STATE OF LOUISIANA

EXECUTIVE DEPARTMENT

BATON ROUGE

EXECUTIVE ORDER NO. EWE 92 - 87

WHEREAS: it is in the best interest of the State of Louisiana to purchase Assets as defined in that AGREEMENT FOR PURCHASE AND SALE OF ASSETS OF HOTEL DIEU HOSPITAL to be executed, a copy of which is attached hereto and which is substantially in the form to be executed (hereinafter referred to as the "Purchase Agreement), from Hotel Dieu Hospital, a private Louisiana non-profit corporation; and

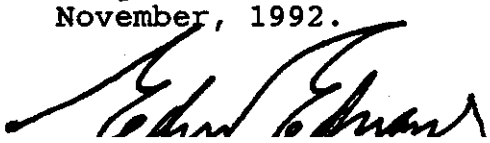
WHEREAS: it is contemplated that the Louisiana Health Care Authority will manage and operate the Assets principally as a charity hospital facility to serve the needs of the uninsured and medically indigent citizens of Louisiana and to provide opportunity for clinical education to medical, nursing and allied health students.

NOW THEREFORE I, EDWIN W. EDWARDS, Governor of the State of Louisiana, by virtue of the authority vested in me by the Constitution and laws of the State of Louisiana, do hereby order and direct as follows:

SECTION 1: The Department of Health and Hospitals of the State of Louisiana, acting by and through its Secretary, J. Christopher Pilley, enter into the Purchase Agreement in substantially the form as the attachment hereto and any and all other documents, contracts, agreements or instruments as necessary to effect this transaction.

SECTION 2: The terms and conditions of the Purchase Agreement, and all transactions contemplated thereunder, are hereby authorized, ratified and confirmed.

IN WITNESS WHEREOF, I have hereunto set my hand officially and caused to be affixed the Great Seal of the State of Louisiana, at the Capitol, in the City of Baton Rouge, on this 18th day of November, 1992.



COPY OF
EXECUTED ORIGINAL

AGREEMENT FOR PURCHASE AND SALE OF ASSETS

OF

HOTEL DIEU HOSPITAL
NEW ORLEANS, LOUISIANA

BY AND AMONG

HOTEL DIEU HOSPITAL

AND

LOUISIANA PUBLIC FACILITIES AUTHORITY

AND

STATE OF LOUISIANA
DEPARTMENT OF HEALTH AND HOSPITALS

PURCHASE AGREEMENT
WITHOUT SCHEDULES

AGREEMENT FOR PURCHASE AND SALE OF ASSETS OF HOTEL DIEU HOSPITAL NEW ORLEANS, LOUISIANA

BY AND AMONG

HOTEL DIEU HOSPITAL

AND

LOUISIANA PUBLIC FACILITIES AUTHORITY

AND

STATE OF LOUISIANA
DEPARTMENT OF HEALTH AND HOSPITALS

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AGREEMENT FOR PURCHASE AND SALE OF ASSETS

THIS AGREEMENT dated November 18, 1992 (the "Effective Date"), between:

HOTEL DIEU HOSPITAL, a private Louisiana nonprofit corporation, domiciled in Orleans Parish, Louisiana, herein represented by Kevin Conlin, its President, and

LOUISIANA PUBLIC FACILITIES AUTHORITY, a public trust and public corporation established and created for the benefit of the State of Louisiana, domiciled in East Baton Rouge Parish, Louisiana, herein represented by the Chair and the Secretary Treasurer of its Board of Trustees, Victor Bussie and C.C. Dabadie, respectively,

STATE OF LOUISIANA, acting through the DEPARTMENT OF HEALTH AND HOSPITALS, its designee pursuant to Executive Order No. EWE 92-87, herein represented by its Secretary, J. Christopher Pilley, and

THE COMMISSIONER OF ADMINISTRATION, RAYMOND J. LABORDE, appearing herein in accordance with LSA-R.S. 39:11.

all of whom declared as follows:

Article 1.
Definitions

As used in this Agreement, the following terms have the meaning herein set forth:

1.1 **"Abbeville Action"** means the suit styled, Abbeville General Hospital, et al. vs. David L. Ramsey, Secretary, Department of Health and Hospitals, et al., 91-356, dismissed by the United States District Court for the Middle District of Louisiana; including any appeal therefrom or any suit filed in any court of the State of Louisiana.

1.2 **"Accounting Expenses"** means the reasonable fees and charges of accountants and of assistants, bookkeepers, and other persons used by accountants and under accountants and other persons and entities, supervision, and all costs incurred or advanced by any of them irrespective of whether incurred in or advanced prior to the initiation of any legal, equitable, arbitration, administrative, bankruptcy, trial or similar proceedings and any appeal from any of same.

1.3 **"Agreement"** means this Agreement for Purchase and Sale of Assets.

1.4 **"Affiliation Agreements"** means agreements with academic institutions to provide healthcare professional education and training at the Facility.

1.5 **"Assets"** means the LPFA Assets and the DHH Assets, provided that Assets does not include the Excluded Assets.

1.6 **"Books and Records"** means all books, records, documents, Medical Records, operational manuals, policies and procedures, protocols, minutes, Facility and medical staff peer review records, disciplinary records, complaints, including complaints regarding Facility employees, patient billing records and invoices, employment records, reviews, equipment manuals, logs and other recordations of information, whether written or computerized, directly prepared, used or maintained by Seller in connection with the operation and maintenance of the Assets and the Facility including but not limited to those maintained in accordance with state, local, and federal laws, regulations, and guidelines and in accordance with the Joint Commission on Accreditation of Healthcare Organizations and other private accreditation standards applicable to the Facility, other than those books, records, documents, medical records, and other recordations which comprise a portion of, or relate to, the Excluded Assets.

1.7 **"Bonds"** means tax exempt revenue bonds, notes, or other evidences of indebtedness, the interest on which will be excluded from gross income for purposes of federal income taxation to be issued by LPFA to finance the purchase of the LPFA Assets.

1.8 **"Business Days"** means Monday through Friday inclusive, excluding national holidays.

1.9 **"CERCLA"** means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§9601 et seq.).

1.10 **"Claim"** means any claim, liability, demand, loss, damage, deficiency, litigation, cause of action, penalty, fine, judgment, defense, imposition, fee, lien, bonding cost, settlement, disbursement, penalty, cost or expenses of any and every kind and nature (including without limitation Litigation Expenses), whether known or unknown, incurred or potential, accrued, absolute, direct, indirect, contingent or otherwise and whether imposed by strict liability, and consequential, punitive and exemplary damage claims.

1.11 **"Closing"** means the closing of the purchase and sale of the Assets.

1.12 **"Closing Date"** means the date on which the Closing occurs.

1.13 **"Closing Effective Date"** shall be 12:01 a.m. central standard time on the date immediately following the Closing Date.

1.14 **"Closing Documents"** means the documents to be executed by the Parties at Closing.

1.15 **"Commissioner of Administration"** means the Commissioner of Administration of the Division of Administration, a division of the office of the governor of the State of Louisiana appearing herein in accordance with LSA-R.S. 39:11.

1.16 **"Commitments"** means an owner title policy commitment and a leasehold title policy commitment issued by the Title Company dated no earlier than the Effective Date.

1.17 **"Convent"** means all of the Daughters right, title and interest in and to the land described in **Schedule 1.17**, together with all buildings, improvements, and other real property located on such land, all rights, ways, privileges belonging or in anywise appertaining to such land, buildings, improvements, other real property, said property being owned by the Daughters.

1.18 **"Corporate Documentation"** means articles of incorporation, bylaws, or other corporate documentation.

1.19 **"Cost Reports"** means all Medicare and Medicaid program cost reports, including any initial and interim cost reports and any Third Party Payor reports relating to the business and operations of the Facility.

1.20 **"Curative Allowance"** means the aggregate cost of all mandatory curative work to be performed by Seller pursuant to **Section 12.8 and Section 12.11** of this Agreement not to exceed One Hundred Thousand dollars ($100,000) in the aggregate.

1.21 **"Curative Period"** means within thirty (30) days of receipt by Seller of Purchasers' Objections.

1.22 **"Data Center"** means the Data Center operated by DCNHS-WC.

1.23 **"Daughters"** means the Daughters of Charity of St. Vincent DePaul, St. Louis, Missouri, U.S.A.

1.24 **"DCNHS-WC"** means the Daughters of Charity National Health System - West Central, Inc.

1.25 **"Days"** refers to calendar days, except as used in "Business Days".

1.26 **"Default"** means a breach of any provision of this Agreement by a Party.

1.27 **"DHH"** means the Department of Health and Hospitals or its Permitted Assignees and Designees. All references herein to "DHH" shall mean DHH acting as designee on behalf of the State.

1.28 **"DHH Assets"** means the Inventory, the Inventory Warranties, the Seller's Contracts, the Seller's Contracts Deposit and the Books and Records.

1.29 **"DHH Consideration"** means the consideration payable by DHH for the DHH Assets.

1.30 **"DHH Group"** means the State, DHH, and their respective representatives, agents, servants, officers, attorneys and employees, individually and collectively.

1.31 **"Effective Date"** is the date set forth on the first page of this Agreement.

1.32 **"Encumbrance"** means any lien, charge, servitude, easement, option, right of first refusal, conditional sales contract, security interest or encumbrance, including liens, charges, security interests, or encumbrances securing payment of Claims or payment of charges for labor, materials, supplies, equipment, rent, or utilities.

1.33 **"Engineering Objections"** means Purchasers' objections to the condition of the Assets identified as a result of Purchasers' Engineering and Feasibility Inspection which affect the merchantability of Seller's title or the use of the Assets as presently utilized.

1.34 **"Environmental Information"** means all records and information concerning all Hazardous Substances, including Medical Waste, used, stored, generated, treated, or disposed of by the Seller, all environmental or safety studies conducted by or on behalf of Seller and all reports, correspondence, or filings to governmental agencies with jurisdiction over Environmental Requirements concerning the

compliance of the Assets or the operation of the Assets with Environmental Requirements, all policies and procedures manuals or guidelines utilized by Seller to comply with Environmental Requirements, and any other information in the possession of the Seller Group, reasonably requested by the Purchasers pertaining to environmental, health, and safety issues.

1.35 **"Environmental Objections"** means Purchasers' objections to the condition of the Assets identified as a result of Purchasers' Environmental Inspection which affect the merchantability of Seller's title or the use of the Assets as presently utilized, or is otherwise unacceptable to the Purchasers, in their sole discretion.

1.36 **"Environmental Requirements"** means all State, federal, local, municipal, parish, and regional laws, statutes, rules, regulations, ordinances, codes, permits, approvals, plans, authorizations, concessions, investigation results, guidance documents; all legislative, judicial, and administrative judgments, decrees, orders, rules, rulings, and regulations; and all agreements and other restrictions and requirements in effect on or prior to the Closing Date, of any Governmental Authority, including, without limitation, federal, state, and local authorities, relating to the regulation or protection of human health and safety, natural resources, conservation, the environment, or the storage, treatment, disposal, processing, release, discharge, emission, use, remediation, transportation, handling, or other management of industrial, gaseous, liquid or solid waste, hazardous waste, Medical Waste, hazardous or toxic substances or chemicals, or pollutants. The term shall specifically include, without limitation, the regulations of the federal Public Health Service and Department of Transportation concerning the transport of etiologic agents or similar agents, the regulations of the Nuclear Regulatory Commission concerning radioactive materials and waste, the regulations of the Occupational Safety and Health Administration, and including without limitation the following environmental laws: The Clean Air Act (42 U.S.C.A. §1857); the Federal Water Pollution Control Act (33 U.S.C. §1251); the Resource Conservation and Recovery Act of 1976, (42 U.S.C. §6901); CERCLA, as amended by the Superfund Amendments and Reauthorization Act of 1986 (Pub.L. 99-499, 100 Stat. 1613); the Toxic Substances Control Act (15 U.S.C. §2601, the Clean Water Act (33 U.S.C. §1251); the Safe Drinking Water Act (42 U.S.C. §30);

the Occupational Safety and Health Act (29 U.S.C. §651); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §135); the Louisiana Environmental Quality Act (La. R.S. 30:2001); and the Louisiana Air Quality Regulations (La. C. 33:III.2595) including any amendments or extensions thereof and any rules, regulations, standards or guidelines issued pursuant to or promulgated under any of the foregoing.

1.37 **"Equipment"** means all of Seller's corporeal movable property, other than that included in the Excluded Assets, now or hereafter located upon the Real Estate or used in connection with the operation of the Facility, and the Assets, including all medical devices, machinery, vehicles, apparatus, appliances, computer hardware, equipment, fixtures, beds, furniture, coverings, blinds, curtains, treatments, including, without limitation, those movables described in **Schedule 1.37.**

1.38 **"Equipment Warranties"** means all warranties, operating manuals, and guarantees by Other Parties with respect to the Equipment which extend beyond the Closing Date.

1.39 **"ERISA"** means the Employee Retirement Income Security Act of 1974.

1.40 **"Escrow Agent"** means First National Bank of Commerce, 210 Baronne Street, New Orleans, Louisiana, or other such person as mutually agreed to by the Parties as escrow agent.

1.41 **"Escrow Agreement"** means any of the Hill-Burton Escrow Agreement, the Indemnity Escrow Agreement, the Inventory Escrow Agreement, and the Transaction Escrow Agreement.

1.42 **"Escrow Deposit"** means any of the Hill-Burton Escrow Deposit, the Indemnity Escrow Deposit, the Inventory Escrow Deposit, and the Transaction Escrow Deposit.

1.43 **"Excluded Assets"** means the Excluded Real Estate, and the following assets of Seller:

(a) All of Seller's cash on hand or in banks, cash equivalents, certificates of deposit and securities, whether set forth on Seller's balance sheets or otherwise accounted for;

(b) All of Seller's accounts and notes receivable (including, without limitation, Medicare, Medicaid, and other Third Party Payor accounts

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receivable) for services rendered prior to the Closing Date;

(c) All amounts owed Seller by Medicare, Medicaid, or other Third Party Payors as a result of adjustments to, or retroactive settlements of, Seller's Cost Reports, including the final Cost Report, or receivables resulting from appeals, administrative agency or judicial action, or as an application of depreciation recapture for the periods prior to the Closing Date;

(d) Seller's investment funds and the accrued interest receivable on such investments;

(e) Seller's accounts, investments and advances;

(f) Seller's endowment and similar funds, self-insurance funds and pension trust funds, and all beneficial interests owned by Seller in any charitable trust or similar legal entity;

(g) Seller's interest in the trademarks, service marks, and trade names described in Schedule 1.43(g); provided that Seller hereby grants to Purchasers a non-exclusive perpetual license to use such trademarks, service marks, and trade names to the extent that (i) they are embossed, imprinted, stamped, or otherwise indelibly attached to the Assets and (ii) Seller, at its option, fails to replace, prior to the Closing Date and at Seller's sole cost, such Assets with similar items acceptable to Purchasers that lack such trademarks, service marks, and trade names, such items hereinafter referred to as the Seller-labeled items;

(h) Those vehicles identified in Schedule 1.43(h);

(i) The movable property described in Schedule 1.43(i); and

(j) The Excluded Real Estate; and

(k) Seller's financial statements, tax returns, work papers and Real Estate appraisals and valuations and all documents, books and records related thereto.

1.44 "Excluded Real Estate" means all of Seller's right, title and interest in and to the land described in Schedule 1.44, together with all the buildings, improvements and other real estate located on such land and all the rights, ways, privileges,

servitudes, appurtenances and advantages belonging or in anywise appertaining to such land, buildings, improvements, and other real property.

1.45 **"Expert Expenses"** means the reasonable fees and charges of experts and/or consultants and of their staff and other persons and entities used by experts and/or consultants and under their supervision, and all costs incurred or advanced by any of them irrespective of whether incurred in or advanced prior to the initiation of any legal, equitable, arbitration, administrative, bankruptcy, trial or similar proceedings and any appeal from any of same.

1.46 **"Facility"** means the ownership, operation, management or maintenance of the Assets and includes the following:

(a) a licensed hospital with 461 licensed beds, all of which are certified under the Medicare and Medicaid programs, and with Affiliation Agreements, each such Affiliation Agreement being listed in **Schedule 1.46(a)** including:

(b) a rehabilitation unit with 14 beds;

(c) a skilled nursing facility with 31 beds;

(d) a licensed home health agency;

(e) a licensed community hospice;

(f) an independent clinical laboratory;

(g) a kidney transplant center with five stations;

(h) a 70,000 square foot medical office building; and

(i) related buildings and parking facilities.

1.47 **"Final Inventory"** means the final written detailed compilation and description of the Inventory prepared and certified as correct by the Seller from the results of the physical inspection and tally of the Inventory by the Seller.

1.48 **"Governmental Authority"** means any federal, state, parish, regional, or local government, political subdivision, any governmental agency, department, authority, instrumentality, bureau, commission, board, official, or officer, any court, judge, examiner, or hearing officer, any legislative, judicial, executive, administrative, or regulatory

body or committee or official thereof or private accrediting body.

1.49 **"Governmental Regulation"** means laws, statutes, codes, acts, ordinances, orders, judgments, decrees, writs, injunctions, rules, regulations, restrictions, permits, plans, authorizations, concessions, investigation reports, guidelines, and requirements or accreditation standards of any Governmental Authority including without limitation, Environmental Requirements.

1.50 **"Hazardous Substance"** means (a) any "hazardous substance" as defined in §101(14) of CERCLA or any regulations promulgated thereunder; (b) petroleum and petroleum by-products; (c) asbestos or asbestos-containing material ("ACM"); (d) polychlorinated biphenyls; (e) urea formaldehyde foam insulation; (f) Medical Waste; or (g) any additional substances or materials which at any time are classified, defined or considered to be explosives, corrosive, flammable, infectious, radioactive, mutagenic, carcinogenic, pollutants, hazardous or toxic under any of the Environmental Requirements.

1.51 **"Hill-Burton Escrow Agreement"** means the Escrow Agreement to be entered into among Seller, Purchasers, and Escrow Agent pursuant to Section 15.3, the form of which is attached hereto as Schedule 1.51.

1.52 **"Hill-Burton Escrow Deposit"** means that amount to be deposited with Escrow Agent at Closing by Seller and held in accordance with the provisions of the Hill-Burton Escrow Agreement.

1.53 **"Hotel Dieu"** means a private Louisiana nonprofit corporation, domiciled in Orleans Parish, Louisiana.

1.54 **"Hotel Dieu Bonds"** means the outstanding principal amount of (i) Louisiana Public Facilities Authority Hospital Revenue Bonds (Daughters of Charity Health Systems - Hotel Dieu) Series 1985 and (ii) Louisiana Public Facilities Authority Hospital Revenue Bonds (Daughters of Charity Health Systems - Hotel Dieu Hospital) Series 1985A.

1.55 **"Incorporated Equipment"** means the Seller's equipment, apparatus, engines, motors, machinery, and appliances which have been permanently attached to and become component parts of the Real Estate including, without limitation, the equipment identified on Schedule 1.55.

1.56 **"Indenture"** means that certain Indenture of Trust, dated August 21, 1974, on file and of record with the Clerk and Recorder of East Baton Rouge Parish, Louisiana at Original 37, Bundle 8921.

1.57 **"Indemnified Party"** means the Party entitled to indemnification pursuant to this Agreement.

1.58 **"Indemnifying Party"** means the Party obligated to provide indemnification pursuant to this Agreement.

1.59 **"Indemnity Escrow Agreement"** means the Escrow Agreement to be entered into among Seller, Purchasers, and Escrow Agent pursuant to Section 15.3, the form of which is attached hereto as **Schedule 1.59.**

1.60 **"Indemnity Escrow Deposit"** means that amount to be deposited with Escrow Agent at Closing by the Seller and held in accordance with the provisions of the Indemnity Escrow Agreement.

1.61 **"Inventory"** means all of Seller's inventory of medication, food, housekeeping and other supplies, and other disposables and consumables now or at the Closing Effective Date located upon the Real Estate or used directly in the operation of the Facility, at Closing Effective Date provided that Inventory shall not include obsolete, expired, or otherwise unusable items, discontinued and outdated drugs and containers with worn, illegible, or missing labels or other items otherwise spoiled or not fit for use in the ordinary course of business.

1.62 **"Inventory Appraiser"** means Inventory Specialists, Inc.

