IN THE SUPREME COURT OF THE STATE OF NEVADA

MANUEL IGLESIAS and EDWARD MOFFLY,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK and the Honorable NANCY ALLF, District Court Judge,

Respondents,

and

N5HYG, LLC, A MICHIGAN LIMITED LIABILITY COMPANY; AND, NEVADA 5, INC., A NEVADA CORPORATION,

Real Parties in Interest.

Supreme Court No.

Distr. Ct. Case No. A-17-762664-B
Dept. XXVII

PETITIONERS' APPENDIX TO *PETITION* UNDER NRAP 21 FOR WRIT OF PROHIBITION, OR IN THE ALTERNATIVE, WRIT OF MANDAMUS

(VOLUME IX)

Pursuant to NRAP 30, Petitioners MANUEL IGLESIAS and EDWARD MOFFLY, hereby submit their *Petitioners' Appendix to Petition Under NRAP 21 for Writ Of Prohibition, or in the Alternative, Writ Of Mandamus*.

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PROOF OF SERVICE

Pursuant to Nev. R. App. P. 25, I certify that I am an employee of Kaplan Cottner; that, in accordance therewith, I caused a copy of **PETITIONERS' APPENDIX TO *PETITION* UNDER NRAP 21 FOR WRIT OF PROHIBITION, OR IN THE ALTERNATIVE, WRIT OF MANDAMUS** to be mailed on the 9th day of June, 2021, by depositing, in a sealed envelope, a true and correct copy in the United States mail, postage prepaid a Compact Disc containing PDF copies and via email, and addressed to the following:

Attorneys of Record	Parties Represented
Ogonna M. Brown, Esq. 3993 Howard Hughes Parkway Suite 600 Las Vegas, NV 89169	*N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation*
G. Mark Albright, Esq. D. Chris Albright, Esq. 801 South Rancho Drive Suite D-4 Las Vegas, NV 89106	*N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation*
E. Powell Miller, Esq. (*pro hac vice*) Christopher Kaye, Esq. (*pro hac vice*) 950 W. University Dr. Suite 300 Rochester, MI 48307	*N5HYG, LLC, a Michigan limited liability company; and, in the event the Court grants the pending Motion for Reconsideration, NEVADA 5, INC., a Nevada corporation*
The Honorable Nancy Allf Eighth Judicial District Court Department 27 200 Lewis Avenue Las Vegas, NV 89155	*Presiding Judge over Case No. A-17-762664-B*

/s/ Sunny Southworth
An employee of Kaplan Cottner

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“Exhibit 25”

“Exhibit 25”

requirements promulgated thereunder; (e) quality, safety and medical necessity laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services; (f) rules governing the provision of services to employees with workers compensation coverage or licensure or certification as a healthcare organization to provide such services; and (g) licensure laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services, including laws relating to the so-called "corporate practice of medicine" and fee splitting, each of (a) through (g) as amended from time to time.

"Indemnified Person" means, with respect to any Indemnity Claim, each Buyer Indemnified Person or Seller Indemnified Party asserting the Indemnity Claim (or on whose behalf the Indemnity Claim is asserted) under Article 7.

"Indemnifying Party" means, with respect to any Indemnity Claim, the party or parties against whom such Indemnity Claim may be or has been asserted.

"Indemnity Claim" means a claim for indemnity Article 7.

"Indirect Owners" is defined in Section 4.5.1.

