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**IN THE FIFTH JUDICIAL DISTRICT COURT IN AND FOR
WASHINGTON COUNTY, STATE OF UTAH**

Falcon Ridge Ranch, Inc.; Red Rock Canyon
School, L.L.C.; Lava Heights Academy, Inc.;
Mount Pleasant Academy, LLC; Red Rock
Canyon School Non-Profit Organization; Falcon
Ridge Ranch Non-Profit Organization; Red Rock
Canyon Charitable Remainder Trust Dated
August 15, 2016; Frank Habibian; Frank
Habibian Dynasty Trust Dated August 9, 2016,

Petitioners,

v.

Sequel Youth Services of Red Rock Canyon,
LLC; Sequel Youth Services of Falcon Ridge
Ranch, LLC; Sequel Youth Services of Lava
Heights, LLC; Sequel Youth Services of Mount
Pleasant, LLC; Care Youth Corporation,

Respondents.

**AMENDED PETITION AND
MOTION FOR ORDER
CONFIRMING ARBITRATION
AWARD**

Civil No. 200500204

Honorable Judge Eric R. Ludlow

Pursuant to Utah Code § 78B-11-123, Petitioners hereby submit this Petition for Order
Confirming Arbitration Award (“Petition”).

PARTIES, JURISDICTION & VENUE

1. Petitioner Falcon Ridge Ranch, Inc. is a Utah corporation.
2. Petitioner Red Rock Canyon School, L.L.C. is a Utah limited liability company.
3. Petitioner Lava Heights Academy, Inc. is a Utah corporation.

4. Petitioner Mount Pleasant Academy, LLC is a is a Utah limited liability company.
5. Petitioner Red Rock Canyon School Non-Profit Organization is a Utah non-profit corporation.
6. Petitioner Falcon Ridge Ranch Non-Profit Organization is a Utah non-profit corporation.
7. Petitioner Red Rock Canyon Charitable Remainder Trust Dated August 15, 2016 is a trust organized under the laws of Utah.
8. Petitioner Frank Habibian is an individual residing in St. George, Utah.
9. Petitioner Frank Habibian Dynasty Trust Dated August 9, 2016 is a trust organized under the laws of Utah.
10. Respondent Sequel Youth Services of Red Rock Canyon, LLC is a Utah limited liability company.
11. Respondent Sequel Youth Services of Falcon Ridge Ranch, LLC is a Utah limited liability company with a place of business in Washington County, Utah.
12. Respondent Sequel Youth Services of Lava Heights, LLC is a Utah limited liability company with a place of business in Washington County, Utah.
13. Respondent Sequel Youth Services of Mount Pleasant, LLC is a Utah limited liability company.
14. Respondent Care Youth Corporation is a Utah non-profit corporation with its principal place of business in Washington County, Utah.
15. Jurisdiction is proper in this Court pursuant to Utah Code §§ 78A-5-102 and 78B-11-127.
16. Venue is proper in this Court pursuant to Utah Code sections §§ 78B-11-128 and 78B-3-304, -307.

FACTUAL BACKGROUND

I. The Agreement to Arbitrate

17. Petitioners and Respondents entered into an Asset Purchase Agreement dated August 16, 2016 (“APA”), a copy of which is attached to this Petition as Exhibit A.

18. Pursuant to the APA entered into between Petitioners and Respondents, the parties agreed to resolve “[a]ny controversy or claim arising out of or relating to this Agreement, . . . any indemnity claims, or the transactions contemplated thereby . . . by binding arbitration . . .” APA § 7.7, 7.7(a).

19. The parties further agreed that any arbitration pursuant to the APA would be “administrated by the American Arbitration Association” and that Utah law would be “the governing law for the arbitration . . . without reference to its conflict of laws provisions.” APA § 7.7(b).

20. The APA further provides that the arbitrator “shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law.” APA § 7.7(d).

21. The APA states the arbitrator “shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Utah” and that the “award rendered by the arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.” APA § 7.7(f).

22. The APA also entitles the prevailing party—in addition to all other remedies they may be entitled—to the costs and expenses incurred in conducting the arbitration or proceeding,

“including reasonable attorneys’ fees and expenses, and arbitration fees, even if not recoverable by law.” APA § 7.7(e).

II. The Claims and Counterclaims Asserted by the Parties

23. On October 4, 2017, Respondents filed a Demand for Arbitration with the American Arbitration Association (“AAA”), seeking indemnification in the amount of \$2,674,122.29, plus attorneys’ fees, interest, and arbitration costs.

24. Petitioners responded to Respondents’ Arbitration Demand by denying all claims and asserting counterclaims against Respondents, alleging claims for breach of contract, breach of the covenant of good faith and fair dealing, and declaratory judgment.

25. In February 2018, Petitioners and Respondents amended their claims and counterclaims, respectively. For their part, Respondents added two fraud claims, seeking an additional \$1,479,500 in damages. Petitioners’ amendment modified their existing counterclaims.

26. In March 2019, Respondents again amended their claims, this time to add an additional indemnification claim arising out an alleged breach of contract. That claim sought to recover the same \$1,479,500 Respondents sought through their fraud claims.

III. The Selection of the Arbitrator

27. The APA requires any arbitration brought under its provisions to be “conducted by one arbitrator agreed to by the parties” and that such “arbitrator shall have no less than fifteen years of experience practicing as a lawyer in the area of mergers & acquisitions or similar complex transactions.” APA § 7.7(b).

28. With the assistance of the AAA and consistent with the APA, the parties jointly selected Melissa Hubbard to conduct the arbitration.

IV. Final Hearing and Award

29. An evidentiary hearing was held before Melissa Hubbard during the week of November 4-8, 2019 (the “Hearing”).

30. William Brown, Sean Moore, and Thomas Story of the Brown Winick law firm appeared at the Hearing on behalf of Respondents.

31. Cameron Sabin and Lauren DiFrancesco of Stoel Rives LLP appeared at the Hearing on behalf of Petitioners.

32. During the Hearing, the arbitrator heard live testimony from the following witnesses: Ryan Santi, Sybil Potts, Steve Gilbert, John Stupak, Laurence Freedman, Jeffrey Rinard, John Ripley, Mandy Moses, Jacque Gabler, Frank Habibian, Gerard Habibian, Brian Pace, Sherman Habibian, Radaun Gleave, Susanne Young, Becky Brown, Michael Jones, and Richard Hoffman.

33. The parties also provided evidence via documentary exhibits presented at the Hearing. Following the Hearing, the parties stipulated to the exhibits that were admitted into evidence for consideration by the arbitrator.

34. Following the Hearing, the parties submitted two post-Hearing briefs each—an initial brief and a response brief.

35. On March 2, 2020, and after considering the case law cited by the parties, witness testimony, the documentary evidence, and the Parties’ oral and written arguments, the Arbitrator issued an Interim Award that made determinations, on the merits, of Respondents’ claims and Petitioners’ counterclaims. The Arbitrator denied Respondents’ claims in their entirety and granted Petitioners’ counterclaims. Specifically (and among other things), the Arbitrator found that, but for Respondents’ misconduct, the EBITDA of the CARE Schools during the Contingent

Period would have exceeded the Contingent Payment threshold set forth in the APA by at least \$566,990, and therefore Respondents are entitled to receive a Contingent Payment under the APA in the amount of at least \$3,118,445. The Arbitrator further determined that Petitioners were the prevailing party in the arbitration. A true and correct copy of the Interim Award is attached as Exhibit B.

36. Consistent with Petitioners' status as prevailing party, the arbitrator further awarded Petitioners their reasonable costs and fees, including attorneys' fees and compensation of the Arbitrator, and directed Respondents to submit a verified affidavit in support of their claim for fees, costs and other expenses incurred in the arbitration, and provided Respondents an opportunity to respond to the same. The arbitrator indicated she would include the award of reasonable fees and costs in a Final Award.

37. On May 1, 2020, the Arbitrator issued a Final Award incorporating all of the language of the Interim Award and awarding Petitioners \$1,300,000 in attorneys' fees and costs, plus post-interest which "shall begin to accrue on any unpaid amounts as of May 29, 2020 at a cumulative rate of 8% per annum." A true and correct copy of the Final Award is attached as Exhibit C.

38. Respondents have not moved under Utah Code §§ 78B-11-121, -124, or -125 to change, modify, or vacate either the Interim or Final Awards.

ARGUMENT

The Utah Uniform Arbitration Act (the "Act") establishes the method for confirming an arbitration award and reducing it to an enforceable judgment. Utah Code § 78B-11-123 provides that, after "a party to an arbitration proceeding receives notice of an award in a matter not pending before the court, the party may petition the court for an order confirming the award."

After the petition is filed, the “court shall issue a confirming order unless the award is modified or corrected pursuant to Utah Code § 78B-11-121 or § 78B-11-125 or is vacated pursuant to Utah Code § 78B-11-124.” Personal service of this Petition and supporting materials will be effected upon Respondents in the manner required for service of an original complaint in a civil action. Utah Code § 78B-11-106(2).

Wherefore, Petitioners request that the Court enter an Order Confirming the Interim Award of Arbitration and the Final Award of Arbitration and enter judgment against Respondents consistent with the Interim Award and Final Award.

REQUESTED RELIEF

Petitioners seek a Court order:

- A. Confirming the arbitration Interim Award dismissing Respondents’ claims in their entirety, granting Petitioners’ claims, and finding Petitioners to be the prevailing parties;
- B. Confirming the arbitration Final Award dismissing Respondents’ claims in their entirety, granting Petitioners’ claims, finding Petitioners to be the prevailing parties, and granting Petitioners \$1,300,000 in attorney fees and costs with interest to “begin to accrue on any unpaid amounts as of May 29, 2020 at a cumulative rate of 8% per annum.”
- C. Pre- and Post-Judgment Interest on any judgment;

- D. Attorneys' fees and costs in confirming the award; and,
- E. Any such other relief as the court determines is appropriate.

DATED: May 11, 2020

STOEL RIVES LLP

/s/ Lauren DiFrancesco

Cameron L. Sabin

Lauren E.H. DiFrancesco

Attorneys for Petitioners

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Exhibit A

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** (the "Agreement") is made and entered into as of the 16th day of August, 2016 (the "Effective Date"), by and among **SEQUEL YOUTH SERVICES OF RED ROCK CANYON, LLC**, a Utah limited liability company ("Sequel Red Rock"), **SEQUEL YOUTH SERVICES OF FALCON RIDGE RANCH, LLC**, a Utah limited liability company ("Sequel Falcon Ridge"), **SEQUEL YOUTH SERVICES OF LAVA HEIGHTS, LLC**, a Utah limited liability company ("Sequel Lava Heights"), and **SEQUEL YOUTH SERVICES OF MOUNT PLEASANT, LLC**, a Utah limited liability company ("Sequel Mount Pleasant") and **CARE YOUTH CORPORATION**, a Utah nonprofit corporation ("Care Youth Corporation") (Sequel Red Rock, Sequel Falcon Ridge, Sequel Lava Heights, Sequel Mount Pleasant and Care Youth Corporation, collectively the "Buyers"); **FALCON RIDGE RANCH, INC.**, a Utah corporation ("Falcon Ridge"), **RED ROCK CANYON SCHOOL, L.L.C.**, a Utah limited liability company ("Red Rock"), **LAVA HEIGHTS ACADEMY, INC.**, a Utah corporation ("Lava Heights"), **MOUNT PLEASANT ACADEMY, LLC**, a Utah limited liability company ("Mount Pleasant"), **RED ROCK CANYON SCHOOL NON-PROFIT ORGANIZATION**, a Utah nonprofit corporation ("Red Rock NFP"), **FALCON RIDGE RANCH NON-PROFIT ORGANIZATION**, a Utah nonprofit corporation ("Falcon Ridge NFP"), **RED ROCK CANYON CHARITABLE REMAINDER TRUST DATED AUGUST 15, 2016** ("Red Rock Canyon CRT") (Falcon Ridge, Red Rock, Lava Heights, Mount Pleasant, Red Rock NFP, Falcon Ridge NFP and Red Rock Canyon CRT, collectively the "Sellers"); and **FRANK HABIBIAN**, an individual ("Habibian"), and **FRANK HABIBIAN DYNASTY TRUST DATED AUGUST 9, 2016** as the sole and exclusive equity owners of the Sellers (together, the "Shareholders").

WHEREAS, Sellers are established providers of psychiatric/counseling, substance abuse treatment, developmental disability, and similar services (as further defined, the "Sellers' Business"), and the Shareholders (through Affiliates) own certain Real Estate used by Sellers in the operation of Sellers' Business; and

WHEREAS, Buyers desires to purchase from Sellers, and Sellers desire to sell to Buyers, the assets used by Sellers in Sellers' Business, as more fully described below.

NOW, THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the sufficiency of which is hereby acknowledged, the parties agree as follows:

ARTICLE I**DEFINITIONS; PRIORITY OF DOCUMENTS**

1.1. Definitions. The capitalized terms in this Agreement shall have the meanings set forth in Annex A, attached hereto and incorporated herein by reference.

1.2. Priority of Documents. In the event of any conflict between the terms of this Agreement and any other Buyer Documents or Seller Documents, the terms of this Agreement shall control.

ARTICLE II**TRANSFER OF ASSETS, TREATMENT OF LIABILITIES**

2.1. Transfer of Assets. On the terms and subject to the conditions herein, on the Closing Date Sellers will sell, convey, transfer and deliver to Buyers (or its wholly owned subsidiaries or other affiliates specified by Buyers), and Buyers will purchase from Sellers, all of the tangible and intangible assets and properties of Sellers related to the Sellers' Business as the same shall exist on the Closing

Date and wherever located, free and clear of all Encumbrances other than Permitted Encumbrances, including without limitation the Assets described below (collectively, the "Assets").

(a) All Accounts Receivable, except the Retained Aged Receivables, including, without limitation, those identified in Schedule 2.1(a).

(b) All Inventory.

(c) All Tangible Personal Property, including, without limitation, those items identified in Schedule 2.1(c).

(d) All Intellectual Property Assets.

(e) All Other Intangible Assets.

(f) All Purchased Contracts, including, without limitation, those identified in Schedule 2.1(f).

(g) All Governmental Authorizations and all pending applications therefor or renewals thereof, in each case to the extent transferable to Buyers, including, without limitation, those identified in Schedule 2.1(g).

(h) All Capital Leases and Operating Leases of Sellers, excluding the Prior Real Estate Leases.

(i) All Prepaid Expenses.

(j) All books and records and all data, files, documents, papers, agreements, books of account and other records pertaining to the Assets or the Sellers' Business which are used in connection therewith, including records relating to current employees of Sellers as allowed by law (or if necessary, to the extent Buyers obtains consent to such transfer from each employee), client and customer lists and records, financial records, and accounting records.

(k) Sellers' bank accounts related to customer payments, including, without limitation, those bank accounts identified in Schedule 2.1(k).

2.2. Excluded Assets. Notwithstanding the foregoing, the Assets shall not include any of the items listed in this Section 2.2 (the "Excluded Assets"):

(a) All cash, cash equivalents, and short-term investments of Sellers.

(b) The Sellers' original corporate records, minute books, treasury stock of Sellers, and all employee and other records Sellers are required by law to retain in their possession (copies of which will be provided to Buyers to the extent permitted by law).

(c) All Employee Plans and all rights in connection with the assets of the Employee Plans.

(d) The rights of the Sellers under this Agreement and the ancillary documents thereto.

(e) The assets set forth on Schedule 2.2(e).

(f) The Prior Real Estate Leases.

(g) All insurance policies, and any insurance benefits, rights or proceeds, except to the extent payable to the Buyers as provided herein.

(h) Sellers' bank accounts, including, without limitation, all bank accounts receiving deposits of payments on accounts receivable of Sellers, except those bank accounts identified on Schedule 2.1(k).

(i) Sellers' claims against third parties relating to operation of Sellers' Business prior to the Closing Date.

(j) The Retained Aged Receivables.

2.3. Excluded Liabilities. Other than with respect to the Assumed Liabilities, Buyers is not assuming, nor shall it be deemed to have assumed, any liabilities or obligations of Sellers, whether actual, contingent, direct or indirect, matured or unmatured, liquidated or unliquidated, or known or unknown, arising out of occurrences prior to the Closing Date (the "Excluded Liabilities"). Sellers hereby acknowledge that they are retaining the Excluded Liabilities and Sellers agree to pay, discharge and perform all such liabilities and obligations promptly as and when due. Without limiting the foregoing, Buyers shall not assume or be obligated to pay, perform, or discharge any liabilities, obligations or commitments of Sellers relating to or arising out of any of the following:

(a) *Taxes.* Any liabilities for federal, state and local Taxes (as hereinafter defined) of Sellers or relating to the Assets (as a result of income, gain or otherwise) for any period prior to or including the Closing Date (except to the extent such taxes relate to the period after the Closing Date).

(b) *Indebtedness.* Any liabilities and obligations to repay indebtedness for borrowed money incurred by Sellers, whether current or long-term liabilities, including any liabilities or obligations under any notes payable to the Shareholders or other third parties, any negative cash balance with any financial institution, bonds, debentures or installment contracts (except with respect to Capital Leases included in the Assets).

(c) *Professional Fees.* Any liabilities and obligations of Sellers for fees, costs and expenses of attorneys, independent public accountants, investment bankers or other representatives incurred in connection with the negotiation, preparation, or consummation of the Closing.

(d) *Litigation.* Any liabilities and obligations of Sellers (i) relating to the Assets or the Sellers' Business and (ii) arising out of any action based on any state of facts or events occurring on or prior to the Closing Date, including but not limited to pending litigation.

(e) *Employment Matters.* Any liabilities and obligations of Sellers for any workers' compensation, payroll and other Taxes (or withholdings or similar items), and any wages, bonuses, commissions, sick pay or vacation payments (except with respect to any Company Continuing Employees, but only to the extent that such amounts are included in Closing Net Working Capital, which liabilities and obligations shall be Assumed Liabilities), severance payments, retirement plan contributions, deferred compensation, deferred tax or bonus related compensation liabilities, or other compensation arising prior to the Closing Date.

(f) *Violation of Law.* Any violation or non-compliance with applicable law by Sellers relating

to the Sellers' Business prior to the Closing Date.

(g) *Intercompany Liabilities.* Any liabilities or obligations of Sellers to any of the Shareholders or other related or affiliated person.

(h) *Current and Long Term Liabilities.* Except as provided in Section 2.4, any and all current or long term liabilities of Sellers, which shall be paid on or before the Closing Date or as otherwise in accordance with their terms if such liabilities or payables are not due until after the Closing Date.

(i) *Environmental, Health, and Safety Liabilities.* Any Environmental, Health and Safety Liabilities arising from activities prior to the Closing.

2.4. Assumed Liabilities. Notwithstanding Section 2.3 above, Buyers will assume as of the Closing, and discharge when due, the following, and only the following, liabilities of the Sellers (the "Assumed Liabilities"):

- (a) *Accounts Payable.* All Accounts Payable.
- (b) *Purchased Contracts.* All contractual liabilities and obligations related to the Purchased Contracts which arise after the Closing.
- (c) *Operating and Capital Leases.* All of Sellers' Operating Leases and Capital Leases transferred to Buyers as Assets but only for the obligations for the periods of the Operating Leases and Capital Leases which arise after the Closing.
- (d) *Post-Closing Liabilities.* Any liability arising out of Buyers' ownership or operation of the Assets and/or Sellers' Business after the Closing.
- (e) *Company Continuing Employees.* Any liability for sick pay or vacation payments after the Closing Date accrued by any Company Continuing Employee prior to the Closing Date but only to the extent that such amounts are included in Closing Net Working Capital.

ARTICLE III CONSIDERATION, CLOSING, CLOSING CONDITIONS

3.1. Consideration. The consideration for Buyers' purchase of the Assets and assumption of the Assumed Liabilities from Sellers shall be the sum of (i) the Base Purchase Price, (ii) the Contingent Payment, and (iii) the value of the Assumed Liabilities, subject to adjustment as set forth in this section (the "Purchase Price"). The Purchase Price shall be paid as provided in this Section 3.1.

(a) *Base Purchase Price.* The "Base Purchase Price" shall equal **Twenty-Three Million Five Hundred Thousand Dollars (\$23,500,000.00)**. The Base Purchase Price shall be further adjusted pursuant to Sections 3.1(e) and 3.1(f) and shall be paid at Closing by wire transfer in immediately available funds.

(b) *Escrow Amount.* **Two Million Three Hundred Fifty Thousand Dollars (\$2,350,000.00)** (the "Escrow Amount") shall be withheld from the Closing payment of the Base Purchase Price and paid to an account designated in the Escrow Agreement. Subject to the terms and conditions of the Escrow Agreement, the Escrow Amount shall be released twelve (12) months after the Closing Date, except that

the Escrow Agent shall retain sufficient funds to cover any pending claims as of the time of distribution.

(c) *Payoff Amounts.* At Closing, the Payoff Amounts shall be paid by wire transfer to the Sellers' creditors and lenders as set forth on Schedule 3.1(d). The amount of the cash payment set forth in Section 3.1(a) shall be reduced by the amount paid under this Section 3.1(d).

(d) *Prorations.* The following prorations and/or reimbursements relating to the Assets and the ownership and operation of Sellers' Business will be made as of the Closing Date, with Sellers liable to the extent such items relate to any time period prior to the Closing Date and Buyers liable to the extent such items relate to periods beginning with and subsequent to the Closing Date. Prepaid items will be credited to Sellers to the extent they relate to the post-Closing period, and items paid in arrears will be credited to Buyers to the extent they relate to the pre-Closing period. Except as otherwise agreed by the parties, the net amount of all such prorations will be settled and paid on the Closing Date.

(i) Rents, additional rents, taxes, and other items under any leases included in the Assets.

(ii) All other items (including personal property taxes) normally adjusted in connection with similar transactions. For the avoidance of doubt, Buyers shall be credited under this provision for one-half (1/2) of any transfer taxes or fees associated with re-titling motor vehicles in Buyers' names, which cost shall be shared equally by Buyers and Sellers.

(iii) Credits to Buyers for any Employee Benefits or Employee Plans or employee credits to be carried over from Sellers to Buyers pursuant to Section 5.13(a), except to the extent that such amounts are included in the calculation of Estimated Closing Net Working Capital or of the Post-Closing Working Capital Adjustment.

(e) *Working Capital Adjustments.*

(i) At least three Business Days before the Closing, Sellers shall prepare and deliver to Buyers a statement setting forth its good faith estimate of the Closing Net Working Capital (the "Estimated Closing Net Working Capital"), which statement shall contain an estimated balance sheet of the Company as of the Closing Date and calculations of the Estimated Closing Working Capital (the "Estimated Closing Statement"). The Estimated Closing Statement shall be prepared by the Sellers on a basis consistent with, and utilizing the same accounts, principles, practices, and policies as those used in preparing the Target Net Working Capital as shown on Schedule 3.1(f). The "Closing Working Capital Adjustment" shall be an amount, if any, by which the Estimated Closing Net Working Capital is greater than the Working Capital Target. For purposes of clarity, if the Estimated Closing Net Working Capital is greater than the Working Capital Target, then the Closing Working Capital Adjustment shall be a positive number and the Base Purchase Price shall be increased by the amount of such excess, but if the Estimated Closing Net Working Capital is less than the Working Capital Target, then the Closing Working Capital Adjustment shall be a negative number and the Base Purchase Price shall be reduced by the amount of such deficiency. As used in this section, "Working Capital Target" means \$1,568,000.

(ii) Within ninety (90) days following the Closing Date, Buyers shall prepare and deliver to Sellers a Closing Balance Sheet. The Closing Balance Sheet and the Closing Net Working Capital shall be prepared by the Buyers on a basis consistent with, and utilizing the

same accounts, principles, practices, and policies as those used in preparing the Target Net Working Capital as shown on Schedule 3.1(f).

(iii) The "Post-Closing Working Capital Adjustment" shall be calculated as follows:

(A) Determine the amount, if any, by which the Closing Net Working Capital is greater than or less than the Working Capital Target. Such amount is herein referred to as the "Post-Closing WC Base Amount." For purposes of clarity, if the Closing Net Working Capital is greater than the Working Capital Target, then the Post-Closing WC Base Amount shall be a positive number, but if the Closing Net Working Capital is less than the Working Capital Target, then the Post-Closing WC Base Amount shall be a negative number.

(B) If the Post-Closing WC Base Amount is a positive number, then the Post-Closing Working Capital Adjustment shall be a positive number equal to the difference.

(C) If the Post-Closing WC Base Amount is a negative number, then the Post-Closing Working Capital Adjustment shall be a negative number equal to the difference.

(D) If the Post-Closing Working Capital Adjustment shall be a positive number, then the Purchase Price shall be increased thereby and, except as otherwise provided in Section 3.1(f)(iv) below, Buyers shall make a payment to Sellers in the amount of the Post-Closing Working Capital Adjustment by wire transfer of immediately available funds within five (5) Business Days of acceptance of the Closing Statement; and if the Post-Closing Working Capital Adjustment shall be a negative number, then the Purchase Price shall be reduced thereby and, except as otherwise provided in Section 3.1(f)(iv) below, Sellers shall make a payment to Buyers in the amount of the Post-Closing Working Capital Adjustment by wire transfer of immediately available funds within five (5) Business Days of acceptance of the Closing Statement.

(iv) Sellers shall have thirty (30) days from the date Buyers delivers the Closing Balance Sheet to dispute the Closing Balance Sheet and the calculation of the Closing Net Working Capital by providing Buyers with written notice of such dispute in accordance with this subsection. During such thirty (30) day period, Buyers shall make available for review by Sellers such books, records, work papers and other documents and information relating to the Closing Balance Sheet as Sellers may reasonably request. If Sellers have not given written notice of any objections to the Closing Balance Sheet and the Closing Net Working Capital during such thirty (30) day period, then these statements shall be deemed to be agreed upon by the parties, and the adjustment contemplated above shall be made on such statements. If Sellers give Buyers written notice of objection within such thirty (30) day period, then the parties shall attempt to resolve their dispute through direct discussion. The objection notice shall specify in reasonable detail any proposed adjustment to the Closing Balance Sheet and the calculation of the Closing Net Working Capital and the basis therefor, including in each case a specific dollar amount and a reasonably detailed explanation of how such proposed adjustment was calculated. Any amount(s) or accounts not disputed as provided herein shall be deemed final. If Sellers deliver an objection notice to the Buyers prior to the expiration of the thirty (30) day period, Buyers and Sellers shall attempt to resolve all disputes within thirty (30) days thereafter, and any written resolution, signed by both Buyers and Sellers, as to a disputed adjustment shall be final, binding,

conclusive and non-appealable for all purposes hereunder. If the parties are unable to resolve their dispute within thirty (30) days from the date an objection notice is delivered, then Buyers and Sellers shall mutually select a certified public accountant with no prior relationship to Buyers and Sellers to resolve the dispute, and any resolution of the dispute by such certified public accountant shall be binding, conclusive and non-appealable for all purchases hereunder. The fees, costs and expenses of the accountant shall be paid by the Buyers, on the one hand, and Sellers, on the other hand, in relation to the proportional difference between the accountant's final determination of the Closing Net Working Capital, and each of the Company's and Sellers' position as to Closing Net Working Capital. The Company and Sellers agree that the procedure set forth in this Section 3.1(f)(iv) for resolving disputes with respect to the Closing Balance Sheet and the calculation of the Closing Net Working Capital shall be the sole method for resolving any such disputes.