1.63 **"Inventory Consideration"** means the consideration to be paid by DHH utilizing funds held pursuant to the Inventory Escrow Agreement for the acquisition of the Inventory which shall be the lesser of:

(a) The Inventory Escrow Deposit plus any accrued interest thereon; or

(b) The Inventory Total Cost if the Inventory Value exceeds the Inventory Total Cost, plus any accrued interest attributable to that portion; or

(c) If the Inventory Total Cost exceeds the Inventory Value then:

(i) If the Inventory Total Cost and the Inventory Value differs by $50,000 or less, the portion of the Inventory Escrow Deposit shall be equal to the Inventory Total Cost, plus any accrued interest attributable to that portion; or

(ii) If the Inventory Total Cost exceeds the Inventory Value by more than $50,000, the portion of the Inventory Escrow Deposit shall be equal to the sum of the Inventory Value, plus $50,000 together with the accrued interest attributable to the sum.

1.64 **"Inventory Cost"** means the acquisition cost to Seller of each item of Inventory as set forth in the most recent invoice by Seller for each item of Inventory.

1.65 **"Inventory Cost Report"** means a written report prepared and certified as correct by Seller setting out:

(a) the Inventory Cost of each item of Inventory or class of similar items of Inventory (as the case may be) identified in the Final Inventory; and,

(b) a tabulation of the total Inventory Cost for the whole Inventory.

1.66 **"Inventory Escrow Agreement"** means the Escrow Agreement to be entered into among Seller, DHH, and Escrow Agent pursuant to Section 15.3, the form of which is attached hereto as Schedule 1.66.

1.67 **"Inventory Escrow Deposit"** means that amount to be deposited with Escrow Agent at Closing by DHH and held in accordance with the provisions the Inventory Escrow Agreement.

1.68 **"Inventory Total Cost"** means the sum of the Inventory Cost for all items of the Inventory.

1.69 **"Inventory Value"** means the total value of the Inventory as determined by Inventory Appraiser, based on the Final Inventory and the Inventory Cost Report prepared by Seller as adjusted by the Inventory Appraiser in the Inventory Value Report. The Inventory Value may not exceed the amount of the Inventory Escrow Deposit.

1.70 **"Inventory Value Report"** means the report prepared by the Inventory Appraiser verifying the accuracy

of the Final Inventory, containing (i) material discrepancies in the quantity and (ii) the Inventory Value.

1.71 **"Inventory Warranties"** means all warranties, instruction manuals, and guarantees by Other Parties with respect to the Inventory which extend beyond the Closing Date.

1.72 **"IRC"** means the Internal Revenue Code of 1986, as amended, and any and all regulations and rulings promulgated thereunder.

1.73 **"Keys"** means all keys, computerized entry cards, and electronic or computerized access codes and passwords which provide entry to the Assets or any part thereof or which are used in connection with the Real Estate, the Equipment, the Incorporated Equipment, or the Inventory, each such key, card, code, and password to be properly identified by Seller.

1.74 "Legal Expenses" means the reasonable fees and charges of attorneys and of legal assistants, paralegals, law clerks and others persons and entities used by attorneys and under attorney supervision and all costs incurred or advanced by any of them irrespective of whether incurred in or advanced prior to the initiation of any legal, equitable, arbitration, administrative, bankruptcy, trial or similar proceedings and any appeal from any of same.

1.75 **"Litigation Expenses"** means all out-of-pocket costs and expenses incurred as a result of a Default, or in connection with an indemnification obligation, including Legal Expenses, Accounting Expenses, Expert Expenses, and all court costs and expenses.

1.76 **"LPFA"** means the Louisiana Public Facilities Authority.

1.77 "LPFA Affiliates" means:

(a) any corporation or partnership that is controlled by, or is under common control with, the LPFA; or

(b) any corporation resulting from any merger or consolidation with the LPFA.

1.78 **"LPFA Assets"** means the Real Estate, the Real Estate Warranties, the Equipment, the Equipment Warranties, the Service Contracts, the Keys, the Software, the Permits, (except for Permits affecting the DHH Assets

and the Excluded Assets), the Telephone Numbers, and the Other Assets.

1.79 **"LPFA Consideration" means the consideration payable by LPFA for the LPFA Assets.**

1.80 **"LPFA Group" means LPFA, its assignees (including LPFA Affiliates), and their respective representatives, agents, servants, officers, shareholders, attorneys, employees, or any person who has served, is presently serving, or who will serve in the future as a member of LPFA's Board of Trustees, individually and collectively.**

1.81 **"LPFA Obligations"** means the agreements, covenants, conditions, terms, and provisions to be performed by LPFA under this Agreement, and the representations made by LPFA in this Agreement, all of which terminate as of and do not survive the Closing.

1.82 **"LPFA Violations" means any failure to comply with or** violation of, any LPFA Obligation.

1.83 **"Medical Records" means all books, records, documents, microfilm, and computer tapes of the Facility pertaining to patient care services rendered by the Facility, including patient histories, patient medical charts, laboratory records, test results, autopsy reports, studies, x-rays, electrocardiograms and like graphic matter.**

1.84 **"Medical Waste"** means without limitation, "infectious waste," "medical waste," "etiologic agents", contaminated "sharps" (e.g. scalpels, needles, blades), "radioactive waste," or similar wastes or agents as defined and regulated by Environmental Requirements.

1.85 **"New Leases"** means the new leases negotiated to replace the Real Estate Leases pursuant to this Agreement.

1.86 **"Other Assets"** means all of Seller's rights, title and interest, in and to all assets, real, personal or mixed, corporeal or incorporeal, movable or immovable, tangible or intangible, directly used and owned by Seller, including Books and Records and the Permits to the extent transferable under applicable law, in connection with the operation of the Facility and the Assets which are not otherwise specifically included in the DHH Assets or the Excluded Assets.

1.87 **"Other Inspections"** means Purchasers' Inspections as forth in Section 12.9.

1.88 **"Other Objections"** means any and all of Purchasers' objections to the condition of the Assets identified as a result of any of Purchasers' Other Inspections which affect the merchantability of Seller's title or the use of the Assets as presently utilized.

1.89 **"Other Parties"** means any Person other than a Party.

1.90 **"Party"** or **"Parties"** means Hotel Dieu, LPFA and DHH, individually and collectively.

1.91 **"PBGC"** means the Pension Benefit Guaranty Association.

1.92 **"Permits"** means all of Seller's right, title and interest in and to permits, licenses, certificates of need, certificates of exemptions, authority and/or grants affecting Assets or the Facility, including, without limitation, all consents, approvals and authorizations issued by any Governmental Authority to conduct and maintain the Assets and Facility as it is currently operated by Seller.

1.93 **"Permitted Assignees and Designees"** means the Louisiana Health Care Authority, or another agency, department, division, political subdivision, instrumentality or other entity of the State. Permitted Assignees or Designees may also include such other entity as may be reasonably approved in writing by Seller, which approval shall not be unreasonably withheld.

1.94 **"Permitted Exceptions"** means all exceptions to title shown on the Commitments and approved by Purchasers pursuant to **Section 12.2**.

1.95 **"Person"** means all juridical persons, whether corporate or natural, including individuals, firms, trusts, corporations, associations, joint ventures and partnerships.

1.96 **"Plan"** means at any time any employee benefit plan as defined in Section 3(3) of ERISA (i) which is either (a) maintained by the Seller or any of its subsidiaries, or (b) maintained pursuant to a collective bargaining agreement or any other arrangement under which more than one employer makes contributions and (ii) to which the Seller is then making or accruing an obligation to make contributions or has within the preceding five (5) plan years made contributions.

1.97 **"Purchasers"** means the LPFA and DHH, individually and collectively.

1.98 **"Purchasers' Inspections"** means the inspections, review, observations, studies, examinations, probes and research conducted by Purchasers in connection with the Title Commitment, Survey, Environmental Inspection, Engineering and Feasibility Inspection, Soil Tests, Purchasers' appraisal, and Other Inspections, individually and collectively, all of the foregoing as provided for in Article 12.

1.99 **"Purchasers' Objections"** means the Engineering Objections, Environmental Objections, Other Objections, Soil Objections, Survey Objections, and Title Objections, individually and collectively.

1.100 **"Real Estate"** means all of Seller's right, title and interest in and to (a) the land located within the area circumscribed by Poydras, South Galvez, Tulane and South Prieur Streets, New Orleans, Louisiana, and being more particularly described in **Schedule 1.100**, and all the buildings, improvements and other real property located on such land, (b) the Incorporated Equipment, and (c) all the rights, ways, privileges, servitudes, appurtenances and advantages belonging or in anywise appertaining to such land, buildings, improvements, other real property and the Incorporated Equipment and immobilized movables pursuant to **Section 13.13**.

1.101 **"Real Estate Deposits"** means all damage, escrow and security deposits made by tenants or other parties, under the Real Estate Leases, whether refundable or not, without deduction or offset, and any interest therein which under applicable law belongs to tenants or other parties, and being more particularly described in **Schedule 1.101**.

1.102 **"Real Estate Leases"** means the written leases of portions of the Real Estate from Seller, as landlord, to other Persons, as tenants, as described in **Schedule 1.102**.

1.103 "Real Estate Taxes" means real property taxes, impositions, and currently due installments of assessments, general, special or otherwise, specifically imposed upon the Real Estate. Real Estate Taxes exclude federal, state or local income taxes; franchise, gift, transfer, excise, capital stock, estate, succession or inheritance taxes; penalties or interest for late payment of Real Estate Taxes; and taxes assessed against trade fixtures or personal property placed by the Seller on the Real Estate.

1.104 **"Real Estate Warranties"** means all warranties, operating manuals, and guarantees by Other Parties with respect to the Real Estate which extend beyond the Closing Date.

1.105 **"Remediation"** means any and all costs incurred due to any investigation of the Assets or any remediation, response, cleanup, removal, or restoration required by any Governmental Regulation, Governmental Authority or by Environmental Requirements.

1.106 **"Seller"** means Hotel Dieu.

1.107 **"Seller's Contracts"** means the rights and obligations of Seller as evidenced by the written agreements described in **Schedule 1.107**.

1.108 **"Seller's Contracts Deposits"** means all damage, escrow and security deposits made by other parties to Seller, pursuant to Seller's Contracts other than Real Estate Leases, whether refundable or not, without deduction or offset, and any interest therein which under applicable law belongs to tenants or Other Parties.

1.109 **"Seller Group"** means Seller, its contractors, representatives, licensees, agents, servants, employees, customers, officers, shareholders, members of the Seller's Board of Directors and any other Person for whom Seller is responsible, individually and collectively.

1.110 **"Seller's Hill-Burton Obligations"** means Seller's obligations under the provisions of the Hill-Burton Act (42 U.S.C. Sec. 291) and the regulations promulgated thereunder.

1.111 **"Service Contracts"** means all contracts, agreements and documents existing as of the Effective Date and as of the Closing Date and relating to the construction of any improvements comprising a part of the Real Estate (including any and all environmental audits, soil tests, termite reports, appraisals, construction specifications, drawings, architectural, mechanical, electrical and other engineering plans and specifications and related data, surveys, tests, reports, bonds and governmental approvals), or to the maintenance of the Assets.

1.112 **"Software"** means, to the extent assignable, Seller's computer software and programs used in connection with the Facility as described in Schedule 1.112, all modifications, improvements and enhancements for such software, and all warranties, guarantees by Other

Parties, and operating manuals related thereto; provided, however, "Software" does not include any of the foregoing owned, licensed or leased by the Data Center.

1.113 "Soil Objections" means Purchasers' objections to the condition of the Assets identified as a result of Purchasers' Soil Tests which affect the merchantability of Seller's title or the use of the Assets as presently utilized.

1.114 "State" means the State of Louisiana or its Permitted Assignees and Designees.

1.115 "Survey" means a current plat of survey of the Real Estate, prepared by a duly licensed Louisiana land surveyor.

1.116 "Survey Objections" means Purchasers' objections to the Survey which affect the merchantability of Seller's title or the use of the Assets as presently utilized.

1.117 "Tank Systems" means aboveground or underground storage tank systems.

1.118 "Telephone Numbers" means, to the extent transferable, all existing telephone numbers now used in connection with the operation of the Facility.

1.119 "Third Party Payor" means Medicare, Medicaid, Blue Cross and Blue Shield plans, commercial insurance companies, self funded organizations, Taft-Hartley funds, employers who establish or participate in self-funded trusts or programs, CHAMPUS, health maintenance organizations, preferred provider organizations, alternative delivery systems, and other Persons providing reimbursement to the Facility for patient care services.

1.120 "Title Agent" means Title Insurance Services, Inc.

1.121 "Title Company" means First American Title Insurance Company.

1.122 "Title Objections" means Purchasers' objections to the condition of title as set forth in the Commitments which affect the merchantability of Seller's title or the use of the Assets as presently utilized.

1.123 "Transaction Escrow Agreement" means the Escrow Agreement to be entered into among Seller,

Purchasers, and Escrow Agent pursuant to Section 15.3, the form of which is attached hereto as **Schedule 1.123.**

1.124 **"Transaction Escrow Deposit"** means that amount to be deposited with Escrow Agent on the Effective Date by Purchasers and held in accordance with the provisions of the Transaction Escrow Agreement.

1.125 **"Warranties as to Condition"** means any express, implied, statutory or other warranty or representation as to the condition, quantity, quality, fitness for a particular purpose, freedom from redhibitory vices or defects, of any of the Assets or their fitness for any purpose.

Article 2.
Purchase and Sale

2.1 **Sale of LPFA Assets**. At the Closing, Seller agrees to sell, convey, transfer, assign, and deliver to LPFA, and LPFA agrees to purchase from Seller, the LPFA Assets in accordance with the terms of this Agreement.

2.2 **Sale of DHH Assets**. At the Closing, Seller agrees to sell, convey, transfer, assign, and deliver to DHH, and DHH agrees to purchase from Seller, the DHH Assets in accordance with the terms of this Agreement.

Article 3.
Consideration

3.1 **LPFA Assets**. The LPFA Consideration shall be Fifty-Eight Million, Five Hundred Thousand Dollars ($58,500,000.00) payable in cash at the Closing.

3.2 **DHH Assets**. The DHH Consideration shall be as follows:

(a) An amount equal to the Inventory Consideration, in any event not to exceed the sum of $2,000,000.00 plus any accrued interest thereon, consideration for the purchase of the Inventory by DHH; plus

(b) An amount equal to the Seller's premium cost for health insurance coverage (which coverage shall be comparable to the health insurance coverage maintained by Seller as of the Effective Date) for those employees of Seller:

(i) who are employed by DHH as of the Closing Effective Date;

(ii) who enroll for health care coverage on the Closing Effective Date; and,

(iii) who are determined to be eligible employees for health insurance coverage under the Louisiana State Employees Group Benefits Program, for the period that begins on the Closing Effective Date and ends on the first day of the month following one month after the Closing Effective Date, provided, however, that for an employee who is not at work on such ending date, the period that ends on the day that employee returns to work for one full day (Provided, however, that Seller's premium cost to be reimbursed shall not include amounts, if any, which Seller pays for insurance covering pre-existing conditions for employees employed by DHH as of the Closing, nor the cost to Seller for any COBRA coverage which it is required to pay for its employees terminating at or prior to Closing who do not on Closing become employees of DHH.).

(iv) DHH shall remit payment to Seller after the Closing Effective Date within fifteen (15) days of receipt of an itemized invoice from Seller which itemizes the Seller's cost of health care coverage and includes a list of the employees provided health care coverage in accordance with Section 3.2(b). DHH or the State Auditor shall have the right upon reasonable advance notice and during normal business hours to inspect and copy the books and records of Seller at DHH's cost to verify the amount to be remitted.

3.3 Appraisal of Inventory. Seller shall provide written notice to the Inventory Appraiser within 48 hours of Seller's commencing the tally of the Inventory in connection with the preparation of the Final Inventory. The Inventory Appraiser shall at all times have the right to observe the tally of the Inventory. The Final Inventory shall be commenced within two (2) days prior to the Closing Date.

On or before 10:00 a.m. on the Closing Date, the Seller shall deliver the Final Inventory to DHH, the Escrow Agent, and the Inventory Appraiser, which Final Inventory shall contain the following information:

(a) a description of each item of Inventory;

(b) the quantity of each item of Inventory;

(c) the expiration date for perishable Inventory; and

(d) a listing of shipments in transit.

Within thirty (30) days following the Closing Date, Seller shall provide DHH and the Inventory Appraiser with the Inventory Cost Report, together with (a) the manufacturer or vendor of the items in the Inventory; and (b) the serial or other identification numbers (if applicable) of Inventory Items.

Upon receipt of the Inventory Cost Report from Seller, the Inventory Appraiser shall immediately commence an audit of the Final Inventory and Inventory Cost Report. Seller shall grant the Inventory Appraiser access to the physical location of the Inventory, and to all relevant books, records, reports, work papers, inventory count sheets, and other documents necessary for the Inventory Appraiser to verify the Inventory Cost Report. The Inventory Appraiser must complete his physical inspection of the Inventory and audit of the Inventory Cost Report and prepare the Inventory Value Report within thirty (30) days of receipt by the Inventory Appraiser of the Inventory Cost Report. The Inventory Value Report, when completed, must be delivered to Seller, DHH, and Escrow Agent. The determination of the Inventory Value shall be final, binding, and enforceable against all Parties.

Within twenty-four (24) hours of receiving the Inventory Value Report, the Escrow Agent shall disburse an amount equal to the Inventory Consideration from the Inventory Escrow Deposit to Seller. Any funds remaining in the Inventory Escrow Deposit after disbursement to Seller shall be remitted to DHH, and Seller shall not have any claim or interest in such remaining funds.

Seller acknowledges that it is critical to the operation of the Facility by DHH after the Closing that a sufficient level of Inventory be maintained and available to DHH on the Closing Effective Date in order to operate the Facility in accordance with Seller's past practices and applicable law.

3.4 Payment of Cash Consideration. The LPFA Consideration and the DHH Consideration shall be due and payable at Closing or thereafter as provided in Section 3.2(b) by wire transfer of immediately available federal funds or as Seller shall otherwise designate in writing.

3.5 Apportionment. The actual amount to be paid to Seller at the Closing will be subject to adjustment, based on the apportionments and costs and expenses which the Seller and Purchasers are required to pay at the Closing pursuant to this Agreement.

3.6 **Allocation of Cash Consideration.** **The Parties agree to the allocation of purchase price as set forth on Schedule 3.6, unless the Parties mutually agree to modify the allocation of purchase price between the Effective Date and the Closing Date.**

Article 4.
Leases, Contracts and Hill-Burton Obligations

4.1 **Real Estate Leases.** Seller has entered into the Real Estate Leases with certain Other Parties. DHH believes it is important to the orderly transfer and the subsequent efficient operation of the Facility that the Real Estate Leases, as set forth in **Schedule 1.102**, be renegotiated to the extent practicable or to the extent permitted by Governmental Regulation and Governmental Authority. Accordingly, to the extent permitted by Governmental Authority and Governmental Regulation, DHH shall, with Seller's cooperation, attempt prior to the Closing to enter into substitute Real Estate Leases (individually, a **"New Lease"** and collectively, the **"New Leases"**) with the Other Parties. Seller and LPFA hereby consent to such attempts if DHH elects, at its sole option, to undertake them and to the execution of the New Leases as long as the New Leases satisfy the following requirements:

(a) The terms and conditions of each New Lease shall be substantially the same as the terms contained in the existing Real Estate Lease such New Lease replaces;

(b) DHH will be a party to each New Lease instead of Seller;

(c) The Closing Effective Date will be the effective date of each New Lease;

(d) Seller and LPFA will have no obligation with respect to the New Lease; and

(e) Each Real Estate Lease replaced by a New Lease shall be terminated effective the Closing Effective Date.

4.2 **Remaining Real Estate Leases.** If DHH is unable to enter into a New Lease for each of the Real Estate Leases, prior to Closing, Purchasers may elect to terminate this Agreement, or alternatively, LPFA agrees to assume and discharge, from and after the Closing Effective Date such Real Estate Leases. Notwithstanding the above, LPFA shall not assume any of Seller's liabilities accruing prior to the Closing Date.

4.3 **Seller's Contracts.** DHH agrees, to the extent permitted by Governmental Authorities and Governmental Regulations and to the extent Seller's Contracts are assignable in accordance with their respective terms and Seller has obtained a valid consent to assignment, to assume those Seller's Contracts

identified on Schedule 4.3 executed by the Other Party to each such Seller Contract, on and after the Closing Effective Date pursuant to the Seller's Contracts, including Seller's Contracts Deposits but specifically does not assume Seller's liabilities or obligations accruing prior to the Closing Effective Date. All amounts received by Seller with respect to the Seller's Contracts that constitute prepaid sums shall be prorated at Closing so that DHH receives an amount equal to that portion of such prepaid sum attributable to that portion of the term of the Seller's Contracts commencing on the Closing Effective Date, provided that Seller shall deliver to DHH all Seller's Contracts Deposits and in no event shall they be prorated. Notwithstanding the foregoing or anything else in this Agreement to the contrary, DHH shall have the right to exercise at any time after the Closing Effective Date any termination rights under the Seller's Contracts.