"Intellectual Property Rights" means the entire right, title, and interest in and to all proprietary rights of every kind and nature however denominated, throughout the world, including (a) patents, patent applications, industrial designs, industrial design applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions, reviews and reexaminations in connection therewith, (b) confidential information, trade secrets, database rights, and all other proprietary rights in Technology, (c) trademarks, trade names, service marks, service names, brands, trade dress and logos, and all other indicia of origin, all applications, registrations, and renewals in connection therewith, and the goodwill and activities associated therewith, (d) domain names, rights of privacy and publicity, and moral rights, including all rights of authorship, use, publication, reproduction, distribution, performance transformation, moral rights and rights of ownership of copyrightable works, copyrights and registrations and applications associated therewith, mask work rights (e) any and all registrations, applications, recordings, licenses, common-law rights, and contractual rights relating to any of the foregoing, and (e) all rights of privacy and publicity, including rights to the use of names, likenesses, images, voices, signatures and biographical information of real persons, as well as all Actions and rights to sue at law or in equity for any past or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, continuations, divisions, or other extensions of legal protections pertaining thereto, and (f) all copies and tangible embodiments or descriptions of any of the foregoing (in whatever form or medium).

"IRS" means the Internal Revenue Service.

"Legal Requirement" or "Law" means any constitution, law (including common law), statute, standard, ordinance, code, rule, regulation, resolution, or promulgation, or any Government Order, or any license, franchise, permit, or similar right granted under any of the foregoing, or any similar provision or duty or obligation having the force or effect of law, including, and for the avoidance of doubt, any Healthcare Law.

"Liability" means, with respect to any Person, any liability or obligation of such Person, whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, whether due or to become due.

"Litigation Conditions" is defined in Section 7.6.2.

"Losses" is defined in Section 7.1.

"Material Adverse Effect" means any event, circumstance, development, condition, occurrence, state of facts, change or effect that, when considered individually or in the aggregate has been, or would be reasonably likely to be, materially adverse to (a) the business condition (financial or otherwise), or the business, assets, liabilities of Seller, or (b) the ability of Seller or either Seller Principal to perform their respective obligations under this Agreement or to consummate the Contemplated Transactions, in either case, other than any event, circumstance, development, condition, occurrence, state of facts, change or effect arising out of: (i) general business, financial, credit or economic conditions in the United States; (ii) acts of war (whether or not declared), sabotage or terrorism, military actions or the escalation thereof; (iii) any change in or adoption of any applicable Legal Requirement or GAAP, and (iv) natural disasters, acts of nature or acts of god such as landslides, floods, fires, explosions, lightning and induction caused by lightning causing damage to equipment, earthquakes subsidence, storms, cyclones, typhoons, hurricanes, tornados, tsunamis, perils of sea, volcanic activity, and other extreme weather conditions and any other extraordinary operation of the forces of nature; except, in the case of subparts (i), (ii), (iii) or (iv) of this definition, only to the extent that such events, circumstances, developments, conditions, occurrences, states of facts, changes or effects do not have a disproportionate effect on Seller relative to other participants in the industries in which Seller operates.

"Most Recent Balance Sheets" is defined in Section 4.6.1.

"Most Recent Balance Sheet Date" is defined in Section 4.6.1.

"Most Recent Financials" is defined in Section 4.6.1.

"Ordinary Course of Business" means an action taken by any Person in the ordinary course of such Person's business which is consistent with the past customs and practices of such Person.

"Party" is defined in the Preamble.

"Payment Date" is defined in Section 6.3.

"Payor" means any insurer, health maintenance organization, third party administrator, employer, union, trust, governmental program (including but not limited to any Third Party Payor Program), or other consumer or customer of health care services that has authorized Seller as a provider of health care services to the members, beneficiaries, participants or the like, thereof or to whom Seller has submitted a claim for services.

"Per-Share Price" is defined in the Recitals.

"Permits" means, with respect to any Person, any license, accreditation, bond, franchise, permit, consent, approval, right, privilege, certificate, registration, accreditation or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such Person is subject or bound or to which or by which any property, business, operation, or right of such Person is subject or bound.

"Person" means any individual or corporation, association, partnership, limited liability company, joint venture, joint stock, or other company, business trust, trust, organization, labor union, Governmental Authority, or other entity of any kind.

"Physician Owner" is defined in Section 4.5.1.

