AFFILIATION AGREEMENT REGARDING THE LEASE AND OPERATION OF
CASCADE VALLEY HOSPITAL AND CLINICS

PUBLIC HOSPITAL DISTRICT NO. 3, SNOHOMISH COUNTY, WASHINGTON
D/B/A CASCADE VALLEY HOSPITAL AND CLINICS

AND

PUBLIC HOSPITAL DISTRICT NO. 1, SKAGIT COUNTY, WASHINGTON
D/B/A SKAGIT REGIONAL HEALTH
# TABLE OF CONTENTS

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. DEFINITIONS</td>
<td>1</td>
</tr>
<tr>
<td>2. LEASE TRANSACTION</td>
<td>6</td>
</tr>
<tr>
<td>2.1 Agreement to Lease and Operate CVH Services</td>
<td>6</td>
</tr>
<tr>
<td>2.2 Intangible Assets</td>
<td>6</td>
</tr>
<tr>
<td>2.3 Tangible Personal Property</td>
<td>6</td>
</tr>
<tr>
<td>2.4 Contracts</td>
<td>6</td>
</tr>
<tr>
<td>2.5 Vacant Lots</td>
<td>7</td>
</tr>
<tr>
<td>3. TRANSFER OF OPERATIONS</td>
<td>7</td>
</tr>
<tr>
<td>3.1 PHD No. 3 Cash and Unrestricted Reserves</td>
<td>7</td>
</tr>
<tr>
<td>3.2 Payments for Assumed Liabilities</td>
<td>8</td>
</tr>
<tr>
<td>3.3 PHD No. 3 Tax Levy Funds</td>
<td>8</td>
</tr>
<tr>
<td>3.4 Accounts Receivable for Services Prior to Closing</td>
<td>8</td>
</tr>
<tr>
<td>3.5 Use of Funds in Pool A</td>
<td>9</td>
</tr>
<tr>
<td>3.6 Pool B of PHD No. 3 Support Fund</td>
<td>9</td>
</tr>
<tr>
<td>3.7 Use of Funds in Pool B</td>
<td>10</td>
</tr>
<tr>
<td>3.8 PHD No. 3 Post-Closing Liabilities</td>
<td>11</td>
</tr>
<tr>
<td>3.9 Post-Termination Obligations</td>
<td>11</td>
</tr>
<tr>
<td>4. EXCLUDED ASSETS</td>
<td>11</td>
</tr>
<tr>
<td>5. PHD NO. 3 OFFICE SPACE</td>
<td>11</td>
</tr>
<tr>
<td>6. LIABILITIES</td>
<td>12</td>
</tr>
<tr>
<td>7. ALTERATION AND DISPOSITION OF LEASED PERSONAL PROPERTY</td>
<td>12</td>
</tr>
<tr>
<td>8. CLOSING</td>
<td>12</td>
</tr>
<tr>
<td>8.1 Closing</td>
<td>12</td>
</tr>
<tr>
<td>8.2 Obligations of the Parties at Closing</td>
<td>12</td>
</tr>
<tr>
<td>9. REPRESENTATIONS AND WARRANTIES BY PHD NO. 3</td>
<td>13</td>
</tr>
<tr>
<td>9.1 Organization</td>
<td>13</td>
</tr>
<tr>
<td>9.2 Authorization; Binding Agreement</td>
<td>13</td>
</tr>
<tr>
<td>9.3 No Violation</td>
<td>14</td>
</tr>
<tr>
<td>9.4 Financial Statements</td>
<td>14</td>
</tr>
<tr>
<td>9.5 Absence of Certain Changes</td>
<td>14</td>
</tr>
<tr>
<td>9.6 Title to Leased Personal Property</td>
<td>15</td>
</tr>
<tr>
<td>9.7 Real Property</td>
<td>15</td>
</tr>
<tr>
<td>9.8 Taxes</td>
<td>16</td>
</tr>
</tbody>
</table>
9.9 Litigation ................................................................. 16
9.10 Licenses ............................................................... 16
9.11 Certificates of Need ................................................. 16
9.12 Medicare Participation/Accreditation ........................... 16
9.13 Regulatory Compliance ............................................ 17
9.14 Contracts ............................................................ 17
9.15 Employees; Employee Relations ................................. 18
9.16 Employee Benefits ................................................ 19
9.17 Consents and Approvals ......................................... 20
9.18 Certain Payments ................................................. 20
9.19 Medical Staff Matters ............................................. 21
9.20 Environmental Matters .......................................... 21
9.21 Joint Ventures; Affiliates ........................................ 22
9.22 Insurance ........................................................... 23
9.23 Third Party Payor Cost Reports ................................. 23
9.24 Controlled Substances ............................................ 23
9.25 Condition of Assets ............................................... 23
9.26 Leased Intangible Property ...................................... 23
9.27 Compliance Program ............................................. 23
9.28 Full Disclosure ..................................................... 24

10. REPRESENTATIONS AND WARRANTIES OF PHD NO. 1 .................. 24
  10.1 Organization ....................................................... 24
  10.2 Authorization; Binding Agreement ............................. 24
  10.3 No Violation ....................................................... 24
  10.4 Financial Statements ............................................ 25
  10.5 Absence of Certain Changes ................................... 25
  10.6 Taxes .................................................................. 25
  10.7 Litigation ........................................................... 26
  10.8 Licenses ............................................................. 26
  10.9 Certificates of Need .............................................. 26
  10.10 Medicare Participation/Accreditation ......................... 26
  10.11 Regulatory Compliance ........................................ 27
  10.12 Employees; Employee Relations ............................... 27
  10.13 Employee Benefits .............................................. 28
  10.14 Consents and Approvals ....................................... 29
  10.15 Certain Payments ............................................... 29
  10.16 Medical Staff Matters ......................................... 30
  10.17 Environmental Matters ...................................... 30
  10.18 Insurance ........................................................ 31
  10.19 Third Party Payor Cost Reports ............................... 31
  10.20 Controlled Substances ........................................ 31
  10.21 Compliance Program ........................................... 32
  10.22 Full Disclosure .................................................. 32

11. COVENANTS OF PHD NO. 3 PENDING CLOSING ........................ 32
  11.1 Information ....................................................... 32
<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>11.2</td>
<td>Operations</td>
<td>33</td>
</tr>
<tr>
<td>11.3</td>
<td>Governmental Approvals</td>
<td>34</td>
</tr>
<tr>
<td>11.4</td>
<td>Contract Renegotiation</td>
<td>34</td>
</tr>
<tr>
<td>11.5</td>
<td>Tail Insurance</td>
<td>34</td>
</tr>
<tr>
<td>11.6</td>
<td>Permission to Operate</td>
<td>34</td>
</tr>
<tr>
<td>11.7</td>
<td>Satisfaction of Conditions Precedent</td>
<td>34</td>
</tr>
<tr>
<td>11.8</td>
<td>Additional Financial Information</td>
<td>55</td>
</tr>
<tr>
<td>11.9</td>
<td>Medical Staff Disclosure</td>
<td>35</td>
</tr>
<tr>
<td>12.</td>
<td>COVENANTS OF PHD NO. 1 PENDING CLOSING</td>
<td>35</td>
</tr>
<tr>
<td>12.1</td>
<td>Governmental Approvals</td>
<td>55</td>
</tr>
<tr>
<td>12.2</td>
<td>Consultation with PHD No. 3</td>
<td>35</td>
</tr>
<tr>
<td>12.3</td>
<td>Satisfaction of Conditions Precedent</td>
<td>35</td>
</tr>
<tr>
<td>13.</td>
<td>CONDITIONS PRECEDENT TO OBLIGATIONS OF PHD NO. 3</td>
<td>35</td>
</tr>
<tr>
<td>13.1</td>
<td>Representations/Warranties</td>
<td>36</td>
</tr>
<tr>
<td>13.2</td>
<td>Governmental Approvals</td>
<td>36</td>
</tr>
<tr>
<td>13.3</td>
<td>Actions/Proceedings</td>
<td>36</td>
</tr>
<tr>
<td>13.4</td>
<td>Insolvency</td>
<td>36</td>
</tr>
<tr>
<td>13.5</td>
<td>Due Diligence</td>
<td>36</td>
</tr>
<tr>
<td>13.6</td>
<td>Closing Deliveries</td>
<td>36</td>
</tr>
<tr>
<td>14.</td>
<td>CONDITIONS PRECEDENT TO OBLIGATIONS OF PHD NO. 1</td>
<td>36</td>
</tr>
<tr>
<td>14.1</td>
<td>Representations/Warranties</td>
<td>36</td>
</tr>
<tr>
<td>14.2</td>
<td>Pre-Closing Confirmations</td>
<td>37</td>
</tr>
<tr>
<td>14.3</td>
<td>Actions/Proceedings</td>
<td>37</td>
</tr>
<tr>
<td>14.4</td>
<td>Adverse Change</td>
<td>37</td>
</tr>
<tr>
<td>14.5</td>
<td>Insolvency</td>
<td>37</td>
</tr>
<tr>
<td>14.6</td>
<td>Consents to Assignments</td>
<td>37</td>
</tr>
<tr>
<td>14.7</td>
<td>Leases</td>
<td>38</td>
</tr>
<tr>
<td>14.8</td>
<td>Tail Insurance</td>
<td>38</td>
</tr>
<tr>
<td>14.9</td>
<td>Due Diligence</td>
<td>38</td>
</tr>
<tr>
<td>14.10</td>
<td>Closing Deliveries</td>
<td>38</td>
</tr>
<tr>
<td>15.</td>
<td>COVENANTS AND AGREEMENTS</td>
<td>38</td>
</tr>
<tr>
<td>15.1</td>
<td>Post-Closing Access to Information</td>
<td>38</td>
</tr>
<tr>
<td>15.2</td>
<td>Preservation and Access to Records After the Closing</td>
<td>38</td>
</tr>
<tr>
<td>15.3</td>
<td>CON Disclaimer</td>
<td>39</td>
</tr>
<tr>
<td>15.4</td>
<td>Tax and Medicare Effect</td>
<td>39</td>
</tr>
<tr>
<td>15.5</td>
<td>Reproduction of Documents</td>
<td>40</td>
</tr>
<tr>
<td>15.6</td>
<td>Cooperation on Tax Matters</td>
<td>40</td>
</tr>
<tr>
<td>15.7</td>
<td>Cost Reports</td>
<td>40</td>
</tr>
<tr>
<td>15.8</td>
<td>Overpayments, Etc.</td>
<td>40</td>
</tr>
<tr>
<td>15.9</td>
<td>Employee Matters</td>
<td>41</td>
</tr>
<tr>
<td>15.10</td>
<td>Non-Discrimination</td>
<td>41</td>
</tr>
<tr>
<td>15.11</td>
<td>Medical Staff Policies</td>
<td>42</td>
</tr>
<tr>
<td>15.12</td>
<td>Community Outreach Committee</td>
<td>42</td>
</tr>
</tbody>
</table>
15.13 Transition Services ................................................................. 42
15.14 Charity Care Policies ............................................................... 42
15.15 Required Services ................................................................ 42
15.16 Consultation Rights ................................................................. 45
15.17 Existing Conditions ................................................................. 45
15.18 Capital Investment Plan and Funding Commitment by PHD No. 1 ... 45
15.19 Insurance ............................................................................. 46
15.20 Maintenance ......................................................................... 46
15.21 Further Assurances ............................................................... 46
15.22 Tax Returns .......................................................................... 46
15.23 Payment of Liabilities ........................................................... 46
15.24 Damage to Facilities .............................................................. 46
15.25 Inspections ........................................................................... 47
15.26 Reporting Requirements ....................................................... 47
15.27 Provision of Services Locally .................................................. 47
15.28 Minimum Cash Balance ......................................................... 47
15.29 Assumption of Liabilities ....................................................... 47
15.30 Integration Planning ............................................................... 47
15.31 Cascade Valley Women’s Clinic .............................................. 47
15.32 Smokey Point Medical Center, LLC ....................................... 48

16. NON-COMPETITION, NON-SOLICITATION AND NON-DISPARAGEMENT ...... 48
16.1 Non-Competition .................................................................... 48
16.2 Non-Solicitation ..................................................................... 49
16.3 Equitable Relief ...................................................................... 49
16.4 Existing Non-Competition and Non-Solicitation Agreements .... 49

17. INDEMNIFICATION; SURVIVAL OF REPRESENTATIONS AND
WARRANTIES ............................................................................. 49
17.1 Indemnification by PHD No. 1 ............................................... 49
17.2 Indemnification by PHD No. 3 ............................................... 49
17.3 Limitations ............................................................................ 50
17.4 Notice and Control of Litigation ............................................. 50
17.5 Notice of Claim ....................................................................... 51
17.6 Survival of Representations and Warranties ......................... 51
17.7 Remedies Cumulative ............................................................. 51

18. TERM ...................................................................................... 51
18.1 Initial Term ............................................................................ 51
18.2 Renewal Terms ...................................................................... 52
18.3 Termination of the Lease ....................................................... 52

19. RIGHT TO TERMINATE .............................................................. 52
19.1 Termination Prior to Closing .................................................. 52
19.2 Right to Terminate After Closing ........................................... 53
19.3 Working Capital Support ........................................................ 54
19.4 Continued Availability of Health Care Within PHD No. 3’s Service Area .... 54
19.5 Unwind Provision ........................................................................................................55
19.6 Specific Performance .................................................................................................55

20. LOSS OF LICENSE AFTER CLOSING .......................................................................55

21. STANDARD OF CARE ..................................................................................................55

22. MISCELLANEOUS ........................................................................................................56
22.1 Delegation of Authority .............................................................................................56
22.2 Expenses .....................................................................................................................56
22.3 Risk of Loss ..................................................................................................................56
22.4 Confidentiality .............................................................................................................56
22.5 Exhibits and Schedules ..............................................................................................56
22.6 Notices .........................................................................................................................57
22.7 Dispute Resolution ......................................................................................................58
22.8 Further Assurances .....................................................................................................58
22.9 Waiver ..........................................................................................................................58
22.10 Entire Agreement .......................................................................................................58
22.11 Assignment; Parties in Interest ..................................................................................59
22.12 Severability ................................................................................................................59
22.13 Section Headings; Construction ..............................................................................59
22.14 Governing Law ..........................................................................................................59
22.15 Counterparts ..............................................................................................................59
Exhibits and Schedules

Agreement to Lease and Operate Cascade Valley Hospital and Clinics between Public Hospital District No. 3, Snohomish County, Washington, doing business as Cascade Valley Hospital and Clinics, and Public Hospital District No. 1, Skagit County, Washington, doing business as Skagit Regional Health, dated ______________.

List of Exhibits:

EXHIBIT 2 (Section 2.1) Lease
EXHIBIT 2.5 (Section 2.5) Legal Description for Vacant Lots
EXHIBIT 8.2 (Section 8.2(b)(iv)) Bill of Sale

List of Schedules:

A List of CVH Facilities
1 Methodology for Calculating CVH Operating Losses
2.4(i) Personal Property Leases
2.4(ii) Capital Leases/Installment Purchase Contracts
2.4(iii) Affiliations and Joint Ventures
2.4(vi) Operating Contracts
2.5(vii) Clinic Leases
9.3 Violations caused by this Affiliation Agreement
9.4 Financial Statements
9.6 Certain changes to PHD No. 3 since Interim Balance Sheet Date
9.6(e) Cancelled or waived PHD No. 3 claims
9.7 Title to Leased Personal Property
9.8 Leased Real Property
9.8(d) Rent roll
9.10 Litigation
9.11 PHD No. 3 licenses, permits, etc.
9.12 Certificates of Need, existing applications, and opposition objections to Certificates of Need
9.13 Medicare/Medicaid notices of investigations or surveys
9.14 Notices of violation of federal/state health care fraud laws
9.15(a) Material Commitments/contracts, etc.
9.15(b) Contract breach disclosures
9.17 Labor issues
9.18 Employee benefit plans
9.19 Required consents and approvals
9.21 Medical staff investigations
9.22 Environmental compliance
9.23 PHD No. 3 ownership/membership interests in third party entities
9.24 Insurance policies
9.25 Cost reports
9.27 Condition of Assets
9.30 Compliance Programs
10.3 Violations caused by this Affiliation Agreement (PHD No. 1)
10.4 PHD No. 1 financial statements
10.5 Certain changes to PHD No. 1 since Balance Sheet date
10.7 PHD No. 1 Litigation
10.8 PHD No. 1 licenses
10.9 PHD No. 1 Medicare/Medicaid notices
10.10 Regulatory compliance
10.11 PHD No. 1 consents/approvals
10.13 PHD No. 1 Insurance
10.14 PHD No. 1 thirty party Cost reports
AFFILIATION AGREEMENT REGARDING THE LEASE AND OPERATION OF CASCADE VALLEY HOSPITAL AND CLINICS

This Affiliation Agreement regarding Lease and Operation of Cascade Valley Hospital and Clinics (the “Affiliation Agreement”), dated __________________________, is by and between Public Hospital District No. 3, Snohomish County, Washington, doing business as Cascade Valley Hospital and Clinics (“PHD No. 3”), and Public Hospital District No. 1, Skagit County, Washington, doing business as Skagit Regional Health (“PHD No. 1”).

RECITALS:

A. WHEREAS, PHD No. 3 owns and operates a hospital, clinics and other ancillary facilities known as Cascade Valley Hospital and Clinics identified in Schedule A (hereinafter referred to as the “CVH Facilities”);

B. WHEREAS, PHD No. 3 is a municipal corporation governed by a Board of Commissioners (the “PHD No. 3 Board”), created under applicable laws of the State of Washington governing public hospital districts and elected by the voters residing within the geographic boundaries of PHD No. 3;

C. WHEREAS, PHD No. 1 is a municipal corporation governed by a Board of Commissioners (the “PHD No. 1 Board”), created under applicable laws of the State of Washington governing public hospital districts and elected by the voters residing within the geographic boundaries of PHD No. 1;

D. WHEREAS, PHD No. 1 is experienced in the operation and management of hospitals and other health care facilities;

E. WHEREAS, PHD No. 3 has determined that it is in the best interests of the residents of PHD No. 3 that the CVH Facilities be leased to PHD No. 1, and that the services and programs of the CVH Facilities be operated by PHD No. 1, on the terms set forth in this Affiliation Agreement; and

F. WHEREAS, PHD No. 1 has determined that entering into a lease of the CVH Facilities and operating the services of the CVH Facilities on the terms set forth in this Affiliation Agreement will further its public purposes and its ability to serve the health care needs of the communities served by PHD No. 1 and PHD No. 3.

AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and the mutual representations, warranties and covenants of the parties hereinafter set forth, the parties agree as follows:

1. DEFINITIONS

“Affiliation Agreement” is defined in the first introductory paragraph.
“Annual Commitment” is defined in Section 3.6.

“CERCLA” is defined in the “Environmental and Occupational Safety Liabilities” definition set forth below.

“Cleanup” is defined in the “Environmental and Occupational Safety Liabilities” definition set forth below.

“Closing” is defined in Section 8.1.

“Closing Date” is defined in Section 8.1.

“CON” is defined in Section 15.3.

“Continuing Employees” is defined in Section 15.9.

“Contracts” is defined in Section 2.4.

“CVH Capital Improvements” is defined in Section 3.7(c).

“CVH Facilities” is defined in Recital A.

“CVH Facilities Employees” is defined in Section 9.17(a).

“CVH Services” shall mean the CVH services provided at the CVH Facilities.

“CVH Operating Losses” means the operating losses resulting from the operation of the CVH Services calculated pursuant to the methodology specified in Schedule 1.

“Due Diligence Period is defined in Section 13.5.

“EI Hours” is defined in Section 15.9.

“Environmental and Occupational Safety Liabilities” means any cost, damages, expense, liability, obligation, or other responsibility arising from or under Environmental Law or Occupational Safety Law and consisting of or relating to: (a) any environmental, health, or safety matters or conditions, including on or off site contamination, occupational safety and health, and regulation of chemical substances or products; (b) fines, penalties, judgments, awards, settlements, legal or administrative proceedings, damages, losses, claims, demands and response, investigative, remedial, or inspection costs and expenses arising under Environmental Law or Occupational Safety Law; (c) financial responsibility under Environmental Law or Occupational Safety Law for cleanup costs or corrective action, including any investigation, cleanup, removal, containment, or other remediation or response actions (collectively, “Cleanup”) required by applicable Environmental Law or Occupational Safety Law (whether or not cleanup has been requested by any Governmental Body or other Person); or (d) any other compliance, corrective, investigative, or remedial measures required under Environmental Law or Occupational Safety and Health Law. As used herein, the terms “removal,” “remedial,” and “response action,” include the types of activities covered by the United States Comprehensive

“Environmental Law” means any Legal Requirement that requires or relates to: (a) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the Environment; (b) reducing the quantities, preventing Release, or minimizing the hazardous characteristics of wastes that are generated; (c) assuring that products are designed, formulated, packaged, and used so that they do not present unreasonable risks to human health or the Environment when used or disposed of; (d) cleaning up pollutants that have been Released, preventing the threat of Release, or paying the costs of clean up or prevention; (e) making responsible parties or potentially responsible parties pay private parties for damages done to their health or the Environment; (f) advising appropriate authorities, employees or the public of intended or actual Releases of pollutants or hazardous substances or materials, violations of discharge limits or other prohibitions and the commencement of activities, such as resource extraction or construction, that could have significant impact on the Environment; and (g) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances.

“ERISA Plan” is defined in Section 9.18(a).

“Facilities” means any real property, leaseholds, or other interests currently or formerly owned, operated or used by the PHD No. 3 and any buildings, plants, structures, or equipment, including motor vehicles, currently or formerly owned, operated or used by PHD No. 3.