3.2. Closing; Closing Documents. Subject to the satisfaction of the conditions set forth in Sections 3.3 and 3.4 hereof, the Closing shall take place on the Closing Date at a location to be mutually selected by the parties. Subject to the ability to terminate this Agreement pursuant to the provisions of ARTICLE VI, the failure to consummate the Closing on the Closing Date shall not result in a termination of this Agreement and will not relieve any party of any obligation under this Agreement. Under such situation, the Closing will occur as soon as practicable. At the Closing, the parties shall deliver the following documents:

(a) *Seller Documents.* Sellers shall have duly executed and/or delivered the following in a form acceptable in the reasonable judgment of Buyers if not otherwise attached hereto (the "Seller Documents"):

- (i) A fully executed Agreement, with all schedules and exhibits attached.
- (ii) A bill of sale for all of the Assets that are tangible personal property (the "Bill of Sale") in the form of Exhibit A hereto.
- (iii) An assignment and assumption of all of the Assets and Assumed Liabilities that are contracts or intangible personal property in the form of Exhibit B hereto (the "Assignment and Assumption Agreement"), and any additional documents required to assign any transferred Capital Leases or Operating Leases.
- (iv) Assignments of all Intellectual Property Assets and separate assignments of all registered Marks, Patents, and Copyrights.
- (v) The New Real Estate Leases for the Facilities and Real Estate used in Sellers' Business in the forms of Exhibit F and Exhibit G hereto.
- (vi) Payoff Letters related to the Payoff Amounts.
- (vii) All documentation necessary to release any Encumbrances on the Assets (excluding the Permitted Encumbrances) other than those addressed in the Payoff Letters.
- (viii) All books and records of Sellers used or utilized in the Sellers' Business (which will be made available at Sellers' principal office), other than the Excluded Assets.

(ix) A certificate of the Sellers certifying as complete and accurate as of the Closing Date attached copies of (A) the Governing Documents of the Sellers, (B) certificates of good standing for Sellers in the state of its incorporation and each other state in which it is qualified to do business, (C) all resolutions or actions of Sellers' board of directors, managers, and/or equity holders required pursuant to the Governing Documents and applicable legal requirements in order to duly approve in a legally effective and enforceable manner the execution, delivery, and performance of this Agreement, (D) the incumbency and signatures of each officer of Sellers executing this Agreement and any other document relating thereto, (E) the accuracy as of the Closing Date of all representations and warranties set forth in Section 4.1, (F) the satisfaction of all closing conditions and other covenants required to be performed or complied with by Sellers at or prior to the Closing Date as set forth in Section 3.3 and ARTICLE V, and (G) amendments to the Governing Documents of Sellers necessary to change the name of Sellers as required by this Agreement.

(x) A closing statement duly executed by Sellers acknowledging their receipt of the Base Purchase Price paid at Closing.

(xi) The Escrow Agreement duly executed and delivered by Sellers in the form of Exhibit E hereto.

(xii) Duly executed powers of attorney on behalf of Sellers in form and substance acceptable to Buyers, and such other instruments as may be necessary to authorize Buyers and its designees to become signatories on the customer payment bank accounts of Sellers listed on Schedule 4.1(l) that have funds deposited into them under any Old NPI Numbers and the lockbox accounts of Sellers, if any, and executed letters issued by Sellers to the institutions holding such accounts authorizing and directing such institutions to remove such signatories on such accounts as Buyers may direct.

(xiii) An affidavit, in form and substance acceptable in the reasonable judgment of Buyers, from Sellers and the Shareholders (or their Affiliates that own any Real Estate), executed under penalty of perjury, indicating Sellers' and the Shareholder's taxpayer identification numbers and stating that they are non-foreign persons pursuant to Section 1.1445-2(b)(2) of the Treasury Regulations promulgated under the Code.

(xiv) An opinion of Sellers' legal counsel Tony Allen, dated as of the Closing Date, in the form of Exhibit C hereto.

(xv) Noncompetition and Nonsolicitation Agreements executed by the Key Employees in the form of Exhibit H hereto.

(xvi) The Transition Services Agreement duly executed by Sellers in the form of Exhibit I hereto.

(xvii) Original motor vehicle titles for all vehicles included in the Assets with title transfer documentation executed by Sellers sufficient to transfer such vehicles to Buyers.

(xviii) Such other deeds, bills of sale, assignments, certificates of title, documents and other instruments of transfer and conveyance as may reasonably be requested by Buyers, each in form and substance satisfactory to Buyers and Sellers and their respective

legal counsel.

(b) *Buyer Documents*. Buyers shall have duly executed and/or delivered the following (the "Buyer Documents"):

- (i) The Base Purchase Price paid as provided in Section 3.1.
- (ii) The Assignment and Assumption Agreement signed by Buyers.
- (iii) A certificate of Buyers certifying as complete and accurate as of the Closing Date (i) the attached copies of all resolutions or actions of Buyers' board of directors, managers, and/or equity holders required pursuant to the Buyers' governing documents and applicable legal requirements in order to duly approve in a legally effective and enforceable manner the execution, delivery, and performance of this Agreement, (ii) certifying the accuracy as of the Closing Date of all representations and warranties set forth in Section 4.2, and (iii) certifying to the satisfaction of all closing conditions and other covenants required to be performed or complied with at or prior to the Closing Date as set forth in Section 3.4 and ARTICLE V.
- (iv) The Escrow Agreement duly executed and delivered by Buyers.
- (v) The Transition Services Agreement duly executed by Buyers.
- (vi) The New Real Estate Leases duly executed by Care Youth Corporation.
- (vii) A closing statement duly executed by Buyers confirming the payments at Closing.

3.3. Conditions Precedent to Obligation of Buyers. The obligation of Buyers to consummate the transactions contemplated by this Agreement is subject to Seller's satisfaction or Buyers' waiver of each of the following conditions prior to the Closing:

(a) *Accuracy of Representations and Warranties*. The representations and warranties of the Sellers set forth in Section 4.1 or in any Seller Document or closing certificate delivered to Buyers shall be true and correct in all material respects at and as of the Closing Date as though made at and as of that time (other than such representations and warranties as are specifically made as of another date).

(b) *Compliance with Covenants*. Sellers shall have performed and complied in all material respects with all covenants set forth in ARTICLE V to be performed or complied with by them at or prior to the Closing Date.

(c) *Consents*. Sellers shall have obtained all of the third-party consents relating to the Material Contracts listed on Schedule 3.3(c) (the "Material Consents"), and Buyers shall have obtained Governmental Authorizations necessary for Buyers to operate the Sellers' Business immediately after Closing in the same manner as Sellers operated Sellers' Business also as set forth on Schedule 3.3(c) (collectively, the "Required Consents"). Notwithstanding any provision of this Agreement, the agreement of Buyers to close and the actual closing of the transactions contemplated by this Agreement shall not be deemed an acknowledgment or agreement by Buyers that Seller has obtained all of the Material Consents, nor shall it be deemed a waiver by Buyers of Sellers' obligations in respect of

obtaining the Material Consents as set forth in this Agreement or the Transaction Services Agreement.

(d) *Legal Actions or Proceedings.* No legal action or proceeding shall have been instituted after the date hereof against Sellers which is reasonably likely (i) to restrain, prohibit or invalidate the consummation of the transactions contemplated by this Agreement or (ii) to have a Material Adverse Effect on the Sellers' Business.

(e) *Corporate Proceedings.* All corporate and other proceedings necessary to properly authorize the transactions herein shall have been taken by the Sellers in connection with the execution and performance of this Agreement, and Buyers will have received copies of such documents and other closing documents as they may reasonable request.

(f) *Insurance.* Sellers shall provide evidence that they either (i) had occurrence based insurance policies or (ii) have obtained tail insurance coverage under Sellers' general and professional liability policies for claims that could be asserted against the Sellers related to the operation of the Sellers' Business or the Assets for claims made within five (5) years after the Closing Date.

(g) *Background Checks.* Each of the Sellers' employees receiving an offer of employment from Buyers shall have consented to permit Buyers to conduct a background check.

(h) *Key Employees.* The Key Employees shall have accepted Buyers' offer of employment and shall have not indicated an intention to work fewer than ninety (90) days as an employee of Buyers.

(i) *Noncompetition and Nonsolicitation Agreements.* The Key Employees shall enter into the Noncompetition and Nonsolicitation Agreements presented to them by the Buyers in the form of Exhibit H hereto.

(j) *Transition Services Agreement.* Sellers shall have executed the Transition Services Agreement.

(k) *Delivery of the Seller Documents.* Sellers shall deliver all of the Seller Documents set forth in Section 3.2.

(l) *Termination of Prior Real Estate Leases, Adoption of New Real Estate Leases.* Prior to or at the Closing, Sellers and the Shareholders (or their applicable Affiliates) shall have terminated the Prior Real Estate Leases, and the landlords shall have executed the New Real Estate Leases in the form substantially set forth as Exhibit F and Exhibit G hereto effective as of the Closing Date.

3.4. Conditions Precedent to Obligation of Sellers. The obligation of Sellers to consummate the transactions contemplated by this Agreement is subject to Buyers' satisfaction or Sellers' waiver of each of the following conditions prior to the Closing:

(a) *Accuracy of Representations and Warranties.* The representations and warranties of Buyers set forth in Section 4.2 of this Agreement or in any Buyers Document or closing certificate delivered to Sellers shall be true and correct in all material respects at and as of the Closing Date as though made at and as of that time (other than such representations and warranties as are specifically made as of another date).

(b) *Compliance with Covenants.* Buyers shall have performed and complied in all material

respects with all covenants set forth in ARTICLE V of this Agreement to be performed or complied with by it at or prior to the Closing Date.

(c) *Legal Actions or Proceedings.* No legal action or proceeding shall have been instituted after the date hereof against Buyers which is reasonably likely to restrain, prohibit or invalidate the consummation of the transactions contemplated by this Agreement.

(d) *Corporate Proceedings.* All corporate and other proceedings necessary to properly authorize the transactions herein shall have been taken by the Buyers in connection with the execution and performance of this Agreement, and Sellers will have received copies of such documents and other closing documents as they may reasonable request

(e) *Delivery of Buyer Documents.* Buyers shall deliver all of the *Buyer Documents* set forth in Section 3.2.

(f) *Delivery of Base Purchase Price.* Buyers shall deliver to the Sellers the Base Purchase Price in the manner provided in Section 3.1.

(g) *Consents and Authorizations.* Sellers and Buyers shall have obtained all of the Required Consents.

3.5. Tax Allocation of Purchase Price. Buyers and Sellers agree that the Purchase Price shall be allocated for tax purposes as set forth on Schedule 3.5 attached hereto. Buyers and Sellers shall report, act and file any and all Tax Returns in all respects in a manner consistent with the said allocation, and shall not take any inconsistent position as part of any examination or litigation regarding such Tax Returns unless required to do so by applicable law.

3.6. Further Assurances. At any time after the Closing, Sellers shall execute and deliver such assignments or assurances and will take such further action, as may be reasonably requested by Buyers to vest, perfect or confirm title to the Assets or rights in Buyers and to otherwise carry out the purposes of this Agreement. At any time after the Closing, Buyers shall execute and deliver such instruments and will take such further action as may be reasonably requested by Sellers to carry out the purposes of this Agreement.

3.7. Contingent Payment.

(a) *Contingent Payment Consideration.* The "Contingent Payment" shall equal the amount, if any, calculated as follows: the product of (i) five and one half (5.50) times (ii) the amount by which (A) the EBITDA of the Sellers' Business for the Calculation Period (the "Calculation Period EBITDA") exceeds (B) \$4,181,818. The Contingent Payment, if any, shall be paid within five Business Days after the date on which the Calculation Period EBITDA and Contingent Payment Amount have been finally determined in accordance with this Section 3.7 by wire transfer in immediately available funds.

(b) *Contingent Payment Procedures.*

(i) Within thirty (30) Business Days after the expiration of the Calculation Period, Buyers shall deliver to Sellers a statement (the "Contingent Payment Statement") that contains a reasonably detailed, good faith calculation of the Calculation Period EBITDA, and of the amount (if any) of Contingent Payment based thereon in accordance with Section 3.7(a). The Calculation Period EBITDA

shall be determined in accordance with GAAP applied using the accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies that were used in the preparation of the Estimated Closing Statement, except that the Calculation Period EBITDA shall only include the direct operating expenses of the Sellers' Business and shall not include any Buyers' corporate overhead expenses (including compensation expenses for Buyers' or Buyers' Affiliates' personnel supervising the operations of the Sellers' Business) or regional or national marketing costs incurred by Buyers that may benefit the Sellers' Business or costs related to the transactions contemplated hereby. For the avoidance of doubt, all amounts paid to Buyers (or their Affiliates) for services rendered by Buyers on or after the Closing Date pursuant to the Transition Services Agreement during the Calculation Period shall be included as revenue of the Sellers' Business in calculating the Calculation Period EBITDA. In connection with the Contingent Payment Statement, Buyers shall provide Sellers with reasonable documentation to support the calculations in the Contingent Payment Statement, which may include copies of such records and, subject to the prior execution and delivery of customary access letters in form and substance reasonably acceptable to Buyers and Buyers' accountants, work papers used or created by Buyers or its Affiliates in connection with the preparation of the Contingent Payment Statement. With the Contingent Payment Statement, Buyers shall deliver to Sellers the access letters, if any, that it or its accountants intend to require Sellers to execute and deliver, and shall respond to all reasonable information requests delivered by Sellers in connection with its preparation of an Objection Notice promptly upon receipt thereof.

(ii) On or prior to the thirtieth (30th) calendar day following Buyers' delivery of the Contingent Payment Statement, Sellers may (A) give Buyers a written notice indicating that Sellers accept the Contingent Payment Statement, in which case the Calculation Period EBITDA and Contingent Payment as reflected thereon shall be final and binding on the parties hereto or (B) give the Buyers a written notice describing in reasonable detail Sellers' objections (an "Objection Notice") to the Contingent Payment Statement and the Calculation Period EBITDA or Contingent Payment as reflected thereon. Any Objection Notice shall specify in reasonable detail the disputed items involved in any objection, the dollar amount of any objection and the basis therefor. If no Objection Notice is delivered on or prior to the thirtieth (30th) day after the delivery of the Contingent Payment Statement, Buyers' calculation of Calculation Period EBITDA and Contingent Payment in the Contingent Payment Statement shall be final and binding on the parties hereto and may be entered as a judgment in a court of competent jurisdiction.

(i) Following Buyers' receipt of any Objection Notice, Sellers and Buyers shall attempt to negotiate in good faith to resolve all objections contained in the Objection Notice. If Sellers and Buyers fail to reach an agreement with respect to all of the matters set forth in the Objection Notice within ten (10) days of Buyers' receipt of an Objection Notice, then any amounts remaining in dispute ("Contingent Payment Disputed Items") shall be determined by an independent accountant selected in accordance with the procedures set forth in Section 3.1(f)(iv) and shall be based only on whether such Contingent Payment Disputed Items have been calculated in accordance with the terms and definitions set forth in this Agreement and the independent accountant is not to make any other determination, and all adjustments shall be made without regard to materiality. The independent accountant shall only decide the specific Contingent Payment Disputed Items submitted by the parties and its decision for each Contingent Payment Disputed Item must be within the range of values assigned to each such item in the Contingent Payment Statement and the Objection Notice, respectively, as modified by mutual agreement of Sellers and Buyers. The independent accountant's determination shall be based solely on presentations by Buyers and/or Sellers which are in accordance with the guidelines and procedures set forth in this Agreement (i.e., not on the basis of an independent review). The

independent accountant shall be instructed to make a determination in writing as soon as practicable within 30 days (or such other time as the parties hereto shall agree in writing) after its engagement, and its resolution of the Contingent Payment Disputed Items submitted to it for resolution and its adjustments to the Contingent Payment Statement, if any, shall be final and binding upon the parties hereto and may be entered as a judgment in a court of competent jurisdiction.

(b) *Extraordinary Transactions.* In the event that, during the Calculation Period, the Buyers consummates or attempts to consummate any business combination, acquisition or disposition transaction (whether by merger, consolidation, stock purchase, asset purchase, joint venture, partnership or otherwise) or enters into or attempts to enter into any new line of business that is substantially different than the Sellers' current lines of business, all earnings, income, loss and expense attributable to or incurred in connection with such acquisition, disposition or new line of business shall be disregarded for purposes of calculating the Calculation Period EBITDA. The Buyers shall not use assets or employees that were involved in the operation of the Sellers' Business prior to the Closing to enter into, or attempt to enter into, such new lines of business. Buyers shall not allocate any expense to the Sellers' Business from any other business Affiliates of the Buyers or the Buyers during the Calculation Period except to the extent such expense relates to the Sellers' Business.

(c) *Operation of the Business.* During the Calculation Period, Buyers shall cause the Sellers' Business to be conducted and operated in good faith, in a commercially reasonable manner and without prejudicing Seller's right to receive the Contingent Payment. During the Calculation Period, Buyers will not terminate the employment of the Key Employees (other than for cause) and the Key Employees will be permitted to operate the Sellers' Business in a manner substantially consistent with how they operated the business prior to the Closing, provided, however, that such operations comply with applicable law and commercially reasonable and ethical business practices, and the Executive Director of the Seller's Business (presumed to be Key Employee Brian Pace) shall have sole discretion regarding the hiring or firing of the employees employed in the operation of the Sellers' Business, subject only to such the Executive Director's complying with Buyers' generally applicable and reasonable personnel policies and procedures in respect of hiring or firing of employees. Buyers will market the products and services of the Sellers' Business in a manner consistent with how it markets its own products and services. During the Calculation Period, Buyers shall not sell or permit to be sold all or substantially all of the assets of the Sellers' Business to any third party purchaser unless such purchaser agrees in writing to be bound by all of the terms and conditions in this Agreement relating to the Contingent Payment and Sellers shall be third-party beneficiaries of any such agreement between Buyers and a third-party purchaser. Except for a sale in accordance with the immediately preceding sentence, during the Calculation Period, Buyers shall not sell or transfer any assets of the Sellers' Business (except for non-material assets in the ordinary course of business that would not reasonably be expected to result in the diminishment of the Contingent Payment amount).

(d) *Information Rights.* Buyers shall maintain the Sellers' Business as a separate business unit during the Calculation Period. Buyers shall provide the Sellers with the monthly and quarterly unaudited financial statements of the Sellers' Business prepared in the ordinary course during the Calculation Period. Such unaudited financial statements shall be delivered to Sellers as soon as reasonably practicable following completion thereof in the ordinary course.

(e) *Buyers' Financial Covenants / Limitation on Declaration of Default and Enforcement of Contingent Payment Obligation.*

- (i) Sellers acknowledge:
 - (A) Buyers are financing the transaction in this Agreement by borrowing funds under a senior credit facility (the "Senior Credit Facility") from several lenders which is agented by Fifth Third Bank (the "Agent"); and
 - (B) advances under the Senior Credit Facility are subject to various financial and non-financial covenants and conditions that could limit Buyers' ability to make the Contingent Payment when due as described herein.
- (ii) Sellers agree:
 - (A) Buyers will not be in default for failing to pay the Contingent Payment to Sellers when due if payment is prohibited or limited, in whole or in part, under the Senior Credit Facility due to a payment default by Buyers at the time the Contingent Payment is due; and
 - (B) they will not institute any arbitration or other legal proceeding, as set forth in Section 7.7 and 7.8 of this Agreement, against Buyers for failing to pay the Contingent Payment to Sellers when due for such period as payment is prohibited or limited, in whole or in part, under the Senior Credit Facility. Notwithstanding any restriction in this Section 3.7(e)(ii)(B), Sellers will be free to institute an arbitration or other legal proceeding against Buyers for failing to pay the Contingent Payment to Sellers when due following 180 days of the payment due date even if payment is then prohibited or limited, in whole or in part, under the Senior Credit Agreement.
- (iii) Buyers and Sellers agree:
 - (A) the limitations in Section 3.7(e)(ii) on Sellers' right to declare Buyers in default for failing to pay the Contingent Payment to Sellers when due, and Sellers' right to institute an arbitration or other legal proceeding against Buyers for failing to pay the Contingent Payment to Sellers when due, are for the express benefit of the Agent; and
 - (B) The Agent is an intended beneficiary of those limitations on Sellers' rights to declare Buyers in default for failing to pay the Contingent Payment to Sellers when due, and to institute an arbitration or other legal proceeding against Buyers for failing to pay the Contingent Payment to Sellers when due; and
 - (C) Neither the Agent nor any lenders under the Senior Credit Facility have any obligation to make any payment, or perform

any obligation set out in or related to this Agreement; and

- (D) The Agent may exercise its rights under the Senior Credit Facility to prohibit or limit, in whole or in part, payment of the Contingent Payment to Sellers when due in its complete discretion, without regard to or consideration of any right or obligation of Buyers and Sellers to each other under this Agreement; and
- (E) During the period from Buyers' failure to make the Contingent Payment in full to Sellers when otherwise due pursuant to this Section 3.7(e) until Sellers receive the full Contingent Payment, the unpaid portion of the Contingent Payment shall accrue interest at a rate equal to LIBOR plus 4.00%.

ARTICLE IV REPRESENTATIONS AND WARRANTIES

4.1 Representations and Warranties of the Seller. Sellers and the Shareholders jointly and severally represent and warrant to Buyers as follows as of the Effective Date:

(a) *Organization, Good Standing, and Qualification.* Sellers are entities duly organized, validly existing, and in good standing under the laws of the State of Utah. Sellers have full power and authority to own all of their properties and assets and to carry on the Sellers' Business as it is now being conducted. Schedule 4.1(a) identifies all businesses owned or operated by Sellers, the Shareholders or Key Employees which are directly or indirectly part of or operated in connection with the Sellers' Business and Sellers represent that there are no businesses other than such businesses which are directly or indirectly part of or operated in connection with the Sellers' Business. Sellers are duly qualified to do business in the jurisdictions set forth on Schedule 4.1(a) and are in good standing in each other jurisdiction where they are required to do so under applicable law. Sellers have delivered to Buyers complete and accurate copies of the governing documents of Sellers, as currently in effect. Sellers do not have any subsidiaries or other Affiliates that perform any or all of Sellers' Business.

(b) *Authority Relative to Agreement; Capitalization.* Sellers have the power and authority, and have received all due authorizations from Sellers' board of directors or other governing body, to execute and deliver this Agreement and each of the other agreements, documents and instruments to be executed and delivered pursuant to this Agreement (including the Seller Documents) to which Sellers are a party, which upon execution shall be valid and binding obligations of Sellers enforceable in accordance with their terms. Schedule 4.1(b) sets forth (i) the total authorized, issued, outstanding, and treasury stock by class and/or series, (ii) the total outstanding warrants, options, or other rights to purchase or receive any equity securities of Sellers, and (iii) the names and addresses of the legal and beneficial owners of such stock or rights to acquire such equity securities.

(c) *Non-Contravention.* Except as set forth in Schedule 4.1(c), the execution and delivery of the Agreement and the Seller Documents to which Sellers are a party by Sellers do not and/or will not: (i) violate any provision of any governing documents of Sellers, (ii) violate or breach any agreement, cause the acceleration of any obligation, or cause the creation of any encumbrance on any Assets (except the Permitted Encumbrances), whether immediately, with the giving of notice, with the lapse of

time, or both, or (iii) violate any law, ordinance or regulation to which Sellers or the Assets are subject. Except for the Required Consents or as otherwise set forth in Schedule 4.1(c), no Consent by any third party is required in connection with the execution, delivery and performance of the Agreement and the Seller Documents to which Sellers are a party by Seller.

(d) *Litigation, Governmental Investigations.* Except as set forth in Schedule 4.1(d), there are no actions, suits, proceedings, or orders with respect to the Assets or Sellers' Business pending or, to Sellers' or the Shareholders' Knowledge, threatened, against Sellers or the Shareholder, at law or in equity, or before or by any Governmental Body. Except as set forth in Schedule 4.1(d), to Sellers' and Shareholders' Knowledge, there is no investigation pending or threatened against Sellers, the Shareholders, the Assets, or any of its officers or directors by or before any Governmental Body or otherwise related to Sellers' or the Shareholders' compliance with any Governmental Authorizations. No Governmental Body has at any time challenged or questioned the legal right of the Sellers' Business to offer or sell any of its products or services. Sellers and the Shareholders are in compliance with all applicable federal, state, or local laws, statutes, ordinances, rules, regulations and codes of any Governmental Body applicable to Sellers' Business. Schedule 4.1(d) also sets forth all claims and litigation that Sellers have commenced or threatened against any third parties.

(e) *Government Authorizations; Permits; Compliance with Law.* Sellers are, and were during the shorter of the five years prior to the Effective Date or the period prior to the Effective Date during which each such Seller was in existence, in material compliance with each Legal Requirement that is or was applicable to it or to the conduct or operation of its business or the ownership or use of any of its assets. Sellers hold, and will continue to hold at all times prior to the Closing, all Governmental Authorizations required to operate the Sellers' Business. Schedule 4.1(e) sets forth all Governmental Authorizations required to operate the Sellers' Business, including a listing of all of the Old NPI Numbers. Except as set forth on Schedule 4.1(e), (i) neither the delivery by Sellers of this Agreement or the Seller Documents, nor the operation of Sellers' Business, requires any Governmental Authorization, (ii) all Governmental Authorizations are valid, in full force and effect, and are transferable to Buyers without the consent or approval of any Governmental Entity except as for Required Consents or as otherwise disclosed on Schedule 4.1(e), (iii) the contemplated transactions shall not breach or give any Governmental Body or other person the right to challenge any of the contemplated transactions or to exercise any remedy or obtain any relief under any Legal Requirement to which Sellers, or any of the Assets, may be subject, (iv) the contemplated transactions shall not contravene, conflict with, or result in a violation or breach of any of the terms or requirements of, or give any Governmental Body the right to revoke, withdraw, suspend, cancel, terminate, or modify any Governmental Authorization that is held by Sellers or that otherwise relates to the Assets or the Sellers' Business, and (v) Sellers have filed all required renewals or other required applications related to any Governmental Authorizations required to operate the Sellers' Business.

(f) *Liabilities; Contracts.* Except as disclosed in Schedule 4.1(f), Sellers have no liabilities or obligations, contingent or otherwise, other than as set forth in the Financial Statements, or incurred in the ordinary course of business after the date of the most recent Financial Statements. Schedule 4.1(f) sets forth a true and complete list of all Material Contracts, whether written or oral, to which Sellers are a party or by which any of the Assets may be bound. Except as set forth on Schedule 4.1(f), all such Contracts are valid and in full force and effect in accordance with their respective terms and shall not terminate prior to the Closing Date. Except as set forth on Schedule 4.1(f), there are no defaults under any such contracts or leases attributable to Sellers, and no material event has occurred which (whether or not with notice, lapse of time or both) would constitute such a default. Except as disclosed in

Schedule 4.1(f), each Contract of Sellers was entered into in the ordinary course of Sellers' Business.

(g) *Title to Assets; Absence of Liens and Encumbrances, etc.* The Assets (i) constitute all of the assets, tangible and intangible, of any nature whatsoever, necessary to operate Sellers' Business in the manner presently operated by Sellers, and (ii) include all of the operating assets of Sellers other than the Excluded Assets. Except for the Purchased Contracts and the liens and encumbrances set forth on Schedule 4.1(g) (the "Permitted Encumbrances"), upon the Closing Buyers will acquire from Sellers good and marketable title to all of the Assets, free and clear of any liens, charges, pledges, security interests or other encumbrances. The Assets are not prohibited from current use in the Sellers' Business by any Legal Requirement. Subject to the terms of this Section 4.1(g), all Assets are suitable for their intended purpose and are in good and usable condition, ordinary wear and tear excepted. None of the Assets necessary to operate Sellers' Business in the manner presently operated by Sellers are owned by Centers for Adolescent Recovery and Education, Inc. ("CARE").

(h) *Real Estate.* Except as noted in Schedule 4.1(h), Sellers own no Real Estate. Schedule 4.1(h) sets forth the correct legal description, street address, and tax parcel ID number of all tracts of Real Estate owned by the Sellers and by the Shareholders (or their Affiliates) to the extent used in the Sellers' Business, and the street address, landlord name, and lease date for any leased Real Estate. Each of the Sellers and the Shareholders (or their Affiliates) has good and marketable title to the Real Estate which each respectively owns as set forth in Schedule 4.1(h). Each lease for Real Estate is a legal, valid, and binding obligation of the parties thereto, enforceable in accordance with its terms, and there is no default or any condition or event which, after notice or lapse of time or both, would constitute a default, thereunder. Sellers have delivered to Buyers true and correct copies of each lease for Real Estate, including any amendments and renewal letters related thereto.