4.4 Hill-Burton. DHH agrees to provide and hereby assumes as of the Closing Effective Date uncompensated services obligations, if any, as defined in 42 C.F.R. §124.502(m) and community service requirements, if any, as required by 42 C.F.R. §124.601 et seq. with respect to Seller's Hill-Burton Obligations and to undertake Seller's Hill-Burton Obligations but only and limited to the extent necessary to satisfy the Seller's uncompensated services obligation, if any, and community service requirements, if any, in accordance with applicable law and regulations promulgated thereunder, including without limitation, all record and document retention requirements related thereto. The Parties shall cooperate to obtain in a timely manner, all necessary consents and approvals, and to file all necessary notices to effectuate this Section 4.4. As between the Parties, and except to the extent that Seller's Hill-Burton Obligations can be discharged by DHH providing uncompensated services, if any, and community service, if any, at the Facility following the Closing as assumed above, Purchasers specifically do not assume Seller's Hill-Burton Obligations prior to the Closing Effective Date including but not limited to (i) any existing Hill-Burton Deficits as defined in 42 C.F.R. §124.503; and (ii) any monetary obligation arising under the provisions of 42 U.S.C.A. §291i as a result of any failure on the part of Seller to comply with the requirements of the Hill-Burton Act or, to the extent this transaction or any other action is deemed to trigger the recovery provisions of 42 U.S.C.A. §291i, or any liability arising under such recovery provisions of 42 U.S.C.A. §291i. The rights, duties and obligations under this Section 4.4 shall expressly survive the Closing.

Article 5.
Liabilities

5.1 LPFA Liabilities. Notwithstanding anything in this Agreement to the contrary, or in any other agreement or document executed by LPFA in connection with this Agreement or the

transaction contemplated herein, except with respect to the Real Estate Leases, if any, assumed by LPFA under Section 4.2 and 7.8:

(a) LPFA Group shall not incur any pecuniary, financial or personal liability whatsoever resulting from or arising out of the LPFA Obligations or the LPFA Violations, it being the intent of the parties to this Agreement that the LPFA's liability for a LPFA Violation under this Agreement, and recovery by any Person for a LPFA Violation is and shall be limited solely to the Transaction Escrow Deposit;

(b) LPFA Group shall not incur any pecuniary, financial or personal liability or obligation whatsoever, whether known or unknown, accrued, absolute, direct, indirect, contingent or otherwise, for Claims accruing prior to the Closing Date, or which arises after the Closing Date but is based on facts, circumstances, events, or actions of Seller prior to the Closing Date, including but not limited to any pecuniary, financial or personal liability or obligations for Claims arising out of or resulting from:

(i) The ownership, operation, and maintenance by Seller of the Assets and the Facility (including without limitation medical malpractice and general liability claims and damages);

(ii) The negotiation and execution of, and subsequent performance under the New Leases by DHH and the obligations and liabilities of DHH and/or Seller with respect to this Agreement; and

(iii) Seller's or DHH's failure to comply with all applicable Governmental Regulations or with all contract obligations with respect to the purchase of services by Third Party Payors.

LPFA shall have no further obligation to Seller under this Agreement as of the Closing Date, and under no circumstances will LPFA Group incur any pecuniary charge or financial liability to Seller or any Person claiming by or through Seller with respect to LPFA's performance under this Agreement, and any recovery of Seller, or any Person claiming by or through Seller for any breach of this Agreement by LPFA shall be limited solely to the Transaction Escrow Deposit.

Seller acknowledges the provisions of this Section 5.1, and the limitations on LPFA's liability under this Agreement. Seller does hereby waive and release any and all Claims it may have against LPFA arising out of or with respect to the provisions of this Section 5.1, and LPFA's acts or failure to act with respect to the matters set forth in Section 5.1, including without limitation a LPFA Violation. Seller acknowledges that the provisions of this Section were a negotiated function of this Agreement, and without the provisions of this Section LPFA would not have entered into this Agreement.

5.2 DHH's Liabilities. Except for DHH's share of obligations assumed under Sections 3.2(b), 4.3, 4.4, 6.43, 8.8, 10.1, 10.2, 10.4, 10.5, and 16.5(b)(v) hereof, subject to the limitations therein contained and to the extent permitted by Governmental Regulation and Governmental Authority, DHH shall:

(a) in no event be liable for any Claims arising out of a default by Seller under the Seller's Contracts; and

(b) except as expressly set forth in this Section, DHH does not assume, and DHH Group shall have no liability for, Claims accruing prior to the Closing Effective Date, regardless whether such Claims are asserted before or after the Closing Date. If DHH elects, whether before or after the Closing Date, to assign any of its rights and obligations under this Agreement to a Permitted Assignee or Designee and if such Permitted Assignee or Designee assumes such obligations in writing, DHH shall thereupon be automatically and immediately released from all liability under this Agreement without the need of any further documentation from any Person, and thereafter Seller and LPFA shall look solely to such assignee or designee for performance of DHH's obligations under this Agreement and under any other documents executed in connection with the transaction contemplated by this Agreement, including documents executed at the Closing, provided, however, that after such assignment DHH Group shall continue to be entitled to the benefits of the indemnity of Seller set out in Section 11.1. The provisions of the preceding sentence shall survive Closing.

Seller acknowledges the provisions of this Section 5.2, and the limitations on DHH's liability under this Agreement. Seller does hereby waive and release any and all Claims it may have against DHH arising out of or with respect to the provisions of this Section 5.2, and DHH's acts or failure to act with respect to the matters set forth in Section 5.2, including without

limitation a DHH Violation. Seller acknowledges that the provisions of this Section were a negotiated function of this Agreement, and without the provisions of this Section DHH would not have entered into this Agreement.

5.3 **Seller's Liabilities.**

(a) Notwithstanding anything to the contrary set out in this Section, the termination of liability pursuant to subsection (c) below shall not be deemed to relieve Seller of liabilities to LPFA Group or DHH Group, or to deny LPFA Group or DHH Group of rights against Seller that they would otherwise have under any Environmental Requirements, including without limitation, CERCLA arising out of Seller's ownership or use of the Assets.

(b) Seller shall be solely liable for all Claims of Other Parties, whether known or unknown, accrued, absolute, direct, indirect, contingent or otherwise, accruing prior to the Closing Effective Date, or which arise after the Closing Effective Date but are based on facts, circumstances, events, or actions of Seller Group prior to the Closing Effective Date in connection with the Assets or the Facility, including without limitation, the following:

(i) Claims arising out of the business, operations of Seller, the Assets, the Real Estate, the Facility, the Real Estate Leases, or Seller's Contracts accruing prior to the Closing Effective Date;

(ii) Claims arising from errors, omissions or commissions (including professional liability) in the operation of the Assets, Real Estate or the Facility accruing prior to the Closing Effective Date;

(iii) Claims relating to the overpayment and repayment, recovery including recapture of depreciation, under Third Party Payor agreements resulting from the business and operations of the Seller accruing prior to the Closing Effective Date and from the transactions contemplated by this Agreement, including from the final Cost Report;

(iv) Claims for taxes, assessments, fees and penalties due or accrued prior to the Closing Effective Date to Governmental Authorities;

(v) Claims for workers' compensation benefits with respect to events occurring prior to the Closing Effective Date;

(vi) Claims arising out of the failure of Seller to pay or cause to be paid all expenses, charges, bills or trade accounts, maintained or incurred in connection with the management or operation of the Assets, Real Estate, or the Facility and attributable to the period prior to the Closing Effective Date and not adjusted or prorated at the Closing;

(vii) Claims arising out of the violation by Seller of any contract, agreement, or restriction affecting the Assets or the Facility accruing prior to the Closing Effective Date;

(viii) Liabilities for employee benefit plans, including any pension, retirement, disability, medical, dental or other health plan, life insurance or other death benefit plan, profit-sharing, deferred compensation, stock option, bonus or other incentive plan, vacation benefit plan, severance plan, or other employee benefit plan or arrangement including accrued and unpaid benefits incurred or accruing prior to the Closing Effective Date;

(ix) Claims arising out of Seller's Hill-Burton Obligations, except for the obligations to provide uncompensated services and community service (and document and record retention requirements related thereto) as assumed by DEH pursuant to Section 4.4; and,

(x) Claims arising from or in connection with (i) the presence of Hazardous Substances in, on, under, at, or emanating from, the Assets on the Closing Effective Date or the presence of any Tank Systems or ACM at the Assets on the Closing Effective Date; (ii) any violation of Environmental Requirements by Seller or any other Person in connection with the Assets or the use of the Assets occurring prior to Closing Effective Date, including without limitation the handling, storage, treatment, incineration, release, spill, or disposal of Medical Waste.

(c) In addition to Seller's liabilities covered by subsection (b) above, Seller shall be solely liable for all Claims of Purchasers arising out

of breaches of Seller's representations, warranties, covenants or agreements, provided that in no event shall Seller's liability under this subsection exceed the amount deposited in the Indemnity Escrow Account plus interest accrued thereon pursuant to the Indemnity Escrow Agreement. Seller's liability under this subsection shall terminate three (3) years after the Closing Effective Date except for Claims asserted prior to the expiration of such three (3) year period and Seller shall thereafter have no further liability under this subsection; provided further that nothing contained in this subsection shall be deemed to create any liability for Seller for the representations and warranties contained in Section 6.7, which representations and warranties do not survive Closing; provided further that such termination of liability hereunder shall not be deemed to terminate Seller's liability under subsection (b), which liability shall continue without termination. In the event of a conflict in the provisions of subsection (b) and (c), subsection (b) shall control.

5.4 **Bonds**. Seller hereby acknowledges its obligations under the (i) Loan and Guaranty Agreement dated as of January 1, 1985 as amended and reinstated as of September 1, 1987 and (ii) the Loan Agreement dated as of November 15, 1985 each relative to the respective series of the Hotel Dieu Bonds. Seller acknowledges that it may be necessary for it to cause the Hotel Dieu Bonds to be redeemed or defeased in connection with the issuance by LPFA of the Bonds pursuant to Section 13.11 hereof. Seller agrees as a condition to Closing that Seller shall have obtained an opinion, at the cost of the Seller, of Orrick, Herrington & Sutcliffe, Old Federal Reserve Bank Building, 400 Sansome Street, San Francisco, California 94111, or an attorney at law or firm of attorneys at law approved by LPFA, that is of nationally recognized standing in matters pertaining to the issuance of bonds by states and their political subdivisions and that is duly admitted to the practice of law before the highest court of any State of the United States of America or the District of Columbia, to the effect that the sale of the Assets; the stated use by the Seller of the proceeds derived from the purchase and sale of the Assets; and the purchase of the Assets and the stated use of the Assets by LPFA and/or DHH will not subject the interest paid on the Hotel Dieu Bonds to federal income taxation. The Seller agrees not to do anything which would impair the ability of LPFA to obtain tax exempt financing through the issuance of the Bonds. The representations contained in this Section shall expressly survive Closing.

Article 6.
Representations and Warranties of Seller

Seller represents and warrants to the Purchasers as follows:

6.1 **Corporate Organization And Good Standing.**

(a) Seller is a private, nonprofit corporation duly organized, validly existing, and in good standing under the laws of the State, authorized to conduct business under the laws of the State, and licensed to operate a hospital under the laws of the State. The execution and delivery of this Agreement, and the performance of Seller's obligations hereunder are within the corporate powers of Seller.

(b) Seller is a tax-exempt organization as described in Section 501(c)(3) of the IRC, and is exempt from federal income taxes under Section 501(a) of the IRC.

(c) Seller has, under all Governmental Regulations, all requisite power and authority necessary to own or to hold under lease its properties and assets (including, without limitation, the Assets), and to carry on its business as is presently being conducted.

6.2 **Corporate Authorization.** Seller is the sole owner of the Assets except as described in **Schedule 6.2**, and has full right, power, and corporate authority to execute this Agreement, carry out the transactions contemplated by this Agreement, and perform its obligations under this Agreement. Seller has taken or caused to be taken all necessary, proper and required corporate action in accordance with the Corporate Documentation to authorize the execution and delivery of this Agreement, and the performance of its obligations under this Agreement. The individuals who have executed this Agreement have the full and legal right, power, and authority to do so on behalf of Seller, and to otherwise act on behalf of Seller in connection with the consummation of the transactions contemplated by this Agreement. Seller's authorization (and the authorization of the individuals executing this Agreement on behalf of Seller) to enter into this Agreement has not been repealed, modified, or amended.

6.3 **Binding Obligation.** This Agreement constitutes the valid and binding agreement of Seller, enforceable in accordance with its terms (except as enforceability may be restricted or delayed by bankruptcy, insolvency, moratorium or similar laws affecting or relating to the enforcement of creditors' rights in general and by general principles of equity).

6.4 Agreement Not in Breach of Other Instruments. Except as set forth in Schedule 6.4, neither the execution, delivery, or performance of this Agreement or any other agreement contemplated hereby, nor the compliance with the respective terms and provisions hereof or thereof, nor the consummation of the transactions contemplated hereby or thereby, will: (a) conflict with or result in a breach of any of the terms, conditions, or provisions of, or constitute a default under, any agreement or instrument to which Seller is a party or is subject; (b) to the best of Seller's knowledge, conflict with, or result in a breach of any agreement or instrument reflected in public records or, to the best of Seller's knowledge, to which any predecessor of Seller is a party, or to which the Assets are subject; (c) violate any restriction to which Seller or, to the best of Seller's knowledge, to which any predecessor of Seller is a party, or to which the Assets are subject; (d) to the best of Seller's knowledge, constitute a violation of any Governmental Regulation; (e) result in the acceleration of any encumbrance pertaining to the Assets, or the cancellation of any agreement pertaining to the Assets; (f) result in the creation of any encumbrance upon the Assets; or (g) violate any Corporate Documentation.

6.5 Approval of Transaction. All approvals, consents, and authorizations required by any Governmental Authority or by any Governmental Regulations, including those Governmental Authorities having jurisdiction over the operation of the Assets and the Facility and those Governmental Regulations pertaining to the operation of the Assets and the Facility, for the Seller to enter into this Agreement have been obtained and/or complied with, and as of the Closing Date, no further authorization by any Governmental Authority shall be necessary or required for due performance by Seller of this Agreement.

6.6 Health and Safety Requirements. Except as disclosed on Schedule 6.6 and to the best of Seller's knowledge, the condition of the Assets is in compliance with the Fair Labor Standards Act, the Occupational Safety and Health Act (particularly regulations issued under that statute with respect to bloodborne pathogens), workers' compensation laws, other safety laws, and all other Governmental Regulations respecting the employees of Seller. With respect to the provisions of Section 10.2 of this Agreement with respect to the retention of all employees of Seller, there exist no Claims, whether asserted or unasserted, or any other contingent liabilities arising under any Governmental Regulations regulating the employment relationship, or otherwise with respect to Seller's relationship with independent contractors working at the Facility. To the extent the Parties are required to provide notice in accordance with the Worker Adjustment and Retraining Notification Act, it is agreed that up to and including the Closing Effective Date, such notices shall be given by Seller, and that Purchasers have no obligation or responsibility to provide notice of termination of employment to any of Seller's employees until after that date.

If such notice is required, it shall be given by Seller, who shall be wholly liable for the duties arising under said Act and for any other wages and other payments which may be due to employees in accordance with said Act. After the Closing Effective Date, pursuant to 29 U.S.C. §2101(b)(1), any such obligations shall become the responsibility of DHH.

6.7 **Condition of Assets**. Except as disclosed on **Schedule 6.7(a)** and to the best of Seller's knowledge, now and as of the Closing Date there are no material structural defects in the buildings and other improvements comprising a part of the Real Estate, including but not limited to the roofs, walls, foundations, sanitary sewers, storm sewers, air conditioning and heating systems, and the plumbing, mechanical, electrical, and elevator systems. All Assets (whether owned or held under lease) are in good operating condition and repair, normal wear and tear excepted, free from material defects, and usable in the ordinary course of business. Except as described in **Schedule 6.7(b)** and to the best of Seller's knowledge, Seller has received no recommendation from any insurer to repair or replace its buildings, equipment or fixtures (including the Facility or the Assets) with which Seller has not complied or is in the process of complying. The Parties hereby expressly acknowledge and agree that the representations and warranties under this **Section 6.7** shall not survive the Closing.

6.8 **The Facility**. The Facility is equipped and licensed as a Medicare/Medicaid certified hospital approved under §1122 of the Social Security Act with 461 beds, all of which are certified under the Medicare and Medicaid programs; a rehabilitation unit with 14 beds; a skilled nursing facility with 31 beds; a licensed home health agency; a licensed community hospice; an independent clinical laboratory; and a kidney transplant center with five stations; and to the best of Seller's knowledge, the Assets include all property required under applicable Governmental Regulations to operate the Facility.

6.9 **The Equipment**. Seller has good and merchantable title to the Equipment and to all other properties and assets whatsoever owned by Seller and Seller will convey the Equipment and all other Assets, free and clear of any Encumbrances, and, except as set forth on **Schedule 6.9(a)**, to the best of Seller's knowledge, in good working condition and suitable for the continued operation of the Assets and the Facility; provided, however, that for purposes of this **Section 6.9**, to the best of Seller's knowledge" shall mean that prior to Closing, Seller shall direct a written communique to each of its then current employees soliciting information relevant to the working condition of the Equipment and share all responses thereto with Purchasers. There are no existing leases or other agreements affecting the Equipment except as set out on **Schedule 6.9(b)**. Nothing contained in this **Section 6.9** shall require Seller to repair, replace, or take any other corrective action as a result of information obtained from employees hereunder.

6.10 **The Real Estate**. Seller has good and merchantable title to the Real Estate subject to no Encumbrances other than the Permitted Exceptions. Between the date hereof and the Closing Date, Seller will not create or permit to be created any Encumbrances on the Real Estate.

6.11 **Tax Parcel**. That portion of the Real Estate described on Schedule 6.11(a) is taxed as separate and distinct tax parcels, and described on Schedule 6.11(b) are real estate tax bills for such portion of the Real Estate for the years 1991 and 1992.

6.12 **Work Performed**. Except as set forth on Schedule 6.12 and other than ordinary maintenance and repair, there is no material construction, renovation, remodelling, or other work that has been commenced with respect to the Assets but has not been completed. No labor has been performed or material furnished for the Assets for which the Seller has not heretofore fully paid or for which an Encumbrance can be claimed by any Person.

6.13 Licensure and Certification. Attached hereto as Schedule 6.13(a) is a list of Permits held by Seller, listing each Permit, the issuing Governmental Authority, and the respective expiration dates of each, and also listing each private or quasi-private association or Governmental Authority by which Seller is accredited or otherwise recognized. The Facility has received a Certificate of Accreditation from the Joint Commission on Accreditation of Healthcare Organizations effective through August 14, 1994. Schedule 6.13(b) contains true and correct copies of all reports, including attached listings regarding deficiencies, if any, and Seller's response thereto regarding surveys or inspections of the Facility conducted by any Governmental Authority or by the Joint Commission on Accreditation of Healthcare Organizations within the three (3) years preceding the date of this Agreement. To the best of Seller's knowledge, Seller is not required by applicable law for the continued conduct of the business of the Facility in substantially its current form (a) to obtain any additional permits, licenses, or similar authorizations from any Governmental Authority other than those it has currently obtained, or (b) to become a member of or accredited by any private or quasi private association or Governmental Authority other than those listed in Schedule 6.13(c) hereto. The Facility has a valid current provider agreement under Titles XVIII and XIX of the Social Security Act as a hospital, rehabilitation unit, independent clinical laboratory, kidney transplant center, home health agency, and hospice. Other than those publicly announced actions pertaining to hospitals in general, there is no action pending or, to the best knowledge of Seller, recommended by Governmental Authorities having jurisdiction over the Facility, to terminate the participation of the Facility in the Title XVIII or Title XIX programs, or to reduce the Facility's level of reimbursement under those programs, nor is there any decision not

to renew any Third Party Payor agreement relating to the Facility except as disclosed on **Schedule 6.13(d)**. Seller has no knowledge that the Facility is not in compliance with all standards and conditions of participation in the Title XVIII and XIX programs. Prior to the Closing Effective Date, Seller shall maintain and operate the Facility in full compliance with all applicable Governmental Regulations, as well as in full compliance with the representations and warranties set forth in this Agreement.