“Financial Statements” is defined in Section 9.4.

“Free Cash” is defined in Section 3.1.

“GAAP” means generally accepted accounting principles for financial reporting in the United States, applied on a basis consistent with the basis on which the Financial Statements and the other financial statements were prepared.

“Government Entity” is defined in Section 9.14.

“Hazardous Materials” means any waste or other substance that is listed, defined, designated, or classified as, hazardous, radioactive, or toxic or a pollutant or a contaminant under or pursuant to any Environmental Law, including any admixture or solution thereof, and specifically including petroleum and all derivatives thereof or synthetic substitutes therefor and asbestos or asbestos-containing materials.

“HIPAA” is defined in Section 9.14.

“Indemnified Party” is defined in Section 17.4.

“Indemnifying Party” is defined in Section 17.4.

“Interim Balance Sheet” is defined in Section 9.4.
“IRC” is defined in Section 9.18(a).

“Knowledge of PHD No. 1” shall mean the actual knowledge, without independent investigation or inquiry, of the Chief Executive Officer and the Chief Financial Officer, except that the Chief Executive Officer and Chief Financial Officer shall have the duty to reasonably inquire with the Chief Operating Officer and the Directors of Human Resources, Compliance and Physical Plant with respect to matters within the scope of their respective responsibilities.

“Knowledge of PHD No. 3” shall mean the actual knowledge, without independent investigation or inquiry, of the Chief Executive Officer and the Chief Financial Officer, except that the Chief Executive Officer and Chief Financial Officer shall have the duty to reasonably inquire with Chief Nursing Officer and Assistant Administrator of Patient Care Services and the Directors of Human Resources, Compliance and Physical Plant with respect to matters within the scope of their respective responsibilities.

“Land Leases” is defined in Section 2.1(b).

“Lease” is defined in Section 2.1(a).

“Leased Assets” is defined in Section 1.4 of the Lease.

“Leased Intangible Property” is defined in Section 2.2.

“Leased Personal Property” is defined in Section 2.3.

“Leased Real Property” is defined in Section 2.1(a).

“Legal Requirement” means any law, constitution, statute, ordinance, regulation or other binding mandate, obligation or requirement of any Governmental Entity.

“Liability Exposure Amount” is defined in Section 3.1.

“Litigation” is defined in Section 9.10.

“Minimum Cash Balance” is defined in Section 3.1.

“Non-ERISA Plan” is defined in Section 9.18(a).

“PHD No. 1” is defined in the first introductory paragraph.

“PHD No. 1 Board” is defined in Recital C.

“PHD No. 1 Indemnified Parties” is defined in Section 17.2.

“PHD No. 1 System Cash Flow” is defined in Section 3.6.

“PHD No. 3” is defined in the first introductory paragraph.

“PHD No. 3 Board” is defined in Recital B.
“PHD No. 3 Cost Reports” is defined in Section 15.7.

“PHD No. 3 Indemnified Parties” is defined in Section 17.1.

“PHD No. 3 Leases” is defined in Section 9.8.

“PHD No. 3 Obligations” is defined in Section 3.3.

“PHD No. 3 Pro Rata Cash Flow” is defined in Section 3.6.

“PHD No. 3 Public Records” is defined in Section 15.2.

“PHD No. 3 Support Fund” is defined in Section 3.4.

“Pool A” is defined in Section 3.1.

“Pool B of the PHD No. 3 Support Fund” is defined in Section 3.6.

“PTO Hours” is defined in Section 15.9.

“Public Record” is defined in Section 15.2.

“Real Property” is defined in Section 9.8.

“Release” means any spilling, leaking, emitting, discharging, depositing, escaping, leaching, dumping, disposing, migration or other releasing into the environment, whether intentional or unintentional.

“Required Services” is defined in Section 15.15.

“Retained Cash” is defined in Section 3.1.

“SPMC” is defined in Section 2.4(iii).

“SRH Services” is defined in Section 10.5(b).

“Surplus A/R Value” is defined in Section 19.3.

“Surplus Funds” is defined in Section 3.3.

“Sustained Operating Losses” is defined in Section 19.2.

“Term” is defined in Section 18.

“Union” is defined in Section 14.8.

“Vacant Lots” is defined in Section 2.5.

“Working Capital Requirement” is defined in Section 19.3.
2. **LEASE TRANSACTION**

2.1 **Agreement to Lease and Operate CVH Services.**

Subject to the terms and conditions of this Affiliation Agreement, at the Closing (as hereinafter defined), PHD No. 3, as lessor, and PHD No. 1, as lessee, shall enter into:

(a) The Lease Agreement between Public Hospital No. 3, Snohomish County, Washington D/B/A Cascade Valley Hospital and Clinics and Public Hospital District No. 1, Skagit County, Washington D/B./A Skagit Regional Health dated the same date as this Affiliation Agreement (the “Lease”) substantially in the form set forth as Exhibit 2.1 to this Affiliation Agreement, whereby PHD No. 3 shall lease to PHD No. 1 and PHD No. 1 shall lease and operate certain of the CVH Facilities as set forth in the Lease (the “Leased Real Property”).

(b) The following land leases under which PHD No. 3 is the lessor such that PHD No. 1 will become the master sublessor (at no additional rental obligation) including PHD No. 3’s rights and responsibilities, so long as such leases (“Land Leases”) remain in effect: (i) Community Health Center of Snohomish County; (ii) Loren L. Johnson and Paula R. Johnson for the Arlington Rehab and Cascade Valley Orthopedic Clinic; and (iii) R. Lee Harmon, M.D., and Judy Harman for the Harmon Eye Clinic. After termination of each Land Lease, provided that this Affiliation Agreement remains in effect, PHD No. 1 shall have the right to use, or to lease the properties under the Land Leases, including the improvements thereon, as long as and to the extent that such direct or leased uses of such properties and improvements involve providing health care or community health services. Construction of buildings on or material improvements to any of the properties covered by the Land Leases shall be subject to PHD No. 3’s prior written approval, which shall not be unreasonably withheld.

2.2 **Intangible Assets.** The Lease shall include intangible assets and health care delivery processes, together with all aspects related to the operation of CVH Facilities, including without limitation the going concerns of the business operations, trademarks, service marks, telephone numbers, other intangible property used by PHD No. 3 in the operation of the CVH Services and all other rights, privileges, appurtenances, and immunities belonging to or in any way pertaining to the operation of the CVH Services as set forth on Exhibit B of the Lease (collectively, the “Leased Intangible Property”);

2.3 **Tangible Personal Property.** The Lease shall include tangible personal property of every kind and nature owned and used by PHD No. 3 in the operation of the CVH Services including, but not limited to, all furniture, furnishings, machinery, equipment, computer systems, vehicles, inventory, and prepaid items, together with the clinical and administrative records, in whatever media maintained or created (“Leased Personal Property”) described as set forth in Exhibit C of the Lease.

2.4 **Contracts.** The following leases, contracts, joint venture interests, and post-Closing commitments of PHD No. 3 (“Contracts”), which are related to the operation of the CVH Services shall be transferred to SRH, except as otherwise provided herein:

(i) All leases of personal property to which PHD No. 3 is a party, a complete and accurate list of the personal property leases is attached as Schedule 2.4(i);
(ii) All capital leases and installment purchase contracts and obligations for equipment, and other personal property to which PHD No. 3 is a party, a complete and accurate list of the capital leases is attached as Schedule 2.4(ii):

(iii) With the exception of PHD No. 3’s interest in the Smokey Point Medical Center, LLC (“SPMC”), all of PHD No. 3’s interest in affiliates and joint ventures, whether organized as a limited liability company, partnership, corporation, or membership including without limitation the affiliates and joint ventures set forth on Schedule 2.4(iii):

(iv) All documents, maintenance and other records, operating manuals, files and computer software related to the foregoing;

(v) PHD No. 3’s rights, to the extent assignable or transferable, to all licenses, provider numbers, permits, approvals, certificates of need, certificates of exemption, franchises, accreditations and registrations and other governmental licenses, permits or approvals issued to PHD No. 3;

(vi) All of PHD No. 3’s interest, to the extent assignable or transferable, in and to all contracts and agreements with respect to the operation of the CVH Facilities and/or CVH Services and which are specifically identified in Schedule 2.4(vi); and

(vii) All of PHD No. 3’s interests, as lessee, under the leases identified in Schedule 2.4(vii).

2.5 Vacant Lots. PHD No. 3 shall retain ownership of the vacant land located between South Stillaguamish Avenue, Medical Center Drive, and Tveit Road in Arlington, Washington, which is composed of two legal lots more particularly described in Exhibit 2.5 (individually, “Vacant Lot,” and, collectively, “Vacant Lots”). Each Vacant Lot shall be deemed included as part of the assets leased to PHD No. 1 pursuant to the Lease for so long as such Vacant Lot is: (i) used directly in support of the operation of the CVH Facilities (including without limitation for the development and maintenance of a helipad and expansion parking for the hospital and medical center facility located at 330 S. Stillaguamish); (ii) otherwise used for the provision of health care or medical services as set forth in the Lease; or (iii) subject to, and used in substantial compliance with, a development plan approved in writing by PHD No. 3. If, at any time after the five (5) year anniversary of the Closing Date, PHD No. 1 ceases to use a Vacant Lot in compliance with the conditions described in the preceding sentence, or puts such Vacant Lot to uses other than as permitted in the preceding sentence, and such condition is not cured within one hundred eighty (180) days after PHD No. 3 provides written notice to PHD No. 1, then such Vacant Lot shall, at PHD No. 3’s election, revert back to PHD No. 3 and shall no longer be deemed part of the assets leased to PHD No. 1 pursuant to the Lease.

3. TRANSFER OF OPERATIONS

3.1 PHD No. 3 Cash and Unrestricted Reserves. During the Due Diligence Period (as defined in Section 13.5) and updated at Closing, PHD No. 3 shall prepare a detailed accounting of PHD No. 3’s current assets, including cash and investments in all accounts and receivables, and current liabilities. PHD No. 3 shall, prior to Closing, identify, including a reasonable estimate of value determined in accordance with GAAP, and present to PHD No. 1 a
written summary of PHD No. 3’s known and contingent liabilities and debts, including but not limited to all pre-closing liabilities and any liabilities and obligations which are projected to arise after Closing relating to any Contracts or Leases not assumed by PHD No. 1 (“ Liability Exposure Amount”). At Closing, the amount equal to the Liability Exposure Amount plus a minimum cash balance of One Million Dollars ($1,000,000) (the “Minimum Cash Balance”) shall be set aside by and for the benefit of PHD No. 3 (“Retained Cash”) in an account in the name and under the exclusive control of PHD No. 3 for the purpose of payment of PHD No. 3’s Liability Exposure Amount, reasonable operating expenses and other liabilities arising after the Closing. Over a period of one year following the Closing, any and all of PHD No. 3’s cash and cash equivalents in excess of the Retained Cash (“Free Cash”) shall be transferred to PHD No. 1 and deposited into a separate account designated as Pool A of the PHD No. 3 Support Fund (“Pool A”) for use in PHD No. 1’s operation of the CVH Services as follows: (i) fifty percent (50%) of the Free Cash shall be transferred by PHD No. 3 to PHD No. 1 at the Closing Date; (ii) twenty-five percent (25%) of the Free Cash shall be transferred by PHD No. 3 to PHD No. 1 six months after the Closing Date; and (iii) twenty-five percent (25%) of the Free Cash shall be transferred by PHD No. 3 to PHD No. 1 twelve (12) months after the Closing Date. If, prior to twelve (12) months following the Closing Date, the balance of the Retained Cash falls below the Minimum Cash Balance, then, in such event, an amount of the Free Cash equal to the deficiency in the Retained Cash compared to the Minimum Cash Balance shall be retained by PHD No. 3 to be used in payment of its liabilities and operating expenses and said deficiency shall be deducted from the next Free Cash payment due to PHD No. 1 as provided in this section.

3.2 Payments for Assumed Liabilities. At Closing, an additional amount of the Retained Cash shall be transferred to PHD No. 1 equal to the agreed value of any pre-closing Liabilities of PHD No. 3 assumed by PHD No. 1 hereunder (including but not limited to liabilities for employees’ accrued vacation or personal time off honored and assumed by PHD No. 1).

3.3 PHD No. 3 Tax Levy Funds. PHD No. 3 shall continue to levy and collect excess and regular property tax levies and revenue from the lease to Smokey Point LLC. The excess levy funds shall be used solely for the purpose of paying the debt service on PHD No. 3’s outstanding unlimited tax general obligation bonds. The proceeds from the regular property tax levy and the lease to Smokey Point LLC shall be used to pay PHD No. 3’s reasonable annual and other obligations, including but not limited to the annual debt service on PHD No. 3’s outstanding limited tax general obligation bonds, PHD No. 3’s operating expenses and funding of the Minimum Cash Balance (collectively the “PHD No. 3 Obligations”). To the extent the amount collected by PHD No. 3 from the regular property tax levy and/or the lease to Smokey Point LLC exceeds the amount of the PHD No. 3 Obligations in any year, the excess funds shall be “Surplus Funds” and shall be transferred to PHD No. 1 to be applied provided below.

3.4 Accounts Receivable for Services Prior to Closing. The accounts receivable of PHD No. 3 existing as of the Closing for the services performed at the CVH Facilities prior to Closing shall be collected by PHD No. 1 as provided in Section 15.13 hereof. Within 30 days of the date PHD No. 1 deposits the proceeds received from the collection of PHD No. 3’s accounts receivable in PHD No. 3’s accounts as provided in Section 15.13, the proceeds shall be transferred to PHD No. 1 to be used as working capital by PHD No. 1 with respect to the operation of CVH Services by PHD No. 1 after Closing.
3.5 Use of Funds in Pool A. The Free Cash and on an annual basis, the Surplus Funds, shall be deposited into Pool A of the PHD No. 3 Support Fund. In addition, at Closing PHD No. 1 shall deposit cash into Pool A equal to the book value of the inventory and prepaid items transferred to PHD No. 1 at Closing. The funds deposited in Pool A shall be used by PHD No. 1 for the following: (i) support the provision of health care services rendered in Snohomish County; (ii) pay for capital improvements and equipment located in Snohomish County; (iii) pay for health information technology (HIT) and other capital investments that may be located outside of Snohomish County if it serves both the PHD No. 1 facilities and the CVH Facilities, provided only such portion of the costs of establishing, operating and maintaining such HIT or other capital investments that reasonably relate to PHD No. 3’s usage of the HIT or other capital investments shall be allocated to PHD No. 3; and, (iv) to the extent necessary, to cover any CVH Operating Losses; and for no other purpose. The funds deposited in Pool A of the PHD No. 3 Support Fund shall be spent by PHD No. 1 in the following order: First, the value of inventory and pre-paids; second, Free Cash; and third, Surplus Funds. All expenditures from Pool A, except for paying CVH Operating Losses, shall be made only in accordance with the Capital Investment Plan specified in Section 15.17 hereof or an estimated budget approved by the PHD No. 3 Board or otherwise approved in advance of the Closing Date by the PHD No. 3 Board, which approval shall not be unreasonably withheld. PHD No. 1 shall provide a written report to PHD No. 3 describing the use of the Free Cash, Surplus Funds attributable to PHD No. 3’s regular tax levy and other funds disbursed from Pool A on a quarterly basis.

3.6 Pool B of PHD No. 3 Support Fund.

(a) At the end of each fiscal year, PHD No. 1 shall calculate according to GAAP the net cash flow generated from PHD No. 1 operations, including cash flow from the operations of the CVH Facilities (the “PHD No. 1 System Cash Flow”). PHD No. 1 System Cash Flow shall be calculated as follows, based on audited financials for PHD No. 1, inclusive of CVH Services:

Excess of revenue over expenses before capital contributions;
plus Interest and amortization (operating and non-operating);
plus Depreciation and amortization;
minus Interest payments and principal payments currently due on PHD No. 1’s long term debt;
minus Interest payments and principal payments currently due on PHD No. 3’s long term debt (but only to the extent that the excess and regular property taxes collected by PHD No. 3 and other revenue generated by PHD No. 3 are not sufficient to pay such annual debt service and other obligations on any bonds issued by PHD No. 3 prior to the Closing Date);
minus Working capital requirements (equal to 13.5% of annual change in net patient service revenue); and
minus Cash required to ensure compliance with the PHD No. 1 bond covenants relating to unrestricted cash reserves.

(b) After funding the foregoing obligations, PHD No. 1 shall deposit annually into a special fund designated as “Pool B of the PHD No. 3 Support Fund” (also known as “Pool B”) an amount equal to fifty percent (50%) of the product of the PHD No. 1 System Cash Flow...
remaining after covering the obligations specified in subparagraph (a) above multiplied by the ratio of the net revenue generated by PHD No. 1 from the operation of the CVH Services to the net revenue generated by PHD No. 1 from the operation of all of its services (the “PHD No. 3 Pro Rata Cash Flow”). Notwithstanding the foregoing formula, or anything to the contrary in this Affiliation Agreement, PHD No. 1 shall be required to contribute to Pool B an amount not less than one and one-half percent (1.50%) of the annual net revenue generated by PHD No. 1 from the operation of the CVH Services still in operation, which shall be calculated based on a three (3) year rolling average (the “Annual Commitment”); provided, however, that PHD No. 1 shall not be required to fund the full Annual Commitment in any year if the average annual amount (calculated from the commencement of the Affiliation Agreement through the current year) PHD No. 1 has expended for CVH Capital Improvements (as defined in Section 3.7(c) below) is equal to or greater than the Annual Commitment. PHD No. 1 shall be entitled to credit toward the Annual Commitment: (i) PHD No. 3 Pro Rata Cash Flow; (ii) any annual debt service payment related to debt incurred by PHD No. 1 for capital improvements or equipment located at the CVH Facilities; and (iii) any additional cash contributed by PHD No. 1 to Pool B in the applicable year. PHD No. 1 shall not be required to deposit into Pool B the PHD No. 3 Pro Rata Cash Flow or the Annual Commitment after the date PHD No. 1 provides notice of termination of this Affiliation Agreement pursuant to Section 19.2(e); provided that PHD No. 1 shall be obligated to deposit the PHD No. 3 Pro Rata Cash Flow and the Annual Commitment into Pool B on a prorated basis, for the applicable time period prior to date of the notice of termination.

3.7 Use of Funds in Pool B. The funds in Pool B may be used and expended in the reasonable discretion of PHD No. 1, provided PHD No. 1 utilizes such funds for the following purposes and in the following order of priority:

(a) First, to cover any CVH Operating Losses but only to the extent the loss is not covered by any remaining funds in Pool A.

(b) Second, to reimburse PHD No. 1 for expenses incurred by PHD No. 1 in prior years to cover any CVH Operating Losses that were not reimbursed in prior years because there were insufficient funds available in Pool A or Pool B.

(c) Third, subject to the joint funding requirement specified in Section 15.18 hereof, to reimburse PHD No. 1 for expenses incurred by PHD No. 1 in prior years to fund capital improvements and equipment located at the CVH Facilities or for HIT or other capital investments located elsewhere to the extent it serves both the PHD No. 1 and CVH Facilities (but only for such portion of the HIT or other capital investment that reasonably relate to PHD No. 3’s usage of the HIT system or other capital investment) (“CVH Capital Improvements”), to the extent that such expenses were not reimbursed in prior years because there were insufficient funds available in Pool A or Pool B.

(d) Fourth, subject to the joint funding requirement specified in Section 15.18 hereof, to reimburse PHD No. 1 for expenses incurred by PHD No. 1 in the current year to fund CVH Capital Improvements.
(e) For other expenditures that support the provision of health care services in Snohomish County, but only if, the average annual amount (calculated from the commencement of the Affiliation Agreement through the current year) PHD No. 1 has expended for CVH Capital Improvements is equal to or greater than the Annual Commitment.

3.8 PHD No. 3 Post-Closing Liabilities. If PHD No. 3 incurs an unknown liability in excess of its Retained Cash, PHD No. 1 shall transfer, within ten (10) business days of a request from PHD No. 3, an amount of cash to PHD No. 3 which is equal to the difference between the PHD No. 3 cash balance and the liability, up to an aggregate limit equal to the amount, but in no event in amount greater than the Free Cash, Surplus Funds, and the value of the collected pre-closing receivables transferred by PHD No. 3 to PHD No. 1.

3.9 Post-Termination Obligations. All of the commitments by PHD No. 3 to provide any cash or similar support to PHD No. 1 shall terminate after the date PHD No. 1 provides written notice of termination of this Affiliation Agreement or concurrent with the termination of the definitive agreements for any other reason; provided that PHD No. 3 shall be obligated to provide any cash or similar support on a pro rata basis for the applicable period of time prior to the notice of termination.

4. EXCLUDED ASSETS

The following assets shall not be transferred to PHD No. 1:

(a) Rights to the name “Public Hospital District No. 3 of Snohomish County” or variations thereof;

(b) Retained Cash as set forth in this Affiliation Agreement;

(c) PHD No. 3’s accounts receivable;

(d) PHD No. 3’s interest in SPMC;

(e) The Vacant Lots, pursuant to the terms and conditions of Section 2.5; and

(f) 903 Medical Center Drive, pursuant to the terms and conditions of Section 15.31.