(i) *Financial Statements and Information.* The financial statements attached to Schedule 4.1(i) are materially true, accurate, and not materially misleading (the "Financial Statements") and were prepared in accordance with GAAP (except as set forth in Schedule 4.1(i)). Sellers have no other deposits, prepaid expense, or claims for refunds that are not disclosed on the Financial Statements, other than those that arose in the ordinary course of business after the date thereof, which are set forth on Schedule 4.1(i). There has been no event or change in circumstances that would cause a Material Adverse Effect or that would render the Financial Statements materially misleading except as set forth on Schedule 4.1(i).

(j) *Books and Records.* The books of account and other financial and non-financial records of Sellers, all of which have been made available to Buyers, are materially complete and correct and fairly and accurately represent actual, bona fide transactions and have been maintained in accordance with reasonable business practices. Sellers have provided Buyers with copies of all available minute books of Sellers, all of which have been made available to Buyers without any redactions, deletions, or omissions. All material company actions of Sellers that have required board, manager, shareholder or member approval have been approved as required.

(k) *Accounts Payable and Accounts Receivable.* Schedule 4.1(k) sets forth a true and correct list and aging of all accounts payable and accounts receivable of Sellers as of June 30, 2016. All accounts payable were incurred within the ordinary course of business and are not delinquent, subject to late fees or penalties, or currently in collections.

(l) *Bank Accounts.* Schedule 4.1(l) sets forth a true and correct list of the bank accounts of

Sellers, including the following information: (i) the name of the bank, (ii) the address of the bank, (iii) the account number at such bank, and (iv) whether payments are deposited under any Old NPI Numbers into such account.

(m) *Inventories.* Sellers do not have inventories in the context of a sale of goods. As of the date hereof and the Closing Date, the inventory of drugs, supplies or other consumables used in the Sellers' Business are at the levels maintained by Sellers in the ordinary course of business.

(n) *Employees; Employee Benefits.* Sellers have not been, and are not now, party to any collective bargaining agreements or other labor contracts. Schedule 4.1(n)(i) sets forth a true and complete list of the names, current salaries, bonus eligibility with respect to calendar year 2016, and number of vacation days allowed for each calendar year of all present officers and employees of Sellers. Except as set forth on Schedule 4.1(n)(i), Sellers have not received any notice from any supervisory or higher ranked employee that he or she has any plans to terminate his or her employment or affiliation with Sellers. Schedule 4.1(n)(ii) sets forth a complete list of Sellers' Employee Benefits. Except as set forth on Schedule 4.1(n)(ii), Sellers have never maintained, administered, or contributed to any "employee pension benefit plan," as defined in Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), any "multiemployer plan," as defined in Section 3(37) of ERISA, or any "employee welfare benefit plan," as defined in Section 3(1) of ERISA (collectively, "Employee Plans"). True, accurate, and complete copies of the written document (and any amendments thereto) evidencing any such Employee Plans (or, with respect to any such plan that is not in writing, a written description thereof), the most recent summary plan description for each Employee Plan (to the extent an Employee Plan is subject to such requirement), the three most recent Forms 5500 required to have been filed with the IRS (to the extent an Employee Plan is subject to such requirement), and each trust agreement for any Employee Plan have been provided to Buyers. Sellers have made full payment of all amounts that are required to be paid as contributions under such Employee Plans, and are in compliance in all respects with the applicable Legal Requirements governing the formation, maintenance, operation, and/or termination of such Employee Plans.

(o) *Insurance.* Schedule 4.1(o) summarizes the amount and kinds of insurance as to which Sellers have insurance policies, contracts or fidelity bonds relating to the Sellers' Business or the Assets. Sellers have maintained workers' compensation coverage as required by any applicable Legal Requirement, either through the purchase of insurance or through self-insurance described on Schedule 4.1(o). All such insurance policies, contracts and bonds are in full force and effect. Except as set forth on Schedule 4.1(o), there are no claims by Sellers pending under any of such policies or bonds with respect to the Sellers' Business or the Assets. All premiums due and payable under all such policies, contracts and bonds have been paid and Sellers are otherwise in compliance with the terms of such policies, contracts, and bonds in all material respects. No notice of cancellation or termination of any such insurance policies, contracts or bonds has been given to Sellers by the carrier of any such policy, contract or policy. Sellers have delivered to Buyers copies of all policies and a five year claims history for all such policies.

(p) *Taxes.*

(i) Filing of Tax Returns. Sellers have timely filed with the appropriate taxing authorities all tax returns required to be filed prior to the Effective Date (subject to any available extensions). The Tax Returns and other information filed with any taxing authority are complete and accurate in all material respects.

(ii) Payment of Taxes. Sellers have paid, or made provision for the payment of, all Taxes that have or may have become due for all periods covered by the Tax Returns or otherwise, or pursuant to any assessment received by Sellers, except such Taxes, if any, as are listed on Schedule 4.1(p)(ii) and are being contested in good faith and to which adequate reserves (determined in accordance with GAAP) have been provided on the Financial Statements.

(iii) Audits, Investigations or Claims. There are no pending or, to Seller's Knowledge threatened, audits, investigations, claims or other actions for or relating to any Taxes, and there are no matters under discussion between Sellers and any Governmental Body with respect to Taxes that are expected to result in a material tax liability. Except as set forth on Schedule 4.1(p)(ii), there are no tax liens on any of the Assets.

(q) Intellectual Property Assets. Schedule 4.1(q) sets forth a true and complete list of all Intellectual Property Assets owned by Sellers, and except as set forth in Schedule 4.1(q), such Intellectual Property Assets are all of those necessary for the operation of the Sellers' Business as it is currently conducted. Sellers are the owner or licensee of all right, title, and interest in and to each of the Intellectual Property Assets, free and clear of all Encumbrances, and has the right to use such Intellectual Property Assets without payment to any third-party except as provided on Schedule 4.1(q).

(r) Brokers. Sellers shall pay any brokerage or finder's fees, agents' commissions, or similar payments to any broker or agent engaged by Sellers in connection with this Agreement. No action by Sellers will cause or support any claim to be asserted against Buyers by any broker, finder, or investment advisor in connection with execution or performance of this Agreement.

(s) Environmental Matters. Except as disclosed on Schedule 4.1(s):

(i) The operations of Sellers, the Shareholders and any Related Person, in each case with respect to the Sellers' Business, are, and at all times have been, in material compliance with, and have not been and are not in violation of or liable under, any Environmental Law. Sellers and the Shareholders have no basis to expect, nor has it, him or any other person for whose conduct it is or may be held to be responsible received, any actual or threatened order, notice or other communication from (i) any Governmental Body or private citizen acting in the public interest or (ii) the current or prior owner or operator of any Real Estate or 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, Health and Safety Liabilities with respect to any Real Estate or Facility or other property or asset (whether real, personal or mixed) related to the Sellers' Business in which Sellers, the Shareholders or any Related Person have or had an interest, or with respect to any Real Estate or Facility at or to which Hazardous Materials were generated, manufactured, refined, transferred, imported, used or processed by Sellers, the Shareholders or any Related Person 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 by or on behalf of Sellers, the Shareholders or any Related Person.

(ii) There are no pending nor, to the Knowledge of the Shareholders or of the Sellers, threatened claims, encumbrances, or other restrictions of any nature resulting from any Environmental, Health and Safety Liabilities or arising under or pursuant to any Environmental

Law with respect to or affecting any Real Estate, Facility, or any other property or asset (whether real, personal or mixed) in which Sellers, the Shareholders or any Related Person have an interest.

(iii) Sellers, the Shareholders and the Related Persons have no Knowledge of or any basis to expect, nor have Sellers, the Shareholders nor any Related Person received, any citation, directive, inquiry, notice, order, summons, warning or other communication that relates to Hazardous Materials, or any alleged, actual, or potential violation or failure to comply with any Environmental Law, or of any alleged, actual, or potential obligation to undertake or bear the cost of any Environmental, Health and Safety Liabilities with respect to any Real Estate, Facility or property or asset (whether real, personal or mixed), in each case related to the Sellers' Business, in which Sellers, the Shareholders or any Related Person have an interest, or with respect to any property or facility to which Hazardous Materials generated, manufactured, refined, transferred, imported, used or processed by Sellers, the Shareholders or any Related Person or any other person for whose conduct it is or may be held responsible, have been transported, treated, stored, handled, transferred, disposed, recycled or received.

(iv) Neither Sellers, the Shareholders nor any Related Person, in each case to his, her or its Knowledge, nor any other person for whose conduct it is or may be held responsible has or had any Environmental, Health and Safety Liabilities with respect to any Real Estate, Facility or with respect to any other property or asset (whether real, personal or mixed) related to the Sellers' Business in which Sellers (or any predecessor), the Shareholders or any Related Person have an interest or at any property adjoining any Real Estate or Facility or any such other property or asset.

(v) There are no Hazardous Materials present on or, to the Knowledge of the Sellers or the Shareholders, in the environment at any Real Estate, Facility, and to Sellers' or the Shareholders' Knowledge on or in adjoining property to any Real Estate or Facility, 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 Real Estate or Facility, or incorporated into any structure therein or thereon. Neither Sellers, the Shareholders nor any Related Person nor any person for whose conduct it is or may be held responsible, nor any other person, permitted or conducted, or is aware of, any hazardous activity that has been conducted with respect to any Real Estate, Facility or any other property or assets (whether real, personal or mixed) relating to the Sellers' Business in which Sellers, the Shareholders or any Related Person have or had an interest except in full compliance with all applicable Environmental Laws.

(vi) To Sellers' and the Shareholders' Knowledge, there has been no release or any threat of release of any Hazardous Materials at or from any Real Estate, Facility or at any other location relating to the Sellers' Business where any Hazardous Materials were generated, manufactured, refined, transferred, produced, imported, used, or processed from or by any Real Estate, Facility, or from any other property or asset (whether real, personal or mixed) related to the Sellers' Business in which Sellers, the Shareholders or any Related Person have or had an interest, and, to Sellers' and the Shareholders' Knowledge, on or at any property adjoining any Real Estate or Facility or any such other property or asset.

(vii) Sellers and the Shareholders have delivered to Buyers true and complete copies and results of any reports, studies, analyses, tests, or monitoring possessed or initiated by Sellers, the Shareholders or any Related Person pertaining to Hazardous Materials or hazardous activities, on, or under the Real Estate or Facilities, or concerning compliance with Environmental Laws by Sellers, the Shareholders or any Related Person or any other person for whose conduct it is or may be held responsible.

(t) *Transactions with Related Persons.* Except as provided on Schedule 4.1(t), neither Sellers, the Shareholders, nor any Related Person of any of them has or had any interest in any property used in or pertaining to the Sellers' Business, and do not owe any funds to and are not owed any funds by Sellers. Neither Sellers, the Shareholders, nor any Related Person or any of them owns or has owned, of record or as a beneficial owner, an equity interest or any other financial or profit interest in any entity that (a) has or had business dealings or a material financial interest in any transaction with Sellers other than business dealings or transactions disclosed on Schedule 4.1(t), each of which has been conducted in the ordinary course of business with Sellers at substantially prevailing market prices and on substantially prevailing market terms or (b) engaged in competition with Sellers with respect to any line of the products or services of Sellers in any market presently served by Sellers, except for ownership of less than one percent (1%) of the outstanding capital stock of any competing business that is publicly traded on any recognized exchange or in the over-the-counter market. Except as set forth in Schedule 4.1(t), neither Sellers, the Shareholders, nor any Related Person or any of them is a party to any Contract with, or has any claim or right against, Sellers or the Assets (other than as an employee of Sellers). As part of the Closing, the parties agree that they will terminate the Prior Real Estate Leases and cause the applicable landlord parties to enter into the New Real Estate Leases.

(u) *Healthcare Compliance; Accreditation; Medicaid; Third Party Payers.*

(i) Accreditation. Except as otherwise disclosed on Schedule 4.1(u)(i), Sellers and each of their Facilities are currently accredited and hold licenses with those regulatory and accreditation organizations listed on Schedule 4.1(u)(i). Sellers have previously delivered to Buyers true, correct and complete copies of all material documents related to the acquisition or renewal of such accreditation, and the licenses held by Sellers are held by the appropriate entity required to be entitled to receive payment for the services which have been billed by Sellers.

(ii) HIPAA. To the extent each Sellers is a "covered entity" or a "business associate" within the meaning of HIPAA or Sellers or Sellers' Business is subject to, or covered by, the so called "administrative simplification" provisions of HIPAA, Sellers are HIPAA Compliant. For purposes hereof, "HIPAA Compliant" shall mean that Sellers are in material compliance with the Standards for Privacy of Individually Identifiable Health Information and the Transaction and Code Set Standards which were promulgated pursuant to HIPAA. Sellers and their affiliates are also in material compliance with all applicable state laws governing the privacy or security of patient medical information.

(iii) Payer Compliance. All claims for reimbursement prepared and delivered by Sellers to any health maintenance organization, preferred provider organization, any other prepaid plan, any health care service plan, any private insurer, Medicare, Medicaid, any Governmental Body, or any other third-party payer (collectively, "Payers") have been prepared, and all billing practices of Sellers are and have been conducted, in material compliance with all rules, regulations, policies and procedures pertaining to the applicable Payer, and all such claims

have been true, fair and correct and prepared in a reasonably accurate and complete matter. There is no investigation or civil, administrative, or criminal proceeding, pending or, to the Sellers' or the Shareholders' Knowledge, threatened, relating to Sellers' participation in any Payer payment program, and Sellers are not subject to fiscal audit, program audit, utilization review, or quality-related review or audit by any Payer payment program other than the ordinary and customary audit or utilization review of all providers participating in such Payer payment programs. No Payer has imposed any fine, penalty or other sanction on Sellers, or has excluded, or threatened exclusion of, Sellers from such Payer payment program. Sellers have not submitted to any Payer payment program any knowingly false or fraudulent claims for payment, nor have Sellers at any time violated any material condition for participation, or knowingly violated, or acted with reckless disregard or deliberate ignorance of, any rule, regulation, policy or standard of any such Payer payment program. Except as provided in Schedule 4.1(u)(iii), Sellers do not have any current, pending, or to Sellers' Knowledge threatened, claims by any Payer against Sellers for overpayment, recoupment or improper billing practices of any nature.

(iv) Medicare and Medicaid Participation. Sellers (A) participate without restriction under Title XIX of the Social Security Act ("Medicaid") and the Medicaid programs of the State of Nevada (collectively, the "Government Programs"); (B) Sellers have received Medicaid reimbursement with respect to its Facilities and is eligible to receive payment without restriction under Medicaid; (C) Sellers (1) are in material compliance with the conditions of participation for the Government Programs, and (2) are in material compliance with 42 C.F.R. Section 489.20 and their Medicare provider agreements; (iv) there are no pending or to Sellers' Knowledge threatened audit, survey, Proceeding or investigation under the Government Programs involving Sellers, their Facilities, or Sellers' Business, or any employee or service provider engaged by Sellers. Sellers do not participate in Title XVIII of the Social Security Act ("Medicare") nor have Sellers ever received Medicare reimbursement with respect to its facilities or the Sellers' Business.

(v) Certification Surveys. Sellers have previously delivered or made available to Buyers materially true, correct and complete copies in all material respects of the most recent Medicaid and Medicare certification survey reports for Sellers, if any, including any statements of deficiencies and plans of correction, and the corrective action plans related thereto. Sellers have taken all reasonable steps to correct all such deficiencies.

(vi) Cost Reports; Reimbursement Accounting. Sellers have timely filed, and as to reports due after the Closing shall timely file, all cost reports required by third party payers, including, but not limited to, Government Programs and other insurance carriers. All such cost reports comply in all material respects with all Legal Requirements and have been delivered or made available to Buyers, or will so comply and be so delivered after the Closing. Sellers are and has been in compliance with all filing requirements with respect to cost reports of its Facilities and Sellers' Business, including appropriate allocation of expenses associated with any management or consulting services provided by Sellers, the Shareholders, any Related Person or any employees of Sellers and such reports do not claim, and Sellers have not received, payment or reimbursement in excess of the amount provided or allowed by applicable Legal Requirements or any applicable agreement, except where excess reimbursement was noted on the cost report or is disclosed on Schedule 4.1(u)(vi). The cost reports of Sellers do not include or reflect any material deficiencies in its compliance with the Social Security Act, regulations

thereunder, Provider Reimbursement Manual and other program instructions. To the extent that Sellers ever received any Medicaid or Medicare reimbursements or payments, if any, no Medicaid or Medicare intermediary has reopened any cost report in respect of which a final notice of program reimbursement has already been received.

(vii) Medicare/Medicaid Compliance. Neither Sellers nor any of its current or former officers or directors: (i) have had any civil monetary penalty assessed against them under Section 1128(h) of the Social Security Act or any regulations promulgated thereunder; or (ii) have been excluded from participation under the Medicare program or any state health care program as defined in Section 1128(h) of the Social Security Act or any regulation thereunder or a federal health care program as defined in Section 1128(B)(f) of the Social Security Act.

(viii) Service Provider Compliance. Except as set forth in Schedule 4.1(u)(vii), (A) Sellers have not, and to Sellers' Knowledge, no physician, service provider or other Person rendering services (including directly or indirectly referring patients) to or at, or in any way affiliated with Sellers have been or currently are a party to, or received notice of, the commencement of any investigation or debarment proceedings or any governmental investigation or action (including any civil investigative demand or subpoena) under the False Claims Act (31 U.S.C. Section 3729 et seq.), the Anti-Kickback Act of 1986 (41 U.S.C. Section 51 et seq.), the Federal Health Care Programs Anti-Kickback statute (42 U.S.C. Section 1320a-7a(b)), the Ethics in Patient Referrals Act of 1989, as amended (Stark Law (42 U.S.C. 1395nn), the Civil Money Penalties Law (42 U.S.C. Section 1320a-7a), Health Care Fraud (18 U.S.C. 1347), Wire Fraud (18 U.S.C. 1343), Theft or Embezzlement (18 U.S.C. 669), False Statements (18 U.S.C. 28 1001), False Statements (18 U.S.C. 1035), and Patient Inducement Statute (42 U.S.C. 1320a-7a(a)) and equivalent state statutes or any rule or regulation promulgated by any Governmental Body with respect to any of the foregoing or any other similar health care law or regulation (collectively, the "Healthcare Fraud Laws") affecting Sellers, their Facilities, any physician or service provider, and, to the Knowledge of Sellers and the Shareholders, no grounds for any such proceeding, investigation or action exist; and (B) Sellers, the Shareholders and, to Sellers' and the Shareholders' Knowledge, each physician, service provider or other Person rendering services (including directly or indirectly referring patients) to or at, or in any way affiliated with Sellers, are in material compliance with all applicable Healthcare Fraud Laws.

(ix) Fraud Claims. Except as set forth on Schedule 4.1(u)(viii), to Seller's or the Shareholders' Knowledge, Sellers have not been investigated, charged or implicated in a violation of any state or Federal statute or regulation involving false, fraudulent or abusive practices relating to participation in state or Federally sponsored reimbursement programs, including, but not limited to, false or fraudulent billing practices. Neither Sellers, nor to Sellers' or the Shareholders' Knowledge any physician, service provider or other Person rendering services (including directly or indirectly referring patients) to or at, or in any way affiliated with, Sellers, have ever engaged in any of the following: (A) knowingly and willfully making or causing to be made a false statement or representation of a material fact in any applications for any benefit or payment under the Medicaid or Medicare program; (B) knowingly and willfully making or causing to be made any false statement or misrepresentation of a material fact for use in determining rights to any benefit or payment under the Medicaid or Medicare program; (C) failing to disclose knowledge of any event affecting the initial or continued right to any benefit or payment under the Medicaid or Medicare program on its own behalf or on behalf of

another, with intent to secure such payment or benefit fraudulently; (D) knowingly and willfully soliciting, paying, or receiving any remuneration (including kickback, bribe or rebate), directly or indirectly, overtly or covertly, in cash or in kind or offering to pay such remuneration (1) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part by Medicaid or Medicare, or (2) in return for purchasing, leasing or ordering or arranging for or recommending the purchasing, leasing or ordering of any good, facility, service, or item for which payment may be made in whole or in part by Medicaid or Medicare; (E) presenting or causing to be presented a claim for reimbursement for services that is for an item or service that was known or should have been known to be (1) not provided as claimed, or (2) false or fraudulent; or (F) knowingly and willfully making or causing to be made or inducing or seeking to induce the making of any false statement or representation (or omitting to state a fact required to be stated therein or necessary to make the statements contained therein not misleading) of a material fact with respect to (1) a facility in order that the facility may qualify for governmental entity certification or (2) information to be provided under 42 U.S.C. Section 1320a-3.

(x) Medical Staff Matters. There are no pending, or to Sellers' or the Shareholders' Knowledge, threatened investigations, appeals, challenges, disciplinary or corrective actions, or disputes involving applicants to the medical staff that serve the Facilities, in the Sellers' Business, or affiliated health professionals. Since the date of the Financial Statements, no member of the medical staff of Sellers have resigned or been terminated therefrom and Sellers have not received notice that any physician or medical staff member intends to resign from the medical staff of Sellers, in each case other than in the ordinary course.

(xi) Trust Transactions. (A) The Trust Transactions (defined below) do not and will not create an obligation or duty of the Sellers, whether contractual, statutory, or otherwise, to file or obtain consent to any change of ownership, change of information, or similar disclosure related to any Governmental Authorizations necessary to provide services to students other than those subject to "Private Agreements" or "Union Agreements" (as those terms are used in Schedule 4.1(f)); and (B) to the Knowledge of the Sellers, no application for any Governmental Authorization or for participation by any Sellers with any Payer requires or has required initial disclosure of, or disclosure of any changes to, any management company that manages any Seller.

(v) No Material Adverse Effect. To the Knowledge of the Sellers and the Shareholders, none of the representations or warranties made by Sellers in this Agreement, nor any statement made in the Disclosure Schedules or in any certificate furnished by Sellers to Buyers pursuant to this Agreement contains any untrue statement of a material fact, or omits to state any material fact necessary in order to make the statements contained herein or therein, in the light of the circumstances under which made, not materially misleading. Notwithstanding the foregoing, except for the representations and warranties contained in this Article IV, neither Sellers nor the Shareholders has made or make any other express or implied representation or warranty, either written or oral, on behalf of Sellers or the Shareholders. Without limiting the generality of the foregoing, neither Sellers nor the Shareholders have made, or hereby make, any representation or warranty with respect to any projections, estimates or budgets of future revenues, future results of operations, future cash flows or future financial condition (or any component of any of the foregoing) of the Sellers' Business. Since the date of the Financial Statements, there has not been any Material Adverse Effect, and, to Seller's and the

Shareholders' Knowledge, no event or combination of events has occurred or circumstances exist that is likely to result in such Material Adverse Effect.

4.2 Representations and Warranties of Buyers. Buyers represents and warrants to Sellers and the Shareholders as follows:

(a) *Organization and Qualification.* Buyers is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Utah.

(b) *Authority Relative to Agreement.* Buyers has the power and authority to execute and deliver this Agreement and each of the other agreements, documents and instruments to be executed and delivered pursuant to this Agreement (including the Buyer Documents) and to perform its obligations hereunder and thereunder, which upon execution shall be valid and binding obligations of Buyers enforceable in accordance with their terms.

(c) *Non-Contravention.* The execution and delivery of the Agreement and Buyer Documents by Buyers do not and/or will not (i) violate any provision of any governing document of Buyers or (ii) violate any law, ordinance or regulation to which Buyers is subject. No Consent by any third party is required in connection with the execution, delivery, and performance of the Agreement and Buyer Documents by Buyers.

(d) *Legal Actions or Proceedings.* No legal action or proceeding has been instituted against Buyers which is reasonably likely to restrain, prohibit or invalidate the consummation of the transactions contemplated by this Agreement

(e) *Brokers.* Buyers will pay any brokerage or finder's fees or agents' commission or similar payment to any broker or agent engaged by Buyers in connection with this Agreement.

(f) *Independent Investigation.* Buyers has conducted its own independent investigation, review and analysis of the Sellers' Business, results of operations, prospects, condition (financial or otherwise) or assets of the Sellers' Business, and acknowledges that it has been provided adequate access to the personnel, properties, assets, premises, books and records and other documents and data of Sellers and the Sellers' Business for such purpose. Buyers acknowledges and agrees that (b) in making its decision to enter into this Agreement and to consummate the transactions contemplated hereby, Buyers has relied solely upon its own investigation, the documents and information in the electronic data room provided by Sellers and the express representations and warranties of Sellers set forth in Article IV of this Agreement (including the related portions of the Sellers' Disclosure Schedules), and (b) neither Sellers nor the Shareholders have made any representation or warranty as to Sellers, the Sellers' Business or this Agreement upon which Buyers is relying with respect to its decision to enter into this Agreement and to consummate the transactions contemplated hereby, except as expressly set forth in Article IV of this Agreement (including the related portions of the Sellers' Disclosure Schedules).

ARTICLE V ADDITIONAL COVENANTS AND AGREEMENTS

5.1. Consents and Authorizations. On and after Closing, if all Material Consents relating to Material Contracts have not been obtained prior thereto, then this Agreement shall not constitute an agreement to assign such Material Contracts if an attempted assignment or reissuance of such Material Contracts to Buyers would constitute a breach thereof or be unlawful. Notwithstanding the foregoing,

Sellers shall use their reasonable best efforts to obtain such Material Consent(s) in a lawful manner and in a manner that will not cause a breach of such Material Contracts as promptly as possible following the Closing. Sellers acknowledge and agree upon obtaining any Material Consent following the Closing, the applicable Material Contract shall be deemed to have been assigned to Buyers effective as of the date of such Material Contract according to the terms of the Assignment and Assumption Agreement. Sellers also shall use their reasonable best efforts to enable Buyers to obtain (a) each Governmental Authorization and each approval of any Governmental Body that is a Required Consent and was not obtained prior to the Closing and (b) the New NPI Numbers. On and after Closing, Buyers shall use its reasonable best efforts to obtain the New NPI Numbers and to make or file accurate and timely applications or notices and to respond to requests of any contracting party or Governmental Body with respect to all Required Consents that were not obtained prior to the Closing, and to diligently pursue all such matters to completion and otherwise cooperate with Sellers in obtaining all such Required Consents.

5.2. Notification. On or after the Closing Date, Sellers and Buyers shall promptly notify the other party in writing if it becomes aware of any fact or condition that evidences a breach of any of such party's representations and warranties made as of the Closing Date. On or after the Closing Date, each party shall promptly notify the other party of the occurrence of any event that may make the satisfaction of the covenants contained in this ARTICLE V impossible or unlikely, including, without limitation, any issues with, or threatened or actual revocation or modification of, any Governmental Authorizations or Purchased Contracts which have not been transferred to Buyers prior to the Closing Date.

5.3. Confidentiality.

(a) *Confidentiality Obligation.* Sellers, the Shareholders, and Buyers covenant and agree that, for a period of five (5) years following the Closing Date, (i) they will hold all Confidential Information on a strictly confidential basis, (ii) not use itself or voluntarily disclose to any third party (other than pursuant to legal process after granting the party whose Confidential Information is being disclosed an opportunity to restrict or otherwise limit such disclosure) any Confidential Information, (iii) upon request promptly return or destroy every document furnished by the other party in connection herewith and any copies thereof it may have made and to destroy any summaries, compilations or similar documents it may have made or derived from such material and have its representatives promptly return or destroy such documents and copies and destroy such summaries, compilations or similar documents. Any Confidential Information required to be disclosed pursuant to legal process shall remain Confidential Information for all other purposes.

(b) *Limitations of Trade Secrets.* Any trade secrets of a party shall be entitled to all of the protections and benefits under applicable trade secret law and any other applicable law. If any information that a party deems to be a trade secret is found by a court of competent jurisdiction not to be a trade secret for purposes of this Agreement, such information shall still be considered Confidential Information of that party for purposes of this Agreement to the extent included within the definition. In the case of trade secrets, Sellers and Buyers hereby waive any requirement that the other party submit proof of the economic value of any trade secret or post a bond or other security.

(c) *Return or Destruction of Confidential Information.* If this Agreement is terminated, each party shall (i) destroy all Confidential Information of the disclosing party prepared or generated by the receiving party without retaining a copy of any such material; (ii) promptly deliver to the disclosing party

all other Confidential Information of the disclosing party, together with all copies thereof, in the possession, custody or control of the receiving party or, alternatively, with the written consent of the disclosing party destroy all such Confidential Information; and (iii) certify all such destruction in writing to the disclosing party, provided, however, that the receiving party may retain a list that contains general descriptions of the information it has returned or destroyed to facilitate the resolution of any controversies after the disclosing party's Confidential Information is returned.