"Plan" is defined in Section 4.17.1.

"Post-Closing Monthly Payment" is defined in Section 6.3.

"Procedure" shall mean any procedure or procedures on the list of Medicare-covered procedures for ambulatory surgical centers in accordance with regulations issued by the U.S. Department of Health and Human Services.

"Pro Rata Share" is defined in Section 7.4.2.

"Put Notice" is defined in Section 6.3.

"Put Option" is defined in Section 6.3.

"Put Price" is defined in Section 6.3.

"Real Property" is defined in Section 4.12.

"Real Property Leases" is defined in Section 4.12.

"Reimbursed Transaction Expenses" is defined in Section 6.2.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of a Hazardous Substance into the Environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) and any condition that results in the exposure of a person to a Hazardous Substance.

"Representative" means, with respect to any Person, any director, manager, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

"SEC" is defined in Section 4.26.

"SEC Documents" is defined in Section 4.26.

"Seller" is defined in the Preamble.

"Seller Indemnification Obligations" is defined in Section 7.4.

"Seller Indemnified Parties" is defined in Section 7.2.

"Seller Intellectual Property Rights" means all Intellectual Property Rights owned by Seller or used by Seller in connection with each of the Business as currently conducted, including all Intellectual Property Rights in and to Seller Technology.

"Seller Owners" is defined in Section 4.5.1.

"Seller Principals" means the following Seller Owners: (a) Manuel Iglesias (Co-Founder, Director and Chief Executive Officer of Seller) and (b) Edward Moffly (Co-Founder, Director and Chief Financial Officer of Seller).

"Seller Technology" means any and all Technology used in connection with the Business as currently conducted.

"Seller's Knowledge" shall mean the knowledge of each of the Seller Principals, Richard Williams (the Chief Legal Officer and General Counsel of Seller), and each officer, manager or member of the board of directors (or equivalent governing body) of Seller and each Subsidiary. For purposes of this Agreement, any such individual shall be deemed to have knowledge of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter or (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter after reasonable investigation.

"Subsidiary" is defined in the Recitals.

"Subsidiary Equity Interests" is defined in Section 4.5.2.

"Tax" or "Taxes" means (a) any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs, duties, capital stock, franchise, profits, built-in gain, withholding, social security (or similar taxes, including FICA), unemployment, disability, real property, intangible property, personal property, escheat, abandoned or unclaimed property obligation, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind or any charge or fee of any kind in the nature of (or similar to) taxes imposed by any Governmental Authority or any Legal Requirement, including any interest, penalty, or addition thereto, in each case whether disputed or not and (b) any Liability for the payment of any amounts of the type described in clause (a) of this definition as a result of (i) being a member of an affiliated, consolidated, combined or unitary group or being a party to any agreement or arrangement whereby liability for payment of such amounts was determined or taken into account with reference to the Liability of another Person, in each case, for any period, (ii) as a result of any tax sharing, tax indemnification or tax allocation agreement, arrangement or understanding (other than commercial contracts (A) a principal subject matter of which is not Taxes, (B) containing customary Tax indemnification provisions, and (C) entered into in the ordinary course of business), (iii) or as a result of being liable for the payment of another Person's taxes as a transferee or successor, by contract or otherwise.

"Tax Return" means any return, statement, election, form, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule, supplement or attachment thereto, and including any amendment thereof.

"Technology" means all inventions, works, discoveries, innovations, know-how, information (including ideas, research and development, formulas, algorithms, compositions, processes and techniques, data, designs, drawings, specifications, graphics, illustrations, artwork, documentation, and manuals), databases, computer software, firmware, computer hardware, integrated circuits and integrated circuit masks, electronic, electrical, and mechanical equipment, and all other forms of technology, including improvements, modifications, works in process, derivatives, or changes, whether tangible or intangible, embodied in any form, whether or not protectable or protected by patent, copyright, mask work right, trade secret law, or otherwise, and all documents and other materials recording any of the foregoing.