5. PHD NO. 3 OFFICE SPACE

PHD No. 1 shall make office space, with appropriate office furniture and access to parking, available to PHD No. 3 within the geographic boundaries of PHD No. 3, as reasonably needed for PHD No. 3 to conduct its remaining business. Such space shall include up to 2,500 square feet of office space, as mutually agreed upon by PHD No. 1 and PHD No. 3, and a use of meeting room for PHD No. 3 Board meetings. Such space, office furniture and reasonable access to parking shall be provided to PHD No. 3 at no cost to PHD No. 3.
6. LIABILITIES

Except as specifically provided herein, PHD No. 1 is assuming no liabilities related to the CVH Services excepting post-Closing Liabilities related to PHD No. 1’s operation of the CVH Services. Liabilities of PHD No. 3 not assumed by PHD No. 1, including those related to PHD No. 3’s operation of the CVH Services prior to Closing, shall be retained by PHD No. 3, paid off within a commercially reasonable timeframe after Closing, and PHD No. 3 shall indemnify and hold PHD No. 1 harmless therefrom as provided in Section 17.1 hereof.

7. ALTERATION AND DISPOSITION OF LEASED PERSONAL PROPERTY

PHD No. 3 shall to the extent feasible arrange for any service agreements or warranties of equipment suppliers to accrue to the benefit of PHD No. 1 during the Term. PHD No. 1 shall have the right to alter, improve, and modify any Leased Personal Property, from time to time if it determines that it is desirable or convenient for PHD No. 1’s use and operation of the CVH Services; provided, however, that any material alteration, improvement or modification shall require advance consultation with, prior notice to and advance written approval by PHD No. 3, which approval shall not be unreasonably withheld. In the event PHD No. 1 determines that any Leased Personal Property has become inadequate, obsolete, worn-out or no longer useful and the removal thereof is necessary, desirable, or convenient for the use and operation of the CVH Services, PHD No. 1 may (i) replace the equipment at its own expense (in which event the new property shall become PHD No. 1’s property; (ii) move the Leased Personal Property to (a) another CVH Facility, or (b) another location separate from a CVH Facility subject to PHD No. 3’s advance written approval, which approval shall not be unreasonably withheld; or (iii) if the Leased Personal Property is no longer usable, and has become surplus, PHD No. 1 shall so advise PHD No. 3 and PHD No. 3 shall have the option to dispose of the surplus item or items at a public sale or otherwise dispose of the items in compliance with applicable laws.

8. CLOSING

8.1 Closing. The closing (“Closing”) of the leases and the affiliation transactions contemplated by this Affiliation Agreement shall take place in the offices of _______________________________ within forty-five (45) days of satisfaction of all Closing conditions. The Closing shall be effective (the “Closing Date”) as of 12:01 a.m., local time, on the day of Closing. If the Closing Date has not occurred by ________________, then absent agreement otherwise by the parties, the transaction and this Affiliation Agreement shall be terminated.

8.2 Obligations of the Parties at Closing.

(a) At Closing, PHD No. 1 shall deliver to PHD No. 3:

   (i) a certificate of the Secretary of PHD No. 1 certifying that the PHD No. 1 Board has authorized the execution, delivery and performance of this Affiliation Agreement, the Lease, and the other documents referred to herein to be executed by PHD No. 1;

   (ii) the Lease in substantially the form of Exhibit 2.1, duly executed by PHD No. 1;
(iii) this Affiliation Agreement regarding Lease and Operation of the Cascade Valley Hospital and Clinics;

(iv) Assignments conveying to PHD No. 1 PHD No. 3’s interests in the Contracts in substantially the form of Exhibit 8.2(a) (“Assignment(s)”), and all third party consents needed in connection with such assignments;

(v) the SPMC Lease, duly executed by PHD No. 1; and

(vi) such other certificates and documents as PHD No. 3 or its counsel may reasonably request.

(b) At Closing, PHD No. 3 will deliver to PHD No. 1:

(i) a certificate of the Secretary of PHD No. 3 certifying that the PHD No. 3 Board have authorized the execution, delivery and performance of this Affiliation Agreement and the other documents referred to herein to be executed by PHD No. 3, and the consummation of the transactions contemplated hereby;

(ii) the Lease in substantially the form of Exhibit 2.1, duly executed by PHD No. 3;

(iii) this Affiliation Agreement regarding Lease and Operation of Cascade Valley Hospital and Clinics;

(iv) the Bill of Sale, in substantially the form attached hereto as Exhibit 8.2 duly executed by PHD No. 3;

(v) the Assignments; and

(vi) such other certificates and documents as PHD No. 1 or its counsel may reasonably request.

9. REPRESENTATIONS AND WARRANTIES BY PHD NO. 3

PHD No. 3 represents and warrants as follows as of the date of this Affiliation Agreement and, subject to such updated Schedules as shall be provided as permitted by this Affiliation Agreement, as of Closing and which shall survive Closing:

9.1 Organization. PHD No. 3 is a public hospital district and a political subdivision of the State of Washington and has full power and authority to conduct its business as now conducted.

9.2 Authorization; Binding Agreement. PHD No. 3 has full power and authority to enter into this Affiliation Agreement and perform its obligations hereunder and carry out the transactions contemplated hereby. The execution, delivery and performance by PHD No. 3 of this Affiliation Agreement and the consummation of the transactions contemplated hereby, including entering into the Lease, have been duly authorized and approved by all necessary
action of PHD No. 3, and this Affiliation Agreement, when executed, will constitute a valid and
binding obligation of PHD No. 3, enforceable against PHD No. 3 in accordance with its terms.

9.3 No Violation. Except as disclosed in writing to PHD No. 1 in attached Schedule 9.3, the execution and delivery of this Affiliation Agreement by PHD No. 3 does not, and the consummation of the transactions contemplated hereby in accordance with the terms of this Affiliation Agreement will not (a) violate any provision of, or result in the creation of any lien or security interest under, any contract or agreement to which PHD No. 3 is a party or by which any of PHD No. 3’s assets or properties are bound; (b) violate any provision of Washington law applicable to PHD No. 3; (c) violate any order, arbitration award, judgment, writ, injunction, decree, statute, rule or regulation applicable to PHD No. 3; or (d) violate any other contractual or legal obligation or restriction to which PHD No. 3 is subject or is a party.

9.4 Financial Statements. Attached as Schedule 9.4 are true and complete copies of (a) unaudited consolidated balance sheets of PHD No. 3 as of ________________ (“Interim Balance Sheet”), and related unaudited statements of revenues, expenses, and changes in net assets; and statements of cash flows for the period then ended; and (b) audited balance sheets, and related statements of revenues, expenses, and changes in net assets, and statements of cash flow of PHD No. 3 as of December 31, 2015, 2014, and 2013 (such financial statements and notes contained therein, collectively, the “Financial Statements”). The unaudited Financial Statements conform to GAAP, except as set forth in Schedule 9.4. Such audited Financial Statements have been prepared in accordance with GAAP, applied on a consistent basis throughout the period indicated. To the Knowledge of PHD 3, there has not been any change since the Interim Balance Sheet Date, which has had or is likely to have a material adverse effect on the financial position, results of operation or business or prospects of PHD No. 3.

9.5 Absence of Certain Changes. Except as set forth on Schedule 9.5, since the Interim Balance Sheet Date, PHD No. 3 has not:

(a) suffered any material casualty loss (whether or not insured);

(b) made any change in its business or operations or in the manner of conducting the CVH Services, other than changes in the ordinary course of such business;

(c) incurred any obligations or liabilities (whether absolute, accrued, contingent or otherwise and whether due or to become due), except items incurred in the ordinary course of business of the CVH Services and consistent with past practice; or experienced any change in any assumptions or methods of calculating any bad debt, contingency or other reserve for the operation of the CVH Services;

(d) written off as uncollectible any notes or accounts receivable or any portion thereof, except for write-offs made in the ordinary course of business consistent with past practice;

(e) cancelled any debts or claims, or waived any rights, of substantial value in connection with the operation of the CVH Services, except as set forth in Schedule 9.5(e);
sold, transferred or conveyed any of the Leased Assets, except in the ordinary course of business consistent with past practice;

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

(h) granted any increase in the compensation of any officer, employee or agent of PHD No. 3 who performs services for or on behalf of PHD No. 3 (including without limitation any increase pursuant to any bonus, pension, profit-sharing or other plan or commitment) other than increases in the ordinary course of business consistent with past practice, or adopted any such plan or other arrangement; and no such increase or the adoption of any such plan or arrangement, is planned or required; or

(i) agreed, whether in writing or otherwise, to take any action described in this Section 9.6.

9.6 Title to Leased Personal Property. Except as set forth on Schedule 9.6, PHD No. 3 owns good and marketable title to the Leased Personal Property free and clear of all mortgages, pledges, liens, security interests, conditional sale agreements, encumbrances and rights of third parties, and, to the Knowledge of PHD No. 3, no conditions exist which could give rise to any such mortgage, pledge, lien, security interest, encumbrance on, or right of any such third party to, the Leased Personal Property.

9.7 Real Property. PHD No. 3 owns (i) good, marketable, and insurable fee simple title to the Leased Real Property, and (ii) subject to the terms of individual leases thereto, PHD No. 3 owns a leasehold interest in and to the real property (the “PHD No. 3 Leases”), all as described on Schedule 9.7 (PHD No. 3 Leases and the Leased Real Property are collectively referred to herein as the “Real Property”). With respect to the Real Property:

(a) To the Knowledge of PHD No. 3, during the past five (5) years, PHD No. 3 has received no written notice from a third party asserting any liens, encumbrances or other restrictions on the Leased Real Property except those more particularly described on Schedule 9.7 hereto;

(b) PHD No. 3 has not received during the past five (5) years notice of a violation of any applicable ordinance or other law, order, regulation, or requirement and has not received notice of condemnation, lien, assessment, or the like relating to any part of the Leased Real Property or the operation thereof;

(c) To the Knowledge of PHD No. 3, during the past five (5) years, PHD No. 3 has received no written notice that the Real Property and its operation are out of compliance with any applicable zoning ordinances.

(d) Schedule 9.7(d) attached hereto is a “rent roll” which sets forth for those leases relating to operation of the CVH Services where PHD No. 3 is landlord: (i) the names of then current tenants; (ii) the rental payments for the then current month under each lease; (iii) a list of all then delinquent rental payments; and (iv) a list of all tenant deposits and a description of any application thereof;
9.8 Taxes. PHD No. 3 has filed all federal, state and local tax returns and reports required to be filed by it and has paid or made provision for the payment of all taxes and assessments (including without limitation income, excise, unemployment, social security, occupation, franchise, property, sales and use taxes, services taxes, import duties or charges, and all penalties and interest with respect thereto) that are due and payable, whether or not in connection with such returns. PHD No. 3 has not signed any extension agreement with any taxing authority.

9.9 Litigation. Except as set forth on Schedule 9.9, to the Knowledge of PHD No. 3, (i) there is no claim, litigation, investigation or proceeding ("Litigation") pending or threatened at law or in equity or before any court, legislative or administrative tribunal or governmental agency relating to or affecting PHD No. 3 or the operation of the CVH Services; (ii) there is no Litigation pending or threatened, which questions the validity of this Affiliation Agreement or which, if adversely determined or publicly disclosed, could reasonably be expected to (a) adversely affect the ability of PHD No. 3 to consummate the Lease, (b) result in a material adverse effect on the CVH Services, or (c) impair the operation of the CVH Services after the Closing in substantially the same manner as currently conducted; and (iii) PHD No. 3 is not subject to any judgment, order, decree or other governmental restriction applicable to PHD No. 3 or its assets, which would be material to PHD No. 3 or the CVH Services.

9.10 Licenses. To the Knowledge of PHD No. 3, PHD No. 3 has all required material licenses and permits needed for the ownership and operation of the CVH Services, all of which are in full force and effect. An accurate and complete list and summary description of all licenses, permits, registrations, and accreditations owned or held by PHD No. 3 relating to the operations of the CVH Services are listed on Schedule 9.10. To the Knowledge of PHD No. 3, PHD No. 3 has received no written notice that it is currently subject to any fine or penalty or the suspension, withdrawal, cancellation, termination or revocation of any license, permit, certificate, authorization or agreement, or that it is presently not in substantial compliance with all the terms, conditions and provisions of such licenses, permits, certificates, authorizations and agreements.

9.11 Certificates of Need. Except as set forth on Schedule 9.11 hereto, no application for any Certificate of Need or determination of non-reviewability or other declaratory ruling has been made by PHD No. 3 pursuant to Chapter 70.38 RCW which is currently pending or open before such agency. Except as set forth on Schedule 9.11 hereto, PHD No. 3 has not prepared, filed, supported or presented opposition to any such applications with the Washington Department of Health or other applicable agency filed by a hospital or physician group within the past three (3) years.

9.12 Medicare Participation/Accreditation. PHD No. 3 is certified for participation in the Medicare, Medicaid and CHAMPUS/TRICARE programs, has a current and valid provider contract with such programs. To the Knowledge of PHD No. 3, PHD No. 3 has not
received notice from any Government Entity or third party payor, including the Medicare, Medicaid and CHAMPUS/TRICARE programs and private insurance companies, nor has it made an internal determination, that it is materially out of compliance with any applicable conditions of participation of such third party payor. To the Knowledge of PHD No. 3, PHD No. 3 has not received notice from any Government Entity, nor has it made an internal determination that its billing practices with respect to any third party payors, including the Medicare, Medicaid and CHAMPUS/TRICARE programs and private insurance companies, are materially out of compliance with any applicable laws, regulations and policies of such third party payors and the Medicare, Medicaid and CHAMPUS/TRICARE programs, and neither PHD No. 3 nor the CVH Services has determined that it has billed or received any payment or reimbursement in excess of amounts allowed by law. To the Knowledge of PHD No. 3, neither PHD No. 3 nor any of its officers, directors, or managing employees are excluded from participation in the Medicare, Medicaid or CHAMPUS/TRICARE programs, nor is any such exclusion threatened. Except as set forth on Schedule 9.12, PHD No. 3 has not received any notice from any of the Medicare, Medicaid or CHAMPUS/TRICARE programs, or any other third party payor programs of any pending or threatened investigations. To the Knowledge of PHD No. 3, there are no such investigations pending or threatened outside of the ordinary course of business (e.g., requests for medical records or routine follow-up to reporting obligations).

9.13 Regulatory Compliance. As used herein, “Government Entity” means any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local. To the Knowledge of PHD No. 3, PHD No. 3 has timely filed all reports, data, and other information required to be filed with the Government Entities. To the Knowledge of PHD No. 3, except as set forth on Schedule 9.13, PHD No. 3 has not received any notice from any Government Entity within the past three (3) years of any pending or threatened investigations regarding a violation of federal or state laws regulating health care fraud, including but not limited to the federal Anti-Kickback Law, 42 U.S.C. §1320a-7b, the Stark I and II Laws, 42 U.S.C. §1395nn, as amended, and the False Claims Act, 31 U.S.C. §3729, et seq. nor has PHD No. 3 internally identified a material violation of the aforementioned laws. To the Knowledge of PHD No. 3, PHD No. 3 is not subject to any obligation under the Hill-Burton Act as amended by Title XVI of the Public Health Service Act. To the Knowledge of PHD No. 3, no notice from any Government Entity has been received within the past three (3) years of any violation of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) or the Health Information Technology for Economic and Clinical Health Act OF 2009 (“HITECH”), including the electronic data interchange regulations (provided, the parties acknowledge that such regulations are still pending), the health care privacy regulations and breach notification regulations, as of the applicable effective dates for such requirements. Except as set forth on Schedule 9.13, to the Knowledge of PHD No. 3, PHD No. 3 has not internally identified any breach of unsecured protected health information maintained by it or any of its business associates and the regulations promulgated thereunder.

9.14 Contracts.

(a) Schedule 9.14(a) is a complete and accurate list of all commitments, contracts, leases, and agreements, written or oral, which materially affect PHD No. 3, CVH Services or the operation thereof, to which PHD No. 3 is a party or by which PHD No. 3, or
CVH Services is bound, including, without limitation, (a) physician agreements, (b) agreements with health maintenance organizations, preferred provider organizations, or other alternative delivery systems, (c) joint venture or partnership agreements, (d) employment contracts or any other contracts, agreements, or commitments to or with individual employees or agents, (e) contracts or commitments materially affecting ownership of, title to, use of or any interest in real estate including any tenant leases, (f) equipment leases, (g) equipment maintenance agreements, (h) agreements with other hospital districts or municipalities, (i) collective bargaining agreements or other contracts or commitments to or with any labor unions, labor organizations, or other employee representatives or groups of employees, (j) loan agreements, bonds, mortgages, liens, or other security agreements, (k) patent licensing agreements or any other agreements, licenses, or commitments with respect to patents, patent applications, trademarks, trade names, service marks, technical assistance, copyrights, or other like terms, (l) agreements, licenses, or commitments relating to data processing programs, software, source codes, web-based applications or, use of internet based computer technology (m) research agreements, (n) ground leases, and leases which are being retained by PHD No. 3 and are not part of the CVH Services, and (o) contracts or commitments, whether in the ordinary course of business or not, which involve future payments, performance of services or delivery of goods or material, to or by PHD No. 3 of an aggregate amount or value in excess of Twenty-Five Thousand Dollars ($25,000) on an annual basis. PHD No. 3 has received no threatened cancellations of any Contract or notices of outstanding disputes under any Contract.

(b) To the Knowledge of PHD No. 3, except as set forth on Schedule 9.14(b), each Contract is in full force and effect and is the valid and binding obligation of PHD No. 3 and each other party thereto. PHD No. 3 has received no notice of actual or threatened cancellations of any Contract and to the Knowledge of PHD No. 3, neither PHD No. 3 nor any other party thereto, has breached any provision of, and there does not exist any default by PHD No. 3 or any other party thereto, under any Contract. Except as set forth on Schedule 9.14(b), to the Knowledge of PHD No. 3, no event has occurred (including the execution and delivery of this Affiliation Agreement and the consummation of the Lease) which is, or with the giving of notice or the passage of time or both would become, a breach or default under the terms of any Contract.

9.15 Employees; Employee Relations.

(a) PHD No. 3 has provided to PHD No. 1 the personnel records of all of PHD No. 3’s employees who are employed in the CVH Services (“CVH Facilities Employees”), and the salary or wage records for such employees including records reflecting sick or extended illness, paid time off, and vacation and holiday benefits that are accrued or credited but unused or unpaid. PHD No. 3 has provided to PHD No. 1 copies of each employment, consulting, independent contractor, bonus, or severance agreement to which PHD No. 3 is a party for CVH Facilities Employees.

(b) To the Knowledge of PHD No. 3, except as set forth on Schedule 9.15, and with regard to CVH Facilities Employees, there has not been within the last three (3) years, there is not presently pending or threatened, any strike, slowdown, picketing, work stoppage, or any proceeding against or affecting PHD No. 3 relating to an alleged violation of any legal requirements pertaining to labor relations, including any charge, complaint, or unfair labor
practices claim filed by an employee, union, or other person with the National Labor Relations Board or any comparable governmental body, organizational activity, or other labor dispute against or affecting PHD No. 3 or its premises. Schedule 9.15 sets forth all collective bargaining agreements, and any amendments thereto, which exists or is currently being negotiated by PHD No. 3. Except as disclosed on Schedule 9.15, no application for certification of any other collective bargaining agent is pending, and no other demand has been made for recognition by a labor organization.

(c) To the Knowledge of PHD No. 3, with regard to CVH Facilities Employees, PHD No. 3 has not received written notice within the past three (3) years that it is materially out of compliance with any legal requirements relating to employment; employment practices; terms and conditions of employment; equal employment opportunity; nondiscrimination; immigration; wages; hours; benefits; payment of employment, social security, and similar taxes; occupational safety and health; and/or plant closing. To the Knowledge of PHD No. 3, PHD No. 3 has not been adjudged liable or accepted liability through settlement for the payment of any compensation, damages, taxes, fines, penalties, interest, or other amounts, however designated, for failure to comply with any of the foregoing legal requirements which liability remains unpaid or unsatisfied. To the Knowledge of PHD No. 3 except as previously disclosed to PHD No. 1, there are no pending or threatened claims before the Equal Employment Opportunity Commission (or comparable state agency), complaints before the Occupational Safety and Health Administration (or comparable state agency), wage and hour claims, unemployment compensation claims, or workers' compensation claims against PHD No. 3.

9.16 Employee Benefits.

(a) Schedule 9.16 sets forth each “employee benefit plan” as defined under Section 3(3) of ERISA, other than a “multiemployer plan,” as defined in Section 3(37) of ERISA, and any other retirement, deferred compensation, or other employee benefit plan (each, an “Employee Benefit Plan”) maintained by, or with respect to which PHD No. 3 or any subsidiary may have any liability. To the Knowledge of PHD No. 3, no notice has been received within the past three (3) years of material non-compliance with the applicable provisions of the Internal Revenue Code of 1986 as amended (“IRC”) and all other applicable law with respect to each Employee Benefit Plan.

(b) With respect to each Employee Benefit Plan which is intended to qualify under IRC Section 401(a), to the extent such determination is required, the IRS has determined that each such Employee Benefit Plan so qualifies, and its related trust is exempt from taxation pursuant to Section 501(a) of the IRC, and PHD No. 3 has received favorable and unrevoked determination letters from the IRS to that effect.

(c) PHD No. 3 has not at any time maintained, adopted, or established, contributed to or been required to contribute to, otherwise participated in or been required to participate in, or had any liability with respect to, any employee benefit plan or other program or arrangement subject to Title IV of ERISA, including, without limitation, a multiemployer plan or a “defined benefit plan” (as defined in Section 3(35) of ERISA).
(d) To the Knowledge of PHD No. 3, PHD No. 3 has not received any notice within the past three (3) years of any material liability with respect to any Employee Benefit Plan under the IRC or any other applicable law, or that any material liability otherwise owing with respect to any Employee Benefit Plan has not been satisfied in full on a timely basis, and, to the Knowledge of PHD No. 3, PHD No. 3 has not determined that it has any unpaid or unfunded liability with respect to any Employee Benefit Plan.