(d) *Enforcement.* Without limiting any of the parties rights under this Agreement, each party hereby acknowledges that the other party will be entitled to enforce its rights under this Section 5.3 specifically, to recover damages and costs (including reasonable attorneys' fees) caused by any breach or threatened breach of any provisions of this Section 5.3 and to exercise all other rights existing in its favor. The parties acknowledge and agree that the breach of any term or provision of this Section 5.3 by either party will materially and irreparably harm the other party, that money damages will accordingly not be an adequate remedy for any breach of the provisions of this Section 5.3 and that the aggrieved party, in its sole discretion and in addition to any other remedies it may have at law or in equity, may apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for specific performance and/or other injunctive relief in order to enforce or prevent any violations of the provisions of this Section 5.3.

5.4. Non-Competition and Non-Solicitation. In consideration of Buyers' consummation of the transactions contemplated by this Agreement, and as a material inducement to Buyers for entering into this Agreement, Sellers and the Shareholders, jointly and severally, covenant and agree as follows:

(a) *Non-Compete.* During the period beginning on the Closing Date and ending on the fifth (5th) anniversary of the Closing Date (the "Noncompete Period"), Sellers and the Shareholders will not at any time, in any capacity, directly or indirectly, own, manage, operate, join, control or participate in the ownership, management, operation or control of, or be employed or otherwise connected as an agent, security holder, consultant, stockholder, subsidiary, partner or otherwise with, any person, firm, corporation or business that engages in the Sellers' Business or substantially similar work for residents of the United States of America or such services delivered within the United States of America.

(b) *Non-Solicitation by Sellers.* During the period beginning on the Closing Date and ending on the third (3rd) anniversary of the Closing Date (the "Nonsolicitation Period"), neither Sellers, the Shareholders nor any of their Affiliates will at any time, in any capacity, directly or indirectly, (i) induce or attempt to induce any former employee of Sellers who is offered employment by Buyers pursuant to Section 5.10 or any employee of Buyers to leave Buyers' employ, or otherwise solicit the employment of any such employee, hire any such employee or in any way interfere with the relationship between Buyers and any of such employees, (ii) induce or attempt to induce any former customer of Sellers or customer of Buyers to cease doing business with Buyers or in any way interfere with the relationship between Buyers and any former customers or business relations of Sellers or customers of Buyers or business relations of Buyers, or (iii) contact or solicit the business of any former customer of Sellers or customer of Buyers with respect to any business substantially similar to the Sellers' Business or Buyers' business; provided, that nothing in this Section 5.4(b) shall prevent Sellers or any of its Affiliates from hiring (i) any employee whose employment has been terminated by Buyers or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(c) *Non-Solicitation by Buyers.* From the Effective Date until the later of (x) the Closing Date

or (y) if the Agreement is terminated prior to the Closing Date, the first anniversary of the termination date, neither Buyers nor any of its Affiliates will at any time, in any capacity, directly or indirectly, (i) induce or attempt to induce any employee of Sellers to leave Sellers' employ, or otherwise solicit the employment of any such employee, hire any such employee or in any way interfere with the relationship between Sellers and any of such employees, (ii) induce or attempt to induce any customer of Sellers to cease doing business with Sellers or in any way interfere with the relationship between Sellers and any customers or business relations of Sellers, or (iii) contact or solicit the business of any customer of Sellers with respect to any business substantially similar to the Sellers' Business; provided, that nothing in this Section 5.4(c) shall prevent Sellers or any of its Affiliates from hiring (i) any employee whose employment has been terminated by Sellers or (ii) after 180 days from the date of termination of employment, any employee whose employment has been terminated by the employee.

(d) *Invalid Provisions.* If, at the time of enforcement of the provisions of this Section 5.4, a court of competent jurisdiction holds that any of the restrictions set forth in Section 5.4 are unreasonable under the circumstances then existing or are otherwise illegal, invalid or unenforceable in any respect by reason of its duration, geographic area or scope of activity, or any other reason, the parties agree that the maximum period, scope or geographical area reasonable or otherwise enforceable under such circumstances will be substituted for the stated period, scope or geographic area.

(e) *Enforcement.* Without limiting any of Buyers' rights under this Agreement, the parties hereto acknowledge that Buyers' will be entitled to enforce its rights under this Section 5.4 specifically, to recover damages and costs (including reasonable attorneys' fees) caused by any breach or threatened breach of any provisions of this Section 5.4 and to exercise all other rights existing in its favor. The parties acknowledge and agree that the breach of any term or provision of this Section 5.4 by Sellers will materially and irreparably harm Buyers, that money damages will accordingly not be an adequate remedy for any breach of the provisions of this Section 5.4 by Sellers and that Buyers, in its sole discretion and in addition to any other remedies it may have at law or in equity, may apply to any court of law or equity of competent jurisdiction (without posting any bond or deposit) for specific performance and/or other injunctive relief in order to enforce or prevent any violations of the provisions of this Section 5.4.

5.5. Change of Name. Promptly, but in no event longer than ten (10) days after the Closing Date, Sellers shall, and Sellers and Shareholders shall cause Sellers to (i) amend their governing documents and take all other actions necessary to change their names to one sufficiently dissimilar to their present names, in Buyers' reasonable judgment, to avoid confusion, and (ii) take all reasonable actions requested by Buyers to enable Buyers to use Sellers' present names as Buyers may decide in its sole discretion.

5.6. Filing Obligations; Taxes. Sellers shall file all reports and returns relating to periods up to and including the Closing Date required by Legal Requirements relating to the Sellers' Business as conducted using the Assets. Sellers shall duly and timely withhold or collect, pay over and report to the appropriate authority any Taxes required to be withheld or collected by Sellers with respect to the Assets or the Sellers' Business relating to periods on or before the Closing Date under all applicable laws, and file any Tax Returns related thereto. After the Closing, Sellers shall pay, or cause to be paid, in a timely manner all Taxes resulting from or payable in connection with the sale of Assets and the effectuation of the contemplated transactions, except that Buyers shall pay one-half (1/2) of any taxes payable upon transfer of any vehicles included in the Assets and any other transfer Taxes.

5.7. Corporate Identity. Sellers acknowledge that, as between Sellers and Buyers, as of and following the Closing, Buyers shall have the absolute and exclusive proprietary right to all Marks, and that all rights thereto and the goodwill represented thereby and pertaining thereto are being transferred to Buyers.

5.8. Transition Services Agreement. Seller and Buyers shall perform all of their respective obligations under the Transition Services Agreement on the terms and conditions set forth therein.

5.9. Buyers Financing. Buyers shall promptly after the date of this Agreement take such actions as necessary, and use commercially reasonable efforts, to complete the financing necessary to close the transactions contemplated by this Agreement, including the making of the Contingent Payment (if any).

5.10. Employees.

(a) Buyers has, or has caused an Affiliate of Buyers to, offer employment upon such terms and conditions as Buyers has determined effective on the Closing Date, to the Key Employees and to such of Sellers' employees who Buyers decides to employ following Closing (including such Sellers' employees who were absent due to vacation, family leave, short-term disability or other approved leave of absence) (each of the Sellers' employees who accept such employment and commence employment on the Closing Date, a "Company Continuing Employee"). Buyers has and shall provide or ensure each Company Continuing Employee is provided: credit under Buyers' paid time off policies (such that Company Continuing Employees shall be allowed to carry over with Buyers their vacation and sick time accrued with Seller as of the Closing as specified on Schedule 4.1(n)).

(b) Buyers acknowledges that, upon Closing, Buyers will be a "successor employer" (within the meaning of Treas. Reg. Section 54.4980B-9) for purposes of COBRA, and that, Buyers will be required to offer COBRA continuation coverage to Seller's "M&A qualified beneficiaries" (within the meaning of Treas. Reg. Section 54.4980B-9).

5.11. Access to Information by Sellers and the Shareholders. Following the Closing, unless otherwise prohibited by law, Buyers will afford Sellers, each Shareholder, their respective counsel and accountants, during normal business hours and after reasonable advanced notice, reasonable access to the books and records of the Sellers' Business and any other information or data relating to the Sellers' Business or the Assets in its possession or available to it and the right to make copies and extracts therefrom, to the extent that such access may be reasonably requested by Sellers or the Shareholders in connection with (i) the preparation of Tax Returns, (ii) compliance with the requirements of any Governmental Body, (iii) any actual or threatened third party action, or (iv) any other reasonable purpose.

5.12. Certain Post-Closing Matters. Sellers shall use their best efforts to cause within thirty (30) days following the Closing Date each of the agreements, instruments and documents set forth on Exhibit J to obtain all necessary third party signatures and otherwise to be duly executed, and delivered agreements, instruments and documents to Buyers or filed or submitted to the appropriate third party. Sellers shall promptly present evidence of each such execution, filing and recordation to Buyers of the items set forth of Exhibit J. Buyers will cooperate with Sellers and use its commercially reasonable efforts to provide information and assistance to Sellers as reasonably requested by Sellers or any third party in relation to such agreements, instruments and documents.

5.13. Appointment of Sellers' Agent. Sellers hereby irrevocably appoint Frank Habibian as their attorney-in-fact and agent, and hereby grant him the complete and absolute authority to negotiate, execute, deliver, and amend this Agreement, any Seller Documents to be executed by the Sellers, and any Schedule or Exhibit hereto, and to take any and all actions otherwise necessary or appropriate to effectuate and close the transactions contemplated hereby.

5.14. Collection of Accounts Receivable. From and after the Closing Date until the first anniversary thereof, Sellers shall use commercially reasonable efforts to assist Buyers in collecting any and all Accounts Receivable purchased by Buyers, and to cooperate with Buyers' staff in communicating with the parties owing such Accounts Receivable as necessary to facilitate such collections. Sellers and the Shareholders may take any action to collect the Retained Aged Receivables from and after the Closing Date, and Buyers shall not actively seek to collect the Retained Aged Receivables but shall promptly deliver to Sellers all amounts collected by Buyers regarding the Retained Aged Receivables within three (3) Business Days of their receipt.

5.15. Annual Thanksgiving Feast. Following the Closing, Habibian shall be permitted by Buyers and its successors and assigns to continue to hold the annual event known as the St. George Thanksgiving Feast at the Red Rock Canyon School at Habibian's sole cost and expense and in accordance with Habibian's past practices in carrying out such event (including use of the kitchen at least 24 hours before and during Thanksgiving Day until the conclusion of the event), provided such event does not unduly burden or materially interfere with Buyers' or its successors' ability to operate the Sellers' Business.

ARTICLE VI AMENDMENT, WAIVERS

6.1. Amendment. This Agreement may not be amended except by an instrument in writing signed on behalf of Buyers, the Sellers and the Shareholders.

6.2. Extension; Waiver. At any time prior to the Closing Date, any party may (a) extend the time for the performance of any of the obligations or other acts of the other party, (b) waive any inaccuracies in the representations and warranties of the other party contained herein or in any document, certificate or writing delivered pursuant hereto or (c) to the extent permitted by applicable laws, waive compliance by the other party with any of the agreements or conditions contained herein. Any agreement on the part of any party to any such extension or waiver shall be valid only if set forth in an instrument in writing signed on behalf of such party.

ARTICLE VII REMEDIES, SURVIVAL, INDEMNIFICATION

7.1. Survival. All representations, warranties, covenants, agreements and obligations in this Agreement and any other certificate or document delivered pursuant to this Agreement shall survive the Closing as provided in this Section 7.1:

(a) *Limited Survival.* Except as otherwise provided in this Section 7.1, all representations, warranties, covenants, agreements and obligations in this Agreement shall expire eighteen (18) months following the Closing Date.

(b) *Survival Through Statute of Limitations.* The following representations, warranties, covenants, agreements, and obligations in this Agreement shall expire on the sixtieth (60th) day following the expiration of the applicable statute of limitations related to such representations, warranties, covenants, agreements, and obligations: Section 4.1(e) (Government Authorizations; Permits; Compliance with Law); Section 4.1(k) (Employees; Employee Benefits); Section 4.1(p) (Taxes); Section 4.1(q) (Intellectual Property Assets); Section 4.1(r) (Brokers); Section 4.1(s) (Environmental Matters); Section 4.1(t) (Transactions with Related Persons); and Section 4.1(u) (Healthcare Compliance; Accreditation; Medicare and Medicaid; Third Party Payers).

(c) *Indefinite Survival.* The following representations, warranties, covenants, agreements, and obligations in this Agreement shall survive indefinitely: Section 2.1 (Transfer of Assets); Section 2.2 (Excluded Assets); Section 2.3 (Excluded Liabilities); Section 2.4 (Assumed Liabilities); Section 3.2 (Closing; Closing Documents); Section 3.6 (Further Assurances); Section 4.1(a) (Organization, Good Standing, and Qualification); Section 4.1(b) (Authority Relative to Agreement; Capitalization); Section 4.1(c) with respect to subclause (i) only (Non-Contravention); Section 4.1(g) (Title to Assets; Absence of Liens and Encumbrances, etc.); and the covenants set forth in Article V shall survive the Closing in accordance with their terms.

(d) *Outstanding Claims.* Any claim (whether or not fixed as to liability or liquidated as to amount) pending on the expiration date of the applicable survival period set forth above for which a claim notice has been given in accordance with this ARTICLE VII on or before such expiration date may continue to be asserted and indemnified against until finally resolved. For avoidance of doubt, the parties hereto agree that the survival periods set forth in this Section 7.1 are contractual statutes of limitation which are tolled by virtue of notice given by the Indemnified Person to the Indemnifying Person prior to the termination of such survival periods in accordance with the provisions of this Article VII.

7.2. Indemnification and Reimbursement.

(a) *By Sellers.* Sellers and the Shareholders, jointly and severally, agree to indemnify, save, hold harmless and defend Buyers and its Related Parties, successors and assigns (collectively, the "Buyers Indemnified Persons"), from and against any and all costs and losses, including without limitation Taxes, liabilities, obligations, damages, deficiencies, actions, claims, demands, and expenses (whether or not arising out of Third Party Claims), and reasonable attorneys' fees and reasonable amounts paid in investigation, defense or settlement of any of the foregoing ("Losses"), asserted, incurred in connection with, arising out of, or resulting from:

(i) Any breach of any representation or warranty made by Sellers or the Shareholders in or pursuant to this Agreement or in any certificate or other closing document delivered pursuant to this Agreement.

(ii) Any failure by the Sellers or the Shareholders to perform or observe any covenant, agreement or condition to be performed or observed by it under this Agreement or in any certificate or other closing document delivered pursuant to this Agreement.

(iii) Any Excluded Assets or Excluded Liabilities.

(iv) Any brokerage, finder's fees, commissions, or similar payments based any agreement or understanding made, or alleged to have been made, by any person with Sellers or

the Shareholders in connection with the contemplated transactions under this Agreement.

(v) Any matter disclosed on Schedule 4.1(u)(iv) (Cost Reports; Reimbursement Accounting).

(vi) Any breach, violation, or failure to pay any amounts to Buyers when due under the terms of the Transition Services Agreement, as provided therein.

(vii) Any failure of Sellers to maintain the insurance coverage and tail policies described on Schedule 7.2(a)(vii) after the Closing Date for Losses arising from or related to Sellers' operations of Sellers' Business prior to the Closing Date.

(viii) The economic benefit of any of the Material Contracts listed in Schedule 3.3(c) is not obtained by Buyers (or their Affiliates) after Closing by virtue of the failure of any such contract to be transferred or assigned to Buyers or the inability to obtain a reissuance of any such contract to Buyers within 11 months of Closing, unless such failure or inability results from (A) Buyers' failure to use best efforts to make or file accurate and timely applications or notices or to respond to reasonable requests of the contracting party or Sellers with respect to such Material Contract or the related Governmental Authorizations (including in accordance with Buyers' obligations under Section 5.6 hereof), (B) Buyers' (or Buyers' Affiliates') intentional malfeasance, violation of law, fraud or other similar acts involving dishonesty that disqualify Buyers from qualifying for such Material Contract or Governmental Authorizations or (C) any contracting party refusing to transfer the economic benefit of any Material Contract to Buyers or their Affiliates solely as a result of any Buyer's identity or the identity of any Buyer's Affiliate. In the event Buyers are unable to obtain the full economic benefit of such Material Contract under the foregoing sentence, Buyers shall be entitled to recovery from Seller an amount equal to (i) the amount by which the lost Material Contract affected the EBITDA of Sellers during the 12-month period from April 1, 2015 through March 31, 2016 (the "Benchmark EBITDA Period"), calculated consistent with Sellers' historical practice and in accordance with GAAP, (ii) multiplied by 5.5; provided, however, that in no event shall any indemnity obligation under this Section 7.2(a)(viii) duplicate an indemnity obligation under Section 7.2(a)(ix) hereof. For purposes hereof, the amount by which a lost Material Contract affected the EBITDA of Sellers during the Benchmark EBITDA Period shall be an amount determined by (a) multiplying the ratio of (i) the revenue generated by the lost Material Contract during the Benchmark EBITDA Period, to (ii) the total revenue of Sellers during the Benchmark EBITDA Period, by (b) \$4,181,818. Notwithstanding the foregoing, the aggregate amount by which lost Material Contracts are deemed to affect the EBITDA of Sellers during the Benchmark EBITDA Period shall not be greater than the amount by which (x) \$4,181,818 exceeds (y) the Calculation Period EBITDA (as finally determined pursuant to Section 3.7). For the purpose of determining whether a Material Contract has been transferred or assigned to a Buyer (or its Affiliate) or whether any Buyer (or its Affiliate) has obtained a reissuance of such Material Contract, in addition to any other evidence of transfer, assignment or reissuance of such Material Contract, the payment of any amount by a payer or contracting party under any such Material Contract directly to any Buyer (or Affiliate thereof) for services rendered by such Buyer (or Affiliate thereof) after the date hereof, that is not required to be refunded due to the payer mistakenly making payment to Buyers instead of Sellers, to such payer in the 11 months following the date hereof, shall be deemed conclusive evidence of such transfer, assignment, or reissuance. For the avoidance of doubt, following the transfer, assignment or reissuance of any Material Contract under this

Agreement, no termination of any such Material Contract, or failure of any contracting party under any such Material Contract to make payment for services provided by Buyers after Closing or to continue seeking the services of the Sellers' Business during the Calculation Period, shall result in any indemnity claim pursuant to this Section 7.2(a)(viii).

(ix) Any claim against Buyers arising from an action or omission of Sellers or any of Sellers' employees prior to Closing in connection with the assumption or use of any old NPI Numbers, Sellers' Governmental Authorizations or Contracts, including claims for recoupment of amounts previously billed by Sellers.

(x) Any lost revenue associated with a permanent gap in Buyers being able to bill and collect for their services actually rendered after Closing relating to (I) the transfer, conveyance, or reissuance of a Material Contract or (II) any Trust Transaction (as defined below), which permanent gap occurs within 11 months of the Closing, unless such gap results from (A) Buyers' failure to use best efforts to make or file accurate and timely applications or notices or to respond to reasonable requests of the contracting party or Sellers with respect to such Material Contract (including in accordance with Buyers' obligations under Section 5.6 hereof), (B) Buyers' (or Buyers' Affiliates') intentional malfeasance, violation of law, fraud or other similar acts involving dishonesty that disqualify Buyers from qualifying for such Material Contract, or (C) any contracting party refusing to transfer the economic benefit of any Material Contract to Buyers or their Affiliates solely as a result of any Buyer's identity or the identity of any Buyer's Affiliate. For purposes of this section, a "permanent gap" means a period of time following the Closing, but no longer than 11 months after the Closing, where Buyers are permanently prohibited from billing or being paid for services actually rendered because such transfer, conveyance, or reissuance, or such participation or eligibility to participate was not effective or retroactive to the Closing Date or in the event Buyer is required to re-enroll as a new provider, or otherwise. For purposes of calculating "lost revenue" for purposes of this section, the "lost revenue" for a permanent gap period shall be the applicable reimbursement rate under the applicable Material Contract for the services provided by Sequel during the permanent gap.

(xi) Any claim, audit, or dispute to which any Buyer becomes a party arising from or relating to the tax treatment, allocation of purchase price, or other tax matters associated with the Sellers' transactions associated with the Red Rock Canyon CRT or the Frank Habibian Dynasty Trust dated August 9, 2016 (collectively, the "Trust Transactions").

(b) *By Buyers.* Buyers agrees to indemnify, save, hold harmless and defend Sellers, the Shareholders, and its Related Parties, successors and assigns (the "Seller Indemnified Persons"), from and against any and all Losses (including attorney fees and costs) asserted, incurred in connection with, arising out of, or resulting from:

(i) Any breach of any representation or warranty made by Buyers in or pursuant to this Agreement or in any certificate delivered under this Agreement.

(ii) Any breach of any covenant or agreement made by Buyers in or pursuant to this Agreement or in any certificate or closing document delivered under this Agreement.

(iii) Any brokerage, finder's fees, commissions, or similar payments based any agreement or understanding made, or alleged to have been made, by any person with Buyers in

connection with the contemplated transactions under this Agreement.

(iv) Buyers' use of the Assets and/or operation of the Sellers' Business on or after the Closing Date.

(v) The Assumed Liabilities.

(c) *Interpretation and Determination of Indemnity Claims.* The right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants, agreements and obligations shall not be affected by any investigation (including, without limitation, any environmental investigation or assessment) conducted with respect thereto, or any Knowledge acquired (or capable of being acquired) at any time, whether before or after the execution and delivery of this Agreement or the Closing Date, with respect to the accuracy or inaccuracy of or compliance with any such representation, warranty, covenant or obligation. For purposes of determining whether any inaccuracy in, or breach of, any representation or warranty in this Agreement has occurred for purposes of this ARTICLE VII, all such representations and warranties, except for the representations and warranties contained in Section 4.1(v), shall be read as if any and all exceptions, limitations, restrictions, qualifications, and exclusions based or conditioned on the terms "Seller's Knowledge," "Buyers' Knowledge," "Knowledge," "Material Adverse Effect," "material" and/or "materially" were deleted. The closing of the transactions contemplated by this Agreement and the waiver by either party of any condition to closing hereunder shall not constitute a waiver of any claims to indemnity hereunder with respect to those indemnities provided in this Section 7.2. The waiver of any condition based upon the accuracy of any representation or warranty, or on the performance of or compliance with any covenant or obligation, will not affect the right to indemnification, reimbursement or other remedy based upon such representations, warranties, covenants and obligations pursuant to this ARTICLE VII.

7.3. Indemnification Claims; Defense of Claims. All indemnity claims made by either party shall be made using the following procedures:

(a) *Third Party Claims.*

(i) Notice of Third Party Claims. Promptly after receipt by a person entitled to indemnity under this ARTICLE VII (an "Indemnified Person") of written notice of the assertion of a claim against such Indemnified Person by a third-party (a "Third Party Claim"), such Indemnified Person shall give notice to the party obligated to indemnify under this ARTICLE VII (an "Indemnifying Person") of the assertion of such Third Party Claim, provided that the failure to notify the Indemnifying Person will not relieve the Indemnifying Person of any liability that it may have to any Indemnified Person, except to the extent that the defense of such Third Party Claim has been materially prejudiced by the Indemnified Person's failure to give such notice.

(ii) Assumption of Defense. The Indemnifying Person shall be entitled to assume the defense of such Third Party Claim at its sole cost and expense with counsel satisfactory to the Indemnified Person in its reasonable judgment, unless (i) the Indemnified Person determines in good faith that joint representation would be inappropriate, (ii) the Indemnifying Person fails to provide reasonable assurance to the Indemnified Person of its financial capacity to defend such Third Party Claim and provide indemnification, or (iii) the Third Party Claim seeks an injunction or any other equitable or other non-monetary relief as a remedy.

(iii) Assumed Indemnification Coverage. If the Indemnifying Person assumes the defense of a Third Party Claim, or if the Indemnifying Person is given written notice of a Third Party Claim and does not provide notice of its election to assume the defense of such claim within ten (10) days of receiving notice, or the Indemnifying Person does not assume the defense, the Indemnified Person shall be entitled to pursue the defense of the claim in good faith, and all costs of such defense shall be borne by the Indemnifying Party to the extent the Indemnified Party is entitled to indemnity hereunder. Notwithstanding the foregoing, even if the Indemnifying Party assumes the defense, this shall not prohibit or restrict an Indemnified Party from participating in the defense at its own cost. No compromise or settlement of such Third Party Claims may be effected by the Indemnifying Person without the Indemnified Person's consent, or by the Indemnified Person without the Indemnifying Person's consent, which in either case will not be unreasonably withheld. The parties agree to cooperate in good faith regarding any Third Party Claim, communicate with each other regarding the status of the Third Party Claim, and cooperating in such a manner as to preserve the confidentiality of Confidential Information and the attorney-client and work-product privileges.

(iv) Right to Defend by Indemnified Person in Certain Circumstances. Notwithstanding the foregoing, if an Indemnified Person determines in good faith that there is a reasonable probability that a Third Party Claim would adversely affect it or its affiliates other than as a result of monetary damages for which it would be entitled to indemnification under this Agreement, the Indemnified Person may, by notice to the Indemnifying Person, assume the exclusive right to defend, compromise or settle such Third Party Claim, but the Indemnifying Person will not be bound by any determination of any Third Party Claim so defended for the purposes of this Agreement or any compromise or settlement effected without its consent (which may not be unreasonably withheld).

(v) Duty to Keep Informed. With respect to any Third Party Claim subject to indemnification under this ARTICLE VII, (A) both the Indemnified Person and the Indemnifying Person, as the case may be, shall keep the other person fully informed of the status of such Third Party Claim and any related proceedings at all stages thereof where such person is not represented by its own counsel, and (B) the parties agree (each at its own expense) to render to each other such assistance as they may reasonably require of each other and to cooperate in good faith with each other in order to ensure the proper and adequate defense of any Third Party Claim.

(b) *Other Claims.* A claim for indemnification for any matter that does not constitute a Third Party Claim may be asserted by written notice to the party from whom indemnification is sought, shall identify with particularity the nature of the Loss giving rise to the right to indemnity hereunder and the provision herein giving rise to a right to indemnity by reference to this Article VII, and shall be due and owing hereunder after such written notice is delivered.

7.4. Limitations on Indemnification Claims. All indemnification claims under this ARTICLE VII shall be subject to the following limitations and restrictions:

(a) *Time Limitations for Filing Claims.* No Indemnified Person shall be entitled to indemnification under this ARTICLE VII unless the Indemnified Person delivers notice to the Indemnifying Person of a claim specifying the factual basis of the claim in reasonable detail prior to the expiration of the applicable representation, warranty, covenant, agreement or obligation under Section 7.1.

(b) *Indemnity Limitations – Sellers and the Shareholders.* Notwithstanding anything to the contrary stated herein, Sellers and the Shareholders shall have no liability for indemnification under this ARTICLE VII with respect to claims under Section 7.2(a)(i) until the total Losses with respect to such matters exceed **Two Hundred Thousand Dollars (\$200,000.00)** (the “Threshold”), at which point Sellers and the Shareholders shall be responsible for the amount of such Losses that is in excess of One Hundred Thousand Dollars \$100,000.00 (the “Seller Indemnity Basket”) notwithstanding the inclusion of a materiality qualification in the relevant provisions of this Agreement.

(c) *Net of Insurance.* Buyers agrees to seek recovery from any applicable insurance policies prior to seeking recovery against Sellers. The amount to be paid by an Indemnifying Party pursuant to this ARTICLE VII shall be limited to the amount by which the Losses exceed the amount of any insurance proceeds or other amounts received and/or recovered from any third party by the Indemnified Party with respect to such Losses.