6.14 **Patients**. Except as set forth in **Schedule 6.14**, there are no patient care agreements, accommodation agreements, or pricing agreements with any Person which deviate in any material respect from the standard customarily used by the Facility. To the best of Seller's knowledge, all Medical Records at the Facility, including patient trust fund accounts, are true and correct and have been maintained in accordance with law and meet acceptable standards of the Joint Commission on Accreditation of Healthcare Organizations.

6.15 **Inspections**. **Schedule 6.15** contains true and correct copies of all reports, including attached listings regarding deficiencies and the most recent inspection report of the fire marshall, and Seller's responses thereto, regarding surveys or inspections of the Facility conducted by any Governmental Authority within the two (2) years preceding the Effective Date.

6.16 **Contributions and Dedications**. Seller has made no commitments (either oral or written) to any association, organization, or Governmental Authority to dedicate any portion of the Real Estate for parklands, to make any other contribution or dedication of land or money in connection with the Real Estate, or to construct, install, or maintain any improvements of a public or private nature on or off the Real Estate.

6.17 **Medicare and Medicaid and Hill-Burton Reports**. Seller will furnish to Purchasers, upon execution of this Agreement, copies of the three (3) most recent Medicare and Medicaid survey reports, and Hill-Burton reports, any waivers of deficiencies, plans of correction and any other investigative reports issued with respect to the Facility and copies of all correspondence relating to such reports, waivers, or plans. Between the Effective Date and the Closing Effective Date, Seller will furnish Purchasers with any Medicare, Medicaid and Hill-Burton informational surveys, reports, waivers, plans of correction or investigation reports which may be issued to or by the Facility, and copies of all correspondence relating to such surveys, reports, waivers, or plans.

6.18 **Necessary Action**. Seller shall in timely fashion take all actions necessary to enter into this Agreement and to carry out the terms hereof.

6.19 **Inventory**. To the best of Seller's knowledge, the Inventory is in sufficient condition, quality, and quantity to

operate the Facility at normal capacity in the ordinary course of business and to the best of Seller's knowledge, is in compliance with all applicable Governmental Regulations on the Effective Date and the Closing Effective Date.

6.20 No Regulatory Violation or Litigation. Except as set forth and described in Schedule 6.20(a), and to the best of Seller's knowledge, neither Seller nor the Facility is in violation of any Governmental Regulation that will have a material adverse effect on the future operation of the or use of the Assets, nor has Seller received any notice of noncompliance with any Governmental Regulations that will have a material adverse effect on the Assets. Except as set forth in Schedule 6.20(b) hereto, no notice from any authority in respect to the suspension, revocation, withdrawal, or termination of any Permit has been issued or given, nor is Seller aware of the proposed or threatened issuance of any such notice. There is no basis known to Seller for any such action which would have a material adverse effect upon the Assets or the Facility. Except as set forth and described in Schedule 6.20(c), there are no lawsuits, proceedings, Claims or governmental investigations pending or, to the best of the knowledge of Seller, threatened against Seller or against the Assets, nor is there any basis known to Seller for any such action, and there is no action, suit or proceeding by any Governmental Authority pending or, to the best of the knowledge of Seller, threatened which questions the legality, validity or propriety of the transactions contemplated by this Agreement.

6.21 Utility Service. All water, sewer, gas, electric, telephone, and drainage facilities and other utilities required by law or in order to operate the Assets and the Facility (i) are connected to the Facility and operational with valid permits; (ii) either enter the Real Estate through adjoining public streets, or if they are passed through adjoining private lands, do so in accordance with valid public or private easements; and (iii) are, to the best of Seller's knowledge, adequate to service the Assets and the Facility and to permit and normal usage of the Assets and the Facility by Seller and to comply with all Governmental Regulations.

6.22 Condemnation. Seller has no knowledge of any pending, contemplated, or threatened condemnation or similar proceeding or of any litigation affecting the Assets, the Real Estate or any part thereof.

6.23 Access. Access to the Real Estate is from adjoining dedicated public roads and is not obtained by means of easements, private servitudes or rights-of-use, rights-of-way, or licenses across lands or premises not included within the Real Estate.

6.24 Employees, Contracted Services. Attached hereto as Schedule 6.24(a) are (a) a copy of that certain Sisters' Services Agreement, dated as of July 1, 1992 by and between the Daughters

and Seller which provides that members of Daughters will provide services at the Facility, (b) a substantially accurate list of names and annual rate of compensation payable to each salaried employee of Seller, (c) a list, including the rate of compensation, and number of hours worked for the twelve (12) month period preceding the Effective Date, of all employees of the Facility who are paid on an hourly basis, and (d) a description of all severance and termination benefits, policies and arrangements applicable to all employees of the Seller, (e) a description of the workers compensation loss experience of the Seller, all as of the Effective Date. Except as set forth in Schedule 6.24(b):

(a) Seller has no collective bargaining agreements, letters of understanding, or arrangements with any labor union and Seller is not currently negotiating with any labor unions;

(b) To the best of Seller's knowledge, Seller has not violated any applicable laws respecting employment and employment practices, terms and conditions of employment, and wages and hours, and Seller is not engaged in any unfair labor practice;

(c) To the knowledge of Seller, there is no unfair labor practice complaint against Seller pending before the National Labor Relations Board;

(d) To the best of Seller's knowledge, there are no labor disputes, administrative or court proceedings or orders, investigations, or Claims pending or threatened by any present or former employee of Seller which would materially and adversely affect the Assets, and Seller has no knowledge of any facts or events which would give rise to such dispute, Claim, or investigation; and

(e) There is no:

(i) labor strike, slowdown or stoppage actually occurring or, to Seller's knowledge, threatened against or affecting Seller's operation of the Facility; or

(ii) labor grievance which might have a material adverse effect on either Seller or the conduct of its business nor is any such arbitration proceeding arising out of or under collective bargaining agreements pending and no Claim therefor exists.

(f) To the best of Seller's knowledge, no employee of Seller is actively seeking to organize Seller's employees. Except as listed in Schedule 6.24(f), employees are "at will" employees of Seller and Seller has entered into no written or verbal agreement with any employee that would render their employment other than "at will" nor has Seller made any representation to such employees that their employment by Purchasers will be other than "at will."

6.25 **Finder's Fee**. Except for the engagement of John Nuveen & Co. Incorporated as investment banker (for whose fees Seller is solely responsible), Seller has not employed and is not liable for the payment of any other fee to any other investment banker, finder, broker, government official, consultant or similar person in connection with the transactions contemplated by this Agreement.

6.26 **Medical Staff**. Seller has delivered to Purchasers a true, complete, and accurate copy of medical staff privilege and membership applications, documents which delineate medical staff membership and privileges for the medical staff, medical staff bylaws, rules and regulations and amendments thereto, and employment records and those peer review records and credentialling records for which Seller has received specific written consent to release such information from individual physicians or other practitioners credentialed by the Facility. To the knowledge of Seller, with regard to the medical staff of the Facility, there are no suits, actions, arbitration proceedings or investigations pending or threatened with applicants, staff members, or health professional affiliates, the resolution of which would have a material adverse affect on the business or operations of the Facility and Seller has complied with all requirements of the Health Care Quality Improvement Act. To the knowledge of the Facility's Chief Executive Officer and except as set forth on Schedule 6.26(a), none of the current medical staff at the Facility listed in Schedule 6.26(b), currently intends to retire, move, or otherwise stop practicing at the Facility within one year of the Closing Effective Date.

6.27 **Hill-Burton Care**. Except as set forth in Schedule 6.27(a), Seller has not received any loans, grants, or loan guarantees pursuant to the Hill-Burton Act (42 U.S.C. §291) and the regulations promulgated thereunder. Furthermore, to the best of Seller's knowledge and except as set forth on Schedule 6.27(b), Seller has been in compliance with all the obligations imposed by the Hill-Burton Act and applicable regulations and guidelines as of the Closing Effective Date.

6.28 **Tax Status**. Seller and all persons holding beneficial interests in the Assets are "United States Persons", as defined by Section 1445(f)(3) and Section 7701 (g) of the IRC.

and the purchase of the Assets by Purchasers pursuant to this Agreement is not subject to the withholding requirements of Section 1445(a) of the IRC. The Internal Revenue Service has determined that Seller is a tax-exempt organization under the IRC, such determination is in full force and effect, such status is not being contested by the Internal Revenue Service. All tax or information returns, statements, certificates and reports of Seller required by law to be filed to the date hereof in order to establish and maintain such status under the IRC have been duly filed.

6.29 Absence of Undisclosed Claims. Except as set forth in **Schedule 6.29** or any other Schedule annexed to this Agreement, and except for Claims which are not material and which are incurred in the ordinary course of business accruing after August 6, 1992, Seller, as of the date hereof, has no Claims which are not disclosed in this Agreement or in the Schedules attached thereto, except Claims that are not material individually or in the aggregate to completion of the transactions under this Agreement or the Assets to be transferred.

6.30 Absence of Certain Recent Changes. Except as disclosed in **Schedule 6.30** hereto, since August 6, 1992, Seller has not:

(a) suffered any damage, destruction or loss, whether or not covered by insurance, in excess of $25,000.00;

(b) increased the regular rate of compensation payable by it to any employee or independent contractor, or any physician, other than normal merit and cost of living increases granted in the ordinary course of business; or, except in the ordinary course of business, consistent with past practice, increased such compensation by bonus, percentage compensation, service award, or similar arrangement not theretofore in effect for the benefit of any of its employees;

(c) established or agreed to establish any health benefit, pension, severance, retirement or welfare plan or other benefit plan or program for the benefit of its employees not theretofore in effect;

(d) withheld payment of employee bonuses etc. to employees otherwise due, accrued or payable in the ordinary course of business;

(e) withheld payment on payables otherwise due and owing in normal course of business;

(f) written down the value of any of its assets except for write-downs in the ordinary course of business and consistent with past practice, none of which are material to Seller's financial condition, or revalued any of its assets by more than $50,000.00 in the aggregate;

(g) amended or terminated any contract, agreement or license of material value to which Seller is a party;

(h) made any change in any method of accounting or accounting practice;

(i) cancelled, had cancelled, or failed to continue, insurance coverages;

(j) suffered the termination of any Permit issued to Seller in the operation of the Facility or received written notice of any such termination with respect to any employees or medical staff, the termination of which would materially and adversely affect the business or operations of the Facility; or

(k) agreed, whether in writing or otherwise, to take any action described in this Section.

6.31 **Contiguous Tracts**. To the best of Seller's knowledge, each individual parcel of land comprising a part of the Real Estate has an entire boundary line which is contiguous to an entire boundary line of another parcel which is a part of the Real Estate.

6.32 **Zoning**. To the best of Seller's knowledge, the Real Estate is zoned under a zoning classification of the City of New Orleans which will allow Purchasers to operate the Real Estate for its intended use. To the best of Seller's knowledge, the Real Estate is in compliance with, and is being operated in compliance with all applicable zoning, land use, and building codes and ordinances and may continue to be so operated after Closing without any zoning change or variance.

6.33 **Use of Assets**. Seller has no knowledge of any fact, condition, or impediment which would prevent Purchasers from operating the Assets as currently operated for its existing use without any substantial modifications to comply with any building, fire, health or safety codes or any other exercise of the police power.

6.34 **No Flooding**. Except as set forth on Schedule 6.34 and to the best of Seller's knowledge, no portion of the Real

Estate has flooded in the five (5) year period immediately preceding the Closing Date.

6.35 **Contracts and Leases.**

(a) Attached hereto as **Schedule 1.107** is a listing of each contract, to which Seller is a party or by which Seller is bound which relates to the Facility and which is included in the Seller's Contracts to be assumed by DHH.

(b) Attached hereto as **Schedule 1.102** is a listing of the leases which will constitute the Real Estate Leases which DHH shall have the right to renegotiate or which LPFA will assume with the purchase of the LPFA Assets.

(c) With respect to each of Seller's Contracts, the Real Estate Leases, except as noted in said Schedule:

(i) Each such contract and lease is a valid and binding agreement of Seller in accordance with its terms, and Seller does not have any knowledge that any such contract or lease is not a valid and binding agreement of any other party thereto;

(ii) Seller has made no verbal agreement which would alter the terms of any contract or lease;

(iii) Seller has fulfilled all material obligations required pursuant to each such contract or lease to have been performed by Seller prior to the date hereof, and Seller has no reason to believe that any obligation under any such contract or lease that remains to be performed after the Effective Date cannot be performed when due;

(iv) There has not occurred a material default under any such contract or lease on the part of Seller; Seller does not have any knowledge that a material default under such contract or lease on the part of any Other Party has occurred; and Seller does not have any knowledge that an event has occurred which with the giving of notice or the lapse of time, or both, would constitute a material default under any such contract or lease; and

(v) Consummation by Seller of the transactions contemplated by this Agreement will not (and

will not give any Other Party a right to) terminate such contract or lease or modify any rights of, or accelerate or augment any obligation of, such Other Party thereunder.

(vi) There are no agreements in effect that would prohibit the hospital from providing clinical laboratory services or billing Medicare/Medicaid for those services under 42 U.S.C.A. §1395nn.

(vii) There are no "side" agreements written or oral, with any physicians relating to their leases of space in the Real Estate or their relationship with the Facility.

(viii) To the best of Seller's knowledge, there are no agreements in effect which would violate any Governmental Regulation or be prohibited by any Governmental Authority.

6.36 Hazard, Casualty and Liability Insurance. Attached as hereto Schedule 6.36 is a list of all policies or binders of fire, liability, product liability, workers' compensation, health, hospital professional, general liability and other forms of insurance policies or binders currently in force insuring against risks of Seller.

6.37 Cost Reports, Third-Party Receivables. Seller has heretofore made available to Purchasers all cost reports, by Seller since 1989. The Cost Reports required to be filed on or prior to the date hereof or the Closing Effective Date have been or will be timely filed by Seller, and to the Seller's knowledge (i) such reports do not or will not claim for (except for amounts which are not material) repayment or overpayment or reflect a repayment and (ii) with respect to the Facility, Seller has not received (except for amounts which are not material), reimbursement in excess of the amount provided pursuant to Governmental Regulation of any Governmental Authority or, in the case of Third-Party Payor programs, provided under its Third-Party Payor agreement. Notwithstanding any provision contained herein to the contrary, Seller hereby agrees that it is solely responsible for any retroactive adjustment of the Facility's Medicare and/or Medicaid rates or payments for services rendered prior to the Closing Effective Date and for any retroactive adjustment under Third-Party Payor agreements.

6.38 Environmental Matters. Seller represents and warrants that, except as specifically described in Schedule 6.38, to the best of Seller's knowledge: (a) the ownership and operations of the Assets and any use, storage, treatment, disposal, or transportation of Hazardous Substances that has occurred in or on the Assets prior to the date of this Agreement have been in compliance with all applicable Environmental

Requirements; (b) during the ownership and operation of the Assets by Seller, or, prior to its ownership or operation, no release, leak, discharge, spill, disposal, or omission of Hazardous Substances has occurred in, on, or under the Assets in a quantity or manner that violates or requires further investigation or remediation under Environmental Requirements; (c) the Assets are free of Hazardous Substances as of the date of this Agreement, except for the presence of small quantities of Hazardous Substances utilized by Seller or other tenants of the Assets in the ordinary course of their business. Seller represents and warrants that there is no pending or threatened litigation or administrative investigation or proceeding concerning the Assets involving Hazardous Substances or Environmental Requirements. To the best of Seller's knowledge, Seller represents and warrants that there are no asbestos-containing material within the Assets and the Tank Systems, except as disclosed on Schedule 6.38, whether friable or non-friable, and that there are no Tank Systems located at the Assets.

6.39 Regulatory Approvals. All notices, consents, approvals, authorizations and other requirements prescribed by Governmental Regulation that must be obtained or satisfied by Seller and that are necessary for the execution and delivery by Seller of this Agreement and the documents to be executed and delivered by Seller in connection herewith, or are necessary for the consummation of the transactions contemplated hereby, have been obtained or satisfied except for such notices, consents, approvals, authorizations, or other requirements that this Agreement expressly contemplates were to be obtained or satisfied between the date of this Agreement and Closing or thereafter (which Seller shall obtain or satisfy by Closing).

6.40 Other Knowledge. Seller has no knowledge or information of any facts, circumstances, or conditions which do or would in any way materially adversely affect the Assets or the operation of the Facility.

6.41 Accounts Payable. Seller will promptly satisfy and pay all liabilities, including without limitation accounts payable, arising out of and relating to Seller's ownership, use, or operation of the Facility or the Assets in the due course of business in accordance with Seller's normal business practices.

6.42 Deposits. Schedule 6.42 is a true, correct, and complete list of all Real Estate Deposits and Seller's Contracts Deposits.

6.43 Abbeville Action. On or before the Closing Date, an order shall have been entered in the Abbeville Action or any appeal therefrom which dismisses Seller, without prejudice, to the right of Seller to be reinstated in the Abbeville action or any appeal therefrom if the Closing does not occur within sixty (60) days of the order. If the Closing shall occur the dismissal

order shall be with prejudice. If DHH or DHH's officials enter into an agreement of compromise and/or settlement; or if there is a judgment, and which settlement or judgment grants plaintiffs relief with respect to Medicaid reimbursement rates or payment, DHH will provide to Seller that same relief to the extent the relief would grant reimbursement to Seller for the period before the Closing Date.

6.44 Seller's Knowledge. The Parties hereby acknowledge and agree that, except per limitations contained in Section 6.9, references in this Agreement to "Seller's knowledge" or "to the best of Seller's knowledge" shall be deemed to mean knowledge of Seller, its respective agents, officers, directors, members, servants, employees and attorneys after reasonable investigation.

Article 7.
Representations of the LPFA

LPFA represents to Seller as follows:

7.1 Status, Location, and Authority of LPFA. LPFA is a public trust and public corporation of the State, duly organized, validly existing, and in good standing under the laws of the State, under and pursuant to the Indenture; and the provisions of the Public Trust Act, La. R.S. 9:2341-2347, inclusive, as amended, with full and legal right, power, and authority to enter into this Agreement, and perform the obligations imposed upon it under this Agreement. The principal business office of LPFA is located in East Baton Rouge Parish, Louisiana, at 8555 United Plaza Boulevard, Suite 100, Baton Rouge, Louisiana 70809.

7.2 Execution and Delivery by LPFA. On the Closing Date LPFA shall have taken or caused to be taken all actions necessary to authorize the execution and delivery of this Agreement by LPFA and the performance by LPFA of its obligations under this Agreement, all approvals, consents, and authorizations required by any Governmental Authority and the applicable laws of the State for LPFA to enter into, and perform its obligations under this Agreement shall have been obtained and/or complied with, and no further authorization by any Governmental Authority shall be necessary or required for due execution, delivery, or performance by LPFA of this Agreement, and LPFA's authorization to enter into this Agreement shall not have been repealed, or materially altered, modified, or amended.

7.3 LPFA Litigation. Except as set forth in Schedule 7.3, there are no actions, suits, hearings, or proceedings threatened or pending before any court or Governmental Authority wherein an adverse decision, ruling, or finding would materially and adversely impair (a) LPFA's power and authority to enter into this Agreement, or its ability to perform its obligations under this Agreement; or (b) the

existence or organization of LPFA or the appointment and power of the members of its Board of Trustees.

7.4 **LPFA Compliance with Applicable Law**. LPFA's execution and delivery of the Agreement, and the performance of its obligations hereunder will not violate any provisions of the Louisiana Constitution, the Public Trust Act, the Indenture, or any other State law, rule, regulation, decree, or order applicable to LPFA.

7.5 Binding Obligation of LPFA. This Agreement has been duly executed by an authorized member of the Board of Trustees of LPFA, and duly approved by the Board of Trustees of LPFA, and to the extent permitted by Governmental Authority and Governmental Regulation constitutes a legal, valid, and binding special obligation of LPFA, enforceable against LPFA in accordance with its terms (except as enforceability may be restricted or delayed by bankruptcy, insolvency, moratorium or similar laws affecting or relating to the enforcement of creditors' rights in general and by general principles of equity).

7.6 Necessary Action. Subject to Governmental Authorities and Governmental Regulations, LPFA shall in timely fashion take all actions necessary to enter into this Agreement and to carry out the terms hereof.

7.7 **Limitation on Representations of LPFA**. All representations of LPFA under this Agreement are made in good faith to the best of LPFA's knowledge, information, and belief, and terminate as of and do not survive the Closing Date.