"Third Party Claim" is defined in Section 7.6.1.

"Third Party Payor Programs" means all Third Party Payor Programs (including but not limited to, Federal Health Care Programs, workers compensation, or any other state health care programs, as well as Blue Cross and/or Blue Shield, managed care plans, or any other private insurance program).

"Treasury Regulations" means the regulations promulgated under the Code.

"Trigger Event" is defined in Section 6.3.

"Yearly Financials" is defined in Section 4.6.1.

2. GENERAL RULES OF INTERPRETATION; SCHEDULES.

2.1. General Rules. Except as otherwise explicitly specified to the contrary, (a) references to a Section, Article, Exhibit or Schedule means a Section or Article of, or Exhibit or Schedule to, this Agreement, unless another agreement is specified, (b) the word "including" shall be construed as "including without limitation", (c) references to a particular statute or regulation include all rules and regulations thereunder and any predecessor or successor statute, rules or regulation, in each case as amended or otherwise modified from time to time, (d) words in the singular or plural form include the plural and singular form, respectively, (e) words expressed in the masculine shall include the feminine and neuter genders and vice versa, (f) the word "will" shall have the same meaning as the word "shall", (g) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends and shall not simply mean "if", (h) references to "day" or "days" in the lower case means calendar days, (i) references to the "date hereof" are to the date of this Agreement, (j) the words "hereof", "herein", "hereto", and "hereunder", and words of similar import, shall refer to this Agreement as a whole and not any particular provisions of this Agreement, (k) references to dollars or "$" are to United States dollars, and (l) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement.

2.2. Disclosure Schedules. Disclosure in any section of the Schedules to this Agreement (the "Disclosure Schedules") shall apply only to the indicated section of this Agreement except to the extent that it is readily apparent from the face of such disclosure that such disclosure is relevant to another section of this Agreement. The inclusion of any information in the Schedules shall not be deemed to be an admission or acknowledgment, in and of itself that such information is required by the terms hereof to be disclosed, is material or has resulted in or is reasonably likely to result in a Material Adverse Effect. Complete and correct copies of all documents referred to in the Disclosure Schedules were made available to Buyer in the Data Room or sent via electronic mail to Dan Miller (Managing Director of Buyer's parent company) at DMiller@RINCapital.com prior to the Closing Date.

3. STOCK PURCHASE.

3.1. The Stock Purchase. Upon the Closing, in exchange for the Consideration contributed by Buyer to Seller, Buyer shall purchase from Seller and Seller shall sell, issue, transfer, assign, convey and deliver to Buyer the Acquired Stock free and clear of any and all liens, mortgages, liens, pledges, security interests, conditional sales agreements, right of first refusals, options, restrictions, liabilities, encumbrances, or charges.

3.2. Closing. The closing of the Contemplated Transactions hereby (the "Closing") will take place remotely via the electronic exchange of documents and signature pages on the Effective Date (the "Closing Date"), or in such other manner as the Parties agree in writing. For accounting and

computational purposes (other than for Tax purposes), the Closing will be deemed to have occurred at 12:01 a.m. (Eastern Time) on the Closing Date.

3.3. Consideration. The consideration to be paid for the Acquired Stock shall be Thirty Million and no/100 Dollars ($30,000,000.00) (the "Consideration"). The Consideration shall be paid as of the Closing effected by wire transfer of immediately available funds to an account provided to Buyer by Seller in writing prior to the Closing.