(d) Notwithstanding anything to the contrary herein, any damages resulting from or arising out of criminal activity, willful misrepresentations, willful omissions, willful breaches, willful nonfulfillment and willful violations or for fraud or a breach of the representations, warranties, covenants and obligations described in Sections 2.1 (Transfer of Assets), 4.1(a) (Organization, Good Standing, and Qualification), 4.1(b) (Authority Relative to Agreement; Capitalization), 4.1(g) (Title to Assets; Absence of Liens and Encumbrances, etc.), 4.1(n) (Employees, Employee Benefits, ERISA), 4.1(o) (Insurance), 4.1(p) (Taxes), 4.1(r) (Brokers), shall survive for the periods set forth in Section 7.1 and shall not be subject to the limitations set forth in Sections 7.4(a), 7.4(b) and 7.4(f).

(e) No Losses may be claimed under Section 7.2 by any Indemnified Person to the extent such Losses are included in the calculation of any adjustment to the Purchase Price pursuant to Section 3.1.

(f) The aggregate amount of all Losses for which Sellers or Buyers shall be liable pursuant to Section 7.2 shall not exceed **Four Million Seven Hundred Thousand Dollars (\$4,700,000)** (the “Cap”).

7.5. Recovery of Claims. Any indemnification payment that is due and owing to an Indemnified Person under this ARTICLE VII shall be paid and recovered as follows:

(a) *Buyers’ Recovery Against Escrow.* To the extent that there are any funds held pursuant to the Escrow Agreement, Buyers shall first make a claim against the Escrow Amount by providing notice of the indemnification claim by Buyers or a Buyers Indemnified Person to Sellers and the Escrow Agent pursuant to the terms of the Escrow Agreement and promptly recover the amount to be indemnified therefrom in accordance with the Escrow Agreement. The exercise of such right by Buyers, in good faith, whether or not ultimately determined to be justified, will not constitute a default under or a breach of this Agreement. Neither the exercise of nor the failure to give a notice of a claim under the Escrow Agreement will constitute an election of remedies or limit Buyers in any manner in the enforcement of any other remedies that may be available to it.

(b) *Buyers’ Claims in Excess of Escrow.* To the extent that (i) there are no amounts held under the Escrow Agreement at the time such indemnification payment becomes due and owing, or (ii) the amount of such indemnification payment exceeds the amount then held under the Escrow Agreement, then in addition to and concurrently with any payment made pursuant to Section 7.5(a), Sellers and the Shareholders shall, jointly and severally, pay or cause to be paid in cash to each applicable Buyers Indemnified Person such amount of such indemnification payment as exceeds the

amount held under the Escrow Agreement (as measured immediately prior to giving effect to any payment made pursuant to Section 7.5(a)) within ten Business Days after the amount of such indemnification payment has been determined. Any such payment shall be made by wire transfer of immediately available funds to the account designated by the Indemnified Person.

(c) *The Seller Indemnification Claims.* Upon receipt of an indemnification claim from Sellers or a Seller Indemnified Person, Buyers shall pay or cause to be paid in cash to each applicable Seller Indemnified Person the amount of such indemnification payment within ten Business Days after the amount of indemnification payment has been determined. Any such payment shall be made by wire transfer of immediately available funds to the account designated by the Indemnified Person.

7.6. Treatment of Indemnity Payments. Any payments made pursuant to this ARTICLE VII shall be consistently treated as adjustments to the consideration payable pursuant to ARTICLE III for all Tax purposes by all parties to the maximum extent permitted by applicable law.

7.7. Arbitration of Disputes. Any controversy or claim arising out of or relating to this Agreement, any Seller Documents, any Buyer Documents, any indemnity claims, or the transactions contemplated thereby shall be settled by binding arbitration in accordance with the following provisions:

(a) *Disputes Covered.* The agreement of the parties to arbitrate covers all disputes of every kind relating to or arising out of this Agreement, any Seller Documents, any Buyer Documents, any indemnity claims, or the transactions contemplated thereby. Disputes include actions for breach of contract with respect to this Agreement or the related documents, as well as any claim based upon tort or any other causes of action relating to the transactions contemplated thereby, such as claims based upon an allegation of fraud or misrepresentation and claims based upon a federal or state statute. In addition, the arbitrators selected according to procedures set forth below shall determine the arbitrability of any matter brought to them, and their decision shall be final and binding on the parties

(b) *Administration, Rules, Arbitrators.* The arbitration shall be administered by the American Arbitration Association. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association (AAA), as modified by any other instructions that the parties may agree upon at the time, except that each party shall have the right to conduct discovery in any manner and to the extent authorized by the Federal Rules of Civil Procedure as interpreted by the federal courts. If there is any conflict between those rules and the provisions of this section, the provisions of this section shall prevail. Any arbitration hereunder shall be conducted by one arbitrator agreed to by the parties within twenty (20) days of receipt by respondent[s] of the request for arbitration or in default thereof appointed by the AAA in accordance with its Commercial Rules. Such arbitrator shall have no less than fifteen years of experience practicing as a lawyer in the area of mergers & acquisitions or similar complex transactions.

(c) *Applicable Law, Forum.* The forum for the arbitration shall be in Denver, Colorado and the governing law for the arbitration shall be the law of the State of Utah, without reference to its conflicts of law provisions.

(d) *Interpretation, Decision.* The arbitrators shall be bound by and shall strictly enforce the terms of this Agreement and may not limit, expand or otherwise modify its terms. The arbitrators shall make a good faith effort to apply substantive applicable law, but an arbitration decision shall not be subject to review because of errors of law. The arbitrators shall be bound to honor claims of privilege or

work-product doctrine recognized at law, but the arbitrators shall have the discretion to determine whether any such claim of privilege or work product doctrine applies. The arbitrators' decision shall provide a reasoned basis for the resolution of each dispute and for any award. The arbitrators shall not have the power to award damages in connection with any dispute in excess of actual compensatory damages and shall not multiply actual damages or award consequential or punitive damages or award any other damages that are excluded under the provisions of ARTICLE VII of this Agreement.

(e) *Expenses.* The prevailing party in any arbitration or other proceeding is entitled to receive, and the non-prevailing party shall pay, in addition to all other remedies to which the prevailing party may be entitled, the costs and expenses incurred by the prevailing party in conducting the arbitration or proceeding, including reasonable attorneys' fees and expenses, and arbitration fees, even if not recoverable by law.

(f) *Remedies, Award.* The arbitrators shall have power and authority to award any remedy or judgment that could be awarded by a court of law in the State of Utah. The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award may be entered in any court of competent jurisdiction in the United States.

7.8. Remedies Exclusive. Notwithstanding anything to the contrary stated in this Agreement, the remedies provided in this ARTICLE VII shall be the exclusive remedies of the parties for any claim (whether such claim is framed in tort, contract, or otherwise) arising out of a breach of any representation, warranty, covenant, or other agreement contained in this Agreement; *provided, however,* that such exclusivity (a) shall not preclude any statutory or common law remedy in the nature of an injunction or other similar or equitable remedy, including without limitation, Buyers' right to seek specific performance or (b) any remedies provided under Sections 5.7 and 5.8.

ARTICLE VIII GENERAL PROVISIONS

8.1. Expenses, etc. Whether or not the transactions contemplated by this Agreement are consummated, none of the parties shall have any obligation to pay any of the fees and expenses of the other party incident to the negotiation, preparation and execution of this Agreement, including the fees and expenses of counsel, accountants and other experts.

8.2. Execution in Counterparts. For the convenience of the parties, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Signatures may be delivered by facsimile or electronic methods, which shall be deemed to be original signatures.

8.3. Notices. All notices and other communications which are required or may be given pursuant to the terms of this Agreement shall be in writing, shall be effective when received, and shall in any event be deemed to have been received (a) three Business Days after deposit with the U.S. Mail, if mailed by registered or certified mail (return receipt requested), (b) one Business Day after the Business Day of timely deposit with a recognized national courier service for next day delivery (or two Business Days after such deposit if timely deposited for second Business Day delivery), if delivered by such means or (c) three Business Days after delivery by email transmission with copy by U.S. Mail, if sent via email plus mail copy, to the parties at the following addresses (or such other addresses provided to by a party to the other parties by sending notice under this section):

(a) *If to Sellers:*
Frank Habibian
2091 Southgate Hills Drive
Saint George, UT 84770
frankssg@hotmail.com

With a Copy to:
Stoel Rives LLP
Attn: Sam Gardiner
201 South Main Street, Suite 1100
Salt Lake City, UT 84111
sam.gardiner@stoel.com

(b) *If to Buyers:*
Sequel Alliance Family Services, LLC
Attn: John Stupak, CEO
1131 Eagle Tree Lane
Huntsville, AL 35801
john.stupak@sequelyouthservices.com

With a Copy to:
BrownWinick Law Firm
Attn: William C. Brown
666 Grand Ave., Suite 2000
Des Moines, IA 50309
brown@brownwinick.com

8.4. Entire Agreement. This Agreement, its Exhibits, its Schedules, the Seller Documents, Buyer Documents, and the Confidentiality Agreement constitute the entire agreement among the parties with respect to the subject matter hereof and supersede all prior agreements and understandings, oral and written, among the parties hereto with respect to the subject matter hereof. No representation, warranty, promise, inducement or statement of intention has been made by any party hereto which is not embodied in this Agreement, and no party shall be bound by, or be liable for, any alleged representation, warranty, promise, inducement or statement of intention not embodied herein or therein.

8.5. Applicable Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without regard to conflict of law provisions that would defer to the laws of another jurisdiction. The rights and obligations of the parties hereunder shall be governed by and determined in accordance with such laws.

8.6. Jurisdiction; Venue. The parties shall attempt to resolve any and all disputes through good faith negotiations. If the parties are unable to resolve a dispute, then all disputes shall be resolved by arbitration as provided in Section 7.7.

8.7. Waiver of Jury Trial. EACH PARTY HERETO HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT IT MAY LEGALLY AND EFFECTIVELY DO SO, TRIAL BY JURY IN ANY SUIT, ACTION OR PROCEEDING ARISING HEREUNDER.

8.8. Binding Effect; Benefits. This Agreement shall inure to the benefit of and be binding upon the parties and their respective successors and assigns. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties or their respective successors and assigns, any rights, remedies, obligations or liabilities under or by reason of this Agreement.

8.9. Assignment. Neither this Agreement nor any of the parties' rights hereunder shall be assignable by any party without the prior written consent of the other parties, which may be withheld in such parties sole and absolute discretion. Notwithstanding the foregoing, Buyers may direct that all or a portion of the Assets be transferred to Affiliates of Buyers or to a nonprofit entity with which Buyers has a contract.

8.10. Invalid Provisions. If any provision of this Agreement is held to be illegal, invalid or

unenforceable under any present or future law, rule or regulation, such provision shall be fully severable and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision has never comprised a part hereof. The remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom. Furthermore, in lieu of such illegal, invalid or unenforceable provision, there shall be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms to such illegal, invalid or unenforceable provision as may be possible.

8.11. Interpretation. Time is of the essence of this Agreement. Unless otherwise qualified, references in this Agreement to "Article", "article", "Section" or "section" are to provisions of this Agreement and a reference thereto includes any subparts. The descriptive headings of the articles and sections, or of or in the Exhibits and Schedules, are inserted for convenience only and are not a part of this Agreement. As used herein, the singular includes the plural, the plural includes the singular, and words in one gender include the others. As used herein, the terms "herein", "hereunder" and "hereof" refer to the whole of this Agreement, and "include", "including" and similar terms are not words of limitation.

8.12. Joint Drafting. The parties have participated jointly in the negotiation and drafting of this Agreement and the other agreements and documents to be executed by the parties in connection herewith. All parties have had the opportunity to obtain the advice of legal and business counsel regarding their respective rights and obligations under this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement and the other agreements and documents to be executed by the parties in connection herewith will be construed as if drafted jointly by the parties and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Agreement and the other agreements and documents to be executed by the parties in connection with this Agreement.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date set forth above.

BUYERS

SEQUEL YOUTH SERVICES OF RED ROCK CANYON, LLC

By: Sybil Potts
Print: Sybil Potts
Title: Chief Financial Officer

SEQUEL YOUTH SERVICES OF FALCON RIDGE RANCH, LLC

By: Sybil Potts
Print: Sybil Potts
Title: Chief Financial Officer

SEQUEL YOUTH SERVICES OF LAVA HEIGHTS, LLC

By: Sybil Potts
Print: Sybil Potts
Title: Chief Financial Officer

SEQUEL YOUTH SERVICES OF MOUNT PLEASANT, LLC

By: Sybil Potts
Print: Sybil Potts
Title: Chief Financial Officer

CARE YOUTH CORPORATION

By: Sybil Potts
Print: Sybil Potts
Title: Authorized Person

SELLERS

FALCON RIDGE RANCH, INC.

By: _____
Print: Frank Habibian
Title: Authorized Person

RED ROCK CANYON SCHOOL, L.L.C.

By: _____
Print: Frank Habibian
Title: Authorized Person

LAVA HEIGHTS ACADEMY, INC.

By: _____
Print: Frank Habibian
Title: Authorized Person

MOUNT PLEASANT ACADEMY, LLC

By: _____
Print: Frank Habibian
Title: Authorized Person

[Signature Page to Asset Purchase Agreement – Sequel and CARE Schools]

4816-9777-6426;10

87438430.14 0058852-00001

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the Effective Date set forth above.

BUYERS

SEQUEL YOUTH SERVICES OF RED ROCK CANYON, LLC

SEQUEL YOUTH SERVICES OF FALCON RIDGE RANCH, LLC

By: _____
Print: Sybil Potts
Title: Chief Financial Officer

By: _____
Print: Sybil Potts
Title: Chief Financial Officer

SEQUEL YOUTH SERVICES OF LAVA HEIGHTS, LLC

SEQUEL YOUTH SERVICES OF MOUNT PLEASANT, LLC

By: _____
Print: Sybil Potts
Title: Chief Financial Officer

By: _____
Print: Sybil Potts
Title: Chief Financial Officer

CARE YOUTH CORPORATION

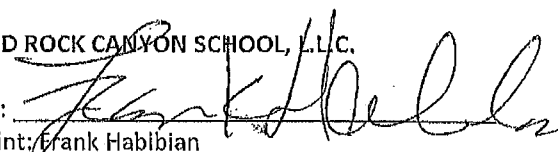
By: _____
Print: Sybil Potts
Title: Authorized Person

SELLERS

FALCON RIDGE RANCH, INC.

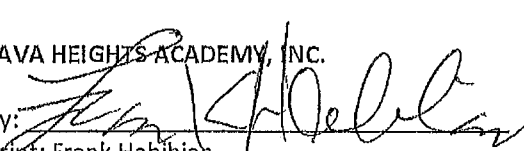
RED ROCK CANYON SCHOOL, L.L.C.

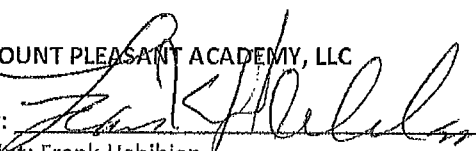
By: 
Print: Frank Habibian
Title: Authorized Person

By: 
Print: Frank Habibian
Title: Authorized Person

LAVA HEIGHTS ACADEMY, INC.

MOUNT PLEASANT ACADEMY, LLC

By: 
Print: Frank Habibian
Title: Authorized Person

By: 
Print: Frank Habibian
Title: Authorized Person

[Signature Page to Asset Purchase Agreement – Sequel and CARE Schools]

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RED ROCK CANYON SCHOOL NON-PROFIT
ORGANIZATION

By: [Signature]
Print: Frank Habibian
Title: Authorized Person

FALCON RIDGE RANCH NON-PROFIT
ORGANIZATION

By: [Signature]
Print: Frank Habibian
Title: Authorized Person

RED ROCK CANYON CHARITABLE REMAINDER
TRUST DATED AUGUST 15, 2016

By: [Signature]
Print: Frank Habibian
Title: Trustee

SHAREHOLDERS

FRANK HABIBIAN

[Signature]

FRANK HABIBIAN DYNASTY TRUST DATED
AUGUST 9, 2016

By: Melanie Habibian
Print: Melanie Habibian
Title: Trustee

By: [Signature]
Print: Sherman Habibian
Title: Trustee

The undersigned as the parent of the Buyers agrees to guarantee the obligations of Buyers under this Agreement.

SEQUEL YOUTH AND FAMILY SERVICES, LLC

By: _____
Print: Sybil Potts
Title: Chief Executive Officer

[Signature Page to Asset Purchase Agreement – Sequel and CARE Schools]

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RED ROCK CANYON SCHOOL NON-PROFIT
ORGANIZATION

By: _____
Print: Frank Habibian
Title: Authorized Person

FALCON RIDGE RANCH NON-PROFIT
ORGANIZATION

By: _____
Print: Frank Habibian
Title: Authorized Person

RED ROCK CANYON CHARITABLE REMAINDER
TRUST DATED AUGUST 15, 2016

By: _____
Print: Frank Habibian
Title: Trustee

SHAREHOLDERS

FRANK HABIBIAN

FRANK HABIBIAN DYNASTY TRUST DATED
AUGUST 9, 2016

By: _____
Print: Melanie Habibian
Title: Trustee

By: _____
Print: Sherman Habibian
Title: Trustee

The undersigned as the parent of the Buyers agrees to guarantee the obligations of Buyers under this Agreement.

SEQUEL YOUTH AND FAMILY SERVICES, LLC

By: Sybil Potts
Print: Sybil Potts
Title: Chief Executive Officer

[Signature Page to Asset Purchase Agreement -- Sequel and CARE Schools]

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ANNEX A DEFINITIONS

The capitalized terms in this Annex A shall have the meanings set forth herein for purposes of this Agreement.

- (a) "Accounts Payable" shall mean all trade accounts payable and other obligations for products purchased or services acquired incurred by Sellers related to and incurred in the ordinary course of their operation of the Sellers' Business.
- (b) "Accounts Receivable" shall mean (i) all trade accounts receivable and other rights to payment from (or for the account of) customers of Sellers for products sold or services provided, (ii) all other accounts receivable of Sellers and the full benefit of all security for such accounts or notes, and (iii) any claim, remedy, or other right related to any of the foregoing.
- (c) "Affiliate" of a Person means any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.
- (d) "Agreement" shall have the meaning set forth in the first paragraph of the preamble.
- (e) "Assets" shall have the meaning set forth in Section 2.1.
- (f) "Assignment and Assumption Agreement" shall have the meaning set forth in Section 3.2(a)(ii).
- (g) "Assumed Liabilities" shall have the meaning set forth in Section 2.4.
- (h) "Base Purchase Price" shall have the meaning set forth in Section 3.1(a).
- (i) "Bill of Sale" shall have the meaning set forth in Section 3.2(a)(i).
- (j) "Business Day" shall mean any day except Saturday, Sunday or any other day on which commercial banks located in Salt Lake City, Utah are required by Law to be closed for business.
- (k) "Buyers" shall have the meaning set forth in the first paragraph of this Agreement.
- (l) "Buyers Indemnified Persons" shall have the meaning set forth in Section 7.2(a).
- (m) "Buyer Documents" shall have the meaning set forth in Section 3.2(b).
- (n) "Calculation Period" shall mean the twelve (12) month period ending on the last day of the 12th full calendar month following the Closing Date.

- (o) "Calculation Period EBITDA" shall have the meaning set forth in Section 3.7(a).
- (p) "Cap" shall have the meaning set forth in Section 7.4(f).
- (q) "Capital Leases" shall mean any lease for Real Estate or Tangible Personal Property that is classified as a capital lease under GAAP.
- (r) "CARE" shall mean the Centers for Adolescent Recovery and Education, Inc.
- (s) "Closing" shall mean the performance of the obligations set forth in the Agreement, including the transfer of the Assets, the payment of the Base Purchase Price, and the delivery of any other instruments or documents as provided in Section 3.2.
- (t) "Closing Balance Sheet" shall mean a balance sheet prepared in accordance with GAAP and consistent with Sellers' past practices showing the assets, liabilities, and equity of Sellers as of the Closing Date.
- (u) "Closing Date" shall mean the date of Closing of the transactions contemplated herein, which shall be effected not less than one (1) Business Day after all of the conditions precedent set forth in Sections 3.3 and 3.4 have been satisfied or waived by the applicable party
- (v) "Closing Net Working Capital" shall mean the Net Working Capital calculated using the Closing Balance Sheet, provided, however, that Retained Aged Receivables shall not be included as an asset in the Closing Balance Sheet.
- (w) "Closing Working Capital Adjustment" shall have the meaning set forth in Section 3.1(f)(i).
- (x) "Code" shall mean the Internal Revenue Code of 1986, as amended.
- (y) "Company Continuing Employee" shall have the meaning set forth in Section 5.14(a).
- (z) "Confidential Information" shall mean any and all of the following information of Sellers, Buyers, or affiliates thereof that has been or may hereafter be disclosed in any form, whether in writing, orally, electronically, or otherwise, or otherwise made available by observation, inspection or otherwise by either party to the other party or its representatives: (i) all information that relates to the Sellers' Business, (ii) all information related to the Assets, including the Intellectual Property Assets and any Trade Secrets, (iii) all information related to the business records of Sellers, (iv) all information regarding this Agreement, including the Purchase Price and terms of the transactions contemplated thereby, and (v) all notes, analyses, compilations, studies, summaries, and other material prepared by the receiving party based in whole or in part upon any of the foregoing information. Confidential Information shall not include any information which (x) becomes generally available to the public, (y) was available to the receiving party on a non-confidential basis prior to its disclosure by the disclosing party, or (z) becomes available to the receiving party on a non-confidential basis from a source other than the disclosing party that is not prohibited from disclosing such information to such persons by a contractual, legal or fiduciary obligation).

- (aa) "Consent" shall mean any approval, consent, ratification, waiver, or other authorization.
- (bb) "Contingent Payment" shall have the meaning set forth in Section 3.7(a).
- (cc) "Contingent Payment Statement" shall have the meaning set forth in Section 3.7(b)(i).
- (dd) "Contingent Payment Disputed Items" shall have the meaning set forth in Section 3.7(b)(iii).
- (ee) "Contract" shall mean any agreement, contract, Lease, consensual obligation, promise or undertaking (whether written or oral and whether express or implied), whether or not legally binding.
- (ff) "EBITDA" shall mean, for any relevant period, net income, plus (i) interest, depreciation, income tax, and amortization expenses, less (ii) interest income, all as such terms are defined under GAAP.
- (gg) "Effective Date" shall have the meaning set forth in the introductory paragraph of the Agreement.
- (hh) "Employee Benefits" shall include all employee benefits to which a Company Continuing Employee was eligible prior to the Closing Date including Employee Plans and employee benefits mentioned in Section 4.1(n).
- (ii) "Employee Plans" shall have the meaning set forth in Section 4.1(n).
- (jj) "Encumbrance" shall mean any charge, claim, community or other marital property interest, condition, equitable interest, lien, option, pledge, security interest, mortgage, right of way, easement, encroachment, servitude, right of first option, right of first refusal or similar restriction, including any restriction on use, voting (in the case of any security or equity interest), transfer, receipt of income or exercise of any other attribute of ownership.
- (kk) "Environmental, Health and Safety Liabilities" shall mean any cost, damages, expense, liability, obligation or other responsibility arising from or under any Environmental Law or Occupational Safety and Health Law, including those consisting of or relating to (i) any environmental, health or safety matter or condition (including on-site or off-site contamination, occupational safety and health and regulation of any chemical substance or product), (ii) any fine, penalty, judgment, award, settlement, legal or administrative proceeding, damages, loss, claim, demand or response, remedial or inspection cost or expense arising under any Environmental Law or Occupational Safety and Health Law, (iii) financial responsibility under any Environmental Law or Occupational Safety and Health Law for cleanup costs or corrective action, including any cleanup, removal, containment or other remediation or response actions ("Cleanup") required by any Environmental Law or Occupational Safety and Health Law (whether or not such Cleanup has been required or requested by any Governmental Body or any other person) and for any natural resource damages, or (iv) any other compliance, corrective or remedial measure required under any Environmental Law or Occupational Safety and Health Law.
- (ll) "Environmental Law" shall mean any applicable law that requires or relates to (i) 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, (ii) preventing or reducing to acceptable levels the release of pollutants or hazardous substances or materials into the environment, (iii) reducing the quantities, preventing the release or minimizing the hazardous characteristics of wastes that are generated, (iv) 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, (v) protecting resources, species or ecological amenities, (vi) reducing to acceptable levels the risks inherent in the transportation of hazardous substances, pollutants, oil or other potentially harmful substances, (vii) cleaning up pollutants that have been released, preventing the threat of release or paying the costs of such clean up or prevention, or (viii) making responsible parties pay private parties, or groups of them, for damages done to their health or the environment or permitting self-appointed representatives of the public interest to recover for injuries done to public assets. The terms "removal," "remedial" and "response action" include the types of activities covered by the United States Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

- (mm) "ERISA" shall have the meaning set forth in Section 4.1(n).
- (nn) "Escrow Agent" shall mean that person or entity appointed to serve as an escrow agent pursuant to the Escrow Agreement.
- (oo) "Escrow Agreement" shall mean that certain Escrow Agreement in the form of Exhibit E hereto entered into by and between the parties and the Escrow Agent to secure the indemnity obligations set forth in this Agreement.
- (pp) "Escrow Amount" shall have the meaning set forth in Section 3.1(b).
- (qq) "Estimated Closing Net Working Capital" shall have the meaning set forth in Section 3.1(e).
- (rr) "Estimated Closing Statement" shall have the meaning set forth in Section 3.1(e).
- (ss) "Excluded Assets" shall have the meaning set forth in Section 2.2.
- (tt) "Excluded Liabilities" shall have the meaning set forth in Section 2.3.
- (uu) "Facilities" shall mean all of Sellers' interest in any and all buildings, fixtures, improvements, and all appurtenances thereto located on or related to Real Estate, as described on Schedule 4.1(h).
- (vv) "Financial Statements" shall have the meaning set forth in Section 4.1(i).
- (ww) "GAAP" shall mean generally accepted accounting principles for financial reporting in the United States, applied on a consistent basis over time. Unless otherwise specified herein, all accounting terms used herein shall be interpreted and all accounting determinations hereunder shall be made in accordance with GAAP.
- (xx) "Governing Documents" shall mean, with respect to any particular entity, (a) if a

corporation, the articles or certificate of incorporation and the bylaws; (b) if a general partnership, the partnership agreement and any statement of partnership; (c) if a limited partnership, the limited partnership agreement and the certificate of limited partnership; (d) if a limited liability company, the articles of organization and operating agreement; (e) if another type of Person, any other charter or similar document adopted or filed in connection with the creation, formation or organization of the Person; (f) all equityholders' agreements, voting agreements, voting trust agreements, joint venture agreements, registration rights agreements or other agreements or documents relating to the organization, management or operation of any Person or relating to the rights, duties and obligations of the equityholders of any Person; and (g) any amendment or supplement to any of the foregoing.

- (yy) "Governmental Authorization" shall mean any Consent, license, registration, certificate, NPI Number, Medicaid or Medicare authorization or provider numbers, accreditation or permit issued, granted, given, or otherwise made available by or under the authority of any Governmental Body or pursuant to any applicable law.
- (zz) "Governmental Body" shall mean any: (i) nation, state, county, city, town, borough, village, district or other jurisdiction; (ii) federal, state, local, municipal, foreign or other government; (iii) accreditation, certification, licensing, governmental or quasi-governmental authority of any nature (including any agency, branch, department, board, division, commission, court, tribunal or other entity exercising any such authority); (iv) body exercising, or entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; or (v) official of any of the foregoing.
- (aaa) "Government Programs" shall have the meaning set forth in Section 4.1(u).
- (bbb) "Hazardous Materials" shall mean any substance, material or waste which is or will foreseeably be regulated by any Governmental Body, including any material, substance or waste which is defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "contaminant," "toxic waste" or "toxic substance" under any provision of Environmental Law, and including petroleum, petroleum products, asbestos, presumed asbestos-containing material or asbestos-containing material, urea formaldehyde and polychlorinated biphenyls.
- (ccc) "Healthcare Fraud Laws" shall have the meaning set forth in Section 4.1(u)(vii).
- (ddd) "Indemnified Person" shall have the meaning set forth in Section 7.3.
- (eee) "Indemnifying Person" shall have the meaning set forth in Section 7.3.
- (fff) "Intellectual Property Assets" shall mean all intellectual property owned or licensed (as licensor or licensee) by Sellers or in which Sellers have a proprietary interest, including: (i) all assumed fictional business names, trade names, registered and unregistered trademarks, service marks and applications (including the corporate names of the Sellers) (collectively, "Marks"); (ii) all patents, patent applications and inventions and discoveries that may be patentable (collectively, "Patents"); (iii) all registered and unregistered copyrights in both published works and unpublished works (collectively, "Copyrights"); (iv) all know-how, trade secrets, confidential or proprietary information, customer lists, computer software,

technical information, data, process technology, plans, drawings and blue prints (collectively, "Trade Secrets"); (v) all rights in internet web sites and internet domain names presently used by Sellers (collectively "Net Names"), and (vi) all goodwill of the Sellers and related to the Sellers' Business, including but not limited to those listed on Schedule 4.1(q).