7.8 Bonds. LPFA shall not do anything which, nor omit to do anything the failure to do which, would subject the interest paid on the Bonds to federal income taxation. The representation contained in this Section shall expressly survive the Closing.

Article 8.
Representations of DHH

DHH represents to Seller as follows:

8.1 Status and Authority of DHH. DHH is a body corporate, as created by Act of the Louisiana State Legislature, responsible for providing health and medical services for the citizens of Louisiana, with statutory authority to provide such services to the insured and medically indigent citizens of Louisiana directly through the operation of health care facilities. The State, by Executive Order No. 92-87, has designated DHH to act on the State's behalf to enter into this Agreement and, in DHH's capacity as such designee, to undertake and perform the obligations of DHH under this Agreement. Based on such statutory authority, DHH shall have on the Closing Date the legal right, power and authority to enter into this

Agreement, and to perform the obligations imposed upon it under this Agreement.

8.2 **Execution and Delivery by DHH**. On the Closing Date DHH shall have taken or caused to be taken all actions necessary to authorize the execution and delivery of this Agreement by DHH and the performance by DHH of its obligations under this Agreement, all approvals, consents, and authorizations required by the applicable laws of the State for the DHH to enter into and perform its obligations under this Agreement shall have been obtained and/or complied with, and no further authorization shall be necessary or required for due execution, delivery, or performance by DHH of this Agreement, and DHH's authorization to enter into this Agreement shall not have been repealed, or materially altered, modified, or amended.

8.3 **DHH Litigation**. Except as set forth in Schedule 8.3, there are no actions, suits, hearings, or proceedings threatened or pending before any court or Governmental Authority wherein an adverse decision, ruling, or finding would materially and adversely impair (a) DHH's power and authority to enter into this Agreement, or its ability to perform its obligations under this Agreement; or (b) the existence or organization of DHH or the appointment and power of its officials.

8.4 **DHH Compliance with Applicable Law**. DHH's execution and delivery of the Agreement, and the performance of its obligations hereunder will not violate any provisions of the Louisiana Constitution or of any other State law, rule, regulation, decree, or order applicable to DHH.

8.5 **Binding Obligation of DHH**. This Agreement, to the extent permitted by Governmental Authority and Governmental Regulation, constitutes a legal, valid, and binding obligation of DHH, enforceable against DHH in accordance with its terms.

8.6 **Necessary Action**. Subject to Governmental Authorities and Governmental Regulations, DHH shall in timely fashion take all actions necessary to enter into this Agreement and to carry out the terms hereof.

8.7 **Limitation on DHH Representations**. All representations of DHH under this Agreement are made in good faith to the best of DHH's knowledge, information, and belief, and terminates as of and do not survive the Closing Date.

8.8 **Bonds**. DHH agrees shall not to do anything which, nor omit to do anything the failure to do which, would subject the interest paid on the Bonds to federal income taxation. The covenant contained in this Section shall expressly survive the Closing.

Article 9.
Covenants of Seller

Seller covenants and agrees with the Purchasers as follows:

9.1 **Access and Information.** At all times prior to the Closing Effective Date, Seller shall afford to the Purchasers and their agents, employees and authorized representatives, access, during normal business hours, to those properties, and books, records and corporate documents pertaining to the Assets, the operation of the Facility, and the Seller's Contracts to be assumed by DHH, and to Seller's employees and designated agents or representatives, as may be reasonably requested. Seller will use its best efforts to cause its independent auditors to make available copies of such documents and information with respect to the Assets, the operation of the Facility, and the Seller's Contracts to be assumed by DHH, as are in possession of Seller's auditors and not otherwise available from Seller (excepting, however, the auditor's work papers and any Real Estate appraisals or valuations). The information may be public pursuant to applicable "public records act", laws, subpoena, court order or other applicable laws. If this Agreement is terminated prior to Closing for any reason, all such information shall be returned to Seller within five (5) Business Days.

9.2 **Preservation of Accuracy of Representations and Warranties.** Seller shall take all action necessary to prevent any representation or warranty contained in Article 6 of this Agreement from becoming inaccurate as of the Closing Effective Date. Seller promptly will notify the Purchasers of any lawsuits, Claims, administrative actions or other proceedings asserted or commenced against Seller, its officers, trustees of employees involving the Assets. Seller will promptly notify the Purchasers of any facts or circumstances which come to Seller's or Daughters attention and which cause, or through the passage of time may cause, any of Seller's representations and warranties to be inaccurate, untrue or misleading at any time from the date of this Agreement to the Closing Effective Date.

9.3 **Senior Management.** To assist in an orderly transition, Seller shall use its best efforts to induce the Facility's current senior management, each of whom is listed on **Schedule 9.3**, to continue working at the Facility for a minimum of six (6) weeks after the Closing Effective Date on the same salary terms they are employed immediately prior to the Closing Effective Date.

9.4 **Medicare and Medicaid Reporting and Other.** Seller shall be responsible for timely filing all Cost Reports and other reports required by law or contract to be filed with respect to the purchase of services by third party payors, including but not limited to Medicare and Medicaid prior to Closing or with respect to final Medicare, Medicaid Cost Reports, within forty-five (45) days of the Closing Effective Date.

9.5 **Authorizations and Contracts Involving Other Parties.** Seller covenants to obtain all consents, approvals, and authorizations of Other Parties, including the regulatory approvals set forth in Section 6.39 necessary for the assignment to DHH of all of Seller's rights under the Seller's Contracts, or required in connection with the valid execution, delivery or performance of the Agreement, and cooperate with DHH in the substitution of New Leases, when applicable and to the extent permitted by Governmental Authority and Governmental Regulation and in accordance with the valid consent of assignment to be obtained by Seller in the form set forth in Schedule 9.5.

9.6 **Maintenance of Corporate Existence**. During the period between execution of this Agreement and the Closing Effective Date, Seller shall continue its operations as a Louisiana nonprofit corporation in good standing, and shall not dissolve or liquidate, or merge with or into another corporation or other legal entity.

9.7 **Conduct of Business**. During the period between the execution of this Agreement and the Closing Effective Date, Seller shall conduct the business of the Facility in the ordinary course thereof consistent with prior practice and with respect to the Assets and the Facility in accordance with all applicable Governmental Regulations and Environmental Requirements reasonably known to Seller. Seller will in the exercise of sound business judgment in conducting the business of the Facility use its best efforts to (a) preserve the business of the Facility materially intact; (b) preserve the goodwill of the physicians, providers, suppliers, employees, patients, and others having business relationships with Seller; and (c) not enter into any contract, amendment, lease, agreement, plan, or commitment with respect to the Assets unless the same is entered into in the ordinary course of business and does not result in a breach of Seller's representations and warranties or materially affect the economic benefit of this Agreement to Purchasers. Notwithstanding the provisions of this Section 9.7 or any other provision of this Agreement to the contrary, any material adverse change in the operating and financial performance of the Facility resulting, directly or indirectly, from the public announcement and community awareness of the transaction contemplated by this Agreement or such other cause beyond the control of Seller, shall not relieve Purchasers of their obligations under this Agreement, including the obligation to close on the purchase and sale of the Assets and shall not be deemed a Default by Seller under this Agreement; provided that nothing contained in this Section shall be deemed to limit the right of Purchasers to terminate this Agreement pursuant to Section 12.12.

9.8 **Liability Insurance**. Seller shall maintain, until the Closing Effective Date, for its benefit at its cost and expense its present insurance policies and self insurance programs, in commercially reasonable amounts, including coverage for general liability, medical malpractice and professional

liability and covering Claims which arise now or in the future out of its operation of the Facility prior to the Closing Effective Date. Said insurance program is described in attached Schedule 9.8. Such medical malpractice and professional liability coverage is on an "occurrence" basis so that Seller does not require "tail coverage" for Claims asserted against Seller and Seller's employees including professional employees after they have left the Facility's employment for actions taken or failed to be taken during their employment by Facility. The amount of Seller's current coverage shall be deemed commercially reasonable.

9.9 **Engineering Plans and Studies**. Within five (5) days of the execution of this Agreement, Seller shall make available to Purchasers all engineering plans, blueprints, drawings, surveys and artist's renderings, which Seller has relating to the Assets.

9.10 **Acts Affecting the Assets**. Seller will refrain from (a) performing any grading or excavation, construction, or removal of improvements to the Assets, or making any change or improvements on or about the Assets; (b) creating any Encumbrance affecting the Assets; and (c) committing any waste or nuisance upon the Assets. Seller will maintain the Assets in a good, neat, and clean condition.

9.11 **Notice of Changes in Laws and Regulations**. Seller will notify and advise Purchasers promptly of any changes in applicable Governmental Regulations affecting the Assets or the operation thereof, or which might affect the value or use of the Assets and the Facility, of which Seller obtains knowledge.

9.12 **Payment of Assessments**. Seller will promptly pay in full all special and general assessments against the Assets to the Closing Effective Date, whether any or all installments of such assessments are matured or unmatured.

9.13 **New Leases**. Seller shall reasonably assist DHH in obtaining the New Leases.

9.14 **Chapel**. Prior to Closing, Seller shall replace the stain-glass windows in the Facility's chapel with clear-glass windows and remove all other religious and historical artifacts listed on Schedule 9.14 from the Facility but Seller shall not remove the pews from the Facility's chapel. Seller shall repair all damage arising from the removal of the religious and historical artifacts listed on Schedule 9.14.

9.15 **Signage**. Within thirty (30) days following the Closing Date, at Seller's sole expense, Seller shall remove all references to "Hotel Dieu Hospital" or Daughters from all signage then situated on the Real Estate and shall repair all damages caused by such removal, provided that in removing such references Seller shall not remove the structure, supports, wiring, lighting

or other integral parts of the signs themselves and Seller shall not unreasonably interfere with the normal operations of the Facility.

9.16 **Additional Records**. Except for such items contained in the Excluded Assets, Seller shall make available to Purchasers for examination and photocopying at Purchasers' expense, books, records and other material that are not part of the Assets but which relate to the Facility in any way and are in Seller's possession or control if such material is reasonably required by Purchasers after the Closing.

Article 10.
Covenants of DHH

DHH covenants and agrees with Seller that after the Closing Effective Date to the extent allowed by Governmental Regulation and Governmental Authority, DHH shall do the following:

10.1 **Medical Staff Appointments**. DHH shall extend medical staff membership privileges to all physicians and other applicable practitioners who are members in good standing of the Seller's medical staff on the Closing Effective Date and who have consented to the release to DHH of their respective peer review and credentialling records.

10.2 **Employees**. DHH shall offer employment as unclassified employees (as such term is defined in the Constitution of the State, Article X, Section 2.B) to all of Seller's employees as of the Closing Effective Date at such employees' then current base salary levels in accordance with such employees' then current full-time or part-time status provided that pool employees will be employed on an as needed basis at such employees' then current rate. Such salary levels of those employees who are employed by DHH as of the Closing Effective Date shall be maintained for a period of one (1) year from the Closing Effective Date, during which period those employees who are employed by DHH as of the Closing Effective Date and who are eligible for benefits under applicable benefit program ("eligible employees") shall be offered the option to participate in DHH's Civil Service Program, State Employees Group Benefits Program, and Louisiana State Employees Retirement System where applicable. In addition, to the extent Seller's employees are entitled under DHH's Civil Service Program Governmental Regulations to overtime or differential pay, the rate of overtime pay and any applicable salary differential rate shall be paid at the employee's then current rate. DHH agrees to employ all Seller's employees for a minimum of twelve (12) months from the Closing Effective Date except for those employees terminated for cause or in connection with the voluntary resignation or retirement of such employees. From and after the Closing Effective Date, all eligible employees who are employed by DHH as of the Closing Effective Date shall receive employment benefits equivalent to those received by DHH's employees in corresponding

job categories, regardless of the timing of any employee's election to participate in DHH's Civil Service Program, State Employees Group Benefits Program, and Louisiana State Employees Retirement System where applicable, it being expressly understood, however, that for purposes of calculating such benefits only employment on or after the Closing Effective Date shall be taken into account for all purposes, including, but not limited to, eligibility and vesting purposes. All eligible employees who are employed by DHH as of the Closing Effective Date shall be considered new employees of DHH for all purposes. Notwithstanding any provision hereof to the contrary, (a) Seller shall continue to provide health insurance to those eligible employees who are employed by DHH as of the Closing Effective Date during the waiting period applicable to eligibility for health insurance under the DHH program [i.e., during the period that begins on the Closing Effective Date and ends on the first day of the month following one month after the Closing Effective Date, provided however, that for an employee who is not at work on such ending date, the period that ends on the day that employee returns to work for one full day], the Seller's cost of which shall be paid by DHH; and (b) DHH shall not waive or cause to be waived any pre-existing condition limitation impacting such employees' health insurance coverage and DHH shall not pay Seller's cost, if any, to cover any such employees for pre-existing conditions, prior to their employment by DHH, or the cost to Seller to provide COBRA coverage to any of Seller's employees terminating their employment with Seller at or prior to Closing and not employed by DHH. Seller shall be responsible for any and all retirement benefits accrued and payable to those eligible employees who are employed by DHH as of the Closing Effective Date with respect to their employment prior to the Closing Effective Date. Nothing in this Section shall be construed to require DHH to provide or pay for benefits, including but not limited to health insurance or retirement benefits, for employees who are not employed by DHH as of the Closing Effective Date or to provide or pay for benefits, including but not limited to health insurance or retirement benefits, for former employees or retirees of Seller. The rights, duties, and obligations under this Section shall survive the Closing.

10.3 Regulatory Approvals. DHH shall apply for and pursue the regulatory approvals described in Section 13.4 hereof.

10.4 Seller's Contracts. Except as set forth in Schedule 10.4, on the Closing Effective Date, DHH shall assume the Seller's Contracts in accordance with Section 4.3, but subject to the liabilities for which Seller remains liable under Section 5.3(b). The rights, duties, and obligations under this Section shall survive the Closing.

10.5 Facility Name. Purchasers covenant not to use or reference the name "Hotel Dieu Hospital", "Seton" or "Laboure" in any location or medium after the Closing Effective Date, except

for those Assets referencing the name "Hotel Dieu Hospital", "Seton" or "Laboure" not replaced by Seller under its Section 1.43(g) option. Seller warrants and represent that the Real Estate Leases do not grant any rights to tenants with respect to the use of the names "Seton" and/or "Laboure".

Article 11.
Indemnification

11.1 **Indemnification of Hotel Dieu**. Subject to the terms and conditions of this Article 11, Seller hereby indemnifies and holds harmless LPFA Group and DHH Group in respect of any and all Claims (including Litigation Expenses for investigating or defending any Claims or threatened Claims) incurred by or asserted against LPFA Group or DHH Group arising out of any or all of Seller's liabilities set out in Section 5.3(b) or (c). The indemnification contained in this Section shall be in addition to, and not in place of, any other remedies, whether at law or in equity, that LPFA Group and DHH Group may have against Seller.

11.2 **Claims for Indemnification**. Whenever any Claim shall arise for indemnification hereunder, the Indemnified Party shall promptly notify the Indemnifying Party of the Claim and, when known, the facts constituting the basis for such Claim. In the event of any Claim for indemnification hereunder resulting from any Claim by any Other Party, the notice to the Indemnifying Party shall specify, if known, the amount or an estimate of the amount of the liability arising therefrom. The Indemnified Party shall not settle or compromise any Claim by an Other Party for which the Indemnified Party is entitled to indemnification hereunder without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld) unless suit shall have been instituted against the Indemnified Party and the Indemnifying Party shall have failed to take control of such suit after notification thereof as provided in Section 11.3 of this Agreement.

11.3 **Defense by Indemnifying Party**. In connection with any Claim giving rise to indemnification hereunder resulting from any Claim by any Other Party, the Indemnifying Party at its sole cost and expense may, upon written notice to the Indemnified Party, assume the defense of any such Claim if the Indemnifying Party acknowledges to the Indemnified Party in writing the Indemnifying Party's obligation to indemnify the Indemnified Party with respect to all elements of such Claim. The Indemnified Party shall be entitled to participate in (but not control) the defense of any such action with its counsel and at its own expense. If the Indemnifying Party does not assume the defense of any such Claim (a) the Indemnified Party may defend against such Claim in such manner as it may deem appropriate, including, but not limited to, settling such Claim, on such terms as the Indemnified Party may deem appropriate after giving the

(2) Business Days' notice of the terms of the proposed settlement to the Indemnifying Party, and (b) the Indemnifying Party shall be entitled to participate in (but not control) the defense of such Claim with its counsel and at its own expense. If the Indemnifying Party thereafter seeks to question the manner in which the Indemnified Party defended such Claim or the amount or nature of any such settlement, the Indemnifying Party shall have the burden to prove by a preponderance of the evidence that the Indemnified Party, after taking into consideration the potential amount of an adverse judgment, did not defend or settle such Claim in a reasonably prudent manner.

11.4 Manner of Indemnification.

(a) All amounts indemnified hereunder shall be paid in cash or by delivery of a check in the amount of the indemnified liability.

(b) As to Purchaser's right to indemnification under Section 5.3(b)(i)-(viii) and Section 5.3(b)(x), such cash or check shall, at Purchasers' option, be delivered either by Escrow Agent pursuant to the terms of the Indemnity Escrow Agreement utilizing funds held in the Indemnity Escrow Deposit until such funds have been fully disbursed or by Seller from funds of Seller other than the Indemnity Escrow Deposit. Seller's liability with respect to amounts indemnified against under Section 5.3 (b)(i)-(viii) and Section 5.3(b)(x) shall continue without limit as to term or amount after such funds held in the Indemnity Escrow Deposit have been fully disbursed and Seller thereafter shall satisfy such liability from other funds of Seller.

(c) As to Purchasers' right to indemnification under Section 5.3 (c), such cash or check shall be delivered by Escrow Agent pursuant to the terms of the Indemnity Escrow Agreement utilizing funds held in the Indemnity Escrow Deposit. Upon the earlier of (i) the date all such funds are fully disbursed, or (ii) three (3) years after the Closing Effective Date, Seller shall have no further liability with respect then unasserted Claims indemnified against under Section 5.3(c).

(d) As to Purchaser's right to indemnification under Section 5.3(b)(ix), such cash or check shall be delivered by Escrow Agent pursuant to the terms of the Hill-Burton Escrow Agreement utilizing funds held in the Hill-Burton Escrow Deposit until such funds have been fully

disbursed. After such funds are fully disbursed, Seller's liability with respect to amounts indemnified against under Section 5.3(b)(ix) shall continue without limit as to term or amount and Seller shall satisfy such liability from other funds of Seller.

(e) Notwithstanding any other provision of this Agreement to the contrary, Purchasers shall not pursue any Claims for indemnification under this Agreement unless and until the aggregate amount of such Claims or Claims for indemnification hereunder exceed Fifty Thousand Dollars ($50,000).

Indemnification under this Article 11 shall apply only in the event that the Closing occurs as provided herein.

Article 12.
Purchasers' Due Diligence

12.1 Documentation to be Furnished by Seller. Within ten (10) days after the Effective Date, Seller's Group shall furnish Purchasers with true and correct copies of the following documentation to the extent such documentation or the information necessary to prepare such documentation is in the possession of Seller's Group:

(a) A current certified rent roll stating with respect to each Real Estate Lease: (i) the premises covered, (ii) the name of the present tenant, (iii) the commencement date and expiration date thereof and of any amendments thereof, (iv) any renewal or extension rights and whether any such rights have been exercised, (v) the monthly rent and any other amounts provided to be paid by the tenant or landlord, (vi) any outstanding amounts owed by the tenant under the tenant's lease, (vii) the amounts and purposes of all tenant deposits and (viii) a description of any concession that the tenant is entitled to under tenant's lease or other agreement.

(b) Equipment Warranties;

(c) Inventory Warranties;

(d) Real Estate Warranties;

(e) Real Estate Leases;

(f) Seller's Contracts;

(g) Service Contracts;

(h) Plats of Survey in Seller's possession reflecting the legal descriptions of the Real Estate and/or showing the location of all improvements located thereon;

(i) All plans and specifications for any of the improvements situated on the Real Estate.

(j) All Permits.

(k) Zoning evidence.

(l) The Books and Records.

(m) Documents evidencing the authority of Seller to enter into this transaction.

(n) Third Party Payor agreements and reports.

(o) All other documents reasonably requested by Purchasers which may affect Purchasers' ownership or operation of the Assets, the Real Estate or the Facility; provided, however, Seller's Financial Statements and related work papers, as well as all appraisals shall specifically and without limitation, not be requested by Purchasers.