(e) To the Knowledge of PHD No. 3, no Employee Benefit Plan provides benefits, including death, health or medical benefits, with respect to current or former employees of PHD No. 3 beyond their retirement or other termination of service with PHD No. 3, other than: (i) coverage mandated by applicable law; (ii) deferred compensation benefits accrued as liabilities on the books of PHD No. 3; (iii) disability benefits; (iv) benefits paid from or pursuant to a trust or an insurance or annuity contract in connection with an Employee Benefit Plan which is a retirement or deferred compensation plan; or (v) benefits the full cost of which is borne by the current or former employee or his or her beneficiary.

(f) Except as disclosed in Schedule 9.16, to the Knowledge of PHD No. 3, the consummation of the contemplated transactions will not: (i) entitle any current or former employee or officer of PHD No. 3 to severance pay; (ii) accelerate the time of payment or vesting or increase the amount of compensation due any such employee or officer; or (iii) result in any payment or other compensation which would constitute an “excess parachute payment” under Section 280G of the IRC.

(g) To the Knowledge of PHD No. 3, full payment on a timely basis has been made of premiums, contributions, benefits and other amounts obligated to be paid under any Employee Benefit Plan attributable to any period on or prior to the date hereof or such payment amounts will be accrued on the financial statements delivered at Closing.

(h) To the Knowledge of PHD No. 3, except for routine claims for benefits, there are no pending or threatened legal action, proceeding, suit, grievance, arbitration, or other manner of litigation, or claim against any of the Employee Benefit Plans, or any officer, director or employee thereof or any fiduciary of any plan.

(i) PHD No. 3 made available to PHD No. 1 true and complete copies of: (i) each Employee Benefit Plan and any agreements pertaining thereto; and (ii) any agreements with any fiduciary or service provider with respect to any Employee Benefit Plan.

(j) Except as set forth on Schedule 9.16, PHD No. 3 does not currently have in effect any contract with any employee regarding the terms of employment of such employee.

9.17 Consents and Approvals. Schedule 9.17 sets forth a complete and accurate list of all consents, approvals and authorizations of any governmental authority or other third party necessary for the authorization, execution and performance of this Affiliation Agreement by PHD No. 3 and for the continued operation and governmental reimbursement of the CVH Facilities following the consummation of the transactions contemplated hereby.

9.18 Certain Payments. To the Knowledge of PHD No. 3, neither PHD No. 3, nor anyone acting on PHD No. 3’s behalf, has made or received any “sensitive” payments, and no
such person has maintained any unrecorded cash or non-cash assets out of which any “sensitive” payments might be made. “Sensitive” payments mean, (a) commercial bribes or kick-backs, (b) amounts paid with an understanding that rebates or refunds will be made in contravention of the laws of any applicable jurisdiction, either directly or through a third party, (c) payments or commitments (whether made in the form of commissions, payments of fees for goods or services received, or otherwise) made with the understanding or under circumstances which would indicate that all or any part thereof is to be paid by the recipient to government officials or employees as a commercial bribe or inducement, influence payment or kickback, and (d) payments made in violation of Medicare or Medicaid laws or the laws of the State of Washington.

9.19 Medical Staff Matters. Attached as Schedule 9.19 is a true and complete copy of the medical staff bylaws for the CVH Facilities currently in effect. Except as set forth in Schedule 9.19, there are no pending, or to PHD No. 3’s Knowledge, threatened investigations, corrective actions or disputes with applicants, medical staff members, or allied health professionals, which (1) assert or are based upon a violation of the CVH Facilities’ medical staff bylaws, including any “fair hearing” procedures conducted thereunder, or (2) are in the process of being adjudicated or resolved pursuant to the CVH Facilities’ medical staff bylaws, and (3) do not relate to minor infraction of rules relating to completion of medical records or other like matters. All appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired.

9.20 Environmental Matters.

(a) To the Knowledge of PHD No. 3, except as set forth on Schedule 9.20, PHD No. 3 has not received, nor has person for whose conduct it is responsible received, any actual or threatened order, notice, or other communication from (i) any Government Entity or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental and Occupational Safety Liabilities with respect to any of the CVH Facilities or any other properties or assets (whether real, personal, or mixed) in which PHD No. 3 has had an interest or, with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by PHD No. 3 or any other person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) To the Knowledge of PHD No. 3, neither it, nor any person for whose conduct it is responsible, has received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Materials, or any alleged (1) actual or potential violation or failure to comply with any Environmental Law, or of (2) any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental and Occupational Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which PHD No. 3 has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by PHD No. 3 or any other person for whose conduct it is responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.
(c) Neither PHD No. 3 nor any other person for whose conduct it is or may be held responsible has any Environmental Occupational Safety Liabilities with respect to any Facility or, to the Knowledge of PHD No. 3, with respect to any other property or asset (whether real, personal or mixed) in which PHD No. 3 (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.

(d) To the Knowledge of PHD No. 3, PHD No. 3 has not discovered or been notified that there are any Hazardous Materials present on or in the environment at any Facility or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon, except in the ordinary course of business and in compliance with applicable Environmental Laws. To the Knowledge of PHD No. 3, neither PHD No. 3 nor any person for whose conduct it is responsible, has permitted or conducted, or is aware of, any hazardous activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which PHD No. 3 has or had an interest except in full compliance with all applicable Environmental Laws.

(e) To the Knowledge of PHD No. 3, there has been no Release or threat of Release, of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which PHD No. 3 has or had an interest, or to the Knowledge of PHD No. 3 any geologically or hydrologically adjoining property, whether by PHD No. 3 or any other person.

(f) To the Knowledge of PHD No. 3, it has delivered to PHD No. 1 true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by PHD No. 3 pertaining to Hazardous Materials or hazardous activities in, on, or under the Facilities, or concerning compliance, by PHD No. 3 or any other person for whose conduct it is responsible, with Environmental Laws.

9.21 Joint Ventures; Affiliates. Schedule 9.21 sets forth a complete and accurate list of all organizations, whether organized as a corporation, partnership, limited liability company, Government Entity, or otherwise, in which PHD No. 3 has an ownership, participation or membership interest reflected on the financial statements of PHD No. 3 or which organization is pertinent to the operation of the CVH Services, and with regard to each such organization: (i) the name of the organization and form of legal entity; (ii) the ownership or membership interest or share of PHD No. 3 in such organization; and (iii) the names of the current governing board of each such entity and PHD No. 3’s representatives or participants in the governance of any such organization. PHD No. 3 has provided, or will prior to Closing provide PHD No. 1 with complete and accurate copies of, as applicable, the articles of incorporation, charter, bylaws, partnership or operating agreements, membership agreements, and amendments to date, pertaining to such organizations, and copies of financial statements and reports provided to PHD No. 3 by such organizations in the last three (3) years.
9.22 Insurance. Schedule 9.22 sets forth an accurate and complete list of the insurance policies covering the ownership and operations of PHD No. 3 and the CVH Services, which Schedule reflects the policy numbers, terms, identity of insurers, amounts, and coverage. All of such policies are in full force and effect with no premium arrearage. PHD No. 3 has not received any notice or other communication from any such insurance company canceling or materially amending, or threatening to cancel or materially amend, any of such insurance policies.

9.23 Third Party Payor Cost Reports. PHD No. 3 has duly filed all required cost reports for all the fiscal years through and including the fiscal year specified on Schedule 9.23. Schedule 9.23 indicates which of such cost reports have not been audited and finally settled and a brief description of any and all notices of program reimbursement, proposed or pending audit adjustments, disallowances, appeals of disallowances, and any and all other unresolved claims or disputes in respect of such cost reports.

9.24 Controlled Substances. To the Knowledge of PHD No. 3, PHD No. 3 has received no notice from third parties, nor has it determined internally, that its respective officers, employees, or other persons who provide professional services under agreements with PHD No. 3 have in connection with their activities directly or indirectly related to PHD No. 3 and in their professional capacities only, as applicable, engaged in any activity which is prohibited under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or the regulations promulgated pursuant to such statute or any related state or local statutes or regulations concerning the dispensing and sale of controlled substances.

9.25 Condition of Assets. The Leased Assets and Contracts to be assigned to PHD No. 1 pursuant to this Affiliation Agreement along with the Lease constitute all assets which are held or used by PHD No. 3 or any of its affiliates and necessary for the conduct of the CVH Services in the manner conducted as of the date of this Affiliation Agreement. All assets are transferred or leased “as is.”

9.26 Leased Intangible Property. To the Knowledge of PHD No. 3, no proceedings have been instituted or are pending or threatened which challenge the validity of the ownership by PHD No. 3 of the Leased Intangible Property. PHD No. 3 has not licensed anyone to use such Leased Intangible Property and PHD No. 3 has no knowledge of the use or the infringement of any such Leased Intangible Property by any other person. To its Knowledge, PHD No. 3 owns (or possesses adequate and enforceable licenses or other rights to use) all Leased Intangible Property, and all computer software programs and similar systems used in the conduct of its business.

9.27 Compliance Program. PHD No. 3 has provided to PHD No. 1 a copy of its current compliance program materials, including without limitation all program descriptions, compliance officer and committee descriptions, ethics and risk area policy materials, training and education materials, auditing and monitoring protocols, reporting mechanisms, and disciplinary policies. PHD No. 3: (i) is not a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services; (ii) has no reporting obligations pursuant to any settlement agreement entered into with any governmental entity; (iii) to PHD No. 3’s knowledge, has not been the subject of any government payer program.
investigation conducted by any federal or state enforcement agency; (iv) to PHD No. 3’s Knowledge, has not been a defendant in any qui tam/False Claims Act litigation; (v) has not been served with or received any search warrant, subpoena, civil investigative demand, or contact letter by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the health care businesses conducted by PHD No. 3); and (vi) within the past three (3) years has not received any material complaints from employees, independent contractors, vendors, physicians, or any other person that would indicate that PHD No. 3 has violated any Medicare law or regulation. Schedule 9.27 contains a description of each material audit and investigation conducted by PHD No. 3 pursuant to its compliance programs since 2012, and any material audit and investigation conducted by PHD No. 3 pursuant to its compliance programs since 2012 shall be set forth in Schedule 9.27. For purposes of this Affiliation Agreement, the term “compliance program” refers to provider programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

9.28 Full Disclosure. To the Knowledge of PHD No. 3, neither this Affiliation Agreement nor any Schedule, Exhibit, list, certificate, disclosure document provided in lieu of a Schedule, or other instrument or document delivered to PHD No. 1 pursuant to this Affiliation Agreement by or on behalf of PHD No. 3 contains any untrue statement of a material fact.

10. REPRESENTATIONS AND WARRANTIES OF PHD NO. 1

PHD No. 1 represents and warrants as follows as of the date of this Affiliation Agreement and, subject to such updated Schedules as shall be provided pursuant to this Affiliation Agreement, as of the Closing and which shall survive Closing:

10.1 Organization. PHD No. 1 is a public hospital district and a political subdivision of the State of Washington and has full power and authority to conduct its business as now conducted.

10.2 Authorization; Binding Agreement. PHD No. 1 has full power and authority to enter into this Affiliation Agreement and perform its obligations hereunder and carry out the transactions contemplated hereby. The execution, delivery and performance by PHD No. 1 of this Affiliation Agreement and the consummation of the transactions contemplated hereby, including entering into the Lease, have been duly authorized and approved by all necessary action of PHD No. 1, and this Affiliation Agreement, when executed, will constitute a valid and binding obligation of PHD No. 1, enforceable against PHD No. 1 in accordance with its terms.

10.3 No Violation. Except as disclosed in writing to PHD No. 3 in attached Schedule 10.3, the execution and delivery of this Affiliation Agreement by PHD No. 1 does not, and the consummation of the transactions contemplated hereby in accordance with the terms of this Affiliation Agreement will not (a) violate any provision of, or result in the creation of any lien or security interest under, any contract or agreement to which PHD No. 1 is a party or by which any of PHD No. 1’s assets or properties are bound; (b) violate any provision of Washington law applicable to PHD No. 1; (c) violate any order, arbitration award, judgment, writ, injunction,
decree, statute, rule or regulation applicable to PHD No. 1; or (d) violate any other contractual or legal obligation or restriction to which PHD No. 1 is subject or is a party.

10.4 Financial Statements. Attached as Schedule 10.4 are true and complete copies of (a) unaudited consolidated balance sheets of PHD No. 1 as of _________________ (“Interim PHD No. 1 Balance Sheet”) and related unaudited statements of revenues, expenses, and changes in net assets; and statements of cash flows for the period then ended; and (b) audited balance sheets, and related statements of revenues, expenses, and changes in net assets, and statements of cash flow of PHD No. 1 as of December 31, 2015, 2014, and 2013 (such financial statements and notes contained therein, collectively, the “Financial Statements”). The unaudited Financial Statements conform to GAAP, except as set forth in Schedule 10.4. Such audited Financial Statements have been prepared in accordance with GAAP, applied on a consistent basis throughout the period indicated. To the Knowledge of PHD No. 1, there has not been any change since the Interim Balance Sheet Date, which has had or is likely to have a material adverse effect on the financial position, results or operation or business prospects of PHD No. 1.

10.5 Absence of Certain Changes. Except as set forth on Schedule 10.5, since the PHD No. 1 Balance Sheet date, PHD No. 1 has not:

(a) suffered any material casualty loss (whether or not insured);

(b) made any change in its business or operations or in the manner of conducting the services it provides at Skagit Valley Hospital or Skagit Regional Clinics (the “SRH Services”), other than changes in the ordinary course of such business;

(c) incurred any obligations or liabilities (whether absolute, accrued, contingent or otherwise and whether due or to become due), except items incurred in the ordinary course of business and consistent with past practice; or experienced any change in any assumptions or methods of calculating any bad debt, contingency or other reserve for operation of the SRH Services;

(d) written off as uncollectible any notes or accounts receivable or any portion thereof, except for write-offs made in the ordinary course of business consistent with past practice;

(e) cancelled any debts or claims, or waived any rights, of substantial value in connection with the operation of the SRH Services, except as set forth in Schedule 10.5(e);

(f) sold, transferred or conveyed any material assets, except in the ordinary course of business consistent with past practice;

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

(h) agreed, whether in writing or otherwise, to take any action described in this Section 10.5.

10.6 Taxes. PHD No. 1 has filed all federal, state and local tax returns and reports required to be filed by it and has paid or made provision for the payment of all taxes and
assessments (including without limitation income, excise, unemployment, social security, occupation, franchise, property, sales and use taxes, services taxes, import duties or charges, and all penalties and interest with respect thereto) that are due and payable, whether or not in connection with such returns. PHD No. 1 has not signed any extension agreement with any taxing authority.

**10.7 Litigation.** Except as set forth on Schedule 10.7, to the Knowledge of PHD No. 1, (i) there is no Litigation pending or threatened against PHD No. 1, at law or in equity or before any court, legislative or administrative tribunal or governmental agency relating to or affecting PHD No. 1 or the operation of its medical services; (ii) there is no Litigation pending or threatened which questions the validity of this Affiliation Agreement or which, if adversely determined or publicly disclosed, would have a material adverse effect on the business or operations of PHD No. 1, or could reasonably be expected to (a) adversely affect the ability of PHD No. 1 to consummate the Lease, (b) result in a material adverse effect on PHD No. 1, or (c) impair the operation of PHD No. 1’s medical services after the Closing in substantially the same manner as currently conducted; and (iii) PHD No. 1 is not subject to any judgment, order, decree or other governmental restriction applicable to PHD No. 1 or its assets, which would be material to PHD No. 1.

**10.8 Licenses.** To the Knowledge of PHD No. 1, PHD No. 1 has all required material licenses and permits needed for the ownership and operation of its medical services, all of which are in full force and effect. An accurate and complete list and summary description of all licenses, permits, registrations, and accreditations owned or held by PHD No. 1 relating to the operations of PHD No. 1’s medical services are listed on Schedule 10.8. To the Knowledge of PHD No. 1, PHD No. 1 has received no written notice that it is currently subject to any fine or penalty or the suspension, withdrawal, cancellation, termination or revocation of any license, permit, certificate, authorization or agreement, or that it is presently not in substantial compliance with all the terms, conditions and provisions of such licenses, permits, certificates, authorizations and agreements.

**10.9 Certificates of Need.** Except as set forth on Schedule 10.9 hereto, no application for any Certificate of Need or determination of non-reviewability or other declaratory ruling has been made by PHD No. 1 pursuant to Chapter 70.38 RCW which is currently pending or open before such agency. Except as set forth on Schedule 10.9 hereto, PHD No. 1 has not prepared, filed, supported or presented opposition to any such applications with the Washington Department of Health or other applicable agency filed by a hospital or physician group within the past three (3) years.

**10.10 Medicare Participation/Accreditation.** PHD No. 1 is certified for participation in the Medicare, Medicaid and CHAMPUS/TRICARE programs, and has a current and valid provider contract with such programs. To the Knowledge of PHD No. 1, PHD No. 1 has not received notice from any Government Entity or third party payor, including the Medicare, Medicaid and CHAMPUS/TRICARE programs and private insurance companies, nor has it made an internal determination, that it is materially out of compliance with any applicable conditions of participation of such third party payor. To the Knowledge of PHD No. 1, PHD No. 1 has not received notice from any Government Entity, nor has it made an internal determination that any of its billing practices with respect to any third party payors, including the Medicare,
Medicaid and CHAMPUS/TRICARE programs and private insurance companies, are materially out of compliance with any applicable laws, regulations and policies of such third party payors and the Medicare, Medicaid and CHAMPUS/TRICARE programs, and neither PHD No. 1 nor the SRH Services has determined that it has billed or received any payment or reimbursement in excess of amounts allowed by law. To the Knowledge of PHD No. 1, neither PHD No. 1 nor any of its officers, directors, or managing employees are excluded from participation in the Medicare, Medicaid or CHAMPUS/TRICARE programs, nor is any such exclusion threatened. Except as set forth on Schedule 10.10, PHD No. 1 has not received any notice from any of the Medicare, Medicaid or CHAMPUS/TRICARE programs, or any other third party payor programs of any pending or threatened investigations. To the Knowledge of PHD No. 1, there are no such investigations pending or threatened outside of the ordinary course of business (e.g., requests for medical records or routine follow-up to reporting obligations).

10.11 Regulatory Compliance. As used herein, “Government Entity” means any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local. To the Knowledge of PHD No. 1, PHD No. 1 has timely filed all reports, data, and other information required to be filed with the Government Entities. To the Knowledge of PHD No. 1, except as set forth on Schedule 10.11, PHD No. 1 has not received any notice from any Government Entity within the past three (3) years of any pending or threatened investigations regarding a violation of federal or state laws regulating health care fraud, including but not limited to the federal Anti-Kickback Law, 42 U.S.C. §1320a-7b, the Stark I and II Laws, 42 U.S.C., §1395nn, as amended, and the False Claims Act, 31 U.S.C. §3729, et seq., nor has PHD No. 1 internally identified a material violation of the aforementioned laws. To the Knowledge of PHD No. 1, PHD No. 1 is not subject to any obligation under the Hill-Burton Act as amended by Title XVI of the Public Health Service Act. To the Knowledge of PHD No. 1, no notice from any Government Entity has been received within the past three (3) years of any violation of or HIPAA or HITECH, including the electronic data interchange regulations (provided, the parties acknowledge that such regulations are still pending), the health care privacy regulations and breach notification regulations, as of the applicable effective dates for such requirements. Except as set forth on Schedule 10.11, to the Knowledge of PHD No. 1, PHD No. 1 has not internally identified any breach of unsecured protected health information maintained by it or any of its business associates and the regulations promulgated thereunder.

10.12 Employees; Employee Relations.

(a) To the Knowledge of PHD No. 1, except as set forth on Schedule 10.12, and with regard to all of PHD No.1’s employees who are employed in the SRH Services (“SRH Facilities Employees”), there has not been within the last three (3) years, there is not presently pending or threatened, any strike, slowdown, picketing, work stoppage, or any proceeding against or affecting PHD No. 1 relating to an alleged violation of any legal requirements pertaining to labor relations, including any charge, complaint, or unfair labor practices claim filed by an employee, union, or other person with the National Labor Relations Board or any comparable governmental body, organizational activity, or other labor dispute against or affecting PHD No. 1 or its premises. Schedule 10.12 sets forth all collective bargaining agreements, and any amendments thereto, which exists or is currently being negotiated by PHD No. 1. Except as disclosed on
Schedule 10.12, no application for certification of any other collective bargaining agent is pending, and no other demand has been made for recognition by a labor organization.

(c) To the Knowledge of PHD No. 1, with regard to SRH Facilities Employees, PHD No. 1 has not received written notice within the past three (3) years that it is materially out of compliance with any legal requirements relating to employment; employment practices; terms and conditions of employment; equal employment opportunity; nondiscrimination; immigration; wages; hours; benefits; payment of employment, social security, and similar taxes; occupational safety and health; and/or plant closing. To the Knowledge of PHD No. 1, PHD No. 1 has not been adjudged liable or accepted liability through settlement for the payment of any compensation, damages, taxes, fines, penalties, interest, or other amounts, however designated, for failure to comply with any of the foregoing legal requirements which liability remains unpaid or unsatisfied. To the Knowledge of PHD No. 1 except as previously disclosed to PHD No. 1, there are no pending or threatened claims before the Equal Employment Opportunity Commission (or comparable state agency), complaints before the Occupational Safety and Health Administration (or comparable state agency), wage and hour claims, unemployment compensation claims, or workers’ compensation claims against PHD No. 1.