- (ggg) "Inventory" shall mean all inventories of Sellers, wherever located, including but not limited to all raw materials, work in process, completed products, spare parts, manufacturing materials and supplies, components, and other materials that are incorporated into Sellers' final products, including consigned inventories.
- (hhh) "Key Employee(s)" shall mean Brian Pace and Sherman Habibian.
- (iii) "Knowledge" shall mean, with regard to a particular fact or matter, that (i) the relevant party or any of its officers, directors, managers, or stockholders is actually aware of such fact or matter, or (ii) a prudent individual could be expected to discover or otherwise become aware of that fact or matter in the course of conducting a reasonably comprehensive investigation regarding the accuracy or any representation or warranty contained in this Agreement.
- (jjj) "Legal Requirement" shall mean any federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute, or treaty.
- (kkk) "Losses" shall have the meaning set forth in Section 7.2.
- (lll) "Material Adverse Effect" shall mean any change in, or effect on, or series of related changes in, or related effects on, the Sellers' Business as currently conducted which, when taken as a whole, is materially adverse to the results of its operations, financial or other condition or future business prospects of the Sellers' Business before giving effect to the transactions contemplated by this Agreement.
- (mmm) "Material Consents" shall have the meaning set forth in Section 3.3(c).
- (nnn) "Material Contract" shall mean any Contract that meets any of the following criteria: (i) involves the performance of services by Sellers regardless of the amount payable with respect to such services, (ii) that is not entered into in the ordinary course of business, (iii) that involves any capital expenditure in excess of **Ten Thousand Dollars (\$10,000)**, (iv) that contains any covenant that in any way restricts Sellers' Business activity or limits the freedom of Sellers to engage in any line of business or to compete with any other person, (v) any employment agreement with any employees or the Shareholder, (vi) any power of attorney allowing any person to act on behalf of Sellers, (vii) which provides for payments to Sellers for residential placements with Sellers or services to be delivered by Sellers, or (viii) any amendment, supplement, or modification (whether oral or written) in respect of any of the foregoing.
- (ooo) "Medicaid" shall have the meaning set forth in Section 4.1(u).
- (ppp) "Medicare" shall have the meaning set forth in Section 4.1(u).

- (qqq) "Net Working Capital" shall mean the net working capital calculated in the manner shown on Schedule 3.1(f).
- (rrr) "New NPI Numbers" shall mean those numbers received by Buyers for billing purposes after to the Closing Date, or the applications therefor, related to the Sellers' Business, but which Buyers has not yet used for billing purposes.
- (sss) "New Real Estate Leases" shall mean the Master Lease between Habibian, Ltd as landlord and Care Youth Corporation as tenant in the form of Exhibit F hereto (and related Guarantee of Lease executed by Sequel Youth and Family Services, LLC for the benefit of Habibian, Ltd) and the Lease between Falcon Ridge as landlord and Care Youth Corporation as tenant in the form of Exhibit G hereto (and related Guarantee of Lease executed by Sequel Youth and Family Services, LLC for the benefit of Falcon Ridge) for the Facilities and Real Estate used in Sellers' Business.
- (ttt) "Noncompete Period" shall have the meaning set forth in Section 5.8(a).
- (uuu) "Nonsolicitation Period" shall have the meaning set forth in Section 5.8(b).
- (vvv) "Objection Notice" shall have the meaning set forth in Section 3.7(b)(ii).
- (www) "Occupational Safety and Health Law" shall mean any applicable law designed to provide safe and healthful working conditions and to reduce occupational safety and health hazards, and any program, whether government or private, designed to provide safe and healthful working conditions, including but not limited to the Occupational Safety and Health Act of 1970, and any applicable law designed to protect health insurance coverage for workers or address the security and privacy of health data, including but not limited to the Health Insurance Portability and Accountability Act.
- (xxx) "Old NPI Numbers" shall mean those provider numbers utilized by Sellers for billing purposes prior to the Closing Date, including but not limited to those set forth on Schedule 4.1(e).
- (yyy) "Operating Leases" shall mean any lease for Real Estate or Tangible Personal Property that is classified as an operating lease under GAAP.
- (zzz) "Other Intangible Assets" shall mean (i) all governmental licenses, permits, or other approvals or rights necessary to operate Sellers' Business (to the extent assignable under the law), and any pending applications or renewals therefore, (ii) all customer and prospect lists, employee records (to the extent Buyers obtains consent to such transfer from each employee or as otherwise permitted by law), files, data, business and strategic plans, marketing plans and materials, production reports, service and warranty records, equipment logs, operating guides and manuals, financial records, and other business records related to the operation of the Sellers' Business, (iii) building, engineering, and construction plans, (iv) all telephone numbers, facsimile numbers, email addresses, and domain names, (v) all rights to software licenses to software used in the Sellers' Business, (vi) all product designs, design files, blueprints, manufacturing process information, and similar documentation, and (viii) any other intangible rights of whatever nature or kind (other than those included in the Excluded Assets).

- (aaaa) "Payoff Amounts" shall mean the amounts that would constitute full payment of the Sellers' indebtedness for borrowed money that is secured by Encumbrances on the Assets (excluding the Permitted Encumbrances).
- (bbbb) "Payoff Letter(s)" shall mean a letter, in form and substance acceptable in the reasonable judgment of Buyers, which includes the following information with respect to each Payoff Amount: (i) identifying the name of the creditor that is owed such Payoff Amount, (ii) confirming the amount of that would constitute payment in full of any and all obligations owed by Sellers to such creditor as of the Closing Date and the per diem charge for each day thereafter, and (iii) acknowledging that, upon receipt of such payment in full, any Encumbrance held by such creditor or any of their Affiliates in connection with such Payoff Amount will be released, and such creditor will promptly take all action necessary or appropriate to release of record any such Encumbrance or will authorize Buyers in writing to take all actions necessary or appropriate to release of record any such Encumbrance.
- (cccc) "Payer" shall have the meaning set forth in Section 4.1(u)(iii) and includes but is not limited to the list of Payers on Schedule 4.1(f).
- (dddd) "Permitted Encumbrances" shall have the meaning set forth in Section 4.1(g).
- (eeee) "Post-Closing WC Base Amount" shall have the meaning set forth in Section 3.1(f)(iii).
- (ffff) "Post-Closing Working Capital Adjustment" shall have the meaning set forth in Section 3.1(e)(iii).
- (gggg) "Post-Closing WC Base Amount" shall have the meaning set forth in Section 3.1(e)(iii).
- (hhhh) "Prepaid Expenses" shall mean all prepaid expenses, deposits, and other credits owed to Sellers by its vendors or other third parties.
- (iiii) "Prior Real Estate Leases" shall mean any and all lease and related agreements between Sellers and the Shareholder (or an entity controlled by the Shareholder) related to any Real Estate.
- (jjjj) "Purchased Contracts" shall mean any Contract (i) with any customer, vendor, or supplier of Sellers, (ii) under which Sellers have or may acquire any rights or benefits, (iii) under which Sellers have or may become subject to any obligation or liability, or (iv) by which Sellers or any Assets owned or used by Sellers are or may become bound, including, without limitation, the Material Contracts set forth in Schedule 4.1(f) hereto, but excluding those contracts expressly excluded as set forth on Schedule 2.2(e).
- (kkkk) "Purchase Price" shall have the meaning set forth in Section 3.1.
- (llll) "Required Consents" shall have the meaning set forth in Section 3.3(c).
- (mmmm) "Real Estate" shall mean any and all real property, whether in fee, tenancy, option, easement, leased, or otherwise, which are used in Sellers' Business, and any and all rights of Sellers arising out of or related thereto.

- (nnnn) "Related Person" shall mean with regards to a particular party, (i) any person that directly or indirectly controls, is directly or indirectly controlled by, or is directly or indirectly under common control with such party, (ii) any shareholder, partner, member, or other equity owner of such party, (iii) each person that serves as a director, officer, executor, trustee, or in a similar capacity of such party. For purposes of this definition, "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of another entity, whether through the ownership of voting securities, by contract, or otherwise. When used with respect to the Sellers or the Shareholder, the term "Related Person" includes any person, shareholder, partner, member, or other equity owner who is a Related Person with respect to any of the Sellers or the Shareholder.
- (oooo) "Retained Aged Receivables" means all of the Accounts Receivables that predate March 1, 2015.
- (pppp) "Seller Documents" shall have the meaning set forth in Section 3.2(a).
- (qqqq) "Sellers" shall have the meaning set forth in the first paragraph of this Agreement..
- (rrrr) "Sellers' Business" shall mean the delivery of behavioral health or psychiatric services to adolescents, including diagnostic evaluations, consultations, medication management and clinic services, psychosocial rehabilitation including both residential treatment and in-home and community based interventions to assist adolescent clients to change behaviors and build life skills and related mental health matters, and counseling services for individual adolescents and their families, including but not limited to substance abuse treatment, alcohol and drugs issues, developmental disability, anxiety and stress, conflict resolution, couples therapy, anger and depression, domestic violence and sexual abuse, grief and loss, academic difficulties and/or ADHD, life choices/transitions, play therapy, and related services.
- (ssss) "Seller Indemnified Persons" shall have the meaning set forth in Section 7.2(b).
- (tttt) "Seller Indemnity Basket" shall have the meaning set forth in Section 7.4(b).
- (uuuu) "Shareholder" shall mean Frank Habibian.
- (vvvv) "Tangible Personal Property" shall mean all fixed assets, equipment, machinery, tools, furniture, office equipment, computer hardware, supplies, materials, vehicles and other items of tangible personal property of every kind owned or leased by Sellers (wherever located and whether or not carried on Sellers' books), together with any express or implied warranty by the manufacturers or Sellers or lessors of any item or component part thereof and all maintenance records and other documents relating thereto.
- (www) "Target Net Working Capital" shall mean the Net Working Capital calculated and shown on Schedule 3.1(f).
- (xxxx) "Tax" or "Taxes" shall mean any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise,

employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected by or under the authority of any governmental body or payable under any tax-sharing agreement or any other Contract.

(yyyy) "Tax Return" shall mean any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information filed with or submitted to, or required to be filed with or submitted to, any Governmental Body in connection with the determination, assessment, collection or payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Legal Requirement relating to any Tax.

(zzzz) "Third Party Claim" shall have the meaning set forth in Section 7.3.

(aaaaa) "Threshold" shall have the meaning set forth in Section 7.4(b).

(bbbbb) "Transition Services Agreement" shall mean that certain Transition Services Agreement by and between Buyers and Sellers in the form of Exhibit I hereto.

Exhibits and Schedules

Exhibit A: Bill of Sale
Exhibit B: Assignment and Assumption Agreement
Exhibit C: Opinion of Sellers' Counsel
Exhibit D: [Reserved.]
Exhibit E: Escrow Agreement
Exhibit F and G: New Real Estate Leases
Exhibit H: Noncompetition Agreement
Exhibit I: Transition Services Agreement
Exhibit J: Certain Post-Closing Matters

Schedule 2.1(a): Accounts Receivable
Schedule 2.1(c): Tangible Personal Property
Schedule 2.1(f): Purchased Contracts
Schedule 2.1(g): Governmental Authorizations
Schedule 2.1(k): Bank Accounts
Schedule 2.2(e): Excluded Assets
Schedule 3.1(c): Seller's Creditors and Lenders
Schedule 3.1(d): Payoff Schedule
Schedule 3.1(f): Target Net Working Capital
Schedule 3.2(a)(v): Material Consents and Governmental Authorizations
Schedule 3.3(c): Material Consents and Governmental Authorizations
Schedule 3.5: Allocation of Purchase Price
Schedule 4.1(a): Jurisdictions
Schedule 4.1(b): Capitalization
Schedule 4.1(c): Conflicts and Consents
Schedule 4.1(d): Litigation
Schedule 4.1(e): Government Authorizations
Schedule 4.1(f): Material Contracts
Schedule 4.1(g): Permitted Encumbrances
Schedule 4.1(h): Leased Real Estate
Schedule 4.1(i): GAAP Exceptions
Schedule 4.1(k): Accounts Payable and Accounts Receivable
Schedule 4.1(l): Bank Accounts
Schedule 4.1(n)(i): Employees
Schedule 4.1(n)(ii): Employee Plans
Schedule 4.1(o): Insurance
Schedule 4.1(p)(ii): Payment of Taxes
Schedule 4.1(q): Intellectual Property
Schedule 4.1(s): Environmental Matters
Schedule 4.1(t): Transactions with Related Persons
Schedule 4.1(u)(i): Licenses and Accreditation
Schedule 4.1(u)(iii): Payer Compliance
Schedule 4.1(u)(vi): Excess Reimbursement
Schedule 4.1(u)(vii): Service Provider Compliance
Schedule 4.1(u)(viii): Fraud Claims



Exhibit B

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-17-0005-9666

Sequel Youth Services of Red Rock Canyon, LLC
Sequel Youth Services of Falcon Ridge Ranch, LLC
Sequel Youth Services of Lava Heights, LLC
Sequel Youth Services of Mount Pleasant, LLC
Care Youth Corporation

(collectively referred to herein as the "Claimants")

-vs-

Falcon Ridge Ranch, Inc.
Red Rock Canyon School, LLC
Lava Heights Academy, Inc.
Mount Pleasant Academy, LLC
Red Rock Canyon School Non-Profit Organization
Falcon Ridge Ranch Non-Profit Organization
Red Rock Canyon Charitable Remainder Trust dated
August 15, 2016, Frank Habibian
Frank Habibian Dynasty Trust dated August 9, 2016

(collectively referred to herein as the "Respondents")

INTERIM AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement contained in Section 7.7 of the Asset Purchase Agreement (the "APA") entered into among the above-named parties, dated August 16, 2016, and having been duly sworn, and having duly heard the proofs and allegations of the Claimants and the Respondents (sometimes collectively referred to herein as the "Parties"), hereby AWARD as follows:

Background

On October 4, 2017, Claimants filed a Demand for Arbitration with the American Arbitration Association ("AAA"). In the Demand, Claimants incorporated a Notice of Indemnity Claim, dated August 16, 2017 (the "Notice"). The Notice identified three Sections of the APA which Claimants alleged gave rise to their rights to be indemnified by the Respondents under the APA: (1) Section 7.2(a)(i) by virtue of an alleged breach by Respondents of a representation or warranty; (2) Section 7.2(a)(iii) by virtue of alleged breaches by Respondents relating to an "Excluded Liability," and (3) Section 7.2 (a)(ix) by virtue of alleged breaches by Respondents prior to Closing in connection with the Claimants' assumption or use of "Sellers' Governmental Authorizations or Contracts."

All capitalized terms used herein are defined in the APA, unless otherwise defined herein.

Claimants sought indemnification from Respondents based on a settlement payment Claimants made to the United States federal government and the State of Nevada (the "United States and the State of Nevada"), in the total amount of \$2,580,520.50,¹ plus \$93,601.79 of attorneys' fees and expenses incurred in connection with such settlement (the "\$2,674,122.29 Indemnification Claim"), pursuant to a Settlement Agreement entered into in June, 2017 (the "Settlement Agreement").

On November 3, 2017, Respondents filed an Answer and a Counterclaim alleging various defenses and asserting a counterclaim alleging that certain provisions of the APA were breached relating to a "Contingent Payment" that Respondents expected to receive from Claimants following a one-year "Calculation Period" after the date of the APA. Claimants answered Respondents' counterclaim on November 13, 2017.

Respondents amended their counterclaim on February 28, 2018 alleging in more detail various breaches of the APA, and noncompliance with the underlying covenants of good faith and fair dealing, and requested a declaratory judgment from the Arbitrator relating to the disputes between the Parties.

Claimants also amended their claims on February 28, 2018 to include tort claims for fraudulent concealment and fraudulent non-disclosure by Respondents, and alleged damages therefrom in the amount of \$1,479,500, representing an "artificial increase to Sellers' pre-sale EBITDA" in the amount of approximately \$269,000, which when multiplied by 5.5 equals \$1,479,500.

On March 26, 2019, Claimants filed a Second Amended Claim requesting indemnification in the amount of no less than \$1,479,500 based on additional "Losses" due to alleged breaches of representations and warranties in the APA which allegedly caused Claimants to overpay for "Sellers' Business," in addition to their \$2,674,121.29 Indemnification Claim set forth in Claimants' initial Demand for Arbitration. Respondents opposed this amendment due to the fact that the November 20, 2017 Scheduling Order in this matter set a February 28, 2018 deadline for amending claims. However, in light of Claimants' representation that no new facts were involved in the Second Amended Claim, the Arbitrator allowed the amendment to be filed, but the hearing dates, which had been set for July 22-26, 2019, were reset for the November dates listed below in order to allow Respondents to prepare their defenses and witnesses relating to the Second Amended Claim.

On August 5, 2019, various Motions for Partial Summary Judgment were filed by the Parties. Respondents' requested that Claimants' fraud claims be dismissed with prejudice as a matter of Utah law, and also requested the dismissal of Claimants' initial claims for indemnification relating to the Settlement Agreement. Claimants' Motion requested a judgment in favor of Claimants relating to their first claim for indemnification based on the Settlement Agreement, as well as indemnification for alleged overpayments described in Claimants' Second Amended Claim. Claimants also requested dismissal of Respondents' claim for a Contingent Payment and Respondents' request for damages for alleged breaches of the APA relating to such Contingent Payment.

On September 6, 2019, Claimants withdrew their fraud claims. On October 17, 2019 (following a telephonic hearing on October 9, 2019), in a written Order, the substance of which is incorporated into

¹ This amount represents Claimants' calculation of \$1,720,347 of payments received from the Nevada Medicaid program for students who were referred to the CARE Schools by organizations that then received referral fees after the students were admitted to the CARE Schools, multiplied by 1.5 as an agreed-upon "penalty" for the alleged violations of certain laws.

this Interim Award by this reference, the Arbitrator dismissed Claimants' fraud claims, with prejudice.² The Arbitrator also granted Respondents' Motion for Partial Summary Judgment dismissing Claimants' \$2,674,121.29 Indemnification Claim relating to the Settlement Agreement and denied Claimants' Motion for Partial Summary Judgment.

Therefore, the only claims to be determined by the Arbitrator following the hearing relate to Claimant's Second Amended Claim (for damages related to an alleged overpayment of the purchase price due to alleged breaches of certain representations and warranties in the APA by Respondents), and Respondents' counterclaim for damages related to alleged breaches by Claimants of certain provisions in the APA related to the Contingent Payment.

An in-person hearing was held in Denver, Colorado at the Courtyard by Marriott, (1475 Colorado Boulevard, Denver, Colorado 80222) on November 4, 5, 6, 7 and 8, 2019. In attendance throughout the five-day hearing (as evidenced in the below-referenced transcripts) were the following individuals: Frank Habibian, Melanie Habibian and Sherman Habibian.

The attorneys for the Parties were as follows:

Sean P. Moore	Cameron L. Sabin
William C. Brown	Lauren E.H. DiFrancesco
Thomas D. Story	STOEL RIVES
BROWN WINICK	TONY ALLEN, ESQ.
Counsel for Claimants/Counterclaim	Counsel for Respondents/Counterclaimants
Respondents	
Megan Stupak, Corporate Counsel for Sequel	
Youth and Family Services	

Written transcripts of all testimony offered into evidence by the witnesses identified in those transcripts were prepared by Emily A. Gibb, owner of Advanced Reporting Solutions.

The Parties agreed to submit Post-Hearing Briefs on January 8, 2020, and Reply/Response Briefs on January 31, 2020. The AAA Case Manager declared the case closed with respect to any new evidence as of February 3, 2020.

On February 7, 2020, counsel for the Parties submitted a list of exhibits which they mutually agreed were admitted into evidence during the hearing.

In light of the lengthy history and the ongoing disputes involving the Parties since 2015, thousands of pages of documentary evidence have been produced and reviewed by the Arbitrator. This Interim Award will only include a summary of the Arbitrator's findings of fact and analysis, and any lack of reference to any particular document or witness testimony does not mean the document or testimony was not factored into her conclusions or considered immaterial. While the provisions of the APA were deemed

² The Arbitrator provided clarification of her October 17, 2019 Order in a subsequent Order dated October 25, 2019, the substance of which is also incorporated into this Interim Award by this reference. In the October 17, 2019 Order, the Arbitrator reserved her right to determine, after the hearing, whether attorneys' fees and expenses should be assessed against Claimants relating to their fraud claims, as well as Claimants' initial indemnification claim, both of which were dismissed prior to the hearing.

controlling, where there were ambiguities and typographical errors in that agreement, credible testimony provided by witnesses and supporting documentary evidence, as well as Utah law, were relied upon to interpret the APA.

Factual Overview

The Parties entered into a detailed Letter of Intent on August 3, 2015 (the "LOI")³ which documented Claimants' interest in purchasing four residential youth treatment centers in Utah⁴ operated and owned by Respondents. In addition to their attorneys, Claimants engaged the investment banking firm, Bengur Bryan & Company, as well as the accounting firm, BDO, to assist them with the due diligence activities in connection with the proposed asset acquisition.

As of August 3, 2015, the parent of Claimants, Sequel Youth and Family Services, LLC ("Sequel"), operated "34 programs in 17 states," with its corporate headquarters in Huntsville, Alabama. Sequel did not operate or own any treatment centers in the State of Utah prior to the Closing Date of the APA. Various managers of Sequel who were involved with the due diligence activities worked out of numerous offices throughout the US.

Mr. John "Jay" Ripley was one of the founders of Sequel in 1999, and served in many roles over the years, including CEO, until Mr. John Stupak became CEO in July of 2013, and thereafter Mr. Ripley became Chairman of the Board and was less involved in the day-to-day activities of Sequel. Mr. Frank Habibian and his wife Melanie Habibian opened the first of four residential youth treatment centers in St. George, Utah in 1996. Mr. Sherman Habibian, their son, worked for the CARE Schools for 17 years prior to the sale to Sequel. Another son, Gerard Habibian, also worked for the CARE Schools with the admissions and marketing group.

The total potential purchase price offered by Claimants in the LOI was \$28,083,000, which included both an initial purchase price, plus a contingent payment, based on a multiple of 5.5 times certain specified EBITDA⁵ calculations. Mr. Ripley testified that trailing twelve months ("TTM") EBITDA was a standard measure Sequel used in the past to set the purchase price for various prior acquisitions, and this measure was also important to Sequel's financial partners who were loaning funds to Sequel to assist with such prior acquisitions. The multiples used in the past by Sequel varied from 2 to 10, and were determined based on a number of factors, including the size and history of the operations, and the strength of the management team.

After a period of extensive due diligence that took place on and off over the course of a year after the LOI was signed, a definitive agreement was entered into on August 16, 2016 among the Parties. The APA included a "Base Purchase Price" of \$23,500,000 to be paid at closing (subject to 10% of that price being placed in a 12 month escrow account), plus a "Contingent Payment" which was based on a 5.5 multiple of EBITDA and described in Section 3.7 of the APA.

Mr. Ripley testified that, because deal negotiations dragged on for over seven months after the LOI was signed, he agreed to host a meeting in Virginia/DC with Mr. Frank Habibian and Mr. Stupak in April of 2016, during which the \$23,500,000 Base Purchase Price was agreed upon via a "handshake," because a "purchase price is always a negotiated numbers [sic] between a buyer and a seller." Rather than using

³ The exclusivity provisions of the LOI were extended in September 2015 and again in May 2016 after negotiations (as well as due diligence activities) stalled in the fall of 2015, and then resumed in April of 2016 among the Parties.

⁴ Sometimes referred to herein (and defined in the APA) as the "CARE Schools."

⁵ EBITDA stands for "earnings before interest, taxes, depreciation and amortization" and is an accounting term used to generally describe the profits of a business.

TTM adjusted EBITDA ending on February 29, 2016 in order to justify the \$23.5 million that Mr. Frank Habibian had insisted upon, Mr. Ripley's team agreed to rely upon the prior six months of adjusted EBITDA for the CARE Schools ending on February 29, 2016, and multiplied that number by 2 in order to annualize it, and then multiplied that adjusted annualized EBITDA amount by 5.5 which roughly equaled the \$23,500,000 Base Purchase Price, and this amount was ultimately included in the August 16, 2016 definitive agreement.

Ms. Sybil Potts, the CFO of Sequel, who signed the APA on behalf of Claimants, testified that if the actual TTM of adjusted EBITDA as of February 29, 2016 had been used, the Base Purchase Price would have been less. However, she was not involved in the April 2016 meeting or the agreement to set the Base Purchase Price at \$23,500,000. And evidence was provided that the student population (referred to in the industry as the "census") at the CARE Schools had been increasing over the six-month period prior to February 29, 2016, and the Parties all expected this trend to continue.⁶

In fact, there is commonly an "uptick" in the census in residential youth treatment centers during the fall and winter months because behavioral issues coincide with the beginning of each school year and the average period of residency ranges from 9 to 11 months. Census is viewed for financial purposes in terms of the actual number of students in each school at the end of each month, as well as the average daily census number, and a great deal of evidence was introduced showing various trends at the CARE Schools prior to the purchase and for the one-year period thereafter which showed a significant decrease in the census. Ms. Potts testified that she was aware that the census had dropped for the CARE Schools prior to the Closing Date, yet the Base Purchase Price remained the same in the APA when it was signed on August 16, 2016.

Unlike the Base Purchase Price, the Contingent Payment was based upon a targeted amount of EBITDA of the Sellers' Business for the 12-month period⁷ following the Closing (the "Calculation Period EBITDA"). Claimants agreed to pay Respondents a multiple of 5.5 times the amount by which the Calculation Period EBITDA exceeded \$4,181,818 within five "Business Days" after a final determination was made pursuant to the APA.

Section 3.7(b) (i), (ii), and a third subsection mislabeled (i) [it should have been labeled (iii) on page 12 of the APA], contain numerous detailed provisions relating to the procedures to be followed for the determination of the Contingent Payment. Subsection (c) of Section 3.7 [which should have been labeled (d) because there were two subsection (b)'s due to another scrivener's error] is titled: *Operation of the Business*.

This subsection required the Buyers to "cause the Sellers' Business to be conducted and operated in good faith, in a commercially reasonable manner and without prejudicing Seller's [sic] right to receive the Contingent Payment." The provision goes on to state: "Buyers will not terminate the employment of the Key Employees (other than for cause) and the Key Employees will be permitted to operate the Sellers' Business in a manner substantially consistent with how they operated the business prior to the Closing, provided, however, that such operations comply with applicable law and commercially reasonable and ethical business practices, and the Executive Director of the Sellers' Business (presumed to be Key Employee Brian Pace) shall have sole discretion regarding the hiring and firing of the employees employed in the operation of Sellers' Business, subject only to such [sic] the Executive Director's complying with Buyers' generally applicable and reasonable personnel policies and procedures in respect of hiring and firing of employees."

⁶ In fact, BDO's quality of earnings report found that the March 2016 TTM adjusted EBITDA was \$3.213 million, and just three months later, still prior to the Closing Date, it jumped to \$3.842 million.

⁷ Defined in the APA as the last day of the 12th full calendar month following the Closing Date.

Section 3.7(d) required the Buyers to provide the Sellers, "as soon as reasonably practical following completion thereof in the ordinary course," with monthly and quarterly unaudited financial statements of the Sellers' Business during the Calculation Period. This requirement was important to Respondents so that they could monitor the operations of the CARE Schools and their potential right to receive the Contingent Payment after the Calculation Period.