Purchasers shall have thirty (30) days after the Effective Date to notify Seller in writing of Purchasers' objections to any of the instruments or information set forth above in this Section. Provided, however, that if Purchasers fail to receive from Seller complete and correct copies of any such items within ten (10) days from the date hereof, such thirty-day period shall be extended by one day for each day that elapses between the tenth day after the Effective Date and the date Purchasers receive the last of such items. If Seller is unable or unwilling to satisfy Purchasers' objections to Purchasers' satisfaction within ten (10) days after Purchasers give written notice thereof, then Purchasers may, at their option, terminate this Agreement by giving written notice of termination within seven (7) days after the expiration of Seller's aforementioned ten-day response period, whereupon the Transaction Escrow Deposit shall immediately be returned to the Purchasers. If either of the aforesaid written notices from Purchasers to Seller are not given within the required time, the instruments and information shall be deemed to be acceptable, any objection thereto shall be deemed to have been waived for all purposes, and this Agreement will continue in full force and effect.

12.2 Title Commitment. Within five (5) days after the Effective Date, Purchasers, at Purchasers' sole cost and expense,

shall order the Commitments to be issued by the Title Company through the Title Agent, accompanied by copies of all recorded documents relating to restrictions, easements, rights-of-way, and other matters affecting the Real Estate. The Commitments will commit the Title Company to issue at Closing an ALTA form of Owner's Title Insurance Policy to LPFA and an ALTA form of Leasehold Title Insurance Policy to DHH, each such policy to be in an amount as determined jointly by LPFA, DHH and the Title Company. Purchasers shall have thirty (30) days after the Effective Date to notify Seller in writing of Title Objections. Provided, however, that if Purchasers fail to receive the Commitments and complete, correct and legible copies of all instruments listed on each Schedule of the Commitments (including, but not limited to, any subdivision plat or map affecting the Property) within ten (10) days after the Effective Date, such thirty (30) day period shall be extended by one day for each day that elapses between the tenth day after the Effective Date and the date Purchasers receive the last of the Commitments and the Commitment Exceptions.

Notwithstanding any provision of this Agreement to the contrary, the period for Purchasers to notify Seller of any Title Objections shall expire on November 30, 1992.

12.3 Survey. Within five (5) days after the Effective Date, Purchasers, at Purchasers' sole cost and expense, shall request preparation of the Survey. The Survey shall be staked on the ground, and shall show the location of all improvements (both those completed and those under construction), highways, streets, roads, driveways, parking areas, railroads, rivers, creeks, or other water courses, fences, easements, rights-of-way, the location of all utilities servicing the Real Estate and their source and curb cuts on or adjacent to the Real Estate or easements on the Real Estate, and all matters described in the Commitments (or if any such matters do not affect the Real Estate or are not capable of being located on the ground, the Survey shall so state). The Survey shall show all striped parking spaces and shall contain a notation specifying the number of handicapped and non-handicapped parking spaces on the Real Estate. The Survey shall contain a metes and bounds description of the land comprising a portion of the Real Estate. The beginning point of the metes and bounds description should be established by a monument or by reference to a nearby monument, and such description should refer to all streets, alleys, and other rights-of-way that abut the Real Estate and recite the width thereof. The Survey shall contain the surveyor's certification addressed to Purchasers and the Title Company (and reciting the Title Company's file number for this transaction) stating, among other things, that there are no encroachments across the boundary lines of the Real Estate, and that the Real Estate has adequate access to a dedicated street or right-of-way maintained by applicable governmental authority.

Purchasers shall have until November 30, 1992 to notify Seller in writing of Survey Objections to the Survey and/or any matters revealed by the Survey.

12.4 **Environmental Inspection**. Within five (5) days of the Effective Date, Seller, at its own cost and expense, shall provide to the Purchasers access to the Environmental Information. Seller agrees that the Purchasers shall have the right until December 31, 1992 to inspect the Environmental Information and the Assets and, at the discretion of the Purchasers, perform subsurface or other invasive investigations, subject to Seller's prior written consent, including air monitoring, at or near the Assets. Seller understands and agrees that Purchasers and their respective employees, agents, and representatives may find it appropriate to contact governmental agencies in connection with their analysis of the Environmental Information or the result of its other investigations of the Assets.

Purchasers shall have until December 31, 1992 to notify Seller in writing of Environmental Objections and/or any matters revealed by the Environmental Inspection.

12.5 **Engineering and Feasibility Inspection**. Purchasers, at Purchasers' sole cost and expense, may, until December 31, 1992, obtain a written opinion of an engineering firm selected by Purchasers, that such firm has conducted an engineering feasibility study of the Real Estate and that the Assets are suitable for Purchasers' intended development and use.

Purchasers shall have until December 31, 1992 to notify Seller in writing of Engineering Objections.

12.6 **Soil Tests**. Purchasers, at Purchasers' sole costs and expense, may obtain a written opinion of a duly licensed soil engineer to the effect that there are no soil compaction or expansion characteristics, rock, surface or subterranean, water, or other conditions which will require soil treatment or replacement, water diversion, or structural construction on the Assets.

Purchasers shall have until November 30, 1992 to notify Seller in writing of Soil Objections.

12.7 **Appraisal**. Purchasers, at Purchasers' sole cost and expense, may obtain an appraisal of the Assets prepared by an independent M.A.I appraiser selected by Purchasers; provided, however, that Purchasers shall have until November 30, 1992 to notify Seller in writing that they elect to terminate this Agreement based upon the Section 12.7 appraisal, and if no such notice is timely received, the rights of Purchasers to terminate this Agreement based upon this Section 12.7 shall be deemed waived.

12.8 Termite Inspection. Within thirty (30) days of the Effective Date, Seller shall order a termite inspection by a licensed exterminator satisfactory to Purchasers and no later than the Closing Date, Seller shall pay the cost of termite inspection and provide to Purchasers a written certification from a licensed exterminator that, based on a visual inspection of accessible areas of the improvements (other than improvements used exclusively for storage), there is no evidence of infestation of termites or woodboring insects and no evidence of existing damage to the improvements from prior or active infestation. If such infestation exists, Seller will exterminate and, at Seller's own expense and prior to the Closing Date, will repair any prior or current damage caused by termites or woodboring insects; provided, however, that if the cost of repairing such prior or current damage would exceed Twenty-Five Thousand Dollars ($25,000.00) in the aggregate, Seller shall not be required to repair such damage unless Purchasers agree to pay the cost in excess of Twenty-Five Thousand Dollars ($25,000.00). If such repair cost would exceed Twenty-Five Thousand Dollars ($25,000.00), Seller shall, no later than twenty (20) days prior to the Closing Date, give written notice to Purchasers of the extent to which the repair cost will exceed Twenty-Five Thousand Dollars ($25,000.00), and Purchasers shall give written notice to Seller, no later than five (5) days after receipt of such notice, whether Purchasers will pay the costs in excess of Twenty-Five Thousand Dollars ($25,000.00). If Purchasers do not agree to pay such costs, Seller shall have the right to repair such damage or to terminate this Agreement, whereupon the Transaction Escrow Deposit shall be returned immediately to Purchasers. Any such request by Purchasers to repair termite damage shall be considered as a Purchaser Objection for the purpose of Section 12.11.

12.9 Other Inspections. In additional to the reviews and inspections described in this Article 12 , Purchasers shall have the right to conduct and to cause their engineers, accountants, attorneys, appraisers, and other agents to conduct such other reviews, inquiries, examinations, and inspections of the Assets as Purchasers deem necessary or appropriate. Purchasers shall have until November 30, 1992 to notify Seller in writing of Other Objections and/or any matters revealed by the Other Inspections, and if no such notice is timely received, the rights of Purchasers to terminate this Agreement based upon this Section 12.9 shall be deemed waived.

12.10 Inspection Procedure. Purchasers shall make the Purchasers' Inspections in good faith and with due diligence. All title costs, survey fees, inspection fees, appraisal fees, engineering fees and other expenses of any kind incurred by Purchasers relating to the Purchasers' Inspections will be solely Purchasers' expense. Seller shall cooperate with Purchasers in all reasonable respects in making the Purchasers' Inspections. Seller hereby reserves the right to have a representative present at the time of making each of Purchasers' Inspections.

Purchasers shall notify Seller not less than one (1) business day in advance of making any of Purchasers' Inspections. Purchasers agree to indemnify and hold Seller and its employees harmless, to the extent permitted by Governmental Authority and Governmental Regulation, from any and all Claims sustained by Seller which arise out of the Purchasers' Inspections and to pay the cost of repair for any damage to the Facility and/or the Assets in connection with any of Purchasers' Inspection by or on behalf of Purchasers.

12.11 Curative Work. Seller shall, at its sole cost and expense not to exceed the Curative Allowance, promptly undertake to eliminate all of Purchasers' Objections to the reasonable satisfaction of the Purchasers within the Curative Period. In the event of Purchasers' Objections, the Closing Date together with all related notice provisions shall be extended for each day of the Curative Period utilized by Seller in eliminating the Purchasers' Objections. Seller agrees to use its best efforts to satisfy promptly all of Purchasers' Objections subject to the expense and other limitations of this Agreement.

If Seller does not satisfy any such Purchasers' Objection promptly, Purchasers shall, in their sole discretion, elect to:

(a) Accept the Assets subject to the Purchasers' Objection or cure the Purchasers' Objection on behalf of Seller, and, in either event, to deduct from the LPFA Consideration or the DHH Consideration, as LPFA and DHH may direct, at the Closing the actual cost of satisfying such Purchasers' Objection, but in no event greater than Curative Allowance. In the event the Purchasers accept title subject to the Title Objection raised by Purchasers, such Title Objection shall be deemed to be waived for all purposes and shall be deemed a Permitted Exception; and/or

(b) In the case of Title Objections, obtain from Title Company an acceptable endorsement providing affirmative coverage expressly insuring against loss or damage resulting from the Title Objection which endorsement(s) shall be obtained at Seller's sole cost and expense, not to exceed the Curative Allowance; or

(c) If Seller elects not to cure any Purchasers' Objection in excess of the Curative Allowance then Purchasers may declare this Agreement terminated, in which event $100.00 shall be paid to Seller by Purchasers as an option fee for the Inspection Period, whereupon the Parties shall have no further rights or obligations hereunder and the transaction

Escrow Deposit shall be returned by Escrow Agent immediately to Purchasers.

12.12 Right to Terminate. Notwithstanding anything in this Agreement to the contrary, in the event Purchasers determine as a result of the Purchasers' Inspections that any condition of the Assets is deficient in any respect in Purchasers' sole and absolute discretion, Purchasers may elect to terminate this Agreement by delivering written notice thereof to Seller prior to the expiration of the period of time granted Purchasers to conduct Purchasers' Inspections, in which event $100.00 shall be paid to Seller by Purchasers as an option fee for the Inspection Period, whereupon, subject to Section 12.10, the Parties shall have no further rights or obligations hereunder and the Transaction Escrow Deposit shall be returned immediately to Purchasers.

Article 13.
Conditions Precedent to Obligations of Purchasers

The obligations of the Purchasers under this Agreement are, at the option of the Purchasers (which may be waived specifically in writing by the Purchasers, in whole or in part), subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

13.1 No Misrepresentation or Breach of Covenants and Warranties. There shall have been no material breach by Seller in the performance of any of its covenants herein, each of the representations and warranties of Seller contained or referred to in this Agreement shall be true and correct in all material respects on the Closing Effective Date as though made on the Closing Effective Date, and there shall have been delivered to the Purchasers a certificate or certificates to that effect, dated the Closing Effective Date and signed on behalf of Seller by the appropriate officer of Seller.

13.2 No Changes or Destruction of Property. There shall have been, between the Effective Date and the Closing Effective Date, no material adverse change in the condition of the Assets or any casualty loss that cannot be repaired within one hundred twenty (120) days of the date of such loss and the Assets shall not have been materially damaged, by fire, flood, casualty, act of God or public enemy or other cause regardless of insurance coverage for such damage, which cannot be repaired within one hundred twenty (120) days and there shall have been delivered to the Purchasers a certificate or certificates to that effect, dated the Closing Effective Date, and signed on behalf of Seller by the appropriate officer(s) of Seller.

13.3 No Litigation. No litigation, administrative proceeding, civil sanction, hearing, review, or investigation which restricts Seller's ability to own, operate, or transfer the

Assets or which seeks an equitable remedy relating to the Assets or the operations thereof before or after the Closing Effective Date shall have been instituted or threatened by any Person or Governmental Authority and shall not have been finally resolved within thirty (30) days after the Purchasers notify Seller of such litigation, administrative proceeding, civil sanction, hearing, review, or investigation. If such litigation, administrative proceeding, civil sanction, hearing, review or investigation materializes, the Closing Date shall be postponed up to thirty (30) days in which time such litigation, administrative proceeding, civil sanction, hearing, review, or investigation shall have been finally resolved to the satisfaction of the Purchasers, in their sole discretion.

13.4 Purchasers' Regulatory Approvals. Purchasers shall have obtained (a) certification for participation in the Medicaid Program of the State of Louisiana, (b) certification from the appropriate agency of the federal government for participation in the federal Medicare Program; (c) licensure by the Louisiana State Department of Health and Hospitals to the use by the Purchasers of the Facility for the purpose of operating the Facility as it is currently operating; (d) the expiration of the waiting periods and receipt of clearances required by all applicable Louisiana statutes and other Governmental Authority and Governmental Regulations; (e) all other regulatory consents and approvals required to carry on the business conducted by Seller immediately prior to Closing or to effect the terms of this Agreement; and (f) Governmental Authority consent and approval to operate as a multi-campus hospital facility without the requirement of certification survey.

13.5 Seller's Regulatory Approvals. All consents, approvals, authorizations and other requirements prescribed by any law, rule or regulation that must be obtained or satisfied by Seller and that are necessary for the execution and delivery by Seller of the Agreement and the documents to be executed and delivered by Seller in connection herewith, or are necessary for the consummation of the transactions contemplated hereby, have been obtained or satisfied.

13.6 Consents, Approvals and Authorizations. Purchasers shall have obtained at their expense, with Seller's cooperation, all consents, approvals and authorizations of third parties that are material and necessary (a) to the operation of the Facility; (b) for the assignment to DHH of the contract rights listed on Schedule 4.3 hereto to the extent assignable and to the extent permitted by applicable law; (c) to the renegotiation of the Real Estate Leases by DHH on the same terms and conditions as currently set forth in the Real Estate Leases; (d) to the assignment to LPFA of the Real Estate Lease not renegotiated to the extent such Real Estate Leases are assignable and to the extent permitted by applicable law; and (e) in connection with the valid execution, delivery or performance of this Agreement.

13.7 **Ecclesiastical Approval**. Seller shall have obtained all necessary ecclesiastical approvals for the consummation of the transaction contemplated hereby.

13.8 **Approval by Counsel**. Gary, Field, Landry & Bradford, a Law Corporation, counsel for LPFA, Locke Purnell Rain Harrell, (A Professional Corporation), special counsel for DHH, and to the extent required by law the Office of the Attorney General of the State, counsel for DHH, must have approved all matters as to legal form, proceedings, instruments, and documents relating to the transaction contemplated by this Agreement.

13.9 **Order Prohibiting Transaction**. No order shall have been entered in any action or proceeding before any court or Governmental Authority, and no temporary, preliminary or permanent injunction by any court shall have been issued which would have the effect of (a) making the transactions contemplated by this Agreement unenforceable or illegal; (b) otherwise preventing consummation of such transactions; (c) imposing material limitations on the ability of the Purchasers effectively to acquire or hold the Assets or to exercise full rights of ownership of the Assets.

13.10 **Results of Inspections**. The results of the Purchasers' Inspections shall be satisfactory to Purchasers or the applicable periods of time to conduct the Purchasers' Inspections shall have expired without written notice of Purchasers' Objections or termination being received by Seller from Purchasers.

13.11 **Tax-Exempt Financing by LPFA**. LPFA is able to obtain tax-exempt financing for the purchase of the LPFA Assets through the issuance of the Bonds. The issuance of the Bonds shall close contemporaneously with the transaction contemplated by this Agreement and all costs and expenses in connection with the issuance of the Bonds shall be borne by Purchasers. Seller agrees to furnish such documentation and information as may be reasonably requested by Purchasers, their counsel, and the State Bond Commission and further agree to take all steps reasonably required to effect the issuance of the Bonds.

13.12 **Lease of Facility**. Contemporaneous with the Closing of the transaction contemplated by this Agreement, LPFA and DHH must enter into a lease agreement in form acceptable to LPFA and DHH, pursuant to which DHH will lease the LPFA Assets from LPFA or, if DHH elects its Permitted Assignee or Designee will lease all or a portion of the LPFA Assets from LPFA. Seller agrees that DHH, as lessee of the LPFA Assets or DHH's Permitted Assignee or Designee, if applicable, shall be entitled to exercise without the joinder of LPFA all of the rights and remedies arising out of Seller's representations, warranties, and covenants contained in this Agreement or in any document executed at Closing relating to the LPFA Assets.

13.13 **Immovables by Declaration**. At LPFA's option, Seller shall declare at the Closing in a form acceptable to LPFA that all machinery, appliances, and equipment placed on the Real Estate for its service and improvement are deemed to be its component parts, and incorporated into the Real Estate.

13.14 **Obstructive Proceedings**. No suit, pleading, action, or Claim shall have been alleged, filed or instituted by any Person (excluding Purchasers) seeking injunctive relief or damages in a material amount, and no order, decree or judgment shall have been rendered by any Governmental Authority, which seeks to void or would prevent the consummation of, or affect the rating, pricing or interest rate payable on the Bonds, or render it unlawful for, LPFA and DHH to enter into this Agreement; acquire the Assets; or for DHH to lease the LPFA Assets and operate the Facility.

13.15 **Execution and Delivery of Closing Documents**. Seller shall have executed and delivered each of the Closing Documents to which it is a party.

Article 13A.
Conditions Precedent to Obligations of Seller

The obligations of the Seller under this Agreement are, at the option of the Seller (which may be waived specifically in writing by the Seller, in whole or in part), subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

13A.1 **No Misrepresentation or Breach of Covenants**. There shall have been no material breach by Purchasers, or either of them, in the performance of any of their covenants herein, each of the representations of Purchasers contained or referred to in this Agreement shall be true and correct in all material respects on the Closing Effective Date as though made on the Closing Effective Date, and there shall have been delivered to the Seller a certificate or certificates to that effect, dated the Closing Effective Date and signed on behalf of Purchasers by the appropriate officers of Purchasers.

13A.2 **Approval by Counsel**. Armstrong, Teasdale, Schlafly & Davis and Liskow & Lewis, counsel for Seller, must have approved all matters as to legal form, proceedings, instruments, and documents relating to the transaction contemplated by this Agreement.

13A.3 **Order Prohibiting Transaction**. No order shall have been entered in any action or proceeding before any court or Governmental Authority, and no temporary, preliminary or permanent injunction by any court shall have been issued which would have the effect of (a) making the transactions contemplated by this Agreement unenforceable or illegal; (b) otherwise

preventing consummation of such transactions; (c) imposing material limitations on the ability of the Purchasers effectively to acquire or hold the Assets or to exercise full rights of ownership of the Assets.

13A.4 **Ecclesiastical Approval**. Seller shall have obtained all necessary ecclesiastical approvals for the consummation of the transaction contemplated hereby.

13A.5 **Execution and Delivery of Closing Documents**. Purchasers shall have executed and delivered each of the Closing Documents to which Purchasers or either of them are a party.

13A.6 **Payment of Cash Consideration**. The LPFA consideration and the DHH Consideration shall have been paid at Closing by wire transfer of immediately available federal funds or as Seller shall have otherwise designated in writing.

Article 14.
Transaction Escrow Deposit

In consideration of Seller entering into this Agreement, Purchasers have delivered to Seller, and Seller acknowledges receipt of, the Transaction Escrow Deposit. The Transaction Escrow Deposit shall be held in a separate interest-bearing account held by Escrow Agent. In the event the Closing occurs, the Transaction Escrow Deposit shall be returned to the Purchasers pursuant to the terms of the Transaction Escrow Agreement. In the event of a Default by Seller or Purchasers, or in the event of a termination of this Agreement, the Transaction Escrow Deposit shall be treated in accordance with the terms of the Transaction Escrow Agreement.

The Transaction Escrow Deposit shall not constitute earnest money. Subject to the provisions of Article 17, Purchasers reserve the right to demand specific performance by Seller; however, Seller waives any right that it may have to demand specific performance of this Agreement by the Purchasers or any one of them.