10.13 Employee Benefits.

(a) Schedule 10.13 sets forth each “employee benefit plan” as defined under Section 3(3) of ERISA, other than a “multiemployer plan,” as defined in Section 3(37) of ERISA, and any other retirement, deferred compensation, or other employee benefit plan (each, an “Employee Benefit Plan”) maintained by, or with respect to which PHD No. 1 or any subsidiary may have any liability. To the Knowledge of PHD No. 1, no notice has been received within the past three (3) years of material non-compliance with the applicable provisions of the Internal Revenue Code of 1986 as amended (“IRC”) and all other applicable law with respect to each Employee Benefit Plan.

(b) With respect to each Employee Benefit Plan which is intended to qualify under IRC Section 401(a), to the extent such determination is required, the IRS has determined that each such Employee Benefit Plan so qualifies, and its related trust is exempt from taxation pursuant to Section 501(a) of the IRC, and PHD No. 1 has received favorable and unrevoked determination letters from the IRS to that effect.

(c) PHD No. 1 has not at any time maintained, adopted, or established, contributed to or been required to contribute to, otherwise participated in or been required to participate in, or had any liability with respect to, any employee benefit plan or other program or arrangement subject to Title IV of ERISA, including, without limitation, a multiemployer plan or a “defined benefit plan” (as defined in Section 3(35) of ERISA).

(d) To the Knowledge of PHD No. 1, PHD No. 1 has not received any notice within the past three (3) years of any material liability with respect to any Employee Benefit Plan under the IRC or any other applicable law, or that any material liability otherwise owing with respect to any Employee Benefit Plan has not been satisfied in full on a timely basis, and, to the Knowledge of PHD No. 1, PHD No. 1 has not determined that it has any unpaid or unfunded liability with respect to any Employee Benefit Plan.
(e) To the Knowledge of PHD No. 1, no Employee Benefit Plan provides benefits, including death, health or medical benefits, with respect to current or former employees of PHD No. 1 beyond their retirement or other termination of service with PHD No. 1, other than: (i) coverage mandated by applicable law; (ii) deferred compensation benefits accrued as liabilities on the books of PHD No. 1; (iii) disability benefits; (iv) benefits paid from or pursuant to a trust or an insurance or annuity contract in connection with an Employee Benefit Plan which is a retirement or deferred compensation plan; or (v) benefits the full cost of which is borne by the current or former employee or his or her beneficiary.

(f) Except as disclosed in Schedule 10.13, to the Knowledge of PHD No. 1, the consummation of the contemplated transactions will not: (i) entitle any current or former employee or officer of PHD No. 1 to severance pay; (ii) accelerate the time of payment or vesting or increase the amount of compensation due any such employee or officer; or (iii) result in any payment or other compensation which would constitute an “excess parachute payment” under Section 280G of the IRC.

(g) To the Knowledge of PHD No. 1, full payment on a timely basis has been made of premiums, contributions, benefits and other amounts obligated to be paid under any Employee Benefit Plan attributable to any period on or prior to the date hereof or such payment amounts will be accrued on the financial statements delivered at Closing.

(h) To the Knowledge of PHD No. 1, except for routine claims for benefits, there are no pending or threatened legal action, proceeding, suit, grievance, arbitration, or other manner of litigation, or claim against any of the Employee Benefit Plans, or any officer, director or employee thereof or any fiduciary of any plan.

(i) PHD No. 1 made available to PHD No. 3 true and complete copies of: (i) each Employee Benefit Plan and any agreements pertaining thereto; and (ii) any agreements with any fiduciary or service provider with respect to any Employee Benefit Plan.

(j) Except as set forth on Schedule 10.13, PHD No. 1 does not currently have in effect any contract with any employee regarding the terms of employment of such employee.

10.14 Consents and Approvals. Schedule 10.14 sets forth a complete and accurate list of all consents, approvals and authorizations of any governmental authority or other third party necessary for the authorization, execution and performance of this Affiliation Agreement by PHD No. 1 and for the continued operation and governmental reimbursement of the CVH Facilities by PHD No. 1 following the consummation of the transactions contemplated hereby.

10.15 Certain Payments. To the Knowledge of PHD No. 1, neither PHD No. 1, nor anyone acting on PHD No. 1’s behalf, has made or received any “sensitive” payments, and no such person has maintained any unrecorded cash or non-cash assets out of which any “sensitive” payments might be made. “Sensitive” payments mean, (a) commercial bribes or kick-backs, (b) amounts paid with an understanding that rebates or refunds will be made in contravention of the laws of any applicable jurisdiction, either directly or through a third party, (c) payments or commitments (whether made in the form of commissions, payments of fees for goods or services received, or otherwise) made with the understanding or under circumstances which would
indicate that all or any part thereof is to be paid by the recipient to government officials or employees as a commercial bribe or inducement, influence payment or kickback, and (d) payments made in violation of Medicare or Medicaid laws or the laws of the State of Washington.

10.16 Medical Staff Matters. Except as set forth in Schedule 10.16, there are no pending investigations, corrective actions or disputes with applicants, medical staff members, or allied health professionals, which (1) assert or are based upon a violation of PHD No. 1’s medical staff bylaws, including any “fair hearing” procedures conducted thereunder, or (2) are in the process of being adjudicated or resolved pursuant to PHD No. 1’s medical staff bylaws, and (3) do not relate to minor infraction of rules relating to completion of medical records or other like matters. All appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired.

10.17 Environmental Matters.

(a) To the Knowledge of PHD No. 1, except as set forth on Schedule 10.17, PHD No. 1 has not received, nor has person for whose conduct it is responsible received, any actual or threatened order, notice, or other communication from (i) any Government Entity or private citizen acting in the public interest, or (ii) the current or prior owner or operator of any Facilities, of any actual or potential violation or failure to comply with any Environmental Law, or of any actual or threatened obligation to undertake or bear the cost of any Environmental and Occupational Safety Liabilities with respect to any of the properties or assets (whether real, personal, or mixed) in which PHD No. 1 has had an interest, or with respect to any property or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by PHD No. 1 or any other person for whose conduct it is or may be held responsible, or from which Hazardous Materials have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(b) To the Knowledge of PHD No. 1, neither it, nor any person for whose conduct it is responsible, has received, any citation, directive, inquiry, notice, Order, summons, warning or other communication that relates to Hazardous Materials, or any alleged (1) actual or potential violation or failure to comply with any Environmental Law, or of (2) any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental and Occupational Safety Liabilities with respect to any Facility or property or asset (whether real, personal or mixed) in which PHD No. 1 has or had an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by PHD No. 1 or any other person for whose conduct it is responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(c) Neither PHD No. 1 nor any other person for whose conduct it is or may be held responsible has any Environmental Occupational Safety Liabilities with respect to any Facility or, to the Knowledge of PHD No. 1, with respect to any other property or asset (whether real, personal or mixed) in which PHD No. 1 (or any predecessor) has or had an interest or at any property geologically or hydrologically adjoining any Facility or any such other property or asset.
(d) To the Knowledge of PHD No. 1, PHD No. 1 has not discovered or been notified that there are any Hazardous Materials present on or in the environment at any Facility or at any geologically or hydrologically adjoining property, including any Hazardous Materials contained in barrels, aboveground or underground storage tanks, landfills, land deposits, dumps, equipment (whether movable or fixed) or other containers, either temporary or permanent, and deposited or located in land, water, sumps, or any other part of the Facility or such adjoining property, or incorporated into any structure therein or thereon, except in the ordinary course of business and in compliance with applicable Environmental Laws. To the Knowledge of PHD No. 1, neither PHD No. 1 nor any person for whose conduct it is responsible, has permitted or conducted, or is aware of, any hazardous activity conducted with respect to any Facility or any other property or assets (whether real, personal or mixed) in which PHD No. 1 has or had an interest except in full compliance with all applicable Environmental Laws.

(e) To the Knowledge of PHD No. 1, there has been no Release or threat of Release, of any Hazardous Materials at or from any Facility or at any other location where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Facility, or from any other property or asset (whether real, personal or mixed) in which PHD No. 1 has or had an interest, or to the Knowledge of PHD No. 1 any geologically or hydrologically adjoining property, whether by PHD No. 1 or any other person.

(f) To the Knowledge of PHD No. 1, it has delivered to PHD No. 1 true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by PHD No. 1 pertaining to Hazardous Materials or hazardous activities in, on, or under the Facilities, or concerning compliance, by PHD No. 1 or any other person for whose conduct it is responsible, with Environmental Laws.

10.18 Insurance. Schedule 10.18 sets forth an accurate and complete list of the insurance policies covering the ownership and operations of PHD No. 1, which Schedule reflects the policy numbers, terms, identity of insurers, amounts, and coverage. All of such policies are in full force and effect with no premium arrearage. PHD No. 1 has not received any notice or other communication from any such insurance company canceling or materially amending, or threatening to cancel or materially amend, any of such insurance policies.

10.19 Third Party Payor Cost Reports. PHD No. 1 has duly filed all required cost reports for all the fiscal years through and including the fiscal year specified on Schedule 10.19. Schedule 10.19 indicates which of such cost reports have not been audited and finally settled and a brief description of any and all notices of program reimbursement, proposed or pending audit adjustments, disallowances, appeals of disallowances, and any and all other unresolved claims or disputes in respect of such cost reports.

10.20 Controlled Substances. To the Knowledge of PHD No. 1, PHD No. 1 has received no notice from third parties, nor has it determined internally, that its respective officers, employees, or other persons who provide professional services under agreements with PHD No. 1 have in connection with their activities directly or indirectly related to PHD No. 1 and in their professional capacities only, as applicable, engaged in any activity which is prohibited under the federal Controlled Substances Act, 21 U.S.C. § 801 et seq., or the regulations
promulgated pursuant to such statute or any related state or local statutes or regulations concerning the dispensing and sale of controlled substances.

10.21 Compliance Program. PHD No. 1 has provided to PHD No. 3 a copy of its current compliance program materials, including without limitation all program descriptions, compliance officer and committee descriptions, ethics and risk area policy materials, training and education materials, auditing and monitoring protocols, reporting mechanisms, and disciplinary policies. PHD No. 1: (i) is not a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services; (ii) has no reporting obligations pursuant to any settlement agreement entered into with any governmental entity; (iii) to PHD No. 1’s knowledge, has not been the subject of any government payer program investigation conducted by any federal or state enforcement agency; (iv) to PHD No. 1’s Knowledge, has not been a defendant in any qui tam/False Claims Act litigation; (v) has not been served with or received any search warrant, subpoena, civil investigative demand, or contact letter by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the health care businesses conducted by PHD No. 1); and (vi) within the past three (3) years has not received any material complaints from employees, independent contractors, vendors, physicians, or any other person that would indicate that PHD No. 1 has violated any Medicare law or regulation. Schedule 10.21 contains a description of each material audit and investigation conducted by PHD No. 1 pursuant to its compliance programs since 2012, and any material audit and investigation conducted by PHD No. 1 pursuant to its compliance programs since 2012 shall be set forth in Schedule 10.21. For purposes of this Affiliation Agreement, the term “compliance program” refers to provider programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

10.22 Full Disclosure. To the Knowledge of PHD No. 1, neither this Affiliation Agreement nor any Schedule, Exhibit, list, certificate, disclosure document provided in lieu of a Schedule, or other instrument or document delivered to PHD No. 3 pursuant to this Affiliation Agreement by or on behalf of PHD No. 1 contains any untrue statement of a material fact.

11. COVENANTS OF PHD NO. 3 PENDING CLOSING

Until the Closing, PHD No. 3 shall comply with the covenants as set forth in this Section.

11.1 Information. PHD No. 3 shall afford to the officers and authorized representatives and agents (which shall include accountants, attorneys, bankers, and other consultants) of PHD No. 1 full and complete access to and the right to inspect the facilities, properties, books, and records of PHD No. 3, and will furnish PHD No. 1 with such additional financial and operating data and other information as to the business and properties of PHD No. 3, including the CVH Services, as PHD No. 1 may from time to time reasonably request. PHD No. 1’s right to access and inspection shall be exercised in such a manner as not to interfere unreasonably with the operations of PHD No. 3 and the CVH Services. PHD No. 1 agrees that no inspections shall take place and no employees or other personnel of PHD No. 3 shall be contacted by PHD No. 1 without PHD No. 1 first providing reasonable notice to PHD No. 3 and coordinating such inspection or contact with PHD No. 3. PHD No. 3 will make reasonable
efforts to consult with PHD No. 1 regarding all potential and pending new contracts and renewals of existing contracts.

11.2 Operations.

(a) PHD No. 3 shall use commercially reasonable efforts to:

   (i) carry on the operation of the CVH Services in substantially the same manner as presently conducted and not make any material change in personnel, operations, finance, accounting policies, or real or personal property pertaining to the CVH Services;

   (ii) maintain the assets and properties of the CVH Services in good operating condition, ordinary wear and tear excepted;

   (iii) perform all of its obligations under agreements relating to or affecting PHD No. 3 or the CVH Services;

   (iv) keep in full force and effect present insurance policies or other comparable insurance pertaining to the assets of PHD No. 3 and the CVH Services; and

   (v) use its best efforts to maintain and preserve its business organizations intact, retain its present CVH Facilities Employees and maintain its relationships with physicians, suppliers, customers, and others having business relations with the CVH Services.

(b) Nothing herein shall prohibit PHD No. 3 from negotiating and modifying the Contracts in the ordinary course, including, without limitation, with respect to any labor and payor contracts, so long as said modifications do not create an express or implied agreement that the current Contract terms will be accepted by PHD No. 1; provided that PHD No. 3 has made such reasonable efforts to first consult with PHD No. 1 on such Contracts, to the extent legally permissible;

(c) Without limiting the foregoing, PHD No. 3 shall not, without the prior written consent of PHD No. 1, which consent shall not be unreasonably withheld, conditioned or delayed:

   (i) amend or terminate any of the Contracts, enter into any contract or commitment, or incur or agree to incur any liability, purchase capital assets or make unbudgeted expenses in connection with the CVH Services in excess of $100,000 per item; provided, however, that PHD No. 3 shall have the right to incur liability and make unbudgeted expenses, including without limitation unbudgeted expenses for repairs, replacements or maintenance in emergency situations, provided PHD No. 3 shall provide PHD No. 1 notice of such action within ten (10) days of said expenditure;

   (ii) enter into any contract or commitment with physicians or other referral sources, other than in the ordinary course of business;
(iii) increase compensation payable or to become payable or make any bonus payment to or otherwise enter into one or more bonus agreements with any CVH Facilities Employee, except in the ordinary course of business in accordance with existing personnel policies or unless reasonably necessary to retain an employee;

(iv) create, assume, or permit to exist any new debt, mortgage, pledge, or other lien or encumbrance upon any of the Leased Real Property or other assets of PHD No. 3 to be conveyed to PHD No. 1 at Closing, whether now owned or hereafter acquired;

(v) acquire (whether by purchase or lease) or sell, assign, lease, or otherwise transfer or dispose of any property, plant, or equipment for the CVH Services, except in the normal course of business with comparable replacement thereof if needed to properly operate the business;

(vi) take any action outside the ordinary course of business of PHD No. 3 or its operation of the CVH Services;

(vii) amend, after the completion of the Due Diligence Period, its medical staff bylaws; or

(viii) enter into any agreement which could have a material adverse effect on the financial results of operations of CVH Services.

11.3 Governmental Approvals. PHD No. 3 shall (i) use commercially reasonable efforts to obtain all governmental approvals (or exemptions therefrom) necessary or required to allow PHD No. 3 to perform its obligations under this Affiliation Agreement; and (ii) assist and cooperate with PHD No. 1 and its representatives and counsel in obtaining all governmental consents, approvals, and licenses which PHD No. 1 deems necessary or appropriate and in the preparation of any document or other material which may be required by any governmental agency as a predicate to or as a result of the transactions contemplated herein.

11.4 Contract Renegotiation. PHD No. 3 shall use commercially reasonable efforts not to take any actions or create express or implied agreements which would impair PHD No. 1’s ability to renegotiate contracts once it assumes operational control of the CVH Services.

11.5 Tail Insurance. Unless PHD No. 1, with the prior written approval of PHD No. 3, elects to purchase tail coverage, PHD No. 3 shall procure tail or prior acts insurance coverage for its prior operation of the CVH Services, including coverage for employed physicians’ activities and employee liabilities.

11.6 Permission to Operate. PHD No. 3 hereby grants unrestricted permission to PHD No. 1 to operate the CVH Facilities and provide the CVH Services, and operate any other facilities and provide any other services deemed appropriate by PHD No. 1, within the geographic boundaries of PHD No. 3 subject only to any applicable governmental restrictions.

11.7 Satisfaction of Conditions Precedent. PHD No. 3 shall use its reasonable commercial efforts to satisfy all of the conditions precedent to its obligations to close under this Affiliation Agreement which are in its reasonable control.
11.8 **Additional Financial Information.** Within twenty (20) business days after they are created (but in any event no later than twenty (20) days following the end of each calendar month prior to Closing), PHD No. 3 shall deliver to PHD No. 1 true and complete copies of the unaudited balance sheets and the related unaudited statements of income of, or relating to, PHD No. 3 for each month then ended, together with a year to date compilation and the notes, if any, related thereto, which presentation shall be true, correct and complete in all material respects, shall have been prepared from and in accordance with the books and records of PHD No. 3, and shall fairly present the financial position and results of operations of PHD No. 3 as of the date and for the period indicated, all in accordance with GAAP consistently applied, except that such financial statements need not include required footnote disclosures.

11.9 **Medical Staff Disclosure.** PHD No. 3 shall deliver to PHD No. 1 a written disclosure containing a brief description of all actions recommended or taken, if any, that may adversely affect clinical privileges sought or held by medical staff members, allied health practitioners, or applicants, which could result in claims or actions against PHD No. 3 or the CVH Services and which have not previously been provided to PHD No. 1.

12. **COVENANTS OF PHD NO. 1 PENDING CLOSING**

Until the Closing, PHD No. 1 shall comply with the covenants as set forth in this Section.

12.1 **Governmental Approvals.** PHD No. 1 shall (i) use commercially reasonable efforts to obtain all governmental approvals (or exemptions therefrom) necessary or required to allow PHD No. 1 to perform its obligations under this Affiliation Agreement; and (ii) assist and cooperate with PHD No. 3 and its representatives and counsel in obtaining all governmental consents, approvals, and licenses which PHD No. 3 deems necessary or appropriate, and in the preparation of any document or other material which may be required by any governmental agency as a predicate to or as a result of the transactions contemplated herein.

12.2 **Consultation with PHD No. 3.** If PHD No. 1’s plans for the CVH Services include combining the CVH Facilities license with the license for any PHD No. 1 hospital, or other material changes in the status and scope of the licensures, permits, or similar regulatory approvals for CVH Facilities, PHD No. 1 shall provide PHD No. 3 a detailed report regarding such plans, and consult with PHD No. 3 on such plans prior to Closing. PHD No. 1 shall also consult with PHD No. 3 and reasonably seek to accommodate PHD No. 3’s reasonable requests regarding continued branding of the CVH Facilities.

12.3 **Satisfaction of Conditions Precedent.** PHD No. 1 shall use its reasonable commercial efforts to satisfy all of the conditions precedent to its obligations to close under this Affiliation Agreement.

13. **CONDITIONS PRECEDENT TO OBLIGATIONS OF PHD NO. 3**

Notwithstanding anything herein to the contrary, the obligations of PHD No. 3 to consummate the transactions described herein are subject to the fulfillment, on or prior to Closing, of the following conditions precedent unless (but only to the extent) waived in writing by PHD No. 3 at Closing:
13.1 **Representations/Warranties.** The representations and warranties of PHD No. 1 contained in this Affiliation Agreement shall be true and correct when read in light of any Schedules when made and as of Closing. All of the terms, covenants, and conditions of this Affiliation Agreement to be complied with or performed by PHD No. 1 on or before the Closing pursuant to the terms hereof shall have been duly complied with and performed.

13.2 **Governmental Approvals.** All material consents, authorizations, orders and approvals of (or filings or registrations with) any Government Entity or other party required in connection with the execution, delivery and performance of this Affiliation Agreement shall have been obtained or made by PHD No. 1 when so required, except for any documents required to be filed, or consents, authorizations, orders or approvals required to be issued, after the Closing Date.

13.3 **Actions/Proceedings.** No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated, and no governmental agency or body shall have taken any other action or made any request of any party hereto as a result of which PHD No. 3 reasonably and in good faith deems it inadvisable to proceed with the transactions hereunder.

13.4 **Insolvency.** PHD No. 1 shall not (i) be in receivership or dissolution, (ii) have made any assignment for the benefit of creditors, (iii) have admitted in writing its inability to pay its debts as they mature, (iv) have been adjudicated a bankrupt, or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against PHD No. 1.

13.5 **Due Diligence.** PHD No. 3 shall have completed its own due diligence investigation of the operation of PHD No. 1, the results of which shall have been deemed satisfactory in the discretion of PHD No. 3, its agents, employees and representatives. PHD No. 3’s due diligence investigation shall be completed within one hundred fifty (150) days of the execution of this Affiliation Agreement (the “Due Diligence Period”) and PHD No. 3 shall be conclusively deemed to have been satisfied with the results of its due diligence investigation and to have waived this condition of closing, unless it elects to terminate this Affiliation Agreement and the Lease by written notice to PHD No. 1 on or before the last day of the Due Diligence Period pursuant to Section 19.1(g) hereof.

13.6 **Closing Deliveries.** PHD No. 1 shall have made the deliveries required to be made by it hereunder.

