** The representations and warranties in Article V, Article VI, Article VII and Article VIII shall survive the Closing subject to the limitations in this Article XV. As a condition precedent to the right to assert a claim for any misrepresentation as to, or any inaccuracy in any representation or warranty in Article V, Article VI, Article VII or Article VIII, other than any of the Fundamental Representations (as defined below), the Party desiring to assert such claim must have given notice of such claim to the other Party (or Parties) as the case may be, within eighteen (18) months after the Closing Date. For purposes of this Agreement, a "Fundamental Representation" means any representation or warranty in Article V, Article VI, Article VII, Section 8.4, Section 8.6, Section 8.7, Section 8.8, Section 8.9 and Section 8.10. As a condition precedent to the right to assert a claim for any misrepresentation as to, or any inaccuracy in, any of the Fundamental Representations, the Party seeking indemnification must have given notice of such claim to the other Party (or Parties) as the case may be, not later than the earlier of (a) thirty six (36) months after the Closing Date, or (b) the expiration of the statute of limitations that would be applicable to any third party claim that could be asserted against the Party seeking indemnification with respect to the subject of such representation or warranty.

**15.2 Indemnification by Seller.** To the extent permitted by law, Seller shall indemnify and hold harmless Adventist, and its respective directors, officers, managers, members, principals, attorneys, agents, employees and other representatives (collectively, the "Adventist Indemnified Parties") from and against any and all Indemnifiable Losses that any such Adventist Indemnified Party incurs as a result of: (a) any breach of inaccuracy in any of the representations or warranties in Article VI, Article VII or Article VIII made by SVHD or any SVHD Affiliate; (b) any breach or nonfulfillment by SVHD or either SVHD Affiliate of any of the covenants or other agreements made by SVHD or either SVHD Affiliate in this Agreement; and (c) any of the Excluded Liabilities.

**15.3 Indemnification by Adventist.** To the extent permitted by law, Adventist shall indemnify and hold harmless each of SVHD, BFMCI and SVMS, the respective board members, directors, officers, managers, members, principals, attorneys, agents, employees and other representatives of each (collectively, the "SVHD Indemnified Parties") from and against any and all Indemnifiable Losses that any such SVHD Indemnified Party incurs as a result of: (a) any breach of or inaccuracy in any of the representations or warranties made by Adventist in Article V of this Agreement; (b) any breach or non-fulfillment of any of the covenants or other agreements made by Adventist in this Agreement; and (c) any of the Assumed Liabilities.

#### **15.4 Determination of Losses.**

**15.4.1** The amount of any Indemnifiable Losses shall be reduced or reimbursed, as the case may be, by any amount received by any Indemnified Parties with respect thereto under any insurance coverage (excluding self-insurance coverage maintained by or for such

Indemnified Parties) or from any other party alleged to be responsible therefor. An Indemnified Party shall use commercially reasonable efforts to collect any amounts available under insurance policies maintained by or for such Indemnified Party with commercial carriers, if any, and from such other party alleged to have responsibility for the Indemnified Loss. If an Indemnified Party receives an amount under insurance coverage (excluding self-insurance programs maintained by or for such Indemnified Party) or from such other party with respect to Indemnifiable Losses at any time subsequent to any indemnification provided by the Indemnifying Party pursuant to Section 15.2 or Section 15.3, as the case may be, then such Indemnified Party shall promptly reimburse the Indemnifying Party for any payment made or expense incurred by such Indemnifying Party in connection with providing such indemnification up to such amount received (less any costs or expenses incurred in recovering such amounts) by the Indemnified Party.

**15.4.2 NOTWITHSTANDING ANYTHING TO THE CONTRARY ELSEWHERE IN THIS AGREEMENT, NO PARTY TO THIS AGREEMENT SHALL, IN ANY EVENT, BE LIABLE TO ANY OTHER PARTY FOR PUNITIVE OR EXEMPLARY DAMAGES PURSUANT TO THIS ARTICLE XV.**

**15.4.3** Each Person entitled to indemnification hereunder shall use commercially reasonable efforts to mitigate all Indemnifiable Losses after becoming aware of any event which could reasonably be expected to give rise to any Indemnifiable Losses.