3.4. Deliverables by Seller. At the Closing, Seller shall deliver (or cause to be delivered) to Buyer the following items:

3.4.1. all documents that are necessary to transfer to Buyer good and valid title to the Acquired Stock free and clear of any lien, with any necessary transfer tax stamps affixed or accompanied by evidence that all equity transfer taxes have been paid;

3.4.2. a certificate of incumbency verifying the authority of the respective officers of Seller executing this Agreement, and any other agreements contemplated hereby, or making certifications for Closing;

3.4.3. a certificate from the Secretary of Seller certifying that all board of directors and shareholder approvals necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which Seller is a party have been obtained and attaching thereto: (i) a copy of the articles of organization of Seller, and (ii) a copy of the resolutions of the board of directors of Seller, evidencing the approval of this Agreement and the Ancillary Agreements to which each is a party and the transactions contemplated hereby and thereby;

3.4.4. a certificate signed by Seller certifying the satisfaction of the conditions set forth in Sections 3.7(b) and 3.7(c);

3.4.5. duly executed counterparts of each Ancillary Agreement to which a Seller or a Seller Principal is a party;

3.4.6. all of the consents, waivers and similar instruments that are set forth on Schedule 4.3, each in form and substance reasonably satisfactory to Buyer; and

3.4.7. such other documents and certificates as Buyer may reasonably request or as may be required pursuant to this Agreement.

3.5. Deliverables by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to or on behalf of Seller the following items:

3.5.1. payment of the Consideration in accordance with Section 3.3;

3.5.2. a certificate of incumbency verifying the authority of the respective officer(s), manager(s) and/or director(s) of Buyer executing this Agreement, or any other agreements contemplated hereby, or making certifications for Closing;

3.5.3. a certificate from the Secretary of Buyer certifying that all governance approvals necessary to consummate the transactions contemplated by this Agreement, and the Ancillary Agreements to which it is a party have been obtained;

3.5.4. a certificate signed by Buyer certifying the satisfaction of the conditions set forth in Sections 3.6(b) and 3.6(c);

3.5.5. duly executed counterparts of each Ancillary Agreement to which a Buyer is a party; and

3.5.6. such other documents and certificates as Seller may reasonably request or as may be required pursuant to this Agreement.

3.6. Seller Closing Conditions. Seller's obligations to consummate the transactions contemplated hereunder are expressly conditioned upon the satisfaction of the following conditions (unless the same are expressly waived by Seller):

(a) receipt by Seller of the various documents and items set forth at Section 3.5 hereof;

(b) the representations and warranties of Buyer will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing; and

(c) Buyer will have performed and complied in all material respects with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by them at or prior to the Closing.

3.7. Buyer Closing Conditions. Buyer's obligations to consummate the transactions contemplated hereunder are expressly conditioned upon the satisfaction of the following conditions (unless the same are expressly waived by Buyer):

(a) receipt by Buyer of the various documents and items set forth in Section 3.4 hereof;

(b) the representations and warranties of Seller will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing;

(c) Seller and each Seller Principal (as applicable) will have performed and complied in all material respects with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by them at or prior to the Closing; and

(d) since the date hereof, there will have occurred no event, change, fact, or condition, nor will there exist any circumstance which, singly or in the aggregate with all other events, changes, facts, conditions and circumstances, has resulted or would reasonably be expected to result in a Material Adverse Effect.

4. REPRESENTATIONS AND WARRANTIES OF SELLER.

In order to induce Buyer to enter into and perform this Agreement and to consummate the Contemplated Transactions, Seller hereby represents and warrants to Buyer, as of the date hereof as follows:

4.1. Organization;. Each of Seller and each Subsidiary is (a) duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation and (b) duly qualified to do business and in good standing in each other jurisdiction where such qualification is required. Seller has delivered to Buyer true, accurate and complete copies of the organizational documents of Seller and each Subsidiary. Schedule 4.1 sets forth a true and correct list of the current directors, managers, officers and

stockholders or other equity holders of Seller and each Seller Subsidiary, as applicable. No earn-out payments, and no payments for referrals to Seller or any Subsidiary of Medicare or Medicaid patients, have been made or promised by Seller, any Subsidiary, or any Affiliate, officer, director, manager or agent thereof in connection with the acquisition of any Subsidiary or the acquisition of the business or assets of any other entity.