Article 15.
Closing and Closing Date

15.1 **Closing**. Unless the Parties hereto otherwise agree in writing, the Closing shall occur on or before December 31, 1992. Anything herein to the contrary notwithstanding, this Agreement may be terminated and abandoned at any time:

(a) on or prior to the Closing Date by the mutual consent of the Parties; or,

(b) subject to the terms of this Agreement by Purchasers or Seller if the Closing shall not

have taken place by December 31, 1992, which date may be extended by mutual agreement of the Parties; provided that in no event shall a Party be entitled to terminate this Agreement pursuant to this subsection if such Party is in default under this Agreement; or,

(c) for a reason otherwise permitted in this Agreement which does not constitute a default by the terminating Party.

Upon any termination as above provided, written notice shall be given to the other Parties and Escrow Agent, and thereupon this Agreement shall become void and of no effect and there shall be no liability on the part of any Party to any other Party and the Escrow Agent shall immediately deliver all funds held pursuant to the Transaction Escrow Agreement to Purchasers.

15.2 **Place**. The Closing shall be held at the offices of LPFA, Suite 100, 8555 United Plaza Boulevard, Baton Rouge, Louisiana, or such other place as the Parties may mutually agree.

15.3 **Escrow Deposits**. At the Closing, the Parties shall deposit in escrow with Escrow Agent the following Escrow Deposits to be held by Escrow Agent as follows subject to the terms and conditions of the form of Escrow Agreements attached hereto as **Schedules 1.51, 1.59, 1.66, 1.123:**

(a) **Hill-Burton Escrow Deposit**. Seller shall deposit with Escrow Agent an amount equal to Six Million One Hundred Thousand Dollars ($6,100,000.00), subject to the terms of this Agreement, against any of Seller's Hill-Burton Obligations that may result under the Hill-Burton Act and which are not assumed by DHH pursuant to **Section 4.4**. Such amount shall be retained by the Escrow Agent pursuant to the terms of the Hill-Burton Escrow Agreement in an interest-bearing account until Seller obtains in writing a document or correspondence in form reasonably satisfactory to Purchasers from the appropriate Governmental Authority that since the purchase and sale of Assets under this Agreement occurred after the twenty (20) year Hill-Burton eligible use period, the uncompensated services obligation is no longer applicable to the Facility and the Facility has been removed from the list maintained by the appropriate Governmental Authority of those facilities obligated for such uncompensated services. In addition, Seller shall acknowledge in writing to DHH that (i) DHH has no further uncompensated services obligation, and (ii) the transfer of the Assets did not

trigger liability under the recovery provisions of the Hill-Burton Act. Upon delivery of such a written document or correspondence and acknowledgement to Purchasers or expiration of the five (5) year period following the Closing Effective Date, whichever shall occur first, Purchasers shall authorize Escrow Agent to deliver such deposited amount, together with all interest thereon to Seller. If prior to payment under the preceding sentence, a Claim is made arising under Seller's Hill-Burton Obligation not assumed by DHH pursuant to Section 4.4, either or both of the Purchasers may so notify Escrow Agent and thereafter the matter will be governed by the terms and conditions of the Hill-Burton Escrow Agreement.

(b) Indemnity Escrow Deposit. Seller shall deposit with Escrow Agent an amount equal to Three Million Five Hundred Thousand Dollars ($3,500,000.00) to indemnify Purchasers for a breach of Seller's representations, warranties, covenants or agreements or Claims of Other Parties under this Agreement in accordance with the provisions of Section 5.3(b) and 5.3(c). Such amount shall be retained by Escrow Agent pursuant to the Indemnity Escrow Agreement in an interest-bearing account for a period not to exceed three (3) years from the Closing Effective Date. If a Claim is made arising as a result of a breach of Seller's representations, warranties, covenants or agreements or Claims of Other Parties under this Agreement, either or both of the Purchasers may so notify the Escrow Agent, which shall act in accordance with the terms of the Indemnity Escrow Agreement.

(c) Inventory Escrow Deposit. DHH shall deposit with Escrow Agent an amount equal to Two Million Dollars ($2,000,000.00), to be disbursed to Seller in accordance with Section 3.3 and the Inventory Escrow Agreement.

(d) Transaction Escrow Deposit. Purchasers shall deposit with Escrow Agent an amount equal to One Hundred Thousand Dollars ($100,000.00) to serve as a deposit and not earnest money, in accordance with Article 14 and the Transaction Escrow Agreement.

The Parties agree to take such further actions and execute and deliver such additional documents and instruments, including the Escrow Agreements, as may be reasonably required to satisfy the requirements of this Section 15.3 and the transactions contemplated by this Agreement. In the event of a conflict between the terms of the Escrow Agreement and this Agreement, the terms of this Agreement shall control.

Article 16.
Obligations of Parties at Closing

16.1 Seller's Obligations to LPFA at Closing. At the Closing, Seller shall deliver or cause to be delivered to LPFA, each of which must be in form satisfactory to LPFA:

(a) Act of Cash Sale. An Act of Cash Sale to the Real Estate conveying to LPFA all of Seller's right, title and interest in and to the Real Estate with full warranty as to title subject to the Permitted Exceptions and the provisions of Article 19.

(b) Assignments. Good and sufficient bills of sale, assignments and other instruments of transfer to LPFA of Seller's right, title, and interest in and to the LPFA Assets with full warranty as to title subject to the provisions of Article 19.

(c) Consents. Any consents of third Persons (except those waived by LPFA) which are necessary to effectively transfer the LPFA Assets to LPFA.

(d) Possession. Possession of the LPFA Assets.

(e) Notices. Notices to tenants under Real Estate Leases, in the form prepared by Purchasers, duly executed by Seller, advising of the sale of the LPFA Assets to LPFA and the lease of the LPFA Assets by DHH.

(f) Estoppel Certificates. Estoppel certificates executed by each tenant under the Real Estate Leases, if any, assumed by LPFA under Section 4.2, such certificates to be dated not more than ten (10) days prior to the Closing, in the form described in Schedule 16.1(f)(1). Acts of Cancellation or Termination executed by each tenant under the Real Estate Leases, such acts to be dated not more than ten (10) days prior to the Closing, in the form described in Schedule 16.1(f)(2). Acts of Cancellation or

Termination executed by each tenant under a lease covering any portion of the Real Estate, such acts to be dated not more than ten (10) days prior to the Closing, in the form described in Schedule 16.1(f)(2).

(g) Rent Roll. A current rent roll for covering the operation of the Real Estate as of the Closing Date.

(h) Title Affidavit. An owner's affidavit or affidavits, and owner's policy of title insurance together with such other evidence as may be required by the Title Company insuring LPFA's full ownership title to the Real Estate, which affidavits or other documentary evidence, if required, shall be in form and substance satisfactory to the Title Company and sufficient to cause the Title Company to issue owner's and leasehold title insurance policies on the Real Estate without standard exceptions, including matters of survey and mechanic's liens.

(i) Original Permits. The originals of all Permits to the extent such are in the possession of Seller's Group.

(j) Non Resident Certificate. A certificate made under penalty of perjury by Seller stating that Seller is not a foreign Person as defined by the IRC.

(k) 1099 Information. Any information in connection with the conveyance of the Real Estate by the Seller required by the IRC in connection with the preparation and filing of Treas. Form 1099.

(l) Resolution. A certified copy of a resolution of Seller's Board of Directors authorizing the execution, delivery and performance of this Agreement and any other documents required to be executed by Seller.

(m) Certificate of Good Standing. A certificate of good standing for Seller issued by the Secretary of State of the State and dated within five (5) days prior to the Closing Date.

(n) Additional Documentation. All documents to be provided by Seller to LPFA as required by any other provision of this Agreement.

(o) **Seller's Counsel's Opinion.** An opinion of counsel for Seller for the benefit of LPFA, DHH and their respective counsel in form and substance reasonably satisfactory to Purchasers opining that:

(i) Seller is a corporation duly organized and existing and in good standing under the laws of the State of Louisiana and is duly qualified to transact business in the State; and has all requisite corporate power and authority to enter into and perform the agreements executed by Seller pursuant to the Closing Documents and to carry out the transaction contemplated thereby;

(ii) All requisite and necessary corporate actions on the part of Seller have been duly taken and had as to fully authorize Seller to enter into the Closing Documents and that the Closing Documents are binding upon and enforceable against the Seller in accordance with their respective terms (except to the extent that enforcement may be limited by applicable bankruptcy, insolvency, or other debtor relief laws in effect at the time of the Closing);

(iii) No consent, approval, order or authorization of, or qualification with any governmental authority on the part of Seller is required in connection with the execution and delivery of the Closing Documents or the sale and conveyance of the Assets; and

(iv) All ecclesiastical approvals necessary for the sale and conveyance of the Assets have been obtained.

(p) Certificate. A certificate and opinion dated the date of closing evidencing compliance with Section 5.4 of this Agreement.

16.2 Seller's Obligations to DHH at Closing. At the Closing, Seller shall deliver or cause to be delivered to DHH:

(a) Assignments.

(i) An assignment to DHH of the Seller's right, title, and interest in the Seller's Contracts to the extent assumed, with full warranty as to title only, together with the

consents to assignment required by subsection (b) subject to the provisions of Article 19.

(ii) Good and sufficient bills of sale, assignments and other instruments of transfer to DHH of Seller's right, title and interest in the other DHH Assets, with full warranty as to title subject to the provisions of Article 19.

(b) Consents. Any consents of Other Parties, including consents as set forth in Schedule 9.5 from Other Parties under the Seller's Contracts, which are necessary to effectively transfer the DHH Assets to DHH.

(c) Deposits. The Seller's Contracts Deposits, together with an effective assignment to DHH of all the Seller's Contracts Deposits and any interest earned thereon, a schedule showing the amount of each of the Seller's Contracts Deposits, and Seller's affidavit that the Seller's Contracts Deposits represent all of the deposits held by Seller in connection with the Seller's Contracts Deposits.

(d) Possession. Possession of the DHH Assets, including the original Inventory Warranties, the original Seller's Contracts, the Seller's Contracts Deposits, and the original Books and Records.

(e) Right of First Refusal. Seller shall deliver to DHH a right of first refusal executed by Daughters in favor of DHH with respect to the Convent, in form and substance reasonably satisfactory to DHH.

(f) Data Center Agreement. Seller shall cause DCNHS-WC to deliver to DHH a contract, in form and substance reasonably satisfactory to DHH, to provide DHH with the Data Processing and other services described in Schedule 16.2(f) in exchange for a monthly payment by DHH of One Hundred Twenty Thousand Dollars ($120,000) for a period of 12 months following the Closing.

(g) CEO Agreement. Seller shall cause DCNHS-WC to deliver to DHH an agreement, in form and substance reasonably satisfactory to DHH, pursuant to which DCNHS-WC agrees to provide the services of Kevin Conlin to serve as Chief Executive Officer of the Facility as provided in Section 20.21.

(h) **Other Documentation.** All of the documentation set forth in Section 16.1(e) through (p).

(i) **Additional Documentation.** All documents to be provided by Seller to DHH as required by any other provision of this Agreement.

16.3 **LPFA's Obligations to Seller at Closing.** On the Closing Date, LPFA shall deliver to Seller:

(a) **Funds.** A wire transfer to Escrow Agent of immediately available funds payable to Seller or its order in the amount of the LPFA Consideration.

(b) **LPFA Resolution.** A certified copy of a resolution of LPFA's Board of Trustees authorizing the execution, delivery, and performance of this Agreement, and any other documents required to be executed by LPFA.

(c) **LPFA's Counsel's Opinion.** An opinion of counsel for LPFA for the benefit of Seller and DHH in form and substance reasonably satisfactory to Seller and DHH opining that:

(i) LPFA is a public trust duly organized and existing and in good standing under the laws of the State and is duly qualified to transact business in the State; and has all requisite corporate power and authority to enter into and perform the agreements of LPFA set out in the Closing Documents and to carry out the transaction contemplated thereby;

(ii) All requisite and necessary actions on the part of LPFA have been duly taken and had so as to fully authorize LPFA to enter into those of the Closing Documents to which LPFA is a party and that the Closing Documents are binding upon LPFA in accordance with their respective terms (except as enforceability may be restricted or delayed by bankruptcy, insolvency, moratorium or similar laws affecting or relating to the enforcement of creditor's rights in general and by general principles of equity); and

(iii) No consent, approval, order or authorization of, or qualification with any governmental authority on the part of LPFA is required in connection with the execution and

delivery of the Closing Documents to which LPFA is a party or the acquisition of LPFA Assets.

(d) **Additional Documentation**. All documents to be provided by LPFA to Seller as required by any other provision of this Agreement.

(e) **Assumption Agreement**. An agreement assuming those real estate leases, if any, LPFA is obligated to assume under this Agreement in a form reasonably satisfactory to the Parties.

16.4 DHH's Obligations to Seller at Closing. On the Closing Date, DHH shall deliver to Seller:

(a) Funds. A wire transfer of immediately available federal funds payable to Seller or its order in the amount of the DHH Consideration.

(b) DHH's Counsel's Opinion. An opinion of counsel for DHH for the benefit of Seller and LPFA (which may be given in whole or in part by the Attorney General of the State) in form and substance reasonably satisfactory to Seller and LPFA opining that:

(i) DHH is an agency of the State and has all requisite power and authority to enter into and perform the agreements executed by DHH pursuant to the Closing Documents and to carry out the transaction contemplated thereby;

(ii) All requisite and necessary actions on the part of DHH have been duly taken and had so as to fully authorize DHH to enter into the Closing Documents and that the Closing Documents are binding upon and enforceable against DHH in accordance with their respective terms (except to the extent that enforcement may be limited by applicable bankruptcy, insolvency, or other debtor relief laws in effect at the time of the Closing); and

(iii) No additional consent, approval, order or authorization of, or qualification with any Governmental Authority on the part of DHH is required in connection with the execution and delivery of the Closing Documents or the sale and conveyance of the DHH Assets.

(c) Assumption Agreement. An agreement assuming that which DHH is obligated to assume under

this Agreement in a form reasonably satisfactory to the Parties.

(d) **Additional Documentation**. All documents to be provided by DHH to Seller as required by any other provision of this Agreement.

16.5 **Adjustments, Apportionments and Closing Expenses:**

(a) **Closing Expenses**. Seller and Purchasers shall each bear their respective costs and expenses incurred or to be incurred in negotiating and preparing this Agreement. Purchasers shall bear the cost of preparing and recording the documents of transfer of the Assets.

(b) **Allocation of Income and Expenses**. The following income collected and expenses incurred in connection with the ownership, management and operation of the Assets shall be apportioned between Seller and Purchasers as of Closing Effective Date (except as otherwise provided in this Agreement):

(i) Rents and other charges to tenants collected by Seller under the Real Estate Leases.

(ii) Ad valorem taxes for the current year and personal property taxes, if any, provided, however, that if the current year's assessment is not available at the time of Closing, the apportionment shall be based upon the most recent assessment available and shall be corrected so as to be accurate with monetary adjustment made within thirty (30) days after actual taxes are known.

(iii) Gas, water charges and sewer charges, if any. If there is a water or gas meter located on the Real Estate, Seller shall furnish a reading to LPFA at a date not more than three (3) days prior to the Closing Date and any unfixed gas, water or sewer charges or rent based thereon for the intervening time shall be apportioned on the basis of such last reading at the time of Closing, the apportionment shall be based upon the most recent assessment available and shall be corrected so as to be accurate with monetary adjustment made within thirty (30) days after actual taxes are known.

(iv) Permit and license fees if such permits and licenses are assignable.

(v) Patient care services revenues and expenses. The Parties agree that where the Third Party Payor permits, the Seller shall bill for patient services provided through the Closing Date and DHH shall bill for all patient services rendered on or after the Closing Effective Date. In the event the Third Party Payor does not permit split billing, DHH shall bill upon discharge and payment between the Seller and DHH shall be prorated based on patient days as of the Closing Effective Date. DHH will remit to Seller or its designee Seller's prorated share of payments upon receipt in accordance with its normal course of business. Seller shall have the right upon reasonable notice to DHH and at Seller's cost and expense to audit said payments during normal business hours. The rights, duties and obligations under this Section 16.5(b)(v) shall survive the Closing.

(vi) Contract rights and obligations.

(vii) Appraisals.

(c) Adjustments at Closing. Within the thirty (30) days following the Closing Effective Date, the Parties shall adjust the consideration due at Closing for payments made on account of net adjustments in either Party's favor, if any, and to the extent of any prepaid expenses, Deposits, or other adjustment items, including any interest thereon.

(d) Seller's Prior Obligations. Seller agrees to pay or cause to be paid, in full, all expenses, charges, bills or trade accounts maintained or incurred in connection with the management or operation of the Assets, Real Estate and/or the Facility or otherwise attributable to, the period prior to the Closing Effective Date, and all sales taxes, excise taxes, payroll taxes, withholding taxes or other taxes collected or payable by Seller, or its agents, in connection with the management or operation of the Assets, Real Estate and the Facility for or during said period. If the sale described herein closes, Purchasers agree to pay or cause to be paid, in full, all expenses, charges, bills or trade accounts maintained or incurred by it in connection with the management or operation of the Assets, Real Estate and the Facility for, or otherwise attributable to, the period after the Closing Date, and all sales taxes, excise

taxes, payroll taxes, withholding taxes or other taxes collected or payable by Purchasers, or its agents, in connection with the management and operation of the Assets, Real Estate and the Facility for or during said period. Purchasers shall have no obligation to collect any amounts owing to Seller arising out of Seller's ownership and operation of the Assets prior to the Closing Date.

Article 17.
Default

17.1 Breach by Seller.

(a) Prior to Closing, if Seller Defaults in the due and timely performance of any of the terms to be performed by Seller hereunder, makes any misrepresentation or is unable or unwilling to consummate the sale of the Assets, for any reason except Purchasers' Default or the termination of this Agreement pursuant to any of the termination provisions hereof, or if, subject to other provisions of this Agreement, there is any material adverse change with respect to the Assets, Purchasers may obtain a refund of the Transaction Escrow Deposit from the Escrow Agent pursuant to the terms of the Transaction Escrow Agreement and then, at their option, may terminate this Agreement by written notice to Seller or may enforce specific performance of this Agreement; provided, however, Purchasers shall not have the right to sue for damages under Section 5.3 or to submit a claim for indemnification under Section 11.1 prior to Purchasers' acquisition of the Assets. If Purchasers successfully enforce specific performance of this Agreement and acquire the Assets, Purchasers shall be entitled to all rights under this Agreement, including the right to indemnification from Seller under Section 11.1.

(b) After Closing, if Seller Defaults in the due and timely performance of any of the terms hereof to be performed by Seller which survive Closing, Purchasers may seek:

(i) monetary remedy for damages as a result of such Default subject to any limitations as set forth in Article 11;

(ii) indemnification as set forth in Article 11; and/or

(iii) any legal or equitable remedies, including injunctive relief allowed by law subject to any limitations in this Agreement.

17.2 **Breach by Purchaser.**

(a) Prior to Closing, if Purchasers Default in the due and timely performance of any of Purchasers' obligations hereunder, the conditions to Purchasers' obligations set forth in this Agreement having been satisfied and Purchasers being in Default and Seller not being in Default hereunder, Seller may terminate this Agreement by written notice to Purchasers and may obtain payment of the Transaction Escrow Deposit in accordance with the terms of the Transaction Escrow Agreement and Seller must accept any such payment as liquidated and stipulated damages, to the extent permitted by law, for Purchasers' Default, and as Seller's sole and exclusive remedy, Seller hereby waiving any rights it might otherwise have to sue for damages, specific performance or any other remedy or injunctive relief permitted by law. Seller and Purchasers have made this provision for liquidated and stipulated damages because it would be difficult to calculate on the date hereof the amount of damages or other relief resulting from such breach.

(b) After Closing, if DHH Defaults in the performance of any of its obligations hereunder which survive Closing, Seller not being in default hereunder, Seller may seek any legal or equitable remedies or injunctive relief permitted by law including the right to enforce the provisions of 10.2 on behalf of Seller's former employees to the extent permitted by law.

17.3 **Waiver**. No delay or omission in the exercise of any right or remedy accruing to one Party upon any breach by another Party under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant, or condition herein contained. Except as specifically excepted in this Agreement, all rights, powers, options, or remedies afforded to any Party either hereunder or by law shall be cumulative and not alternative and the exercise of one right, power, option or remedy shall not bar other rights, powers, options, or remedies allowed herein or by law.