#### **15.5 Notice and Control of Litigation.**

**15.5.1** If a Government Authority or other third party asserts a claim or potential liability (a “Third-Party Claim”) against a Person entitled to indemnification under this Article XV (the “Indemnified Party”) that would give rise to a claim under this Article XV, the Indemnified Party promptly shall give notice of the Third-Party Claim (the “Claim Notice”) to the Person or Persons providing indemnity hereunder (the “Indemnifying Party”); provided, however, that the failure to give a Claim Notice as so indicated shall not affect the Indemnifying Party’s obligation to indemnify the Indemnified Party, and the Indemnifying Party shall have no remedy by reason of such failure except to the extent of any prejudice to the Indemnifying Party resulting from such delay. The Indemnifying Party, at its sole cost and expense, will be entitled to participate in the defense of any Third-Party Claim and will have the right to defend the Indemnified Party against the Third-Party Claim so long as: (a) the Third-Party Claim involves only claims for monetary damages and does not seek an injunction or other equitable relief against the Indemnified Party; (b) the Indemnified Party has not been advised in writing by counsel that a conflict or potential conflict exists between the Indemnified Party and the Indemnifying Party in connection with the defense of the Third-Party Claim; and (c) the Third-Party Claim does not relate to or otherwise arise in connection with any criminal or regulatory enforcement action. If the Indemnifying Party, within fifteen (15) Business Days after receipt of a Claim Notice, fails to undertake to defend such Third-Party Claim, the Indemnified Party will (upon giving further notice to the Indemnifying Party) have the right to undertake the defense, compromise or settlement of such Third-Party Claim and seek indemnification therefor under Section 15.2 or Section 15.3, as applicable; provided, however, that the Indemnified Party will not compromise or settle such Third Party Claim without the consent of the Indemnifying Party, which consent will not be unreasonably withheld. If the Indemnified Party assumes the defense

of a Third-Party Claim in accordance with this Section 15.5.1, the Indemnifying Party shall cooperate in all commercially reasonable respects with the Indemnified Party in the investigation, trial and defense of such Third-Party Claim and any appeal arising therefrom; provided, however, that the Indemnifying Party may, at its own cost, participate in the investigation, trial and defense of such Third-Party Claim or any appeal arising therefrom.

**15.5.2** If the Indemnifying Party assumes the defense of a Third-Party Claim in accordance with Section 15.5.1, the Indemnified Party shall cooperate in all commercially reasonable respects with the Indemnifying Party in the investigation, trial and defense of such Third-Party Claim and any appeal arising therefrom; provided, however, that the Indemnified Party may, at its own cost, participate in the investigation, trial and defense of such Third-Party Claim or any appeal arising therefrom. The Parties shall cooperate with each other in any notifications to insurers. The Indemnified Party shall assist and cooperate with the Indemnifying Party, at the cost and expense of the Indemnifying Party, in the making of settlements and the enforcement of any right of contribution to which the Indemnified Party may be entitled from any Person or entity in connection with the subject matter of any litigation subject to indemnification hereunder. The Indemnifying Party will not compromise or settle such Third Party Claim without the consent of the Indemnified Party, which consent will not be unreasonably withheld.

## **15.6 Specific Performance.**

**15.6.1** The Parties agree that irreparable damage will occur in the event that any of the essential provisions of this Agreement are materially breached. Each Party therefore agrees that, in the event of any breach or threatened breach by any other Party of any essential covenant or obligation contained in this Agreement, the non-breaching Party shall be entitled (in addition to any other equitable remedy that may be available to it and, in addition, to the right to seek indemnification pursuant to this Article XV) to seek and obtain, without proof of actual damages: (a) a decree or other order of specific performance to enforce the observance and performance of such covenant or obligation; and (b) an injunction restraining such breach or threatened breach.

**15.6.2** Each Party acknowledges and agrees that it will not oppose any equitable relief or equitable remedy referred to in this Section 15.6 on the grounds that any other remedy is available at law or in equity.

**15.7 Exclusive Remedy.** The provisions of this Article XV shall be the sole and exclusive remedy for any claim arising under this Agreement for any damages or injury alleged to be suffered by any Party hereto except to the extent, if any, that SVHD is not permitted by law to indemnify and hold harmless the Adventist Indemnified Parties with respect to a particular claim under the terms and limitations of this Article XV.