4.2. Power and Authorization. Seller has the requisite capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Seller of this Agreement and each Ancillary Agreement to which Seller is a party and the consummation of the Contemplated Transactions are within the power and authority of Seller and have been duly authorized by all necessary action on the part of Seller. This Agreement and each Ancillary Agreement to which Seller is a party (a) have been duly executed and delivered by Seller and (b) are the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, and, other than with respect to any restrictive covenant contained in this Agreement or any Ancillary Agreement, general equitable principles and the discretion of courts in granting equitable relief. Seller and each Subsidiary has the full corporate or limited liability company power and authority necessary to own and use its properties and assets and carry on its business as currently conducted.

4.3. Authorization of Governmental Authorities. Except as disclosed on Schedule 4.3, no action by (including any authorization, consent or approval), or in respect of, or filing with, or notice to, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by Seller and each Ancillary Agreement to which Seller is a party or (b) consummation of the Contemplated Transactions by Seller.

4.4. Non-contravention. Except as disclosed on Schedule 4.4, neither the execution, delivery and performance by Seller of this Agreement nor the execution, delivery and performance by Seller of any Ancillary Agreement nor the consummation of the Contemplated Transactions will: (a) assuming the taking of any action by (including any authorization, consent or approval), or in respect of, or any filing with, any Governmental Authority, in each case, as disclosed on Schedule 4.3, violate any Legal Requirement applicable to Seller, any Subsidiary or the Business; (b) result in the modification, acceleration, termination, breach or violation of, or default under, any Contractual Obligation to which Seller or any Subsidiary is a party; (c) require any action by (including any authorization, consent or approval) or in respect of (including notice to), any Person under any Contractual Obligation of Seller or any Subsidiary; (d) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, the Common Stock or any asset owned or held by Seller or any Subsidiary; or (e) result in a breach or violation of, or default under, the organizational documents of Seller or any Subsidiary.

4.5. Capitalization; Subsidiaries.

4.5.1. Capitalization of Seller. Except for those warrants to purchase Common Stock listed on Schedule 4.5.1, complete and correct copies of which have been made available by Seller to Buyer, other than the Common Stock, Seller has not issued, nor has agreed to issue, any equity interest of any kind (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any security or other instrument convertible into an equity security of Seller, or any derivative right of any of the foregoing). None of the Common Stock (including, for the avoidance of doubt, the Acquired Stock) is subject to, and none of Seller, either Seller Principal or, to Seller's Knowledge, any of the Seller Owners is a party to, any shareholders' agreement or similar agreement, any voting agreement, any pre-emptive rights, any rights of first offer or rights of first refusal, or any

similar Encumbrance of any kind with respect to the Common Stock. All of the issued and outstanding shares of Common Stock have been duly authorized, validly issued, and are fully paid and non-assessable, as applicable. Seller has complied in all material respects with all federal and state securities Laws and exemptions (including all applicable rules and regulations promulgated by the SEC, any applicable state securities regulators, and/or any exchange upon which any Common Stock is traded) in connection with the issuance and sale of all of the Common Stock (including the Acquired Stock). All of the issued and outstanding Common Stock is held of record and beneficially owned by the Persons set forth on Schedule 4.5.1 (the "Direct Owners") in the respective amounts set forth on Schedule 4.5.1. When used in this Agreement: (a) the term "Indirect Owner" means each Person that has a direct or indirect beneficial ownership interest in a Direct Owner; (b) the term "Seller Owners" means, collectively, all of the Direct Owners and the Indirect Owners; and (c) the term "Physician Owner" means each Seller Owner who is a physician (including any medical doctors, doctors of osteopathy, physiatrists, chiropractors or dentists). Schedule 4.5.1 sets forth a list of all Physician Owners, as well as the respective approximate percentages of direct or indirect beneficial ownership interest held by each such Physician Owner in one or more Direct Owners. The Acquired Stock has been duly authorized, validly issued and, upon payment of the Consideration, will be fully paid and non-assessable and, upon the Closing, Buyer shall have sole and exclusive, good and valid title to the Acquired Stock, not subject to any Encumbrance.