Article 18.
Waiver of Liens and Resolutory Conditions

Notwithstanding anything in this Agreement to the contrary, it is Seller's intention that no vendor's lien, and/or privilege, mortgage, resolutory condition, right of recision nor stipulation for the benefit of a third party, other than DHH's and LPFA's Permitted Assignees and Designees, shall be created by this Agreement or the assumption of any obligation referred to in this Agreement; and, should any be deemed to have been created, they are hereby expressly released, renounced, waived and abandoned.

Article 19.
Warranties as to Condition

Purchasers waive Warranties as to Condition. Notwithstanding the foregoing, this waiver of Warranties as to Condition shall not relieve or release Seller from any of Purchasers' Claims against Seller arising out of or in any way connected with Seller's representations, warranties, covenants or agreements, that survive Closing as set forth in Article 6 and Seller's covenants set forth in Article 9 of this Agreement and Seller's Liabilities set forth in Article 5 of this Agreement. In the event of a conflict between the terms of this Article 19 and the terms of Articles 5, 6 and 9, the terms of Articles 5, 6 and 9 shall control.

Article 20.
Miscellaneous

20.1 **Delay or Omission**. No delay or omission in the exercise of any right or remedy accruing to any Party upon any breach by any other Party under this Agreement shall impair such right or remedy or be construed as a waiver of any breach theretofore or thereafter occurring. The waiver of any condition or the breach of any term, covenant, or condition herein

contained shall not be deemed to be a waiver of any other condition or of any subsequent breach of the same or any other term, covenant or condition herein contained.

20.2 **Destruction to Assets.** If prior to the Closing Date the Assets are damaged or destroyed by fire or other casualty or if any portion of the Assets are damaged or destroyed by condemnation or other governmental taking, Seller shall advise Purchasers in writing within five (5) days of the date thereof, specifying the cost to repair such damage and destruction.

(a) If the estimated cost to repair such damage or destruction or to restore the Assets is less than Two Hundred Fifty Thousand Dollars ($250,000.00), Seller shall repair and restore the same to a condition at least as good as exists as of the Effective Date, in accordance with plans and specifications approved by Purchasers regardless whether the insurance or condemnation proceeds are adequate for such repairs and restoration. Purchasers and their respective agents shall have the right to inspect such repairs and restoration from time to time. The Closing Date shall be extended for a period equal to the estimated time necessary for Seller to complete such repairs and restoration, but in no event shall such extension exceed January 31, 1993.

(b) If the estimated cost to repair such damage or destruction or to restore the Asset exceeds Two Hundred Fifty Thousand Dollars $250,000.00, Seller shall have no obligations to repair such damage or destruction and Purchasers shall have the right either to:

(i) purchase the Assets on the Closing Date, without reduction in the LPFA Consideration or the DHH Consideration, and to receive all insurance proceeds or condemnation awards payable to Seller as a result of such damage or destruction, or

(ii) terminate this Agreement by written notice to Seller given within fifteen days after receipt of the Casualty Notice; provided however, if Purchasers elect to terminate this Agreement, Seller shall have the option to repair the Real Estate to its prior condition and to extend the Closing Date for up to one hundred twenty (120) days to complete same. If Purchasers elect to terminate this Agreement and Seller does not exercise its option to repair or, upon exercise of its option, does

not repair the Assets to their prior condition, then this Agreement shall terminate and the Transaction Escrow Deposit shall be returned to the Purchasers and the Parties shall have no further obligations to each other under this Agreement. If Purchasers elect to receive the insurance proceeds or condemnation award, then Seller shall assign to Purchasers at the Closing all right, title and interest of Seller in and to such insurance proceeds or condemnation award. If Purchasers fail to notify Seller in writing of Purchasers' election of either (i) or (ii) above, within such fifteen (15) day period, Seller shall have the right to terminate this Agreement, in which event the Transaction Escrow Deposit shall be refunded to the Purchasers and the Parties shall have no further obligations to each other under this Agreement.

20.3 **Approval of Documents**. Any document required to be prepared, executed and delivered in connection with the Closing shall be in form reasonably satisfactory to Seller and Purchasers and their respective counsel.

20.4 **Risk of Loss**. The risk of loss or damage to the Assets or any part thereof by fire or other casualty shall from the date hereof until the Closing Date be borne by Seller.

20.5 **Medical Records and Hill-Burton Records**. For a period of ten (10) years after the Closing Date, DHH shall maintain in conformance with all applicable Governmental Regulations all Medical Records and Hill-Burton records delivered to DHH on the Closing Date that relate to services rendered by Seller or Hill Burton Obligations prior to the Closing Date and DHH shall make available to Seller all such medical records and Hill-Burton records during regular business hours for reasonable inspection and photocopying at Seller's sole expense. Subsequent to the expiration of such ten (10) year period, DHH shall make available to Seller, at Seller's expense, all such medical records and Hill-Burton records prior to DHH's destruction or disposal of those records.

20.6 **Notices**. All notices or other communications required or permitted hereunder shall be in writing, shall be delivered personally or sent by certified mail or by an overnight delivery service that operates on a nationwide basis, and routinely issues receipts, and shall be considered given upon the earlier of actual receipt or forty-eight (48) hours after mailing postage prepaid. All such notices shall be addressed as follows:

IF TO THE PURCHASERS:

Louisiana Public Facilities Authority
Suite 100
8555 United Plaza Boulevard
Baton Rouge, Louisiana 70809
Attn: Victor Bussie

WITH A COPY TO:

Charles A. Landry
Gary·Hicks·Field·Landry & Bradford
Suite 500
8555 United Plaza Boulevard
Baton Rouge, Louisiana 70809

IF TO DHH:

State of Louisiana
Department of Health and Hospitals
P. O. Box 629
Baton Rouge, Louisiana 70821
Attn: Secretary J. Chris Pilley

WITH A COPIES TO:

Richard J. Ieyoub
Louisiana Attorney General
P. O. Box 94005
Baton Rouge, Louisiana 70804-9005

and

Donna D. Fraiche
Locke Purnell Rain Harrell
(A Professional Corporation)
Suite 2440
601 Poydras Street
New Orleans, Louisiana 70130-6036

IF TO SELLER:

Hotel Dieu Hospital
2021 Perdido
New Orleans, Louisiana 70112
Attn: Sister Bernice Coreil

WITH COPIES TO:

Bruce E. Woodruff
Armstrong, Teasdale, Schlafly & Davis
One Metropolitan Square
St. Louis, Missouri 63102-2740

and

Leon J. Reymond, Jr.
Liskow & Lewis
One Shell Square
701 Poydras, 50th Floor
New Orleans, Louisiana 70139

or to such other addresses as the parties may specify in writing.

20.7 **Further Assurances**. Following the Closing, each of the Parties 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 purchase and sale of the Assets as set forth herein, and the other transactions specifically contemplated herein.

20.8 **Waiver of Terms**. Any of the terms or conditions of this Agreement may be waived at any time by the Parties which are entitled to the benefit thereof but only by a written notice signed by the 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.

20.9 **Amendment of Agreement**. This Agreement may be amended, supplemented or modified only by a written instrument duly executed by Seller and by the Purchasers.

20.10 **Governing Law**. This Agreement shall be governed by and construed in accordance with the laws of the State of Louisiana.

20.11 **Venue**. The 19th Judicial District Court, East Baton Rouge Parish, State of Louisiana shall be deemed to be the exclusive court of jurisdiction and venue for any litigation, special proceeding or other proceeding as between the Parties that may be brought, or arise out of, in connection with or by reason of this Agreement.

20.12 **Partial Invalidity**. If any one or more of the provisions contained herein shall, for any reason, be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement, but this Agreement shall be construed as if such invalid, illegal or unenforceable provision or provisions had never been contained herein.

20.13 **Successors and Assigns**. This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective successors and Permitted Assignees and Designees, provided, however, that except as permitted under the terms hereof, none of the rights of obligations of a Party hereunder may be assigned without the prior written consent of the other Parties. Notwithstanding the foregoing, (a) LPFA shall have the right to assign its interest in this Agreement to any LPFA Affiliate without the consent of the other Parties, and (b) DHH and the State each shall have the right to assign their respective interests in this Agreement, in whole or in part, to another agency, department, division, or political subdivision, or state instrumentality or other State entity of the State.

20.14 **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.

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

20.16 **Schedules**. The annexed Schedules shall be construed 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. Each Party shall have the right to update each of their respective Schedules, except as hereinbelow described, not more than two (2) Business Days prior to Closing, which updated Schedule shall be subject to the other Parties' approval. Upon receiving notice from the other Parties of the disapproved Schedule (including an updated Schedule that contains different information than that approved originally by other Parties), Party wishing to update a Schedule shall use its best efforts to remove or remedy any disapproved Schedule (and with respect to a disapproved updated Schedule delivered two or fewer Business Days prior to the Closing Date, the Closing Date shall be extended by three Business Days), but if the Party wishing to update a Schedule is unable to do so within five (5) Business Days, the other Parties shall have the option of waiving their disapproval or terminating this Agreement without liability to any Party, upon which termination the Transaction Escrow Deposit shall be returned to the Purchasers. Notwithstanding the foregoing, the following schedules shall not be subject to revision or amendment without the mutual consent of the Parties: Schedules 1.17, 1.43(g), 1.43(h), 1.43(i), 1.44, 1.46(a), 1.51, 1.59, 1.66, 1.100, 1.102, 1.107, 1.112, 1.123, 3.6, 4.3, 6.2, 6.11(a), 6.11(b), 6.27(a), 9.5, 9.8, 9.14, 10.4 (with the reservations stated therein), 16.1(f)(1), 16.1(f)(2) and 16.2(f).

20.17 **Entire Agreement**. This Agreement, including the Schedules annexed hereto, constitutes the entire agreement and supersedes all other prior agreements and understandings, both

written and oral, among the Parties or any of them, with respect to the subject matter hereof, including the letter dated August 6, 1992 from Office Facilities Corporation to Sister Bernice Coreil and Sister Nannette Gentile.

20.18 **Public Records Act**. The Parties acknowledge that Purchasers are subject to the Public Records Act.

20.19 **Expiration**. Notwithstanding anything else in this Agreement to the contrary, if the Closing has not occurred by December 31, 1992, Seller or Purchaser shall have the right at any time thereafter and prior to the Closing by delivery of ten (10) days written notice to the other Party to terminate the Agreement, provided, however, that the noticing party is not then in material breach of any terms or provisions of this Agreement, or if the noticing party is in material breach of any terms and conditions of this Agreement, then the other parties also must be in material breach of the terms or conditions of this Agreement in order to terminate the Agreement.

20.20 **Best Efforts**. Seller covenants and agrees to use its best efforts to cause all of its covenants and agreements and all conditions precedent to the Purchasers' obligations to close hereunder to be performed, satisfied and fulfilled. LPFA and DHH, each covenant and agree to use their best efforts to cause all their covenants and agreements and all conditions precedent to Seller's obligations to close hereunder to be performed, satisfied and fulfilled.

20.21 **Data Center Agreement and Management Compensation**. Seller covenants to cause DCNHS-WC to deliver an agreement at Closing to continue to provide through the Data Center the shared information services currently provided for a period of one (1) year from and after the Closing Effective Date at the rate of $120,000 per month to be paid by DHH to DCNHS-WC. In addition, DHH agrees to pay, following Closing, to DCNHS-WC cash, in an amount equal to the salary and fringe benefit expense of the Chief Executive Officer of the Facility, who shall remain an employee of DCNHS-WC, in consideration of Kevin Conlin's continued services to DHH at the Facility for up to six (6) weeks of post-Closing service, or such longer period as the Parties and the Chief Executive Officer shall mutually agree.

20.22 **Seller's Noncompetition**. Seller agrees that for a period of two (2) years after the Closing Date, Seller, any successor to Seller, or an organization in control of, controlled by or in common control with Seller, or their successors, will not (a) directly or indirectly, in any capacity, own, manage, operate, control, participate in the management or control of, or maintain or continue any interest whatsoever in any enterprise engaged in operating an acute-care, general hospital, within the area circumscribed by the Esplanade, Broad and Earhardt Streets and the Mississippi River, Orleans Parish, without the prior written approval of DHH, (b) enter into a major affiliation

agreement or contract between any acute-care hospital which may be owned by Seller, or any successor, or an organization in control of, controlled by or in common control with Seller, or its successor within the area described in (a) above and the entities currently under Affiliation Agreements with Seller, or (c) employ any of Seller's employees identified as vice-presidents on Schedule 20.22 without the prior written approval of DHH. In addition, Seller agrees to deliver to DHH at Closing a noncompetition agreement from DCNHS-WC containing those restrictions set forth in this Section 20.22 in a form reasonably satisfactory to DHH. Seller agrees that if any restriction contained in this Section is held by any Court to be unenforceable or unreasonable, such restriction shall be severed therefrom and a lesser restriction enforced in its place to the fullest extent permitted by law, and the remaining restrictions contained herein shall be enforceable independently of each other. The rights, duties and obligations under this Section shall survive the Closing.

20.23 **No Additional Solicitations**. Unless a Party terminates this Agreement after the Effective Date in accordance with its terms, Seller will not, without prior written approval of the Purchasers offer for sale, solicit offers for, initiate or advance discussions about or enter into any agreement with any Person except the Purchasers with respect to the sale or other disposition of the Assets or any material portion thereof, except for sales in the ordinary course of business.

20.24 **Litigation Expenses**. If a Party litigates (a) any provision of this Agreement; (b) the subject matter of this Agreement; or (c) to enforce any warranty, representation or covenant of this Agreement, the Parties hereto agree that the unsuccessful litigant shall pay to the successful litigant all of its Litigation Expenses; provided, however, Litigation Expenses in connection with a claim for indemnification shall be governed by Article 11. A Party shall be considered the successful litigant if such Party:

(a) obtains substantially (which shall include any damage judgment in its favor although in a lesser amount than it sought) the relief it sought or successfully defends its position, in either case, solely through a judgment;

(b) it did not initiate the litigation and the other Party withdraws its action without substantially obtaining the relief it sought; or

(c) it did not initiate the litigation and judgment is entered for either Party, but without substantially granting the relief sought.

20.25 **Rules of Interpretation**. The following rules shall apply to the construction of this Agreement unless the context

requires otherwise: (a) the singular includes the plural and the plural, the singular; (b) words importing any gender include the other genders; (c) references to statutes are to be construed as including all statutory provisions consolidating, amending or replacing the statute to which reference is made and all regulations promulgated pursuant to such statutes; (d) references to "writing" include printing, photocopy, typing, lithography and other means of reproducing words in a tangible visible form; (e) the words "including", "includes" and "include" shall be deemed to be followed by words "without limitation"; (f) references to the introductory paragraph, preliminary statements, articles, sections (or subdivision of sections), exhibits, appendices, annexes or schedules are to those of this Agreement unless otherwise indicated; (g) references to agreements and other contractual instruments shall be deemed to include all subsequent amendments and other modifications to such instruments; (h) references to Persons include their respective successors and assigns to the extent successors or assigns are permitted or not prohibited by the terms of this Agreement; (i) "or" is not exclusive; (j) provisions apply to successive events and transactions; (k) references to documents or agreements which have been terminated or released or which have expired shall be of no force and effect after such termination, release, or expiration; (l) references to mail shall be deemed to refer to first-class mail, postage prepaid, unless another type of mail is specified; (m) all references to time shall be to Baton Rouge, Louisiana time; (o) references to specific persons, positions, or officers shall include those who or which succeed to or perform their respective functions, duties, or responsibilities; (o) the terms "herein", "hereunder", "hereby", "hereof," and any similar terms refer to this Agreement as a whole and not to any particular articles, section or subdivision hereof; and the term "heretofore" means before the Effective Date, the term "now" means at the Effective Date, and the term "hereafter" means after the Effective Date; and (p) all Parties have been actively involved in drafting this document and no provision hereof shall be construed in favor of or against any Party on the basis of such Party's role in drafting that particular provision.

20.26 <u>Cooperative Endeavor</u>. This Agreement shall be deemed to be a cooperative endeavor between the Parties for a public purpose pursuant to Article 7, §14 of the Constitution of the State of Louisiana.

20.27 <u>Time is of Essence</u>. Time is of the essence of this Agreement.

IN WITNESS WHEREOF the Parties hereto have executed this Agreement as of the date first above written.

WITNESSES:

LOUISIANA PUBLIC FACILITIES AUTHORITY

By _____
Victor Bussie
Title: Chairman

By _____
C. C. Dabadie
Title: Secretary Treasurer

STATE OF LOUISIANA
DEPARTMENT OF HEALTH AND HOSPITALS

By _____
J. Christopher Pilley
Title: Secretary

COMMISSIONER OF ADMINISTRATION
STATE OF LOUISIANA
DIVISION OF ADMINISTRATION

By _____
Raymond J. Laborde
Title: Commissioner

HOTEL DIEU HOSPITAL

By _____
Kevin P. Conlin
Title: President

ACKNOWLEDGMENT

STATE OF LOUISIANA)
)
PARISH OF EAST BATON ROUGE)

On this 18th day of November, 1992, before me personally appeared Kevin P. Conlin, to me personally known, who, being by me duly sworn, did say that he is the President of Hotel Dieu Hospital, a Louisiana nonprofit corporation, and said appearer acknowledged to me, Notary, in the presence of the undersigned competent witnesses, that the foregoing instrument was signed on behalf of said corporation by authority of its Board of Trustees, and said appearer acknowledged said instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, said appearer has executed these presents together with me, Notary, and the undersigned competent witnesses, in the Parish and State aforesaid, on the date first above written.

WITNESSES:

Kevin P. Conlin

NOTARY PUBLIC

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BE IT KNOWN, that on this 18th day of December, 1992, before me, the undersigned authority, duly commissioned, qualified and sworn within and for the State and Parish aforesaid, personally came and appeared:

VICTOR BUSSIE

to me known to be the identical person who executed the above and foregoing instrument, who declared and acknowledged to me, Notary, in the presence of the undersigned competent witnesses, that he is the Chairman of the Board of Trustees for the Louisiana Public Facilities Authority (the "Authority"), and that the aforesaid instrument was signed by him, on this date, on behalf of the Authority and that the above named person acknowledges the approval of said instrument to be the free act and deed of the Authority.

Victor Bussie
Chairman, Board of Trustees
Louisiana Public Facilities Authority

WITNESSES:

Notary Public

STATE OF LOUISIANA

PARISH OF EAST BATON ROUGE

BE IT KNOWN, that on this 18th day of December, 1992, before me, the undersigned authority, duly commissioned, qualified and sworn within and for the State and Parish aforesaid, personally came and appeared:

C. C. DABADIE

to me known to be the identical person who executed the above and foregoing instrument, who declared and acknowledged to me, Notary, in the presence of the undersigned competent witnesses, that he is the Secretary-Treasurer of the Board of Trustees for the Louisiana Public Facilities Authority (the "Authority"), and that the aforesaid instrument was signed by him, on this date, on behalf of the Authority and that the above named person acknowledges the approval of said instrument to be the free act and deed of the Authority.

C. C. Dabadie
Secretary-Treasurer, Board of Trustees
Louisiana Public Facilities Authority

WITNESSES:

Notary Public

ACKNOWLEDGMENT

STATE OF LOUISIANA)
)
PARISH OF EAST BATON ROUGE)

On this 18th day of November, 1992, before me personally appeared J. Christopher Pilley, to me personally known, who, being by me duly sworn, did say that he is the Secretary of **Department of Health and Hospitals**, a department within the Executive Branch of State government of the State of Louisiana acting on behalf of said State, and said appearer acknowledged to me, Notary, in the presence of the undersigned competent witnesses, that the foregoing instrument was signed on behalf of said State by authority of EWE 92-87, and said appearer acknowledged said instrument to be the free act and deed of said State.

IN WITNESS WHEREOF, said appearer has executed these presents together with me, Notary, and the undersigned competent witnesses, in the Parish and State aforesaid, on the date first above written.

WITNESSES:

J. Christopher Pilley

NOTARY PUBLIC

ACKNOWLEDGMENT

STATE OF LOUISIANA)
)
PARISH OF EAST BATON ROUGE)

On this 18th day of November, 1992, before me personally appeared Raymond J. Laborde, to me personally known, who, being by me duly sworn, did say that he is the **Commissioner of Administration of the Division of Administration of the State of Louisiana** acting pursuant to LA - R.S. 39:11, and said appearer acknowledged to me, Notary, in the presence of the undersigned competent witnesses, that the foregoing instrument was signed on behalf of said Commissioner, and said appearer acknowledged said instrument to be the free act and deed of said Commissioner.

IN WITNESS WHEREOF, said appearer has executed these presents together with me, Notary, and the undersigned competent witnesses, in the Parish and State aforesaid, on the date first above written.

WITNESSES:

NOTARY PUBLIC