14. **CONDITIONS PRECEDENT TO OBLIGATIONS OF PHD NO. 1**

Notwithstanding anything herein to the contrary, the obligations of PHD No. 1 to consummate the transactions described herein are subject to the fulfillment, on or prior to Closing, of the following conditions precedent unless (but only to the extent) waived in writing by PHD No. 1 as of Closing:

14.1 **Representations/Warranties.** The representations and warranties of PHD No. 3 contained in this Affiliation Agreement shall be true and correct when read in light of any
Schedules when made and as of Closing. All of the terms, covenants, and conditions of this Affiliation Agreement to be complied with or performed by PHD No. 3 on or before the Closing pursuant to the terms hereof shall have been duly complied with and performed.

14.2 Pre-Closing Confirmations. PHD No. 1 shall have obtained documentation or other evidence satisfactory to PHD No. 1 in its reasonable discretion that PHD No. 1 has:

(a) received approval from all Government Entities whose approval is required to complete the transactions herein contemplated, including without limitation the granting of any certificates of need required by law for PHD No. 1 to operate CVH Services;

(b) received written confirmation from all applicable licensure agencies that as of the Closing all licenses required by law to operate the CVH Services as currently operated will be transferred to, or issued or reissued in the name of, PHD No. 1;

(c) obtained reasonable assurances that Medicare and Medicaid participation of the CVH Services, its related providers and suppliers for its operation by PHD No. 1 will be effective as of Closing and that PHD No. 1 may participate in and receive reimbursement from such programs effective as of Closing; and

(d) obtained such other consents and approvals as may be legally or contractually required for the consummation of the transactions described herein.

14.3 Actions/Proceedings. No action or proceeding before a court or any other governmental agency or body shall have been instituted or threatened to restrain or prohibit the transactions herein contemplated, and no governmental agency or body shall have taken any other action or made any request of any party hereto as a result of which PHD No. 1 reasonably and in good faith deems it inadvisable to proceed with the transactions hereunder.

14.4 Adverse Change. No material adverse change in the results of operations, financial condition, business or prospects of PHD No. 3 shall have occurred, and PHD No. 3 shall not have suffered any material change, loss or damage to the CVH Services, whether or not covered by insurance.

14.5 Insolvency. PHD No. 3 shall not (i) be in receivership or dissolution, (ii) have made any assignment for the benefit of creditors, (iii) have admitted in writing its inability to pay its debts as they mature, (iv) have been adjudicated a bankrupt, or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization, or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against PHD No. 3.

14.6 Consents to Assignments. All consents, waivers, and estoppels of third parties which are reasonably necessary, in the opinion of PHD No. 1, to complete this transaction shall have been obtained and are in form and substance reasonably satisfactory to PHD No. 1.

14.7 Leases. All Leases, including but not limited to the lease of the CVH Facilities attached hereto as Exhibit 2.1, shall have been duly executed by all parties thereto. Any and all title reports, surveys, environmental reports, etc., shall have been received by PHD No. 1 and be
satisfactory to PHD No. 1 in its sole reasonable discretion; provided such reports and surveys shall be deemed to be satisfactory, if PHD No. 1 has failed to object prior to the end of the Due Diligence Period.

**14.8 Tail Insurance.** Unless PHD 1 elects to procure nose coverage as provided by Section 11.5, PHD No. 3 shall have procured, at PHD No. 3’s sole expense, sufficient insurance to reasonably protect the parties against any unknown and unreported liabilities arising from the ownership and operation of the CVH Services prior to Closing, including but not limited to medical claims, general business claims, and other past acts of PHD No. 3, its employees and agents. Such policies of coverage shall name PHD No. 1 as an additional insured and be issued by companies and on terms reasonably acceptable to PHD No. 1.

**14.9 Due Diligence.** PHD No. 1 shall have completed its own due diligence investigation of the operation of PHD No. 3 and the CVH Services, the results of which shall have been deemed satisfactory in the discretion of PHD No. 1, its agents, employees and representatives. PHD No. 1’s due diligence investigation shall be completed within the Due Diligence Period and PHD No. 1 shall be conclusively deemed to have been satisfied with the results of its due diligence investigation and to have waived this condition of closing, unless it elects to terminate this Affiliation Agreement and the Lease by written notice to PHD No. 3 on or before the last day of the Due Diligence Period pursuant to Section 19.1(f) hereof.

**14.10 Closing Deliveries.** PHD No. 3 shall have made the deliveries required to be made by it hereunder.

15. **COVENANTS AND AGREEMENTS**

**15.1 Post-Closing Access to Information.** The parties acknowledge that, subsequent to Closing, each party may need access to information or documents in the control or possession of the other party for the purposes of concluding the transactions herein contemplated, audits, compliance with governmental requirements and regulations, and the prosecution or defense of third party claims. Accordingly, for a period of six (6) years after Closing or such further period as may be stated by applicable law, each party shall make reasonably available to any of the other’s agents, independent auditors, counsel, and/or governmental agencies upon written request of the requesting party such documents and information as may be available relating to PHD No. 3 or the CVH Services for periods prior and subsequent to Closing to the extent necessary to facilitate concluding the transactions herein contemplated, audits, compliance with governmental requirements and regulations, and the prosecution or defense of claims. The requesting party shall bear any third party expense incurred by the party providing information.

**15.2 Preservation and Access to Records After the Closing.** After the Closing, PHD No. 1 shall, subject to its reasonable records retention policy, in the ordinary course of business and as required by law, keep and preserve in their original form all medical and other records, including all Public Records relating specifically to the operation of the CVH Services, existing as of the Closing whether in hard copy or electronic format, wherever located, including hard copies onsite at PHD No. 3 and in storage with Iron Mountain, and records stored electronically, either locally or remotely in the cloud, and which constitute a part of the assets leased or otherwise possessed by PHD No. 1 as and after the Closing. For purposes of this Affiliation
Agreement, the term “records” includes all documents, electronic data and other compilations of information in any form and “Public Record” means all items defined as a “public record” under Washington State law (including but not limited to Chapter 40.14 RCW and Chapter 42.56 RCW). PHD No. 1 acknowledges that all Public Records that constitute a part of the assets leased or otherwise possessed by PHD No. 1 as of and after the Closing will remain Public Records and the property of PHD No. 3 (hereinafter referred to as “PHD No. 3 Public Records”), but in no event shall any other records of PHD No. 1 be considered PHD No. 3 Public Records for purposes of PHD No. 1’s obligations under this Section. PHD No. 3 shall have responsibility for maintenance of PHD No. 3 records which are not leased or otherwise transferred to the possession of PHD No. 1 at Closing. PHD No. 1 shall maintain all PHD No. 3 Public Records pursuant to the requirements of Washington State law (including but not limited to Chapter 40.14 RCW and Chapter 42.56 RCW). PHD No. 1 shall use its best efforts to assist PHD No. 3 to fulfill its obligations under the Public Records Act, Chapter 42.56 RCW, and shall produce PHD No. 3 Public Records to PHD No. 3 in a timely manner at the sole cost and expense of PHD No. 1. PHD No. 1 further acknowledges that as a result of entering into this Affiliation Agreement and operating the CVH Services, it will gain access to patient and other information which is subject to rules and regulations regarding confidentiality. PHD No. 1 agrees to abide by any such rules and regulations relating to the confidential information it acquires. PHD No. 1 agrees to maintain the patient records of the CVH Services as of the Closing in accordance with applicable law (including, if applicable, Section 1861(v)(i)(I) of the Social Security Act (42 U.S.C. §1395(v)(l)(i)), the privacy requirements of the Administrative Simplification subtitle of HIPAA, and applicable state requirements with respect to medical privacy and requirements of relevant insurance carriers, in accordance with industry standards. Upon reasonable notice, during normal business hours, at the sole cost and expense of PHD No. 3 and upon PHD No. 1’s receipt of appropriate consents and authorizations, PHD No. 1 will afford to the representatives of PHD No. 3, including its counsel and accountants, full and complete access to, and copies of, the records of PHD No. 1 (including, without limitation, access to patient records in respect of patients treated at the CVH Facilities) and PHD No. 3 records, including, without limitation, PHD No. 3 Public Records. Upon reasonable notice, during normal business hours, PHD No. 1 shall also make its officers and employees available to PHD No. 3 at reasonable times and places after the Closing. In addition, PHD No. 3 shall be entitled, at its sole risk, to remove copies of any such patient records, but only for purposes of pending litigation involving a patient to whom such records refer or where PHD No. 3 otherwise requires access for purposes of making a disclosure required by law, and only upon PHD No. 1’s receipt of appropriate consents and authorizations, as needed. Any patient record so removed shall be promptly returned to PHD No. 1 following its use by PHD No. 3 as provided herein. Any access granted to PHD No. 3 in this Affiliation Agreement shall not materially interfere with the business operations of PHD No. 1.

15.3 CON Disclaimer. This Affiliation Agreement shall not be deemed an affiliation, lease or acquisition or obligation of a capital expenditure or of funds within the meaning of the certificate of need statute of any state, until the appropriate governmental agencies shall have granted a certificate of need (“CON”) or the appropriate approval or ruled that no certificate of need or other approval is required.

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

15.5 Reproduction of Documents. This Affiliation Agreement and all documents relating hereto, including, without limitation, (i) consents, waivers and modifications which may hereafter be executed, (ii) the documents delivered at the Closing, and (iii) financial statements, certificates and other information previously or hereafter furnished to PHD No. 1, or PHD No. 3, may, subject to the provisions of this Affiliation Agreement, be reproduced by any photographic, photostatic, microfilm, micro-card, miniature photographic or other similar process, and any original documents so reproduced may be destroyed. The parties agree and stipulate that any such reproduction shall be admissible in evidence as the original itself in any judicial, arbitral or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made in the regular course of business), and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

15.6 Cooperation on Tax Matters. Following the Closing, the parties shall cooperate fully with each other and shall make available to the other, as reasonably requested and at the expense of the requesting party, and to any taxing authority, all information, records or documents relating to tax liabilities or potential tax liabilities of PHD No. 3 for all periods on or prior to the Closing and any information which may be relevant to determining the amount payable under this Affiliation Agreement, and shall preserve all such information, records and documents at least until the expiration of any applicable statute of limitations or extensions thereof.

15.7 Cost Reports. PHD No. 3 shall be responsible for the preparation and timely filing of all terminating and other cost reports required or permitted by law to be filed under the Medicare and Medicaid or other third party payor programs and the Washington Department of Health for periods ending on or prior to the Closing Date, or as a result of the consummation of the transactions described herein ("PHD No. 3 Cost Reports"). Following the Closing, PHD No. 1 shall make available to PHD No. 3, as reasonably requested, all information, records or documents necessary for preparation of the PHD No. 3 Cost Reports, including any and all correspondence relating to the PHD No. 3 Cost Reports. PHD No. 1 shall remit any receipts of funds relating to the PHD No. 3 Cost Reports within ten (10) business days after receipt by PHD No. 1, as the case may be, and shall forward to PHD No. 3 any demand for payments within three (3) business days after receipt by PHD No. 1 (where any such communications are not received by PHD No. 3 directly). PHD No. 3 shall retain all rights to the PHD No. 3 Cost Reports including any amounts receivable or payable in respect of such reports or reserves relating to such reports. Such rights shall include the right to appeal any Medicare or Medicaid determinations relating to the PHD No. 3 Cost Reports. PHD No. 3 shall retain the originals of the PHD No. 3 Cost Reports, correspondence, work papers and other documents relating to the PHD No. 3 Cost Reports. PHD No. 3 shall furnish copies of such cost reports, correspondence, work papers and other documents to PHD No. 1 and its affiliates upon request.

15.8 Overpayments, Etc. In the event of a determination by any governmental or third-party payor that payments to PHD No. 3 resulted in an overpayment or other determination
that funds previously paid by any program or plan to PHD No. 3 must be repaid, PHD No. 3 shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered prior to the Closing Date and PHD No. 1 shall be responsible for repayment of said monies (or defense of such actions) if such overpayment or other repayment determination was for services rendered after the Closing Date.

15.9 Employee Matters. Subject to PHD No. 1’s standard employment policies, procedures and criteria (including drug screening and background checks), PHD No. 1 shall make offers to substantially all of the CVH Facilities Employees to continue employment in the operation of the CVH Services as employees of PHD No. 1 and PHD No. 1 shall use reasonable efforts to have employees (collectively, the “Continuing Employees”) hold the same positions at the same level of wages and/or salary; provided, however, except as may be specifically required by applicable law or any contract assumed or entered into by PHD No. 1 (including without limitation the Union Contract), PHD No. 1 shall not be obligated to continue any employment relationship with any Continuing Employee for any specific period of time. From and after Closing, subject to applicable law and any contractual obligations, PHD No. 1 shall provide reasonably comparable benefits to Continuing Employees and honor Continuing Employees’ dates of hire with PHD No. 3 for all purposes relating to benefits and the Union Contract; provided, however, that nothing shall preclude any change effected on a prospective basis in any PHD No. 1 benefit plan (including termination of any benefit plan). PHD No. 1 shall assume responsibility for and allow transfer of accrued PHD No. 3 vacation/PTO hours (“PTO Hours”) into new PHD No. 1 PTO banks, up to the lesser of PHD No. 3’s current or PHD No. 1’s future benefits policy. Transferred PTO Hours shall be adjusted to reflect ongoing changes in employee wages. Excess amounts of PTO Hours not transferred to PHD No. 1 shall be cashed out and affected employees compensated therefor by PHD No. 3. PHD No. 1 shall assume, and allow for transfer of accrued PHD No. 3 extended illness/sick leave hours (“EI Hours”) in an amount not exceeding PHD No. 1’s policy limit (currently 720 hours) into a PHD No. 1 sponsored extended illness bank that may be utilized after any PHD No. 1-provided extended illness or sick leave hours are exhausted. Such transferred EI Hours shall be excluded from the calculation of excess EI Hours that PHD No. 1 may buy out. Any PTO Hours or EI Hours assumed by and transferred to PHD No. 1 shall result in compensation being paid by PHD No. 3 to PHD No. 1 for the value of said liability assumed by PHD No. 1, and said payment shall occur at Closing. To the extent any employee benefit plan, program or policy of PHD No. 1 or other PHD No. 1 affiliate is made available to the Continuing Employees and to the extent permitted by applicable law and the terms of the respective benefit plans: (i) service with PHD No. 3 by any employee prior to Closing Date shall be credited for eligibility and vesting purposes under such plan, program or policy; and (ii) with respect to any welfare benefit plans to which such employees may become eligible, PHD No. 1 (or an affiliate) shall cause such plans to provide credit for any co-payments or deductibles by such employees and waive all pre-existing condition exclusions and waiting periods, other than limitations or waiting periods that have not been satisfied under any welfare plans maintained by PHD No. 3 for its employees prior to Closing.

15.10 Non-Discrimination. PHD No. 1 shall operate the CVH Services without discrimination based on race, color, marital status, sex, gender or gender identity, sexual orientation, ethnicity, religion or national origin.
15.11 **Medical Staff Policies.** PHD No. 1 shall adopt the bylaws and policies of the medical staff substantially in the form currently in effect at the Cascade Valley Hospital and shall recognize the medical staff privileges and membership status medical staff enjoy as of the Closing Date, subject to any existing peer review or other medical staff proceedings. PHD No. 1 may, from time to time, seek to amend the medical staff bylaws and policies regarding correction of any perceived deficiencies or make other reasonable changes to said bylaws and policies. PHD No. 1 shall cause Skagit Valley Hospital and Cascade Valley Hospital to maintain separate medical staff governing structures for a period of not less than ten (10) years after the Closing Date.

15.12 **Community Outreach Committee.** PHD No. 1 shall establish a Community Outreach Committee to advise on PHD No. 1’s operations of the CVH Services. PHD No. 1 shall appoint members of the Community Outreach Committee, provided that a majority of such members must reside within PHD No. 3.

15.13 **Transition Services.** PHD No. 1 shall, for thirty-six (36) months following Closing, at no cost to PHD No. 3, provide PHD No. 3 with certain mutually agreed transition services, including collection of PHD No. 3’s pre-Closing accounts receivable. PHD No. 1 shall turn over proceeds received from accounts receivable to PHD No. 3 on a monthly basis subject to PHD No. 1’s management and accounting process.

15.14 **Charity Care Policies.** PHD No. 1 shall maintain charity care policies at the CVH Facilities, which policies are fully compliant with all applicable laws, as such laws may change from time to time, and any operations of the CVH Services shall be conducted in a manner materially consistent with such charity care policies. PHD No. 1 shall not adopt policies or take actions which unreasonably limit or restrict access to CVH Facilities services at the CVH Facilities by Medicaid or Medicare beneficiaries.

15.15 **Required Services.**

(a) PHD No. 1 shall provide the following services ("Required Services") in North Snohomish County (identified by zip codes 98223, 98241, 98292, 98271, 98270, 98258, 98252 at appropriate levels for the needs of residents of North Snohomish County and shall provide requisite infrastructure to support such services for the stated period of time set forth below (hereafter, the "Required Services Commitment"): 
<table>
<thead>
<tr>
<th>Period</th>
<th>Services</th>
</tr>
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<tbody>
<tr>
<td>Five-Year</td>
<td>OB/GYN Provider and related CVH Facilities Services</td>
</tr>
<tr>
<td></td>
<td>Pediatric Physician and related CVH Facilities Services</td>
</tr>
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<td></td>
<td>Primary Care Services provided or caused to be provided for the Darrington and Granite Falls Clinics.</td>
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<tr>
<td>Ten-Year</td>
<td>Surgery (inpatient and outpatient)</td>
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<td>General inpatient acute services</td>
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<td>Orthopedic and general surgeons</td>
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<tr>
<td>Thirty-Year</td>
<td>24-hour Emergency Department</td>
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<td>Observation Unit</td>
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<td>Ancillary Medical Services</td>
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<td>Primary Care Physicians</td>
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(b) In order to satisfy the Required Services Commitment with respect to services required for the Ten-Year Period, PHD No. 1 shall be required to continuously maintain and operate Cascade Valley Hospital located at 330 South Stillaguamish Avenue, Arlington, Washington, as a general acute care hospital duly licensed by the State of Washington and certified under the Medicare and Medicaid programs, with at least the following services: general inpatient acute services, inpatient surgery, a 24-hour emergency department, observation unit, ancillary medical services to the extent required to maintain state acute care hospital licensure, and an organized medical staff consisting, at a minimum, of primary care physicians, orthopedic surgeons and general surgeons. PHD No. 1 shall have flexibility during said Ten-Year Period to eliminate or relocate any service located at Cascade Valley Hospital other than those specified in the preceding sentence or to modify or reduce the level of service provided at Cascade Valley Hospital (including those specified in the preceding sentence) provided (i) it continues to provide an appropriate level of such services in North Snohomish County to meet the needs of residents of North Snohomish County as required by Section 15.15(a) above, and (ii) it has given notice to PHD No. 3 and allowed PHD No. 3 to provide input before said service is eliminated, relocated, modified or reduced (as the case may be) as required by Section 15.22 hereof. Notwithstanding the foregoing, if PHD No. 1 elects to discontinue outpatient surgery services at Cascade Valley Hospital during the Ten-Year Period, it shall provide such service during the remainder of the Ten-Year Period at an alternative location within North Snohomish County at appropriate levels to meet the needs of residents of North Snohomish County.
(c) After the Ten-Year Period, PHD No. 1 shall be entitled to relocate the Required Services that were subject to the Ten-Year Period commitment and that continue to be subject to the Thirty-Year Period Commitment (i.e., 24-hour emergency department, observation unit, ancillary medical services and primary care physicians) to any location within North Snohomish County that it reasonably believes will appropriately meet the needs of the residents of North Snohomish County.

(d) During the first Five-Year Period, PHD No. 1 shall be entitled to provide OB/GYN Provider, Pediatric Physician, and related CVH Facility Services at any location within North Snohomish County which it reasonably believes will appropriately serve the needs of the residents of North Snohomish County. Primary care services shall, however, continue to be provided or caused to be provided at the Darrington and Granite Falls clinics during the Five-Year Period.

(e) PHD No. 1 shall have the right to determine the appropriate level of Required Services to meet the needs of the residents of North Snohomish County, such as the number of medical/surgical beds, ICU beds, observation beds, emergency department bays, operating rooms, procedure rooms, examination and treatment rooms, and the staffing levels thereof, provided it does so reasonably after appropriate evaluation and analysis of any impact a reduction in level of service may have on the residents of North Snohomish County.

(f) In the event PHD No. 1 intends for whatever reason to eliminate, reduce, relocate or change any Required Service in a manner which is not permitted under this Section 15.15, it shall first give at least ninety (90) days advance written notice to PHD No. 3 of its intent to do so (the “Change Notice”). The Change Notice shall include a detailed statement of the reasons for the intended action and shall be accompanied by an analysis prepared by a qualified independent health care consultant analyzing the potential impact on the accessibility and availability of health care services for residents of North Snohomish County. PHD No. 3 shall determine, in its sole and absolute discretion, whether it will permit PHD No. 1 to proceed with the proposed elimination, relocation, reduction or modification of a Required Service, and if it elects to permit it, it shall so notify PHD No. 1 within ninety (90) days following receipt of the Change Notice. PHD No. 3’s determination to permit the change shall be deemed a waiver of the Required Service Commitment, but only with respect to the change of service described in the Change Notice. If PHD No. 3 does not permit the proposed change described in the Change Notice, it shall so notify PHD No. 1 in writing within said ninety (90) days following receipt of the Change Notice. If PHD No. 3 fails to respond in writing to the Change Notice within such ninety (90) day period, PHD No. 3 shall be deemed to have approved the proposed service change and PHD No. 1 shall be entitled to proceed with such service change without it being deemed a violation of this Section 15.15.