**15.8 Direct and Third Party Claims.** The provisions of this Article XV shall apply to direct claims and the enforcement of indemnification claims attributable to third party claims.

**ARTICLE XVI**  
**MISCELLANEOUS**

**16.1 Commercially Reasonable Efforts.** Each Party covenants and agrees to use commercially reasonable efforts to cause all conditions precedent that are within such Party's reasonable control, to be satisfied at or prior to the Closing.

**16.2 Notices.** All notices or other communications required or permitted hereunder shall be in writing, shall be delivered personally; delivered by a recognized courier service or sent by certified or registered mail, return receipt requested, postage prepaid, in any such case as follows:

IF TO SVHD: Southeast Volusia Hospital District  
Post Office Box 909  
New Smyrna Beach, Florida 32170-0909  
Attention: Chairman of the Board

With simultaneous copy Carlton Fields Jorden Burt, P.A.  
(which shall not constitute 4221 West Boy Scout Boulevard  
notice) to: Suite 1000  
Tampa, Florida 33607  
Attention: James J. Kennedy, III, Esq.

IF TO ADVENTIST: Adventist Health System/Sunbelt, Inc.  
900 Hope Way  
Altamonte Springs, Florida 32714  
Attention: President

With simultaneous copy Adventist Health System Sunbelt Healthcare Corporation  
(which shall not constitute 900 Hope Way  
notice) to: Altamonte Springs, Florida 32714  
Attention: Chief Legal Officer

and

Adventist Health System East Florida Region  
c/o Florida Hospital Fish Memorial  
1055 Saxon Boulevard  
Orange City, FL 32763  
Attention: President, East Florida Region

or to such other address, and to the attention of such other individual or officer as any Party may designate by notice given in accordance with this **Section 16.2**. Notice shall be deemed to have been given and received when delivered personally or by recognized courier, or on the fifth (5<sup>th</sup>) day after such notice has been mailed, in accordance with this **Section 16.2**.

**16.3 Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto, the successors and permitted assigns of the Parties, provided,



however, none of the rights or obligations of a Party hereunder may be assigned or delegated without the prior written consent of the other Parties.

**16.4 Further Assurances.** Following the Closing, each of the Parties hereto will take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested by any other Party in order to perfect and complete the transactions described herein.

**16.5 Amendment of Agreement.** This Agreement may be amended, supplemented or modified at any time by a written instrument duly executed by all of the Parties hereto.

**16.6 Governing Law.** This Agreement shall be governed and construed in accordance with the laws of the State of Florida without regard to its principles of conflicts of laws that would result in the application of the laws of any other jurisdiction. ANY LEGAL SUIT, ACTION OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, THE OTHER TRANSACTION DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY WILL BE INSTITUTED IN THE COURTS OF THE STATE OF FLORIDA LOCATED IN VOLUSIA COUNTY, AND EACH PARTY IRREVOCABLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF SUCH COURTS IN ANY SUCH SUIT, ACTION OR PROCEEDING. THE PARTIES IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY OBJECTION TO THE LAYING OF VENUE OF ANY SUIT, ACTION OR ANY PROCEEDING IN SUCH COURT AND IRREVOCABLY WAIVE AND AGREE NOT TO PLEAD OR CLAIM IN ANY COURT THAT ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM. EACH OF THE PARTIES HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE CONTEMPLATED TRANSACTION.

**16.7 Waiver of Terms.** Any of the terms or conditions of this Agreement may be waived at any time by the Party or Parties who are entitled to the benefit thereof, but only by a writing that has been signed by the Party or Parties waiving such terms or conditions. The waiver of any term or condition shall not be construed as a waiver of any other term or condition of this Agreement.

**16.8 Entire Agreement; No Third Party Beneficiaries.** This Agreement together with the New Lease Agreement and each exhibit or attachment incorporated by reference in the this Agreement/New Lease Agreement constitutes the entire agreement among the Parties with respect to the subject matters hereof, and supersedes all other prior or contemporaneous agreements, understandings, negotiations, representations, warranties or letters of intent, both written and oral, among any two or more of the Parties. This Agreement is not intended to confer upon any Person other than the Parties any rights or remedies hereunder.