Shortly before the Closing, a series of "town hall" meetings were scheduled as an opportunity for the employees of the CARE Schools to meet some of the employees of the Buyers and to ask questions. Mr. Pace, as well as other witnesses who were employees at the CARE Schools, testified that Sequel's VP of Human Resources, Mr. Roy Day, repeatedly told all of the employees of the CARE Schools in attendance that it would be "business as usual" after the Closing Date.

Mr. Stupak testified that he understood that Mr. Pace and Mr. Sherman Habibian (the other Key Employee named in the APA) were to "be able to run the Schools as they had in the past and ha[ve] the success they'd had [in the past]." Mr. Steve Gilbert, Sequel's EVP of Customer Development, testified that the CARE Schools were to be left "to do marketing the same way they had done it pre-Closing" and that the national marketing team "was not supposed to be supervising the local marketing at the CARE Schools." And Mr. Frank Habibian testified that running the schools as they had been in the past, for the one year period following the Closing, was one of the most important issues that he discussed with Mr. Stupak and Mr. Ripley when they met in April 2016 to negotiate the purchase price. He stressed that his son, Mr. Sherman Habibian, and Mr. Pace had worked at the CARE Schools for many years and that if they were allowed to run the business "as is", the Calculation Period EBITDA could easily be achieved and exceeded.

Yet, immediately after the Closing, and for the one-year period thereafter, numerous changes to the way that the CARE Schools had been operated pre-Closing were made with little or no prior consultation with Mr. Pace and Mr. Sherman Habibian. Both of their roles and responsibilities changed or were diminished or overridden by Claimants' employees with no prior input from them. Respondents' employees testified that they were unsure about who to report to and that morale deteriorated over time. The phrase "business as usual" became a running joke within the CARE Schools. And several employees were terminated without prior consultation with Mr. Pace.⁸ A reduction in force ("RIF") was initiated by Claimants in December of 2016 without Mr. Pace's involvement.

Incentive bonuses were eliminated and other compensation policies were changed. The methods used for restraining students was changed which required additional training of the direct care staff employees. The types of tours offered to families of prospective students were deemed "unethical," so they were changed. The way in which the CARE Schools marketed its services, and the types of students admitted into the CARE Schools were all changed during the Calculation Period.

Ms. Potts testified that she did not include Mr. Sherman Habibian in any accounting meetings because she believed he did not have the proper qualifications or expertise, although she admitted she did not know what his role or title was pre-Closing. Mr. Sherman Habibian was required to office in a new location rather than officing and working side by side with Mr. Pace as a "team" as they had done in the

⁸ The former controller of the CARE Schools was terminated because he had not disclosed a prior conviction for embezzlement from a former employer. While this was certainly a reasonable action by Claimants, the fact that Mr. Pace was told about this firing after the fact and was not involved in the termination was a clear violation of the express provisions of the APA stating that he had the "sole discretion regarding the hiring and firing of employees." This action alone sent an early message to all of the employees that Mr. Pace was NOT in fact in charge of employment decisions and had an immediate negative impact on morale in the CARE Schools.

past. All of Mr. Sherman Habibian's pre-closing roles within the CARE Schools were virtually eliminated. The budget was prepared and finalized by Ms. Potts and her team of employees with little input from either Key Employee. Mr. Pace was provided a copy of it after it was set, and it was set below the targeted amount of EBITDA which would have entitled Respondents to a Contingent Payment.

One of the biggest changes that Claimants made occurred in October of 2016, after Mr. Ryan Santi, the newly-appointed VP of Operations of the CARE Schools,⁹ learned that certain referral fees had been paid in the past to various referral organizations in connection with the placement of students in the CARE Schools. He testified that referrals fees were never paid by Sequel because they were "borderline unethical", so he immediately put the practice "on hold" and reported it to his boss, Ms. Mandy Moses, as well as Sequel's legal team.

Referral fees for the placement of students in residential treatment centers are not "per se" illegal. In fact, there was testimony that the payment of referral fees to referral sources following the placement of students in residential youth treatment centers was a common practice in the State of Utah. Over many years, the CARE Schools had established relationships with a number of organizations that would recommend the CARE Schools to the organization's clients. After the admission of the student into one of the CARE Schools, and after an invoice was sent by the referring organization, the CARE Schools would pay a "referral fee" ranging in amounts from \$2000 to \$5000 per student.

There was no evidence that the referral fees were hidden from Claimants. Most all of the invoices paid by the CARE Schools had been uploaded into the data room, including the list of seven referral entities. The Due Diligence Memorandum being circulated and discussed on a weekly basis among numerous Sequel managers indicated that "referral fees" was an area to be investigated and it was eventually crossed off the list as though it had been.¹⁰ "Referral Expenses" was a line item in the financial statements reviewed by Ms. Potts, among others. Both Ms. Potts and Ms. Susanne Young (who oversaw the chief compliance officer of Sequel), admitted that the referral invoices did not raise a "red flag" and were not an "obvious concern" during the due diligence process.

Yet, Mr. Santi immediately put the referral fee program on hold with no prior discussions with Mr. Pace and Mr. Sherman Habibian, despite the fact that the program was a long-standing and integral part of the marketing of the CARE Schools. It was only after Claimants' legal team began its review of the invoices that it was discovered that some of the referral fees may have been made to organizations that referred students who were covered by the Nevada Medicaid program.

Part of Sellers' Business involved providing residential treatment services for which it received compensation under Title XIX of the Social Security Act ("Medicaid") and the Medicaid programs of the State of Nevada.¹¹ The False Claims Act (31 U.S.C. §3729 et seq.) and the Federal Health Care

⁹ Mr. Santi stated that he had worked for Sequel since 2005 and was the Executive Director of the Woodward Academy in Iowa immediately prior to transitioning to his position with the CARE Schools in the fall of 2016. He was not involved in any of the due diligence activities prior to the Closing Date.

¹⁰ An email dated May 31, 2016 from Ms. Potts to Stacey Rector (of Bengur, Bryan) states: "Stacey – the below needs to be added to the due diligence questions – who are they paying the referral fee?"

¹¹ In 2011, the CARE Schools applied to the Nevada Medicaid program to obtain reimbursements from the State of Nevada for students who were residents of Nevada and who qualified for Medicaid payments if they were placed in to one of the CARE Schools. Mr. Pace testified that he was in charge of preparing this application and that the CARE Schools were regularly audited by Nevada regulators. The CARE Schools did not apply for approval from any other state for reimbursement for the treatment of students whose families qualified for Medicaid.

Programs Anti-Kickback statute (41 U.S.C. & 1320a-7a(b)), as well as their equivalent state statutes, are criminal statutes that require specific intent to do something those laws forbid. Claimants referred to these laws as the "Healthcare Fraud Laws" in all of their submissions. Those laws give the United States and the State of Nevada the right to pursue civil penalties, as well as criminal charges, against those persons or entities who "knowingly and willfully" paid "kickbacks" in order to receive Medicaid funds.

On Friday, February 10, 2017, a self-disclosure report was filed with the U.S. Department of Justice which discussed the discovery by Claimants, after the Closing Date, of the "illegal" referral fees with respect to 15 students who had received treatment at one of the CARE Schools. Mr. Stupak called Mr. Frank Habibian on Sunday, February 12, 2017, to tell him to expect a "surprise" the next day. One of Claimants' attorneys provided a copy of the self-disclosure report to one of Respondents' attorneys via email on Monday, February 13, 2017. Claimants did not include Respondents in their internal investigation or in the preparation of the self-disclosure report.

Claimants (with their counsel) negotiated the terms of the June 2017 Settlement Agreement and the settlement payments without any prior discussions with Mr. Frank Habibian. Mr. Stupak and Mr. Frank Habibian never spoke after February 12, 2017 until they saw each other at the hearing. The Notice of Indemnity Claim was provided to Respondents exactly one year after the Closing Date: August 16, 2017. The Contingent Payment calculation made by Claimants was not provided to Respondents until October 2017.

Analysis

The governing law for the arbitration is the law of the State of Utah, without reference to its conflicts of law provisions. Pursuant to Section 7.7(b) of the APA, the arbitration proceeding is to be governed by the Commercial Arbitration Rules of the AAA, and the Parties had the right to conduct discovery pursuant to the Federal Rules of Civil Procedure.

Section 7.7(d) of the APA requires the Arbitrator to be bound by and to "strictly enforce the terms of this Agreement" and to "make a good faith effort to apply substantive applicable law." The duties of good faith and fair dealing are implied covenants, if not expressly specified, in all Utah contracts.

The Parties have been embroiled in the disputes set forth in their various submissions almost since the day of the Closing of the APA, August 16, 2016. While Claimants had no choice but to file the self-disclosure report once they learned of the Nevada Medicaid referral payments, they did have the choice after their initial investigation to notify Respondents about their settlement negotiations. In fact, they had the obligation to do so in light of the express indemnification provisions of the APA which required Claimants to give Respondents prompt notice of any "Third Party Claims," and to "cooperate in good faith with each other to ensure the proper and adequate defense of any Third Party Claim," among other obligations.

That failure to give notice did in fact materially prejudice Respondents' right to defend itself against the claims that it violated the Healthcare Fraud Laws. The Arbitrator previously ruled that Claimants' failure to give notice prejudiced Respondents to the full extent of the "\$2,674,122.29 Indemnification Claim. The self-disclosure report prepared and filed by Claimants in February of 2017 made it very clear that Claimants did not believe that there was any fraud involved, but rather that Respondents did not know that certain referral payments they had made in the past could be considered illegal. Yet Claimants chose to amend their claims in February of 2018 to include assertions of fraud and did not withdraw those claims until September of 2019. This reeks of bad faith.

Many of Claimants' witnesses testified at the hearing that Respondents had been doing "illegal" things prior to the Closing, and that Respondents' business operations were unethical. Mr. Ripley and others referred to the revenues the CARE Schools received from Nevada for students who qualified for Medicaid as "fraudulent" billings. Ms. Potts accused Respondents of illegally paying for "heads in beds," but defended herself when asked why she did not remember knowing about Respondents' payment of referral fees, and why she did not raise objections prior signing the APA to the purchase of the CARE Schools, by testifying that it was "not her place" to do so. Indeed, many of Claimants' employees pointed fingers at others when asked about certain actions or inactions, so it was clear that communications were compromised due to employees having offices in many different locations with specified job descriptions that apparently did not overlap.

Claimants' overpayment claim is based on the removal of the allegedly illegal revenues included in Respondents' financial statements prior to the Closing. Alleging that the revenues were illegal is not sufficient to satisfy Claimants' burden of proving that they were illegal. Nor is it sufficient to overcome Claimants' burden of proving that Respondents breached any of the representations and warranties in the APA and/or suffered "Losses" related thereto.

The preponderance of the evidence provided at the hearing did not show anything more than the fact that Respondents and their Key Employees were ignorant of the laws prior to the Closing. Certainly this ignorance could have been considered a breach of a number of the representations and warranties in the APA, but only if, and only to the extent that, other express provisions in the APA had been complied with by Claimants, including the covenants of good faith and fair dealing. In short, Claimants played the role of judge and jury and then expected Respondents to indemnify them for the settlement amounts they alone negotiated while ignoring the express provisions of the APA which would have allowed Respondents to defend themselves.

The other problems with Claimants' allegations in their Second Amended Claim are threefold. First, the evidence is clear that the Base Purchase Price in the APA was agreed upon through arms-length negotiations between the principals of the Buyers and the Sellers, and not as a multiple of EBITDA, as it was in the LOI. Second, nothing in the APA allows for an adjustment of the Base Purchase Price after the Closing. Third, even assuming EBITDA was a critical factor in the determination of the Base Purchase Price, Respondents' expert witness, Richard Hoffman, provided credible testimony that the value of the CARE Schools pre-closing was well in excess of \$23,500,000 as of the Closing Date, even without the revenue the CARE Schools received for the Nevada Medicaid students.

Claimants' Second Amended Claim is DENIED.

With respect to Respondents' Contingent Payment counterclaim, there is no dispute that the EBITDA from the Sellers' Business fell short of the targeted EBITDA of \$4,181,818. The Parties agree that the adjusted combined EBITDA totaled \$3,271,973, which was \$909,845 below the targeted EBITDA. The question for the Arbitrator is whether, and to what extent, the changes to the Sellers' Business made by Claimants during the Calculation Period resulted in a decreased amount of EBITDA.

Although integration of merged business operations often presents a myriad of challenges following an acquisition, legal disputes and liabilities arise when specific contractual provisions allow for some type of a future payment (commonly known in the industry as an "earn out") after the passage of a certain period of time. Section 3.7(c) made it clear that changes in the Sellers' Business after the Closing Date could not prejudice Respondents' right to the Contingent Payment. The lengthy due diligence period provided Sequel with every opportunity to learn about how the CARE Schools were being operated prior to the Closing Date, and to evaluate whether Claimants could, for one year, continue to operate the Sellers' Business in a commercially reasonable manner that was substantially similar to the way it had been operated by Respondents prior to the Closing Date. Most of the changes that Claimants made could

have, and should have, waited until after August 16, 2017.

To the extent Claimants believed there was a “commercially reasonable” need to make changes that had the potential of negatively impacting the Calculation Period EBITDA, the implied covenant of “fair dealing” mandated at a minimum, prior discussions with the Key Employees named in the APA. The evidence showed a complete lack of respect towards the two Key Employees, one of whom was rarely consulted, and the other of whom suffered a substantial decrease in pay. The CFO of Sequel, Ms. Potts, testified at the hearing that during her first post-Closing visit to the CARE Schools, she made it “crystal clear who was in charge”---Sequel, because it “owned the place.”

While Claimants rely heavily on language in Section 3.7(c) of the APA that they believe gave them the unilateral right to change operations they believed were “unethical” (primarily because they did not conduct their businesses in the same manner that Respondents did)¹², the clear language in the APA uses the words “commercially reasonable” and “substantially consistent” to qualify what is considered to be ethical business practices. Claimants rely on language stating that operations must “comply with applicable law,” but cited no law that required it to substantially change the manner in which tours were conducted, only that the serving of alcohol, the quantity of food, the private massages, and the accommodations were overly extravagant. Without any meaningful consultation with the Key Employees, the tours were changed and largely discontinued. An employee was terminated and a RIF was put in place, again without any prior consultation with Key Employee, Brian Pace, despite express language in the APA to the contrary. Financial information was not provided on a timely basis to Respondents as contractually required. The mix of students who were admitted to the CARE Schools was changed to include “adjudicated students”¹³ which caused a drop in student referrals from school districts. The changes in the incentive compensation system and in marketing efforts, as well as changes to the health insurance benefits and in training of direct care staff all had negative impacts on the bottom line, as well as morale at the CARE Schools.

Utah law and specific provisions of the APA require the Parties to fulfill their various obligations in good faith. The preponderance of the evidence provided by various credible witnesses proved that Claimants did not make a good faith attempt to comply with the express provisions of Section 3.7(c) of the APA that were clearly intended to provide the Sellers with the ability to receive an earn out pursuant to the terms of the APA.

Respondents’ counterclaim is hereby GRANTED.

It is not possible to know precisely how the CARE Schools would have performed if Claimants had complied with the provisions of Section 3.7(c) of the APA. However, Respondents’ experts conducted an extensive pre- and post-Closing financial review of the CARE Schools to evaluate the impact on the EBITDA of the various changes made by Claimants. The Arbitrator finds that the most conservative analysis that Mr. Hoffman provided at the hearing provides a reasonable estimate of Respondents’ damages. After removing the month of September 2016 in his analysis of the changes made by

¹² One sentence in Section 3.7(c) states: “Buyers will market the products and services of the Sellers’ Business in a manner consistent with how it [sic] markets its [sic] own products and services.” This is an important provision to Claimants, but cannot be read alone because it conflicts with other express provisions that clearly require collaboration (or at least advance consultation) with the Key Employees during the Calculation Period, especially when changes made by the Buyers were not “substantially consistent” with the manner the Sellers’ Business was operated prior to the Closing, and when the changes had the potential to prejudice Sellers’ right to receive the Contingent Payment.

¹³ The CARE Schools had never marketed to students in the juvenile justice system in the past because Respondents believed parents, adoption agencies and school districts would not want kids with behavioral issues to be mixed with students who had committed crimes.

Claimants after the Closing Date that he specifically identified in his expert reports, he found that the targeted EBITDA would have been exceeded by \$566,990. Multiplied by 5.5 entitles Respondents to receive a Contingent Payment in the amount of at least \$3,118,445.

Section 3.7 (b) of the APA titled, *Contingent Payment Procedures*, was not followed by the Parties in light of the filing of the Arbitration Demand by Claimants in October 2017 (and because Claimants' position was that no Contingent Payment was owed to Respondents). The Parties have asked the Arbitrator to make her determination regarding any breaches of the APA, and then they plan to proceed with the procedures set forth in the APA for determining the precise amount of the Contingent Payment to be paid to Respondents.

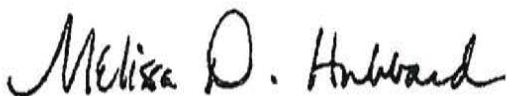
In making her findings and preparing this Interim Award, the Arbitrator has considered case law cited by the Parties, the credibility of the witnesses, assessed the weight to be given to the documentary evidence and testimony of both fact and expert witnesses, and closely attended to the Parties' oral and written arguments. Based upon this, and for the reasons stated above, the Arbitrator decides and awards as follows. The Arbitrator finds against Claimants and in favor of Respondents.

Section 7.7(e) of the APA states that the "prevailing party in any arbitration or other proceeding is entitled to receive...the costs and expenses incurred by the prevailing party in conducting the arbitration...including reasonable attorneys' fees and expenses, and arbitration fees."

Respondents are the prevailing party in this arbitration. Accordingly, they are entitled to an award of their reasonable costs and fees, including compensation of the Arbitrator. Attorneys' fees and other costs and fees will be determined by the Arbitrator. Therefore, within 10 days of the date of this Interim Award, Respondents shall submit their verified affidavit in support of any claims for attorneys' fees and other costs and fees they have incurred in connection with this arbitration. Any objections by the Claimants to that submittal shall be made within 10 days after receipt of the submittal. Any reply shall be due within 5 days after receipt of the objections. The Arbitrator will then review those submissions in order to include an award of reasonable costs and attorneys' fees, together with other costs and fees, in a Final Award.

This Interim Award resolves all claims which have been submitted to this arbitration for resolution, with the exception of the award of attorneys' fees and other costs and fees. Any other claims, defenses, affirmative defenses, and counterclaims between the Parties which have not been specifically addressed herein are hereby denied.

Respectfully submitted,



Melissa D. Hubbard, Arbitrator

Dated: March 2, 2020



Exhibit C

**AMERICAN ARBITRATION ASSOCIATION
Commercial Arbitration Tribunal**

In the Matter of the Arbitration between

Case Number: 01-17-0005-9666

Sequel Youth Services of Red Rock Canyon, LLC
Sequel Youth Services of Falcon Ridge Ranch, LLC
Sequel Youth Services of Lava Heights, LLC
Sequel Youth Services of Mount Pleasant, LLC
Care Youth Corporation

(collectively referred to herein as the "Claimants")

-VS-

Falcon Ridge Ranch, Inc.
Red Rock Canyon School, LLC
Lava Heights Academy, Inc.
Mount Pleasant Academy, LLC
Red Rock Canyon School Non-Profit Organization
Falcon Ridge Ranch Non-Profit Organization
Red Rock Canyon Charitable Remainder Trust dated
August 15, 2016, Frank Habibian
Frank Habibian Dynasty Trust dated August 9, 2016

(collectively referred to herein as the "Respondents")

FINAL AWARD OF ARBITRATOR

I, THE UNDERSIGNED ARBITRATOR, having been designated in accordance with the arbitration agreement contained in Section 7.7 of the Asset Purchase Agreement (the "APA") entered into among the above-named parties, dated August 16, 2016, and having been duly sworn, and having duly heard the proofs and allegations of the Claimants and the Respondents (sometimes collectively referred to herein as the "Parties"), hereby AWARD as follows:

Background

On October 4, 2017, Claimants filed a Demand for Arbitration with the American Arbitration Association ("AAA"). In the Demand, Claimants incorporated a Notice of Indemnity Claim, dated August 16, 2017 (the "Notice"). The Notice identified three Sections of the APA which Claimants alleged gave rise to their rights to be indemnified by the Respondents under the APA: (1) Section 7.2(a)(i) by virtue of an alleged breach by Respondents of a representation or warranty; (2) Section 7.2(a)(iii) by virtue of alleged breaches by Respondents relating to an "Excluded Liability," and (3) Section 7.2 (a)(ix) by virtue of alleged breaches by Respondents prior to Closing in connection with the Claimants' assumption or use of "Sellers' Governmental Authorizations or Contracts."

All capitalized terms used herein are defined in the APA, unless otherwise defined herein.

Claimants sought indemnification from Respondents based on a settlement payment Claimants made to the United States federal government and the State of Nevada (the “United States and the State of Nevada”), in the total amount of \$2,580,520.50,¹ plus \$93,601.79 of attorneys’ fees and expenses incurred in connection with such settlement (the “\$2,674,122.29 Indemnification Claim”), pursuant to a Settlement Agreement entered into in June, 2017 (the “Settlement Agreement”).

On November 3, 2017, Respondents filed an Answer and a Counterclaim alleging various defenses and asserting a counterclaim alleging that certain provisions of the APA were breached relating to a “Contingent Payment” that Respondents expected to receive from Claimants following a one-year “Calculation Period” after the date of the APA. Claimants answered Respondents’ counterclaim on November 13, 2017.²

Respondents amended their counterclaim on February 28, 2018 alleging in more detail various breaches of the APA, and noncompliance with the underlying covenants of good faith and fair dealing, and requested a declaratory judgment from the Arbitrator relating to the disputes between the Parties.

Claimants also amended their claims on February 28, 2018 to include tort claims for fraudulent concealment and fraudulent non-disclosure by Respondents, and alleged damages therefrom in the amount of \$1,479,500, representing an “artificial increase to Sellers’ pre-sale EBITDA” in the amount of approximately \$269,000, which when multiplied by 5.5 equals \$1,479,500.

On March 26, 2019, Claimants filed a Second Amended Claim requesting indemnification in the amount of no less than \$1,479,500 based on additional “Losses” due to alleged breaches of representations and warranties in the APA which allegedly caused Claimants to overpay for “Sellers’ Business,” in addition to their \$2,674,121.29 Indemnification Claim set forth in Claimants’ initial Demand for Arbitration. Respondents opposed this amendment due to the fact that the November 20, 2017 Scheduling Order in this matter set a February 28, 2018 deadline for amending claims. However, in light of Claimants’ representation that no new facts were involved in the Second Amended Claim, the Arbitrator allowed the amendment to be filed, but the hearing dates, which had been set for July 22-26, 2019, were reset for the November dates listed below in order to allow Respondents to prepare their defenses and witnesses relating to the Second Amended Claim.

On August 5, 2019, various Motions for Partial Summary Judgment were filed by the Parties. Respondents’ requested that Claimants’ fraud claims be dismissed with prejudice as a matter of Utah law, and also requested the dismissal of Claimants’ initial claims for indemnification relating to the Settlement Agreement. Claimants’ Motion requested a judgment in favor of Claimants relating to their first claim for indemnification based on the Settlement Agreement, as well as indemnification for alleged overpayments described in Claimants’ Second Amended Claim. Claimants also requested dismissal of Respondents’ claim for a Contingent Payment and Respondents’ request for damages for alleged breaches of the APA relating to such Contingent Payment.

¹ This amount represents Claimants’ calculation of \$1,720,347 of payments received from the Nevada Medicaid program for students who were referred to the CARE Schools by organizations that then received referral fees after the students were admitted to the CARE Schools, multiplied by 1.5 as an agreed-upon “penalty” for the alleged violations of certain laws.

² The Arbitrator has dispensed with the use of the terms: “Respondents/Counterclaimants” and “Claimants/Counterclaim Respondents” for ease of reading this Award.

On September 6, 2019, Claimants withdrew their fraud claims. On October 17, 2019 (following a telephonic hearing on October 9, 2019), in a written Order, the substance of which is incorporated into this Final Award by this reference, the Arbitrator dismissed Claimants' fraud claims, with prejudice.³ The Arbitrator also granted Respondents' Motion for Partial Summary Judgment dismissing Claimants' \$2,674,121.29 Indemnification Claim relating to the Settlement Agreement and denied Claimants' Motion for Partial Summary Judgment.

Therefore, the only claims to be determined by the Arbitrator following the hearing relate to Claimant's Second Amended Claim (for damages related to an alleged overpayment of the purchase price due to alleged breaches of certain representations and warranties in the APA by Respondents), and Respondents' counterclaim for damages related to alleged breaches by Claimants of certain provisions in the APA related to the Contingent Payment.

An in-person hearing was held in Denver, Colorado at the Courtyard by Marriott, (1475 Colorado Boulevard, Denver, Colorado 80222) on November 4, 5, 6, 7 and 8, 2019. In attendance throughout the five-day hearing (as evidenced in the below-referenced transcripts) were the following individuals: Frank Habibian, Melanie Habibian and Sherman Habibian.

The attorneys for the Parties were as follows:

Sean P. Moore
William C. Brown
Thomas D. Story
BROWN WINICK
Counsel for Claimants/Counterclaim
Respondents

Cameron L. Sabin
Lauren E.H. DiFrancesco
STOEL RIVES

TONY ALLEN, ESQ.

Counsel for Respondents/Counterclaimants

Megan Stupak, Corporate Counsel for Sequel
Youth and Family Services

Written transcripts of all testimony offered into evidence by the witnesses identified in those transcripts were prepared by Emily A. Gibb, owner of Advanced Reporting Solutions.

The Parties agreed to submit Post-Hearing Briefs on January 8, 2020, and Reply/Response Briefs on January 31, 2020. The AAA Case Manager declared the case closed with respect to any new evidence as of February 3, 2020.

On February 7, 2020, counsel for the Parties submitted a list of exhibits which they mutually agreed were admitted into evidence during the hearing.

In light of the lengthy history and the ongoing disputes involving the Parties since 2015, thousands of pages of documentary evidence have been produced and reviewed by the Arbitrator. This Final Award

³ The Arbitrator provided clarification of her October 17, 2019 Order in a subsequent Order dated October 25, 2019, the substance of which is also incorporated into this Final Award by this reference. In the October 17, 2019 Order, the Arbitrator reserved her right to determine, after the hearing, whether attorneys' fees and expenses should be assessed against Claimants relating to their fraud claims, as well as Claimants' initial indemnification claim, both of which were dismissed prior to the hearing.

will only include a summary of the Arbitrator's findings of fact and analysis, and any lack of reference to any particular document or witness testimony does not mean the document or testimony was not factored into her conclusions or considered immaterial. While the provisions of the APA were deemed controlling, where there were ambiguities and typographical errors in that agreement, credible testimony provided by witnesses and supporting documentary evidence, as well as Utah law, were relied upon to interpret the APA.

Factual Overview

The Parties entered into a detailed Letter of Intent on August 3, 2015 (the "LOI")⁴ which documented Claimants' interest in purchasing four residential youth treatment centers in Utah⁵ operated and owned by Respondents. In addition to their attorneys, Claimants engaged the investment banking firm, Bengur Bryan & Company, as well as the accounting firm, BDO, to assist them with the due diligence activities in connection with the proposed asset acquisition.

As of August 3, 2015, the parent of Claimants, Sequel Youth and Family Services, LLC ("Sequel"), operated "34 programs in 17 states," with its corporate headquarters in Huntsville, Alabama. Sequel did not operate or own any treatment centers in the State of Utah prior to the Closing Date of the APA. Various managers of Sequel who were involved with the due diligence activities worked out of numerous offices throughout the US.

Mr. John "Jay" Ripley was one of the founders of Sequel in 1999, and served in many roles over the years, including CEO, until Mr. John Stupak became CEO in July of 2013, and thereafter Mr. Ripley became Chairman of the Board and was less involved in the day-to-day activities of Sequel. Mr. Frank Habibian and his wife Melanie Habibian opened the first of four residential youth treatment centers in St. George, Utah in 1996. Mr. Sherman Habibian, their son, worked for the CARE Schools for 17 years prior to the sale to Sequel. Another son, Gerard Habibian, also worked for the CARE Schools with the admissions and marketing group.