(g) The parties agree that the covenants of PHD No. 1 to maintain and operate the Required Services is a material obligation of this Agreement and essential to the core purpose of the transaction, which is to continue to provide high quality and continuous health care services to the residents of North Snohomish County. The parties further acknowledge and agree that PHD No. 3 has agreed to lease the CVH Facilities to PHD No. 1 at substantially below fair market value and to transfer its Free Cash, Surplus Funds, and accounts receivable to PHD No. 1 in exchange for the Required Services Commitments. But for such Required Services
Commitments, PHD No. 3 would not have been willing to reduce the lease payments below fair market value or transfer its Free Cash, Surplus Funds, and accounts receivable to PHD No. 1.

15.16 Consultation Rights. PHD No. 1 shall not take any of the following actions in regard to the CVH Services without first notifying PHD No. 3 and allowing PHD No. 3 to provide input before said action is taken:

(a) Any consolidation or similar action related to the CVH Services which may materially affect quality, efficiency, or effectiveness of care provided in connection with the CVH Services;

(b) Any material elimination, relocation, or reduction of the clinical services that are currently provided as a part of the CVH Services; and

(c) Any material change in the status or scope of a hospital license or certification needed or used in connection with the operation of the CVH Facilities as a general acute care hospital, including any consolidation of the CVH Facilities licensure with any other facility.

The notification of the proposed action by PHD No. 1 shall be provided no fewer than forty-five (45) days prior to the date that PHD No. 1 proposes to take the action and the input to be provided by PHD No. 3 shall be provided to PHD No. 1 no more than thirty (30) days after PHD No. 1 provides its notification.

15.17 Existing Conditions. PHD No. 1 accepts the CVH Facilities and the Leased Personal Property (collectively the “Property”) in their condition as of the Closing Date, subject to all recorded matters, laws, ordinances, and governmental regulations and orders. PHD No. 1 accepts the Property on an “AS IS — WHERE IS” basis. PHD NO. 1 ACKNOWLEDGES THAT PHD NO. 3 (WHETHER ACTING AS PHD NO. 3 HEREUNDER OR IN ANY OTHER CAPACITY), EXCEPT AS PROVIDED IN SECTIONS 9.6, 9.7, 9.20, AND 9.25, HAS NOT MADE AND WILL NOT MAKE, NOR SHALL PHD NO. 3 BE DEEMED TO HAVE MADE, ANY WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, WITH RESPECT TO THE PROPERTY, INCLUDING ANY WARRANTY OR REPRESENTATION AS TO ITS FITNESS FOR USE OR PURPOSE, DESIGN OR CONDITION FOR ANY PARTICULAR USE OR PURPOSE, AS TO THE QUALITY OF THE MATERIAL OR WORKMANSHIP THEREIN, LATENT OR PATENT, AS TO PHD NO. 3’S TITLE THERETO, OR AS TO VALUE, COMPLIANCE WITH SPECIFICATIONS, LOCATION, USE, CONDITION, MERCHANTABILITY, QUALITY, DESCRIPTION, DURABILITY OR OPERATION, IT BEING AGREED THAT ALL RISKS INCIDENT THERETO ARE TO BE BORNE BY PHD NO. 1. PHD No. 1 acknowledges that the Property is of its selection and to its specifications and that the Property has been inspected by PHD No. 1 and is satisfactory to it.

15.18 Capital Investment Plan and Funding Commitment by PHD No. 1. PHD No. 1 shall develop a Capital Investment Plan relating to CVH Facilities and submit the plan to PHD No. 3 for its approval within one hundred eighty (180) days following the Closing Date. The Capital Investment Plan shall describe the projects to be completed, the expected beginning date for each project, the expected completion date for each project and the estimated cost of each
The Capital Investment Plan shall be funded with a combination of funds drawn from Pool A (and, after the Pool A funds have been fully spent, from Pool B) and funds contributed by PHD No. 1. For every two dollars ($2.00) drawn by PHD No. 1 from Pool A (or, if necessary, Pool B) to fund the projects specified in Exhibit 15.18, PHD No. 1 shall contribute one dollar ($1.00) from PHD No. 1’s own funds up to a maximum of Five Million Dollars ($5,000,000). The not to exceed $5,000,000 contributed by PHD No. 1 out of its own funds to pay for its share of the Capital Investment Plan shall be in addition to the amounts PHD No. 1 is required to deposit into Pool B under Section 3.6.

15.19 **Insurance.** PHD No. 1 shall maintain insurance in compliance with the requirements of the Lease.

15.20 **Maintenance.** PHD No. 1 shall maintain the CVH Facilities, and all equipment used in the CVH Facilities, in compliance with the requirements of the Lease.

15.21 **Further Assurances.** At any time and from time to time after the Closing, at the reasonable request of a party, the other parties shall, and without further consideration, execute and deliver such other instruments of sale, transfer, conveyance, assignment and delivery and confirmation and take such action as the first party may reasonably deem necessary or desirable in order more effectively to confirm and consummate the transactions contemplated by this Affiliation Agreement.

15.22 **Tax Returns.** PHD No. 3 shall prepare or cause to be prepared and file or cause to be filed all Tax Returns for PHD No. 3 for all periods ending on or prior to the Closing Date which are filed after the Closing Date. PHD No. 3 shall provide such tax returns to PHD No. 1 at least forty-five (45) days prior to the due date of same (except in circumstances in which PHD No. 3 is unable, despite diligent efforts, to prepare Tax Returns sufficiently in advance of the filing deadlines to permit a forty-five (45) day review period, in which case the review period shall be as close to forty-five (45) days as is reasonably possible) to permit PHD No. 1 to review and comment on each such tax return prior to filing.

15.23 **Payment of Liabilities.** In addition to payment of taxes as set forth herein, PHD No. 3 shall pay, or make adequate provision for the payment, in full of all liabilities related to the operation of the CVH Services by PHD No. 3 prior to Closing unless said liability is specifically transferred to PHD No. 1 herein. If such liability is not so paid or provided for, or if PHD No. 1 reasonably determines that the failure to make any payment will impair PHD No. 1’s operation of the CVH Services, PHD No. 1 may make such payments directly (but shall have no obligation to do so), and set off and deduct the full amount of such payments from any payments due from PHD No. 1 to PHD No. 3. PHD No. 1 shall pay, or make adequate provision for the payment, in full of all liabilities assumed by PHD No. 1 at the Closing Date or, related to the operation by PHD No. 1 of the CVH Services, after the Closing Date.

15.24 **Damage to Facilities.** In the event of any damage after Closing to any of the CVH Facilities or facilities covered by the Land Leases, where such damage impairs the ability to operate the applicable CVH Facilities as a general acute care hospital, and where such damage arises, relates to, or results from negligence on the part of PHD No. 1, PHD No. 3 has the option to require PHD No. 1 to purchase the CVH Facilities and the land and rights relative to the Land
Leases at fair market value, without taking into account the adverse impact on value deriving from the damages and consequences thereof; provided, however, PHD No 1 shall not be required to purchase the CVH Facilities and the land rights relative to the Land leases if, after written notice from PHD No. 3, PHD No. 1 repairs such damage or replaces said damaged facilities (i) within ninety (90) days, or, (ii) in the event the nature of the damages are such that more than ninety (90) calendar days are required to repair or replace the damaged facilities, PHD No. 1 commences the repair or replacement within such ninety (90) day period and thereafter diligently prosecutes the same to completion.

15.25 **Inspections.** PHD No. 3 or its designee shall have the right to make site visits to the CVH Facilities upon reasonable notice to PHD No. 1 and at reasonable times.

15.26 **Reporting Requirements.** PHD No. 1 shall be required to provide to PHD No. 3 semi-annual reports, including, but not limited to, reports describing the type, quantity, and quality of health care services rendered within PHD No. 3 and the uses to which tax revenues have been applied.

15.27 **Provision of Services Locally.** Subject to a clinician’s professional judgment and to patient preference, and in compliance with all applicable laws, PHD No. 1 shall use its best efforts to ensure that patients residing within PHD No. 3 receive appropriate clinical care within the health systems operated by PHD No. 1 or UW Medicine, in a care setting that is located as close as possible to the patient’s residence.

15.28 **Minimum Cash Balance.** After the Closing Date, PHD No. 3 shall at all times maintain a minimum balance of cash and cash equivalents of no less than the Minimum Cash Balance. For the avoidance of doubt, PHD No. 3 shall only be obligated to transfer Free Cash or Surplus Funds to PHD No. 1 in excess of PHD No. 3’ reasonable operating expenses and the Minimum Cash Balance.

15.29 **Assumption of Liabilities.** For the avoidance of doubt, except as otherwise expressly provided herein, PHD No. 1 shall be responsible for all known and unknown current and contingent Liabilities related to, arising or resulting from operation of the CVH Facilities, provision of the CVH Services, and any other related actions or omissions by or on behalf of PHD No. 1, after the Closing Date during the Term of this Affiliation Agreement.

15.30 **Integration Planning.** PHD No. 1 and PHD No. 3 shall work together to develop a team consisting of PHD No. 1 and PHD No. 3 leadership and caregivers, for the purpose of defining and planning cultural integration, orientation, and on-boarding (the “Integration Team”), and shall use best efforts to support and facilitate such purposes as requested by the Integration Team. The Integration Team shall convene for such time period, including prior to Closing and post-Closing, as mutually agreed by PHD No. 1 and PHD No. 3, and in consultation with the Integration Team.

15.31 **Cascade Valley Women’s Clinic.** The Cascade Valley Women’s Clinic (the “Clinic”) will continue to operate in its existing location of 903 Medical Center Dr. Arlington, WA 98223 (“903 Medical Center”). Should the Clinic’s practice re-locate to another location during the Term, PHD No. 1 may utilize 903 Medical Center for other health care business;
provided, however, that if PHD No. 1 does not utilize the space within one hundred eighty (180) days of being vacated, or otherwise provide notice to PHD No. 3 that it does not intend to use the space, 903 Medical Center shall be an Excluded Asset, as set forth in Section 4.

15.32 Smokey Point Medical Center, LLC. PHD No. 1 shall enter into a lease agreement with SPMC, at a fair market value lease rate, for use space and provision of services at the Cascade Skagit Health Alliance (the “SPMC Lease”). The SPMC Lease shall expressly provide that the term of the lease shall be coextensive with the Term of this Agreement and the Lease.

16. NON-COMPETITION, NON-SOLICITATION AND NON-DISPARAGEMENT

16.1 Non-Competition. Except as provided below, during the Term of this Affiliation Agreement, PHD No. 3 shall not, anywhere within Snohomish County or Skagit County, Washington, directly or indirectly, operate, invest in, own, manage, finance, control, or render services in competition with the CVH Services or other health care services offered by PHD No. 1. Notwithstanding the foregoing:

(a) PHD No. 3 shall have the absolute right to operate and invest in the following additional medical services within Snohomish County: (i) mental health services, (ii) health awareness programs, (iii) health improvement programs, (iv) immunization services, and (v) prenatal outreach programs except as allowed below.

(b) In the event of an epidemic or other public health emergency, as declared by Snohomish County or Skagit County Public Health Departments or by the State of Washington, PHD No. 3 may invest in and sponsor programs within Snohomish County to respond to such epidemic or public health emergency.

(c) Subject to the foregoing limitations, in the event that PHD No. 3, in good faith, believes that a need exists for additional health care services, facilities, and/or programs not currently provided in Snohomish County, PHD No. 3 may notify PHD No. 1 with recommendations to provide said services, which PHD No. 1 shall, in good faith, consider offering said services and advise PHD No. 3 of its decision within ninety (90) days of receiving PHD No. 3’s recommendation. If PHD No. 1 declines to provide said services, facilities, and/or programs recommended by PHD No. 3, then notwithstanding the preceding non-competition covenant, PHD No. 3 may provide such services, facilities, and/or programs within Snohomish County, Washington, provided that such added services, facilities, and/or programs do not directly compete with any services, facilities, and/or programs than provided by PHD No. 1 in Snohomish County or Skagit County, Washington. Should PHD No. 3 offer or add such services, facilities, and/or programs, PHD No. 1 shall have the option thereafter at any time upon written notice to PHD No. 3 to assume providing and/or operating such services, facilities, and/or programs (or assume PHD No. 3’s interest in any venture or joint venture providing such services) on terms mutually agreeable to PHD No. 1 and PHD No. 3, provided such assumption is permissible under any contractual commitments related to such services, facilities, and/or programs.
Notwithstanding the non-competition covenant contained herein, PHD No. 3 may consult with and advise PHD No. 1 on operation of the CVH Services as set forth in this Affiliation Agreement.

16.2 Non-Solicitation. For a period of two (2) years after the Closing Date, PHD No. 3 shall not, directly or indirectly, hire, retain, or attempt to hire or retain any employee or independent contractor of PHD No. 1 or in any way interfere with the relationship of PHD No. 1 to any of its employees or independent contractors.

16.3 Equitable Relief. Because monetary damages alone may not be adequate to make PHD No. 1 whole in the event of PHD No. 3’s breach of this covenant not to compete, PHD No. 1 may, in addition to its other remedies hereunder or at law, seek injunctive relief to enjoin or prevent any breach of PHD No. 3’s covenants set forth herein. In the event any such relief is sought or granted, PHD No. 3 agrees to waive the posting of any bond or security in connection therewith. Any election by PHD No. 1 to pursue less than all remedies provided shall not bar subsequent remedies. The remedies provided herein are deemed cumulative and not exclusive.

16.4 Existing Non-Competition and Non-Solicitation Agreements. From and after execution of this Affiliation Agreement until Closing, PHD No. 3 shall enforce any and all non-competition and non-solicitation covenants from any of its present or prior employees and independent contractors and hereby assigns the right to PHD No. 1 to enforce said covenants on behalf of PHD No. 3 and/or PHD No. 1 as its successor in the operation of PHD No. 3’s CVH Services if PHD No. 3 fails to take timely action in regard to enforcement thereof. The enforcement of said covenants shall be managed by, and be at the expense of, PHD No. 1. A list of said covenants shall be furnished to PHD No. 1 prior to the Closing Date.

17. INDEMNIFICATION; SURVIVAL OF REPRESENTATIONS AND WARRANTIES

17.1 Indemnification by PHD No. 1. Subject to the limitations set forth in Section 17.3 hereof, PHD No. 1 shall defend, indemnify and hold harmless PHD No. 3 and its commissioners, officers, employees, agents or independent contractors (collectively, “PHD No. 3 Indemnified Parties”), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal) and expenses (including, without limitation, reasonable attorneys’ fees and fees of expert consultants and witnesses) that such PHD No. 3 Indemnified Parties incur as a result of, or with respect to (i) any misrepresentation or breach of warranty by PHD No. 1 under this Affiliation Agreement, (ii) any breach by PHD No. 1 of, or any failure by PHD No. 1 to perform, any covenant or agreement of PHD No. 1, or covenant or agreement required to be performed by PHD No. 1 under this Affiliation Agreement, (iii) any claim made by a third party with respect to the liabilities assumed by PHD No. 1 at Closing, and (iv) any claim by a third party as a result of operation of the CVH Services after the Closing Date (except to the extent any third party claim is proximately caused by a breach of the representations or warranties of PHD No. 3 in this Affiliation Agreement).

17.2 Indemnification by PHD No. 3. Subject to the limitations set forth in Section 17.3 hereof, PHD No. 3 shall defend, indemnify and hold harmless PHD No. 1 and its affiliates,
and their respective officers, employees, agents, or independent contractors (collectively, “PHD No. 1 Indemnified Parties”), from and against any and all losses, liabilities, damages, costs (including, without limitation, court costs and costs of appeal) and expenses (including, without limitation, reasonable attorneys’ fees and fees of expert consultants and witnesses) that such PHD No. 1 Indemnified Party incurs as a result of, or with respect to (i) any misrepresentation or breach of warranty by PHD No. 3 under this Affiliation Agreement, (ii) any breach by PHD No. 3 of, or any failure by PHD No. 3 to perform, any covenant or agreement of, or required to be performed by, PHD No. 3 under this Affiliation Agreement, (iii) any of the excluded liabilities, or (iv) any claim made by a third party with respect to the operations of PHD No. 3 prior to the Closing Date.

17.3 Limitations.

(a) PHD No. 1 and PHD No. 3 shall be liable under Section 17.1 and Section 17.2, respectively (i.e., for misrepresentations and breaches of warranties, and for liabilities assumed or retained at Closing), as set forth in this Section 17.3 as applicable. As to indemnification by PHD No. 1, only when total indemnification claims exceed Twenty-Five Thousand Dollars ($25,000), after which PHD No. 1 shall be liable for all such claims beginning with the first dollar of claims. PHD No. 1’s remedy for a breach of Section 9.27 shall be limited as set forth in Section 9.27.

(b) The parties acknowledge that PHD No. 3 is leasing the CVH Facilities and Leased Personal Property to PHD No. 1 at substantially less than fair market value, and transferring to PHD No. 1 its Free Cash, Surplus Funds and collected receivables which may be used by PHD No. 1 to cover CVH Operating Losses, including but not limited to those that might arise from a breach of representation or warranty by PHD No. 3. For this reason and for the further reason that the transfer of such funds to PHD No. 1 will substantially deplete PHD No. 3’s Retained Cash and impair its financial ability to indemnify PHD No. 1, PHD No. 3 shall be liable under Section 17.2 only when total indemnification claims exceed the aggregate amount of Free Cash, Surplus Funds and collected receivables that have been transferred to PHD No. 1 as of the date a claim for indemnification is submitted, and only for such amount by which the claim or claims exceed the aggregate amount so transferred.

(c) No party shall be liable for any indemnification for any claims for misrepresentations and breaches of warranty which are based upon misrepresentations and breaches of warranty which have been waived by a party.

17.4 Notice and Control of Litigation. If any claim or liability is asserted in writing by a third party against a party entitled to indemnification under this Section 17 (the “Indemnified Party”) which would give rise to a claim under this Section, the Indemnified Party shall notify the person giving the indemnity (the “Indemnifying Party”) in writing of the same within fifteen (15) days of receipt of such written assertion of a claim or liability. The Indemnifying Party shall have the right to defend a claim and control the defense, settlement, and prosecution of any litigation. If the Indemnifying Party, within ten (10) days after notice of such claim, fails to defend such claim, the Indemnified Party shall (upon further notice to the Indemnifying Party) have the right to undertake the defense, compromise, or settlement of such claim on behalf of and for the account and at the risk of the Indemnifying Party, subject to the
right of the Indemnifying Party to assume the defense of such claim at any time prior to settlement, compromise, or final determination thereof. Notwithstanding any provision in this Section 17.4, (i) if there is a reasonable probability that a claim may materially and adversely affect the Indemnified Party other than as a result of money damages or other money payments, the Indemnified Party shall have the right, at its own cost and expense, to defend, compromise, and settle such claim, and (ii) the Indemnifying Party shall not, without the written consent of the Indemnified Party, settle or compromise any claim or consent to the entry of any judgment which does not include as an unconditional term thereof the giving by the claimant to the Indemnified Party of a release from all liability in respect of such claim. The foregoing rights and agreements shall be limited to the extent of any requirement of any third-party insurer or Indemnitor. All parties agree to cooperate fully as necessary in the defense of such matters. Should the Indemnified Party fail to notify the Indemnifying Party in the time required above, the indemnity with respect to the subject matter of the required notice shall be limited to the damages that would have resulted absent the Indemnified Party’s failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party.

17.5 Notice of Claim. If an Indemnified Party becomes aware of any breach of the representations or warranties of the Indemnifying Party hereunder or any other basis for indemnification under this Section 17 (except as otherwise provided for under Section 17.3), the Indemnified Party shall notify the Indemnifying Party in writing of the same within forty-five (45) days after becoming aware of such breach or claim, specifying in detail the circumstances and facts which give rise to a claim under this Section 17. Should the Indemnified Party fail to notify the Indemnifying Party within the time frame required above, the indemnity with respect to the subject matter of the required notice shall be limited to the damages that would have nonetheless resulted absent the Indemnified Party’s failure to notify the Indemnifying Party in the time required above after taking into account such actions as could have been taken by the Indemnifying Party had it received timely notice from the Indemnified Party.

17.6 Survival of Representations and Warranties. The representations and warranties of the parties contained in Sections 9 and 10 of this Affiliation Agreement shall survive the Closing Date for a period of three (3) years, notwithstanding any due diligence or other reviews performed by PHD No. 1 or PHD No. 3, respectively, except in the case of representations set forth in Sections 9.2, 9.7, 9.8, 9.12, 9.20 and 9.23 which shall survive subject to the applicable statute of limitation.

17.7 Remedies Cumulative. The remedies provided herein shall be cumulative and shall not preclude the assertion by any party hereto of any other rights or the seeking of any other remedies against the other party hereto.

18. TERM

18.1 Initial Term. The initial term (the “Initial Term”) of this Affiliation Agreement is for a period of thirty (30) years, commencing on the Closing Date, and, subject to the termination provisions contained herein, terminating at 11:59 P.M. on the day prior to the thirtieth (30th) anniversary thereof (the “Termination Date”).

-51-
18.2 **Renewal Terms.** PHD No. 1 shall have the right to extend the Initial Term of this Affiliation Agreement for up to two (2) additional successive terms of ten (10) years each (each a “Renewal Term”, more than one, collectively, the “Renewal Terms” and together with the Initial Term, the “Term”). A Renewal Term shall be deemed to have been automatically exercised unless PHD No. 1 shall have provided PHD No. 3 with written notice of non-renewal at least one (1) year prior to the Termination Date of the then-effective Term of this Lease. All Renewal Terms exercised shall commence immediately upon expiration of the Initial Term or the preceding Renewal Term, as applicable. Each Renewal Term shall be upon the same terms and conditions as provided herein for the Initial Term.

18.3 **Termination of the Lease.** The termination of the Lease for any reason whatsoever shall cause a concurrent termination of this Affiliation Agreement.