**16.9 Execution in Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.



**16.10 Titles and Headings.** Titles and headings to articles, sections and subsections herein are for purposes of reference only, and shall in no way limit, define or otherwise affect the provisions hereof.

**16.11 Schedules and Attachments.** The annexed Schedules and Attachments shall be construed with and as an integral part of this Agreement to the same extent as if the same had been set forth verbatim herein. Any fact disclosed on one Schedule hereto shall be deemed to be disclosed on each other applicable Schedule.

**16.12 Payment of Expenses.** Except as otherwise set forth in this Agreement, all fees and expenses for the preparation of this Agreement and the consummation of the Contemplated Transaction including, without limitation, counsel fees, accounting fees, investment advisor's fees and disbursements, shall be borne by the respective Parties incurring such expense, whether or not such transactions are consummated.

**16.13 Invalidity of any Provisions.** It is the intention of the Parties that the provisions of this Agreement shall be enforced to the fullest extent permissible under the laws and public policies of the State of Florida, and that the unenforceability (or the modification to conform with such laws or public policies) of any provision of this Agreement shall not render unenforceable or impair the remainder of this Agreement. Accordingly, if any provision of this Agreement shall be deemed invalid or unenforceable in whole or in part as a result of such laws or public policies, this Agreement shall be deemed amended to delete or modify, in whole or in part as necessary, the invalid or unenforceable provisions or portions thereof and to alter the remainder of this Agreement in order to render the same valid and enforceable.

**16.14 Enforcement Costs.** In the event a Party incurs legal fees and expenses to enforce any provision of this Agreement, the prevailing party will be entitled to recover such legal fees and expenses (including, without limitation, such fees and expenses in bankruptcy proceedings and any appeals), in addition to any other relief to which such Party shall be entitled.

**16.15 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, any Party shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such Party.

**16.16 Construction.** As used in this Agreement, unless the context clearly indicates otherwise, the terms "hereunder," "herein" and "hereof" shall refer to this Agreement as a whole.

## **ARTICLE XVII**

### **INDEX OF DEFINITIONS**

**17.1** "**Adventist**" is defined in the preamble to this Agreement.

**17.2** "**Adventist Indemnified Parties**" is defined in **Section 15.2.**

**17.3** "**Adventist Pro Rata HiTech Payments**" is defined in **Section 14.3.2.**

**17.4** "**AHSS**" is defined in the recitals to this Agreement.

- 17.5 “**Agreement**” is defined in the preamble to this Agreement.
- 17.6 “**Assumed Liabilities**” is defined in **Section 3.3.1**.
- 17.7 “**Benefits Transition Period**” is defined in **Section 9.9.7**.
- 17.8 “**BFMCI**” is defined in the preamble to this Agreement.
- 17.9 “**BFMCI COBRA Beneficiaries**” is defined in **Section 9.9.3** of this Agreement.
- 17.10 “**BFMCI Pro Rata HiTech Payments**” is defined in **Section 14.3.2**.
- 17.11 “**Bill of Sale**” is defined in **Section 12.2.6**.
- 17.12 “**CAA**” is defined in **Section 2.10**.
- 17.13 “**Capital Lease**” is defined in **Section 3.3.3**.
- 17.14 “**Capital Lease Credit**” is defined in **Section 3.3.3(b)**.
- 17.15 “**Capital Lease Property**” is defined in **Section 3.3.3(a)**.
- 17.16 “**CERCLA**” is defined in **Section 2.10**.
- 17.17 “**Claim Notice**” is defined in **Section 15.5.1**.
- 17.18 “**Closing**” is defined in **Article XII**.
- 17.19 “**Closing Date**” is defined in **Article XII**.
- 17.20 “**Contract Approvals**” is defined in **Section 10.4**.
- 17.21 “**Centers for Medicare and Medicaid Services**” is defined in **Section 8.10.1**.
- 17.22 “**C-Suite Employee**” is defined in **Section 9.9.1**.
- 17.23 “**DB Plan**” is defined in **Section 9.9.4**.
- 17.24 “**Effective Time**” is defined in **Article XII**.
- 17.25 “**Employee**” is defined in **Section 9.9.1**.
- 17.26 “**Employment Loss**” is defined in **Section 8.15**.
- 17.27 “**End Date**” is defined in **Section 13.1.2**.
- 17.28 “**Excluded Assets**” is defined in **Section 3.1.2**.
- 17.29 “**Excluded Contract**” is defined in **Section 8.2**.