The total potential purchase price offered by Claimants in the LOI was \$28,083,000, which included both an initial purchase price, plus a contingent payment, based on a multiple of 5.5 times certain specified EBITDA⁶ calculations. Mr. Ripley testified that trailing twelve months ("TTM") EBITDA was a standard measure Sequel used in the past to set the purchase price for various prior acquisitions, and this measure was also important to Sequel's financial partners who were loaning funds to Sequel to assist with such prior acquisitions. The multiples used in the past by Sequel varied from 2 to 10, and were determined based on a number of factors, including the size and history of the operations, and the strength of the management team.

After a period of extensive due diligence that took place on and off over the course of a year after the LOI was signed, a definitive agreement was entered into on August 16, 2016 among the Parties. The APA included a "Base Purchase Price" of \$23,500,000 to be paid at closing (subject to 10% of that price being placed in a 12 month escrow account), plus a "Contingent Payment" which was based on a 5.5 multiple of EBITDA and described in Section 3.7 of the APA.

⁴ The exclusivity provisions of the LOI were extended in September 2015 and again in May 2016 after negotiations (as well as due diligence activities) stalled in the fall of 2015, and then resumed in April of 2016 among the Parties.

⁵ Sometimes referred to herein (and defined in the APA) as the "CARE Schools."

⁶ EBITDA stands for "earnings before interest, taxes, depreciation and amortization" and is an accounting term used to generally describe the profits of a business.

Mr. Ripley testified that, because deal negotiations dragged on for over seven months after the LOI was signed, he agreed to host a meeting in Virginia/DC with Mr. Frank Habibian and Mr. Stupak in April of 2016, during which the \$23,500,000 Base Purchase Price was agreed upon via a “handshake,” because a “purchase price is always a negotiated numbers [sic] between a buyer and a seller.” Rather than using TTM adjusted EBITDA ending on February 29, 2016 in order to justify the \$23.5 million that Mr. Frank Habibian had insisted upon, Mr. Ripley’s team agreed to rely upon the prior six months of adjusted EBITDA for the CARE Schools ending on February 29, 2016, and multiplied that number by 2 in order to annualize it, and then multiplied that adjusted annualized EBITDA amount by 5.5 which roughly equaled the \$23,500,000 Base Purchase Price, and this amount was ultimately included in the August 16, 2016 definitive agreement.

Ms. Sybil Potts, the CFO of Sequel, who signed the APA on behalf of Claimants, testified that if the actual TTM of adjusted EBITDA as of February 29, 2016 had been used, the Base Purchase Price would have been less. However, she was not involved in the April 2016 meeting or the agreement to set the Base Purchase Price at \$23,500,000. And evidence was provided that the student population (referred to in the industry as the “census”) at the CARE Schools had been increasing over the six-month period prior to February 29, 2016, and the Parties all expected this trend to continue.⁷

In fact, there is commonly an “uptick” in the census in residential youth treatment centers during the fall and winter months because behavioral issues coincide with the beginning of each school year and the average period of residency ranges from 9 to 11 months. Census is viewed for financial purposes in terms of the actual number of students in each school at the end of each month, as well as the average daily census number, and a great deal of evidence was introduced showing various trends at the CARE Schools prior to the purchase and for the one-year period thereafter which showed a significant decrease in the census. Ms. Potts testified that she was aware that the census had dropped for the CARE Schools prior to the Closing Date, yet the Base Purchase Price remained the same in the APA when it was signed on August 16, 2016.

Unlike the Base Purchase Price, the Contingent Payment was based upon a targeted amount of EBITDA of the Sellers’ Business for the 12-month period⁸ following the Closing (the “Calculation Period EBITDA”). Claimants agreed to pay Respondents a multiple of 5.5 times the amount by which the Calculation Period EBITDA exceeded \$4,181,818 within five “Business Days” after a final determination was made pursuant to the APA.

Section 3.7(b) (i), (ii), and a third subsection mislabeled (i) [it should have been labeled (iii) on page 12 of the APA], contain numerous detailed provisions relating to the procedures to be followed for the determination of the Contingent Payment. Subsection (c) of Section 3.7 [which should have been labeled (d) because there were two subsection (b)’s due to another scrivener’s error] is titled: *Operation of the Business*.

This subsection required the Buyers to “cause the Sellers’ Business to be conducted and operated in good faith, in a commercially reasonable manner and without prejudicing Seller’s [sic] right to receive the Contingent Payment.” The provision goes on to state: “Buyers will not terminate the employment of the Key Employees (other than for cause) and the Key Employees will be permitted to operate the Sellers’ Business in a manner substantially consistent with how they operated the business prior to the Closing, provided, however, that such operations comply with applicable law and commercially reasonable and ethical business practices, and the Executive Director of the Sellers’ Business (presumed to be Key

⁷ In fact, BDO’s quality of earnings report found that the March 2016 TTM adjusted EBITDA was \$3.213 million, and just three months later, still prior to the Closing Date, it jumped to \$3.842 million.

⁸ Defined in the APA as the last day of the 12th full calendar month following the Closing Date.

Employee Brian Pace) shall have sole discretion regarding the hiring and firing of the employees employed in the operation of Sellers' Business, subject only to such [sic] the Executive Director's complying with Buyers' generally applicable and reasonable personnel policies and procedures in respect of hiring and firing of employees."

Section 3.7(d) required the Buyers to provide the Sellers, "as soon as reasonably practical following completion thereof in the ordinary course," with monthly and quarterly unaudited financial statements of the Sellers' Business during the Calculation Period. This requirement was important to Respondents so that they could monitor the operations of the CARE Schools and their potential right to receive the Contingent Payment after the Calculation Period.

Shortly before the Closing, a series of "town hall" meetings were scheduled as an opportunity for the employees of the CARE Schools to meet some of the employees of the Buyers and to ask questions. Mr. Pace, as well as other witnesses who were employees at the CARE Schools, testified that Sequel's VP of Human Resources, Mr. Roy Day, repeatedly told all of the employees of the CARE Schools in attendance that it would be "business as usual" after the Closing Date.

Mr. Stupak testified that he understood that Mr. Pace and Mr. Sherman Habibian (the other Key Employee named in the APA) were to "be able to run the Schools as they had in the past and ha[ve] the success they'd had [in the past]." Mr. Steve Gilbert, Sequel's EVP of Customer Development, testified that the CARE Schools were to be left "to do marketing the same way they had done it pre-Closing" and that the national marketing team "was not supposed to be supervising the local marketing at the CARE Schools." And Mr. Frank Habibian testified that running the schools as they had been in the past, for the one year period following the Closing, was one of the most important issues that he discussed with Mr. Stupak and Mr. Ripley when they met in April 2016 to negotiate the purchase price. He stressed that his son, Mr. Sherman Habibian, and Mr. Pace had worked at the CARE Schools for many years and that if they were allowed to run the business "as is", the Calculation Period EBITDA could easily be achieved and exceeded.

Yet, immediately after the Closing, and for the one-year period thereafter, numerous changes to the way that the CARE Schools had been operated pre-Closing were made with little or no prior consultation with Mr. Pace and Mr. Sherman Habibian. Both of their roles and responsibilities changed or were diminished or overridden by Claimants' employees with no prior input from them. Respondents' employees testified that they were unsure about who to report to and that morale deteriorated over time. The phrase "business as usual" became a running joke within the CARE Schools. And several employees were terminated without prior consultation with Mr. Pace.⁹ A reduction in force ("RIF") was initiated by Claimants in December of 2016 without Mr. Pace's involvement.

Incentive bonuses were eliminated and other compensation policies were changed. The methods used for restraining students was changed which required additional training of the direct care staff employees. The types of tours offered to families of prospective students were deemed "unethical," so they were changed. The way in which the CARE Schools marketed its services, and the types of students admitted into the CARE Schools were all changed during the Calculation Period.

⁹ The former controller of the CARE Schools was terminated because he had not disclosed a prior conviction for embezzlement from a former employer. While this was certainly a reasonable action by Claimants, the fact that Mr. Pace was told about this firing after the fact and was not involved in the termination was a clear violation of the express provisions of the APA stating that he had the "sole discretion regarding the hiring and firing of employees." This action alone sent an early message to all of the employees that Mr. Pace was NOT in fact in charge of employment decisions and had an immediate negative impact on morale in the CARE Schools.

Ms. Potts testified that she did not include Mr. Sherman Habibian in any accounting meetings because she believed he did not have the proper qualifications or expertise, although she admitted she did not know what his role or title was pre-Closing. Mr. Sherman Habibian was required to office in a new location rather than officing and working side by side with Mr. Pace as a “team” as they had done in the past. All of Mr. Sherman Habibian’s pre-closing roles within the CARE Schools were virtually eliminated. The budget was prepared and finalized by Ms. Potts and her team of employees with little input from either Key Employee. Mr. Pace was provided a copy of it after it was set, and it was set below the targeted amount of EBITDA which would have entitled Respondents to a Contingent Payment.

One of the biggest changes that Claimants made occurred in October of 2016, after Mr. Ryan Santi, the newly-appointed VP of Operations of the CARE Schools,¹⁰ learned that certain referral fees had been paid in the past to various referral organizations in connection with the placement of students in the CARE Schools. He testified that referrals fees were never paid by Sequel because they were “borderline unethical”, so he immediately put the practice “on hold” and reported it to his boss, Ms. Mandy Moses, as well as Sequel’s legal team.

Referral fees for the placement of students in residential treatment centers are not “per se” illegal. In fact, there was testimony that the payment of referral fees to referral sources following the placement of students in residential youth treatment centers was a common practice in the State of Utah. Over many years, the CARE Schools had established relationships with a number of organizations that would recommend the CARE Schools to the organization’s clients. After the admission of the student into one of the CARE Schools, and after an invoice was sent by the referring organization, the CARE Schools would pay a “referral fee” ranging in amounts from \$2000 to \$5000 per student.

There was no evidence that the referral fees were hidden from Claimants. Most all of the invoices paid by the CARE Schools had been uploaded into the data room, including the list of seven referral entities. The Due Diligence Memorandum being circulated and discussed on a weekly basis among numerous Sequel managers indicated that “referral fees” was an area to be investigated and it was eventually crossed off the list as though it had been.¹¹ “Referral Expenses” was a line item in the financial statements reviewed by Ms. Potts, among others. Both Ms. Potts and Ms. Susanne Young (who oversaw the chief compliance officer of Sequel), admitted that the referral invoices did not raise a “red flag” and were not an “obvious concern” during the due diligence process.

Yet, Mr. Santi immediately put the referral fee program on hold with no prior discussions with Mr. Pace and Mr. Sherman Habibian, despite the fact that the program was a long-standing and integral part of the marketing of the CARE Schools. It was only after Claimants’ legal team began its review of the invoices that it was discovered that some of the referral fees may have been made to organizations that referred students who were covered by the Nevada Medicaid program.

¹⁰ Mr. Santi stated that he had worked for Sequel since 2005 and was the Executive Director of the Woodward Academy in Iowa immediately prior to transitioning to his position with the CARE Schools in the fall of 2016. He was not involved in any of the due diligence activities prior to the Closing Date.

¹¹ An email dated May 31, 2016 from Ms. Potts to Stacey Rector (of Bengur, Bryan) states: “Stacey – the below needs to be added to the due diligence questions – who are they paying the referral fee?”

Part of Sellers' Business involved providing residential treatment services for which it received compensation under Title XIX of the Social Security Act ("Medicaid") and the Medicaid programs of the State of Nevada.¹² The False Claims Act (31 U.S.C. & 3729 et seq.) and the Federal Health Care Programs Anti-Kickback statute (41 U.S.C. & 1320a-7a(b)), as well as their equivalent state statutes, are criminal statutes that require specific intent to do something those laws forbid. Claimants referred to these laws as the "Healthcare Fraud Laws" in all of their submissions. Those laws give the United States and the State of Nevada the right to pursue civil penalties, as well as criminal charges, against those persons or entities who "knowingly and willfully" paid "kickbacks" in order to receive Medicaid funds.

On Friday, February 10, 2017, a self-disclosure report was filed with the U.S. Department of Justice which discussed the discovery by Claimants, after the Closing Date, of the "illegal" referral fees with respect to 15 students who had received treatment at one of the CARE Schools. Mr. Stupak called Mr. Frank Habibian on Sunday, February 12, 2017, to tell him to expect a "surprise" the next day. One of Claimants' attorneys provided a copy of the self-disclosure report to one of Respondents' attorneys via email on Monday, February 13, 2017. Claimants did not include Respondents in their internal investigation or in the preparation of the self-disclosure report.

Claimants (with their counsel) negotiated the terms of the June 2017 Settlement Agreement and the settlement payments without any prior discussions with Mr. Frank Habibian. Mr. Stupak and Mr. Frank Habibian never spoke after February 12, 2017 until they saw each other at the hearing. The Notice of Indemnity Claim was provided to Respondents exactly one year after the Closing Date: August 16, 2017. The Contingent Payment calculation made by Claimants was not provided to Respondents until October 2017.

Analysis

The governing law for the arbitration is the law of the State of Utah, without reference to its conflicts of law provisions. Pursuant to Section 7.7(b) of the APA, the arbitration proceeding is to be governed by the Commercial Arbitration Rules of the AAA, and the Parties had the right to conduct discovery pursuant to the Federal Rules of Civil Procedure.

Section 7.7(d) of the APA requires the Arbitrator to be bound by and to "strictly enforce the terms of this Agreement" and to "make a good faith effort to apply substantive applicable law." The duties of good faith and fair dealing are implied covenants, if not expressly specified, in all Utah contracts.

The Parties have been embroiled in the disputes set forth in their various submissions almost since the day of the Closing of the APA, August 16, 2016. While Claimants had no choice but to file the self-disclosure report once they learned of the Nevada Medicaid referral payments, they did have the choice after their initial investigation to notify Respondents about their settlement negotiations. In fact, they had the obligation to do so in light of the express indemnification provisions of the APA which required Claimants to give Respondents prompt notice of any "Third Party Claims," and to "cooperate in good faith with each other to ensure the proper and adequate defense of any Third Party Claim," among other obligations.

¹² In 2011, the CARE Schools applied to the Nevada Medicaid program to obtain reimbursements from the State of Nevada for students who were residents of Nevada and who qualified for Medicaid payments if they were placed in to one of the CARE Schools. Mr. Pace testified that he was in charge of preparing this application and that the CARE Schools were regularly audited by Nevada regulators. The CARE Schools did not apply for approval from any other state for reimbursement for the treatment of students whose families qualified for Medicaid.

That failure to give notice did in fact materially prejudice Respondents' right to defend itself against the claims that it violated the Healthcare Fraud Laws. The Arbitrator previously ruled that Claimants' failure to give notice prejudiced Respondents to the full extent of the "\$2,674,122.29 Indemnification Claim. The self-disclosure report prepared and filed by Claimants in February of 2017 made it very clear that Claimants did not believe that there was any fraud involved, but rather that Respondents did not know that certain referral payments they had made in the past could be considered illegal. Yet Claimants chose to amend their claims in February of 2018 to include assertions of fraud and did not withdraw those claims until September of 2019. This reeks of bad faith.

Many of Claimants' witnesses testified at the hearing that Respondents had been doing "illegal" things prior to the Closing, and that Respondents' business operations were unethical. Mr. Ripley and others referred to the revenues the CARE Schools received from Nevada for students who qualified for Medicaid as "fraudulent" billings. Ms. Potts accused Respondents of illegally paying for "heads in beds," but defended herself when asked why she did not remember knowing about Respondents' payment of referral fees, and why she did not raise objections prior signing the APA to the purchase of the CARE Schools, by testifying that it was "not her place" to do so. Indeed, many of Claimants' employees pointed fingers at others when asked about certain actions or inactions, so it was clear that communications were compromised due to employees having offices in many different locations with specified job descriptions that apparently did not overlap.

Claimants' overpayment claim is based on the removal of the allegedly illegal revenues included in Respondents' financial statements prior to the Closing. Alleging that the revenues were illegal is not sufficient to satisfy Claimants' burden of proving that they were illegal. Nor is it sufficient to overcome Claimants' burden of proving that Respondents breached any of the representations and warranties in the APA and/or suffered "Losses" related thereto.

The preponderance of the evidence provided at the hearing did not show anything more than the fact that Respondents and their Key Employees were ignorant of the laws prior to the Closing. Certainly this ignorance could have been considered a breach of a number of the representations and warranties in the APA, but only if, and only to the extent that, other express provisions in the APA had been complied with by Claimants, including the covenants of good faith and fair dealing. In short, Claimants played the role of judge and jury and then expected Respondents to indemnify them for the settlement amounts they alone negotiated while ignoring the express provisions of the APA which would have allowed Respondents to defend themselves.

The other problems with Claimants' allegations in their Second Amended Claim are threefold. First, the evidence is clear that the Base Purchase Price in the APA was agreed upon through arms-length negotiations between the principals of the Buyers and the Sellers, and not as a multiple of EBITDA, as it was in the LOI. Second, nothing in the APA allows for an adjustment of the Base Purchase Price after the Closing. Third, even assuming EBITDA was a critical factor in the determination of the Base Purchase Price, Respondents' expert witness, Richard Hoffman, provided credible testimony that the value of the CARE Schools pre-closing was well in excess of \$23,500,000 as of the Closing Date, even without the revenue the CARE Schools received for the Nevada Medicaid students.

Claimants' Second Amended Claim is DENIED.

With respect to Respondents' Contingent Payment counterclaim, there is no dispute that the EBITDA from the Sellers' Business fell short of the targeted EBITDA of \$4,181,818. The Parties agree that the adjusted combined EBITDA totaled \$3,271,973, which was \$909,845 below the targeted EBITDA. The question for the Arbitrator is whether, and to what extent, the changes to the Sellers' Business made by Claimants during the Calculation Period resulted in a decreased amount of EBITDA.

Although integration of merged business operations often presents a myriad of challenges following an acquisition, legal disputes and liabilities arise when specific contractual provisions allow for some type of a future payment (commonly known in the industry as an “earn out”) after the passage of a certain period of time. Section 3.7(c) made it clear that changes in the Sellers’ Business after the Closing Date could not prejudice Respondents’ right to the Contingent Payment. The lengthy due diligence period provided Sequel with every opportunity to learn about how the CARE Schools were being operated prior to the Closing Date, and to evaluate whether Claimants could, for one year, continue to operate the Sellers’ Business in a commercially reasonable manner that was substantially similar to the way it had been operated by Respondents prior to the Closing Date. Most of the changes that Claimants made could have, and should have, waited until after August 16, 2017.

To the extent Claimants believed there was a “commercially reasonable” need to make changes that had the potential of negatively impacting the Calculation Period EBITDA, the implied covenant of “fair dealing” mandated at a minimum, prior discussions with the Key Employees named in the APA. The evidence showed a complete lack of respect towards the two Key Employees, one of whom was rarely consulted, and the other of whom suffered a substantial decrease in pay. The CFO of Sequel, Ms. Potts, testified at the hearing that during her first post-Closing visit to the CARE Schools, she made it “crystal clear who was in charge”---Sequel, because it “owned the place.”

While Claimants rely heavily on language in Section 3.7(c) of the APA that they believe gave them the unilateral right to change operations they believed were “unethical” (primarily because they did not conduct their businesses in the same manner that Respondents did)¹³, the clear language in the APA uses the words “commercially reasonable” and “substantially consistent” to qualify what is considered to be ethical business practices. Claimants rely on language stating that operations must “comply with applicable law, “ but cited no law that required it to substantially change the manner in which tours were conducted, only that the serving of alcohol, the quantity of food, the private massages, and the accommodations were overly extravagant. Without any meaningful consultation with the Key Employees, the tours were changed and largely discontinued. An employee was terminated and a RIF was put in place, again without any prior consultation with Key Employee, Brian Pace, despite express language in the APA to the contrary. Financial information was not provided on a timely basis to Respondents as contractually required. The mix of students who were admitted to the CARE Schools was changed to include “adjudicated students”¹⁴ which caused a drop in student referrals from school districts. The changes in the incentive compensation system and in marketing efforts, as well as changes to the health insurance benefits and in training of direct care staff all had negative impacts on the bottom line, as well as morale at the CARE Schools.

¹³ One sentence in Section 3.7(c) states: “Buyers will market the products and services of the Sellers’ Business in a manner consistent with how it [sic] markets its [sic] own products and services.” This is an important provision to Claimants, but cannot be read alone because it conflicts with other express provisions that clearly require collaboration (or at least advance consultation) with the Key Employees during the Calculation Period, especially when changes made by the Buyers were not “substantially consistent” with the manner the Sellers’ Business was operated prior to the Closing, and when the changes had the potential to prejudice Sellers’ right to receive the Contingent Payment.

¹⁴ The CARE Schools had never marketed to students in the juvenile justice system in the past because Respondents believed parents, adoption agencies and school districts would not want kids with behavioral issues to be mixed with students who had committed crimes.

Utah law and specific provisions of the APA require the Parties to fulfill their various obligations in good faith. The preponderance of the evidence provided by various credible witnesses proved that Claimants did not make a good faith attempt to comply with the express provisions of Section 3.7(c) of the APA that were clearly intended to provide the Sellers with the ability to receive an earn out pursuant to the terms of the APA.

Respondents' counterclaim is hereby GRANTED.

It is not possible to know precisely how the CARE Schools would have performed if Claimants had complied with the provisions of Section 3.7(c) of the APA. However, Respondents' experts conducted an extensive pre- and post-Closing financial review of the CARE Schools to evaluate the impact on the EBITDA of the various changes made by Claimants. The Arbitrator finds that the most conservative analysis that Mr. Hoffman provided at the hearing provides a reasonable estimate of Respondents' damages. After removing the month of September 2016 in his analysis of the changes made by Claimants after the Closing Date that he specifically identified in his expert reports, he found that the targeted EBITDA would have been exceeded by \$566,990. Multiplied by 5.5 entitles Respondents to receive a Contingent Payment in the amount of at least \$3,118,445.

Section 3.7 (b) of the APA titled, *Contingent Payment Procedures*, was not followed by the Parties in light of the filing of the Arbitration Demand by Claimants in October 2017 (and because Claimants' position was that no Contingent Payment was owed to Respondents). The Parties have asked the Arbitrator to make her determination regarding any breaches of the APA, and then they plan to proceed with the procedures set forth in the APA for determining the precise amount of the Contingent Payment to be paid to Respondents.

In making her findings and preparing this Final Award, the Arbitrator has considered case law cited by the Parties, the credibility of the witnesses, assessed the weight to be given to the documentary evidence and testimony of both fact and expert witnesses, and closely attended to the Parties' oral and written arguments. Based upon this, and for the reasons stated above, the Arbitrator decides and awards as follows. The Arbitrator finds against Claimants and in favor of Respondents.

Section 7.7(e) of the APA states that the "prevailing party in any arbitration or other proceeding is entitled to receive...the costs and expenses incurred by the prevailing party in conducting the arbitration..., including reasonable attorneys' fees and expenses, and arbitration fees, even if not recoverable by law."

Respondents are the prevailing party in this arbitration.

Following March 2, 2020, the date on which the Arbitrator issued her Interim Award, counsel for the Parties agreed upon a schedule for the submission of Respondents' request for an award of attorneys' fees and costs, Claimants' response thereto, and Respondents' reply. All submissions were timely made and reviewed in depth by the Arbitrator.

Respondents' provided detailed time entries for the attorneys from the law firm of Stoel Rives LLP who worked on the arbitration from October 4, 2017 until the date of its submission, March 12, 2020. However, these entries were heavily redacted and Claimants asserted that they were not given an opportunity to evaluate the reasonableness of the fees being sought. Furthermore, Claimants objected to the manner in which the expert-related expenses were presented, and requested the Arbitrator to deny these expenses in their entirety. Finally, Claimants asserted that Respondents' request for \$46,450.70 relating to the fees and costs of Frank Anthony Allen should be denied.

The language of Section 7.7(e) of the APA is broad with little restriction on what amounts can be awarded to the “prevailing party,” other than the requirement that the “attorneys’ fees and expenses” must be **reasonable**. Utah case law provides various factors for arbitrators and trial judges to consider when evaluating what constitutes reasonable attorneys’ fees and expenses, and acknowledges that arbitrators have broad discretion when weighing these various factors.

The Arbitrator denies Respondents’ request for an award of the fees and expenses of Attorney Allen. While his assistance may have been helpful to the attorneys at Stoel Rives LLP, those attorneys billed for the time they had discussions with him, which makes the submission of his time duplicative in nature and it would not be reasonable to include his time merely because he is also an attorney. Mr. Allen never entered his appearance in this matter and has been the personal attorney of Mr. Frank Habibian long before the arbitration was filed. His entries were in the nature of serving as a personal representative of Mr. Habibian.

Without identifying particular entries and submissions, the Arbitrator has reduced the amount of attorneys’ fees requested by Respondents to a total amount of \$900,000, for the following reasons. First, on March 31, 2019, the invoice showed a “courtesy discount” of 10 percent, which is a common law firm custom for longstanding clients in large, complex cases. No other invoices showed this discount, but it is a reasonable reduction in light of the large number of attorneys and paralegals from Stoel Rives LLP who worked on this case providing duplicative support. Second, although the Arbitrator was permitted to review all of the attorney entries without redaction, the Claimants were not given this opportunity and the redactions were indeed excessive and unnecessary in terms of protecting attorney-client privileged information. Finally, invoices were inconsistent in deducting or reducing attorneys’ fees for “travel time.” Without clearly identifying whether and what specific work was performed during that travel time, it is reasonable for attorneys to reduce or eliminate their fees involved while traveling on behalf of their clients. The Arbitrator finds that the actual costs incurred by Respondents’ counsel while traveling (hotels, food, transportation, etc.) were reasonable.

With respect to the fees and expenses of the various experts Respondents engaged in connection with this matter, Claimants requested that the Arbitrator deny them all for a variety of reasons. A complete elimination of these fees is not reasonable, but a reduction is warranted in light of the fact that each expert testified on a narrow aspect of the overall case, and both opined on matters that could be considered “legal” opinions, although the Arbitrator counseled against this, and she repeatedly stated that she would disregard these opinions. The APA does not expressly require that expert witness fees be awarded, and they could be considered attorneys’ expenses since the experts assisted the attorneys in their advocacy for their clients. The Arbitrator, therefore, has the discretion to reduce these expenses to amounts she considers to be reasonable.

The total amount of costs and expenses to be awarded in this case shall be reduced to \$400,000.¹⁵

In summary, the Arbitrator hereby awards Respondents a total of \$1,300,000 in costs and expenses, including reasonable attorneys’ fees and expenses, and, as described below, the administrative fees of AAA and the Arbitrator compensation.

The administrative fees of AAA totaling \$29,400.00 and the compensation of the Arbitrator totaling

¹⁵ This capped amount includes all of the approved costs and expenses of the attorneys, experts, AAA and the Arbitrator. Thus, after Claimants reimburse Respondents for the total amount of \$42,660, Claimants shall pay Respondents an additional \$357,340.

\$55,920.00 shall be borne by Claimants, jointly and severally,

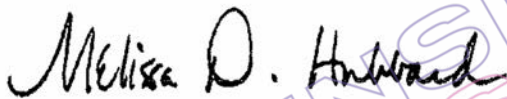
Therefore, Claimants shall reimburse Respondents in the amount of \$42,660.00, representing that portion of said fees in excess of the apportioned costs previously incurred by Respondents.

AAA will continue to bill the Claimants in accordance with this Award and the prior agreement between the Parties, both for outstanding invoices owed through the date of this Award, and thereafter, to the extent additional services of the Arbitrator are required.

Post-judgment interest on the amounts of costs and expenses, and attorneys' fees and expenses, and arbitration fees, awarded herein shall begin to accrue on any unpaid amounts as of May 29, 2020 at a cumulative rate of 8% per annum.

This Final Award resolves all claims which have been submitted to this arbitration for resolution. Any other claims, defenses, affirmative defenses, and counterclaims between the Parties which have not been specifically addressed herein are hereby denied.

Respectfully submitted,

A handwritten signature in black ink that reads "Melissa D. Hubbard". The signature is written in a cursive, flowing style.

Melissa D. Hubbard, Arbitrator

Dated: May 1, 2020