19. **RIGHT TO TERMINATE**

19.1 **Termination Prior to Closing.** Anything to the contrary herein notwithstanding, this Affiliation Agreement and the Lease may be terminated at any time prior to the Closing by prompt written notice given:

(a) By the mutual written consent of PHD No. 1 and PHD No. 3;

(b) By PHD No. 3, if PHD No. 1 is in material breach of any representation, warranty or covenant under this Affiliation Agreement or the Lease (and PHD No. 3 is not then in material breach of any representation, warranty or covenant), and such breach is not cured within thirty (30) days after written notice thereof;

(c) By PHD No. 1, if PHD No. 3 is in material breach of any representation, warranty, condition or covenant under this Affiliation Agreement or the Lease (and PHD No. 1 is not then in material breach of any representation, warranty or covenant) and such breach is not cured within thirty (30) days after written notice thereof;

(d) Failure of receipt of the approvals from the requisite Governmental Entities (including the receipt of a grant of CON);

(e) By PHD No. 1 or by PHD No. 3, if the Closing shall not have occurred at or before 11:59 p.m. Pacific Time, on ______________ unless the Closing Date is extended by the parties; provided, however, that the right to terminate this Affiliation Agreement under this Section 19 shall not be available to any party whose failure to fulfill any material obligation under this Affiliation Agreement has been the cause of or resulted in the failure of the Closing to occur on or prior to the aforesaid date; and

(f) By PHD No. 1, if PHD No. 1 is dissatisfied in its sole discretion with the results of its due diligence review and so notifies PHD No. 3 in writing on or before the end of the Due Diligence Period.

(g) By PHD No. 3, if PHD No. 1 is dissatisfied in its sole discretion with the results of its due diligence review and so notified PHD No. 1 in writing on or before the end of the Due Diligence Period.
19.2 Right to Terminate After Closing. Post-Closing, this Affiliation Agreement and the Lease may be terminated as follows:

(a) By mutual written consent of PHD No. 1 and PHD No. 3, or as otherwise provided in the Lease;

(b) By either party in the event of an uncured breach of this Affiliation Agreement or the Lease by the other party. In the event of a breach by the other party, the non-breaching party shall give the breaching party written notice specifying the obligation or obligations in this Affiliation Agreement or the Lease which the breaching party has failed to perform and provide thirty (30) calendar days for the breaching party to cure the breach. In the event the nature of the obligation is such that more than thirty (30) calendar days are required for performance, then the thirty (30) day time period for curing the breach shall be extended if the breaching party commences performance within such thirty (30) day period and thereafter diligently prosecutes the same to completion.

(c) By PHD No. 1 in the event a catastrophic event occurs that was not caused by PHD No. 1 and that makes it no longer viable to continue operating the CVH Services as originally contemplated;

(d) By either PHD No. 3 or PHD No. 1, if PHD No. 3 elects to require PHD No. 1 to purchase the CVH Facilities and the land and rights relative to the Land Leases as set forth in Section 15.24;

(e) By PHD No. 1, after the sixth (6th) anniversary of the Closing Date upon three hundred sixty-five (365) days’ written notice, which may only be given following Sustained Operating Losses (as defined hereafter) for the CVH Services, subject to the following terms and conditions. “Sustained Operating Losses” shall mean that (x) the CVH Service produces a cumulative CVH Operating Losses equal to or greater than Three Million Dollars ($3,000,000) during the initial six (6) years following the Closing Date or the CVH Services produce a cumulative CVH Operating Losses equal to or greater than One Million Five Hundred Thousand Dollars ($1,500,000) the three (3) most recent years, from factors beyond the reasonable control of PHD No. 1’s operational decisions and input, including, for example, significant sustained decreases in utilization volumes and/or reimbursement levels not caused or influenced by decisions or actions within PHD No. 1’s control, and (y) the cumulative CVH Operating Losses over the applicable measurement period is equal to or greater than the amount, if any, on deposit in Pool A.

(i) No later than one hundred fifty (150) days following the provision of notice of termination by PHD No. 1 to PHD No. 3, PHD No. 1 shall, at its expense, provide PHD No. 3 with audited financial statements, from a national accounting firm mutually agreed to by PHD No. 1 and PHD No. 3, for the three (3) immediately preceding years, which audited financial statements shall disclose the CVH Operating Losses. In the event the audited financial statements do not demonstrate that the CVH Services experienced “Sustained Operating Losses,” or in the event such audit is not timely completed and provided to PHD No. 3, PHD No. 1’s notice of termination shall be automatically rescinded.
(ii) In the event that the parties disagree as to the findings of the aforementioned national accounting firm, either party may, within thirty (30) days after receipt of such findings, submit the dispute to arbitration. The parties agree that unless the arbitrator shall otherwise agree in the interest of fairness, any such arbitration shall take no longer than ninety (90) days. To the extent the arbitration proceeding is not completed within three hundred sixty-five (365) days from the date PHD No. 1 provided notice of termination, this Affiliation Agreement shall not be terminated until the arbitration is resolved, and depending on the decision reached by the arbitrator. The arbitrator’s decision shall be final and binding on the parties.

(iii) PHD No. 1 acknowledges and agrees that if PHD No. 1 provides notice of termination, PHD No. 3 may elect to explore a possible affiliation or other transaction with respect to operation of the CVH Services upon termination of this Affiliation Agreement. To that end, commencing on the date that PHD No. 1 provides notice of termination pursuant to this Section, PHD No. 3 shall have access to all books and records related to the operation of the CVH Services, and PHD No. 1 shall make such books and records available to PHD No. 3, and other persons or entities identified by PHD No. 3, for purposes related to PHD No. 3’s plans for operation or transfer of the CVH Services upon termination of this Affiliation Agreement, including without limitation for due diligence purposes; provided that all relevant parties shall enter into a confidentiality agreement to protect any information which is non-public, confidential or proprietary in nature.

19.3 Working Capital Support. Following termination of this Affiliation Agreement, PHD No. 1 shall calculate the value of its accounts receivable and its liabilities, including contingent liabilities, relating to its operation of the CVH Services existing as of the effective date of the termination. If the value of the accounts receivable exceeds the value of the liabilities (the “Surplus A/R Value”), PHD No. 1 shall deposit into Pool A of the PHD No. 3 Support Fund an amount equal to the Surplus A/R Value. Following termination of this Affiliation Agreement, PHD No. 1 shall transfer to PHD No. 3 any remaining cash balance in Pool A and Pool B of the PHD No. 3 Support Fund, including the Surplus A/R Value, but, except for a termination by PHD No. 3 under Section 19.2(b) as a result of an uncured breach by PHD No. 1, PHD No. 1 may deduct the cumulative cash flow losses, if any, generated by the CVH Services during the three (3) years immediately preceding the termination of this Affiliation Agreement, but in no event shall such deduction exceed One Million Five Hundred Thousand Dollars ($1,500,000). If the aggregate amount of cash to be transferred to PHD No. 3 out of Pools A and B of the PHD No. 3 Support Fund is less than the greater of (1) ten million dollars ($10,000,000) or (2) the amount of cash transferred to PHD No. 1 by PHD No. 3 pursuant to this Affiliation Agreement (the “Working Capital Requirement”), PHD No. 1 shall, if requested by PHD No. 3, agree to purchase a limited tax general obligation bond, in an amount equal to the difference between the amount of cash transferred out of the PHD No. 3 Support Fund and the greater of the Working Capital Requirement or Ten Million Dollars ($10,000,000) but in no event in an amount greater than Ten Million Dollars ($10,000,000).

19.4 Continued Availability of Health Care Within PHD No. 3’s Service Area. In the event of the termination of this Affiliation Agreement, prior to termination, PHD No. 1 and PHD No. 3 shall work diligently to seek to develop a mutually acceptable plan for changes or adjustments to the CVH Services to preserve operations.
19.5  **Unwind Provision.** Without payment of further consideration, upon termination PHD No. 1 shall (i) transfer all of the facilities owned by PHD No. 3 and otherwise used in the operation of the CVH Services, located on the **Vacant Lots** or otherwise used in connection with premises covered by the Lease, related operations (including tangible and intangible assets, employees, records, and so forth), and all land, improvements, or other assets covered by the Land Leases, free and clear of all debts, liens and encumbrances, back to PHD No. 3 following a process consistent with how they were originally transferred; (ii) transfer any remaining cash balance in Pool A or Pool B; and (iii) assign in part or grant sublicenses under the electronic health records software license, maintenance and support services agreements in effect at the CVH Facilities immediately prior to the termination (“EHR Services”) to PHD No. 3 in order to allow PHD No. 3 to continue to access and use the EHR Services to the same extent as prior to the termination for the duration of the term of the EHR Services and such additional periods, if any, as PHD No 3 wishes to receive the EHR Services; provided however that PHD No. 3 agrees in writing to be liable directly to the provider of such ongoing EHR Services and that PHD No. 1 is released from such liability. If any furniture, fixtures, and equipment being transferred from PHD No. 1 to PHD No. 3 has been leased or financed, PHD No. 3 shall assume all future liability pursuant to any such lease or financing agreement. PHD No. 1 shall exercise good faith cooperation to effect a smooth transition of the CVH Services to PHD No. 3.

19.6  **Specific Performance.** The parties hereto acknowledge and agree that the failure of any party to perform its agreements and covenants hereunder, including its failure to take all actions as are necessary on its part to the consummation of the transaction, would cause irreparable injury to the other parties, for which damages, even if available, will not be an adequate remedy. Accordingly, each party hereby consents to the issuance of injunctive relief or specific performance by any court of competent jurisdiction to compel performance of such party’s obligations and to the granting by any court of the remedy of specific performance of its obligations hereunder.

20.  **LOSS OF LICENSE AFTER CLOSING**

In the event PHD No. 1 is unable to provide the Restricted Services as set forth herein, because of the loss of the CVH Facilities’ general acute care license, or any other permit, certification or approval needed for the CVH Facilities to be operated as a general acute care hospital, PHD No. 1 shall be responsible for curing and remedying such loss as soon as reasonably possible. In the event the loss cannot be remedied in a reasonable period of time, PHD No. 1 shall be deemed in default under the terms of this Affiliation Agreement and the Lease.

21.  **STANDARD OF CARE**

PHD No. 1 shall use its best efforts to ensure that residents of PHD No. 3 have an opportunity to receive appropriate medical care within Snohomish County, Washington. In its sole discretion, PHD No. 1 shall determine from time to time what constitutes appropriate medical care subject to the requirement to consult with PHD No. 3, as set forth in Section 15.16, prior to discontinuing any clinical services. PHD No. 1 agrees to adopt appropriate policies for employed providers working within PHD No. 3 to refer residents of PHD No. 3 to clinical services provided within PHD No. 3, subject to availability of appropriate resources in the
clinician’s judgment and patient preference, and in compliance with applicable laws. Annually, PHD No. 1 shall provide an update to PHD No. 3 Board regarding volume trends by clinical service area.

22. MISCELLANEOUS

22.1 Delegation of Authority. Nothing in this Agreement shall be construed to (1) require PHD No. 3 to delegate to PHD No. 1 any authority which must legally be reserved to PHD No. 3, or (2) restrict PHD No. 3 from providing or causing to be provided any services required by applicable statute, rule or regulation to be provided directly or indirectly by PHD No. 3. To the extent any terms of this Agreement or the Lease conflict with such requirements or restrictions in any applicable statute, rule, or regulation, the applicable statute, rule or regulation shall control.

22.2 Expenses. All fees and expenses incurred by PHD No. 3, including without limitation legal fees and expenses, in connection with this Affiliation Agreement shall be borne by PHD No. 3 and all fees and expenses incurred by PHD No. 1, including without limitation legal fees and expenses, in connection with this Affiliation Agreement shall be borne by PHD No. 1.

22.3 Risk of Loss. The risk of loss or damage to any assets used in connection with the CVH Services shall remain with PHD No. 3 until Closing and PHD No. 3 shall maintain its insurance policies covering the CVH Facilities through Closing.

22.4 Confidentiality. The parties shall maintain in confidence, and shall cause their commissioners, officers, employees, agents, and advisors to maintain in confidence, any written, oral, or other information obtained in confidence from another party, unless (a) such information is already known to such party or to others not bound by a duty of confidentiality or such information becomes publicly available through no fault of such party, (b) the use of such information is necessary or appropriate in making any filing or obtaining any consent or approval required for the consummation of the contemplated transaction, or (c) the furnishing or use of such information is required by any Proceeding.

22.5 Exhibits and Schedules. The parties acknowledge and agree that as of the parties’ execution of this Affiliation Agreement, the content of the Exhibits and Schedules to this Affiliation Agreement (including, without limitation, the form of the agreements to be included in any Exhibits and Schedules) may not be complete or finalized. The parties shall use their best efforts to cooperate with one another to complete and finalize the content of the Exhibits and Schedules in an expeditious and prompt manner following mutual execution of this Affiliation Agreement. The parties will exchange drafts of all Exhibits and Schedules based on all information currently available no later than ninety (90) days following execution of this Affiliation Agreement. If either party has objections or concerns with respect to any Schedule or Exhibit, it shall promptly communicate such objections and concerns and the parties will cooperate in good faith to resolve them, and to revise the Exhibits and Schedules as necessary. If either party has not elected to terminate this Affiliation Agreement and the Lease by written notice to the other prior to the end of the Due Diligence Period, such party shall be deemed to have agreed to all Schedules and Exhibits, as then revised, except that neither party shall be
deemed to accept any subsequent changes to an Exhibit or Schedule that is necessary to update a Schedule to reflect new or more current information prior to Closing. Each Schedule (and disclosure in lieu of Schedule) and Exhibit to this Affiliation Agreement shall be considered a part hereof as if set forth herein in full. Following the Due Diligence Period until ten (10) days prior to the Closing Date, either party shall make best efforts to update its Schedules and related disclosures, subject to the other party’s approval rights described below; provided, however, that either party may further update its Schedules and related disclosures within the ten (10) days prior to Closing as needed, to the extent such update or disclosure could not reasonably have been made prior to that time. It shall be deemed a condition precedent to the obligations of the parties hereto that any update of the Schedules, Exhibits, and related documents, instruments, books, and records subsequent to the Due Diligence Period that is necessary to make the Exhibit or Schedule reasonably accurate as of the Closing Date and which exposes a party to material risk or legal liability that was not previously disclosed (“Material Unknown Risk”) shall require the approval of such party. If a party, in its reasonable discretion, determines that it should not consummate the transactions contemplated by this Affiliation Agreement because of a Material Unknown Risk disclosed in an updated Schedule, Exhibit or other instrument that is delivered to such party after the Due Diligence Period, then such party may terminate this Affiliation Agreement on or before the Closing by giving written notice thereof to the other party.

22.6 Notices. All notices, consents, waivers, and other communications under this Affiliation Agreement must be in writing and shall be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telex (with written confirmation of receipt), provided that a copy is mailed by registered mail, return receipt requested, or (c) when received by the addressee, if sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

if to PHD No. 3:

______________________
______________________
______________________

with a copy to:

Hooper, Lundy & Bookman, P.C.
1875 Century Park East, Suite 1600
Los Angeles, California 90067
Attention: Robert W. Lundy, Jr.
Facsimile: (310) 551-8181

if to PHD No. 1:

Skagit Valley Hospital
1415 E. Kincaid
P.O. Box 1376
Mount Vernon, WA 98273
Attn: CEO/Superintendent
Subject to the parties’ rights to equitable relief, as provided herein, all controversies, claims and disputes arising in connection with this Affiliation Agreement shall be settled by mutual consultation between the parties in good faith as promptly as possible, but failing an amicable settlement shall be settled finally by arbitration, conducted in Seattle, Washington in accordance with the rules and procedures promulgated by Judicial Dispute Resolution before one arbitrator. The arbitrator shall be authorized to award the prevailing party its reasonable expenses of such arbitration, including attorneys’ fees. The decision of the arbitrator shall be final and binding on the parties. Either party may bring an action in any court of competent jurisdiction to compel arbitration under this Affiliation Agreement and to enforce an arbitrator’s award. In the event of any court action brought to enforce this agreement to arbitrate, the prevailing party shall be entitled to recover its reasonable expenses of such court action, including attorneys’ fees.

Further Assurances. The parties hereto agree (a) to furnish upon request to each other such further information, (b) to execute and deliver to each other such other documents, and (c) to do such other acts and things, all as any other party may reasonably request for the purpose of carrying out the intent of this Affiliation Agreement and the documents referred to in this Affiliation Agreement.

Waiver. The rights and remedies of the parties to this Affiliation Agreement are cumulative and not alternative. Except with regard to those rights and obligations that only survive until a date certain, neither the failure nor any delay by any party in exercising any right, power, or privilege under this Affiliation Agreement or the documents referred to in this Affiliation Agreement shall operate as a waiver of such right, power, or privilege, and no single or partial exercise of any such right, power, or privilege shall preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power, or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Affiliation Agreement or the documents referred to in this Affiliation Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party shall be applicable except in the specific instance for which it is given; and (c) no notice to or demand on one party shall be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Affiliation Agreement or the documents referred to in this Affiliation Agreement.

Entire Agreement. This Affiliation Agreement supersedes all prior agreements between the parties with respect to its subject matter and constitutes (along with the disclosure
Schedules and the documents referred to in this Affiliation Agreement) a complete and exclusive statement of the terms of the agreement between the parties with respect to its subject matter. This Affiliation Agreement may not be amended except by a written agreement executed by the parties.

22.11 Assignment; Parties in Interest. No party may assign any of its rights and obligations under this Affiliation Agreement, nor may PHD No. 1 assign, delegate or subcontract its management or operational responsibilities with respect to the CVH Facilities to any other person, without the prior consent of the other parties hereto, which consent shall not be unreasonably withheld, except that PHD No. 1 may assign its responsibilities to the University of Washington or an entity wholly owned or controlled by PHD No. 1. No assignment of its responsibilities to an entity wholly owned or controlled by PHD No. 1 shall relieve PHD No. 1 of any obligation or liability under this Agreement. All the terms and provisions of this Affiliation Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the respective heirs, successors, assigns and legal or personal representatives of the parties hereto. Nothing expressed or referred to in this Affiliation Agreement shall be construed to give any Person other than the parties to this Affiliation Agreement any legal or equitable right, remedy, or claim under or with respect to this Affiliation Agreement or any provision of this Affiliation Agreement. This Affiliation Agreement and all of its provisions and conditions are for the sole and exclusive benefit of the parties to this Affiliation Agreement and their successors and permitted assigns.

22.12 Severability. If any provision of this Affiliation Agreement is held invalid or unenforceable by any arbitrator or court of competent jurisdiction, the other provisions of this Affiliation Agreement shall remain in full force and effect. Any provision of this Affiliation Agreement held invalid or unenforceable only in part or degree shall remain in full force and effect to the extent not held invalid or unenforceable.

22.13 Section Headings; Construction. The headings of Articles or Sections in this Affiliation Agreement are provided for convenience only and shall not affect their construction or interpretation. All references to Articles or Sections refer to the corresponding Articles or Sections of this Affiliation Agreement. All words used in this Affiliation Agreement shall be construed to be of such gender or number as the circumstances require. Unless otherwise expressly provided, the word “including” does not limit the preceding words or terms.

22.14 Governing Law. This Affiliation Agreement shall be governed by the laws of the State of Washington without regard to choice of law or conflicts of laws principles.

22.15 Counterparts. This Affiliation Agreement may be executed in one or more counterparts (including, by facsimile or .pdf electronic copies), each of which shall be deemed to be an original copy of this Affiliation Agreement and all of which, when taken together, shall be deemed to constitute one and the same agreement.

[Signature Page Follows]
IN WITNESS WHEREOF, the parties have duly executed this Affiliation Agreement to Lease and Operate Cascade Valley Hospital and Clinics as of the date first above written.

PUBLIC HOSPITAL DISTRICT NO. 3, SNOHOMISH COUNTY, WASHINGTON
doing business as CASCADE VALLEY HOSPITAL AND CLINICS

By: ________________________________
Name: ________________________________
Title: ________________________________

PUBLIC HOSPITAL DISTRICT NO. 1, SKAGIT COUNTY, WASHINGTON
doing business as SKAGIT REGIONAL HEALTH

By: ________________________________
Name: ________________________________
Title: ________________________________
SCHEDULE 1

Methodology for Calculating CVH Operating Losses

The cash flow from the operation of the CVH Services shall be calculated by subtracting cash operating expenditures (e.g., not including non-cash expenditures such as depreciation) from the cash collected from the operation of the CVH Services (net patient revenue and other operating revenue), applying the following principles:

(i) Operating expenses shall be limited to (x) direct operating expenses of the CVH Services, plus (y) 50% of the losses resulting from the operation of the Smokey Point Medical Center clinic (“SPMC Clinic”) up to an amount not to exceed $750,000.00 annually. The $750,000 limit on the losses attributable to the operation of the SPMC Clinic shall be increased by any additional losses resulting in the future from legislative or regulatory changes adversely affecting the provider-based status of the SPMC Clinic. The overhead portion of the direct operating expenses shall include the costs reported in the following overhead departments listed in the Washington State Department of Health’s Accounting and Reporting Manual plus allocated employee benefits:

- General Services Department (8310-8490);
- The Fiscal Services Department (8510 to 8590); and
- The Administrative Services (8610 to 8790).

Overhead services may be provided on-site at the CVH Facilities or through a centralized function. The Overhead expenses allocated to the CVH Services shall be the lesser of the amount determined by the then current PHD No. 1 overhead allocation methodology or PHD No. 3’s historic overhead rate of 24.1% of operating revenue (net patient revenue and other operating revenue).

(ii) The cash flow from the operation of the CVH Services shall be determined in accordance with GAAP, except as otherwise provided herein.