- 17.30 “**Excluded Liabilities**” is defined in **Section 3.3.2**.
- 17.31 “**Execution Date**” is defined in the preamble to this Agreement.
- 17.32 “**Foundation**” is defined in **Section 3.1.2(m)**.
- 17.33 “**Fundamental Representation**” is defined in **Section 15.1**.
- 17.34 “**Health Insurance Coverage**” is defined in **Section 3.3**.
- 17.35 “**Identified Excluded Claims**” is defined in **Section 3.3.2**.
- 17.31 “**Included Assets**” is defined in **Section 3.1.1**.
- 17.36 “**Indemnified Party**” is defined in **Section 15.5.1**.
- 17.37 “**Indemnifying Party**” is defined in **Section 15.5.1**.
- 17.38 “**IRS**” is defined in **Section 8.6.6**.
- 17.39 “**Medicaid**” is defined in **Section 8.10.1**.
- 17.40 “**Medicare**” is defined in **Section 8.10.1**.
- 17.41 “**Multiemployer Plan**” is defined in **Section 8.6.10**.
- 17.42 “**New Lease Agreement**” is defined in the recitals to this Agreement.
- 17.43 “**Omitted Contract**” is defined in **Section 3.4.2**.
- 17.44 “**Other Capital Lease**” is defined in **Section 3.3.3**.
- 17.45 “**Other Real Property**” is defined in **Section 3.1.1(a)**.
- 17.46 “**PPACA**” is defined in **Section 8.6.2**.
- 17.47 “**Party**” or **Parties**” is defined in the preamble to this Agreement.
- 17.48 “**Pension Plan**” is defined in **Section 8.6.10**.
- 17.49 “**Plans**” is defined in **Section 8.6.1**.
- 17.50 “**Pre-Effective Time Periods**” is defined in **Section 14.5.1**.
- 17.51 “**Purchase Payment**” is defined in **Section 3.3.3(c)**.
- 17.52 “**Purchase Price**” is defined in **Section 4.1**.
- 17.53 “**Qualified Plan**” is defined in **Section 8.6.1**.

- 17.54 “Return Payment” is defined in Section 3.3.3(d).
- 17.55 “RCRA” is defined in Section 2.10.
- 17.56 “Retiree Subsidy Plan” is defined in Section 9.9.10.
- 17.57 “Section 409A Plan” is defined in Section 8.6.13.
- 17.58 “Seller” is defined in the preamble to this Agreement.
- 17.59 “Settlement Statement” is defined in Section 12.1.7.
- 17.60 “Straddle Patients” is defined in Section 14.1.1.
- 17.61 “Straddle Patient Receivables” is defined in Section 14.1.1.
- 17.62 “Straddle Patient Services” is defined in Section 14.1.1.
- 17.63 “Sunshine Law” is defined in Section 9.8.
- 17.64 “SVHD” is defined in the preamble to this Agreement.
- 17.65 “SVHD Affiliate Participant” is defined in Section 8.10.1.
- 17.66 “SVHD Cost Reports” is defined in Section 14.2.
- 17.67 “SVHD Financial Statements” is defined in Section 8.1.
- 17.68 “SVHD Indemnified Parties” is defined in Section 15.3.
- 17.69 “SVHD Receivables” is defined in Section 3.1.2(b).
- 17.70 “SVHD Settlements” is defined in Section 14.2.
- 17.71 “SVMS” is defined in the preamble to this Agreement.
- 17.72 “Third-Party Claim” is defined in Section 15.5.1.
- 17.73 “Tuition Reimbursement” is defined in Section 3.3.1.

**ARTICLE XVIII**  
**INDEX OF ATTACHMENTS AND SCHEDULES**

Attachment 10.5	Title Insurance Commitment
Attachment 12.1.4	Opinion of Adventist Counsel
Attachment 12.1.6	Assumption Agreement
Attachment 12.1.7	Closing Statement
Attachment 12.2.3	Opinion of SVHD's/BFMCI's Counsel
Schedule 2.22	Hospital Real Property
Schedule 2.30	Permitted Encumbrances
Schedule 3.1.1(a)	Description of Other Real Property
Schedule 3.1.1(b)	Personal Property
Schedule 3.1.1(d)	Inventory of Supplies and Pharmaceuticals
Schedule 3.1.1(e)	Prepaid Expenses
Schedule 3.1.2 (v)	Other Assets of SVHD/SVHD Affiliate
Schedule 3.3.2	Identified Excluded Claims
Schedule 3.3.3	Capital Lease Credit
Schedule 4.2	Allocation of Purchase Price
Schedule 4.3	Items to be Prorated
Schedule 5.4	Required Consents (Adventist)
Schedule 6.3(a)	Non-Contravention Disclosure (SVHD)
Schedule 6.3(b)	Disclosures of Conflicts (SVHD)
Schedule 6.3(c)	Required Consent (Seller)
Schedule 7.4(a)	Non-Contravention Disclosures (BFMCI)
Schedule 7.4(b)	Disclosures of Conflicts (BFMCI)
Schedule 7.4(c)	Required Consent (BFMCI)
Schedule 8.1	Financial Statement Disclosures
Schedule 8.2	Contracts and Assumed Contracts
Schedule 8.3	Leases
Schedule 8.5	Insurance Coverage
Schedule 8.6.1	Employee Benefit Plans
Schedule 8.6.3	Disclosures as to Employee Benefit Plans
Schedule 8.6.4	Disclosures as to Employee Benefit Plan Operations
Schedule 8.6.5	Disclosures as to Government Filings
Schedule 8.6.6	Disclosures as to Employee Benefit Plan Investigations
Schedule 8.6.8	Disclosures as to Qualified Plans
Schedule 8.6.10	Disclosures as to Employees
Schedule 8.6.12	Ability to Terminate Plans
Schedule 8.6.13	Disclosures as to Section 409A Plans
Schedule 8.6.14	Severance Agreements
Schedule 8.7	Disclosures as to Post-Balance Sheet Results
Schedule 8.8.2	Disclosures as to Environmental Matters
Schedule 8.8.3	Disclosures as to Hazardous Substances Notification
Schedule 8.8.4	Disclosures as to Underground Storage Tanks & Disposal of Hazardous Waste
Schedule 8.9	Disclosures as to Taxes; Returns

Schedule 8.10.1	Government Programs Participants
Schedule 8.10.1(a)	Disclosures as to Government Program Participants
Schedule 8.10.2	Disclosures as to Government Investigations
Schedule 8.10.3	Disclosures as to Billing Practices
Schedule 8.10.5	Disclosures as to Payments to Referral Sources
Schedule 8.11	Unrecorded Liabilities
Schedule 8.12	Disclosures as to Labor Relations
Schedule 8.13	Disclosures as to Immigration Law
Schedule 8.14	Disclosures as to Employee Contract
Schedule 8.15	Disclosures as to WARN Act
Schedule 9.4	Disclosures as to Compliance with Laws
Schedule 9.9.1	BFMCI C-Suite Employees
Schedule 9.9.1(a)	Sample Employment Offer Letter

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

Witnesses:

Name: *[Signature]*  
DREEN FLARDI

Name: *[Signature]*  
Lynore J. Redding

Witnesses:

Name: *[Signature]*  
DREEN FLARDI

Name: *[Signature]*  
Lynore J. Redding

Witnesses:

Name: *[Signature]*  
DREEN FLARDI

Name: *[Signature]*  
Lynore J. Redding

Witnesses:

Name: *[Signature]*  
PAT HADDAD

Name: *[Signature]*  
MIS RODRIGUEZ

SOUTHEAST VOLUSIA HOSPITAL DISTRICT

By: *[Signature]*  
Name: HAROLD "DERWIN" SMOTHERS  
Title: Chairman of the Board

BERT MSH MEDICAL CENTER, INC.

By: *[Signature]*  
Name: HAROLD "DERWIN" SMOTHERS  
Title: Chairman of the Board

SOUTHEAST VOLUSIA MEDICAL SERVICES, INC.

By: *[Signature]*  
Name: HAROLD "DERWIN" SMOTHERS  
Title: Chairman of the Board

SOUTHEAST VOLUSIA HEALTHCARE CORPORATION

By: *[Signature]*  
Name: Debra H. Thomas  
Title: President, East Florida Region Treasurer