4.5.2. Capitalization of Subsidiaries; Affiliates. Seller has no subsidiaries or Affiliates other than the Subsidiaries. Exhibit A sets forth a complete list of all of the Subsidiaries. Seller owns, either directly or indirectly, 100% of the issued and outstanding capital stock, membership interests or other equity interests of each Subsidiary (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any derivative rights thereto) (the "Subsidiary Equity Interests"). None of the Subsidiary Equity Interests is subject to, and none of Seller, either Seller Principal, any Subsidiary or, to Seller's Knowledge, any of the Seller Owners is a party to, any shareholders' agreement or similar agreement, any voting agreement, any pre-emptive rights, any rights of first offer or rights of first refusal, or any similar Encumbrance of any kind with respect to any Subsidiary Equity Interests. All of the issued and outstanding Subsidiary Equity Interests have been duly authorized, validly issued, and are fully paid and non-assessable, as applicable. Seller and each Subsidiary, as applicable, have complied in all material respects with all federal and state securities Laws and exemptions (including all applicable rules and regulations promulgated by the SEC, any applicable state securities regulators, and/or any exchange upon which any Common Stock is traded) in connection with the issuance and sale of all of the Subsidiary Equity Interests. All of the issued and outstanding Subsidiary Equity Interests are held of record and beneficially owned by the Persons designated on Exhibit A in the respective amounts set forth on Exhibit A.

4.6. Financial Matters.

4.6.1. Financial Statements. Attached to Schedule 4.6.1 are true, correct and complete copies of each of the following: (a) the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2013 and the related statements of profit and loss and changes in equity for the fiscal year then ended (the "2013 Yearly Financials"); and (b) that certain "Hydrea Holdings Corp. Quality of Earnings Report Update – TTM June 30, 2016" prepared by independent accounting firm CliftonLarsonAllen LLP, dated as of October 3, 2016, including an unaudited consolidated balance sheet of Seller and the Subsidiaries as of June 30, 2016 (respectively, the "Most Recent Balance Sheet," and the "Most Recent Balance Sheet

Date") and the related unaudited consolidated statement of profit and loss and changes in equity of Seller and the Subsidiaries for the 6-month period then ended (collectively, the "Most Recent Financials"). Seller, together with CPA firm RT&C (Rodriguez, Trueba & Co) is in the process of completing the preparation of the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2014 and December 31, 2015 and the related statements of profit and loss and changes in equity for the fiscal years then ended (the "2014 & 2015 Yearly Financials" and, collectively with the Audited Financials, the "Yearly Financials"), true and correct copies of which shall be provided to Buyer promptly upon completion, but in any event no later than November 30, 2016, which 2014 & 2015 Yearly Financials (together with the Most Recent Financials), when completed and provided to Buyer, shall reflect shareholders' equity as of June 30, 2016 that is no less than $95,000,000. The Most Recent Financials and the Yearly Financials are referred to herein collectively as the "Financials."

4.6.2. Except for the absence of footnote disclosure and any customary year-end adjustments that would not, individually or in the aggregate, be reasonably expected to be material, solely with respect to the Most Recent Financials, each of the Financials has been (or, with respect to the 2014 & 2015 Yearly Financials, will be) prepared in accordance with GAAP (except as set forth on Schedule 4.6.2) and presents (or, with respect to the 2014 & 2015 Yearly Financials, will present) fairly in all material respects the financial position and results of operations of Seller as at the dates and for the periods indicated therein. The Financials were (or, with respect to the 2014 & 2015 Yearly Financials, will be) derived from the books and records of Seller and the Subsidiaries.

4.7. Absence of Undisclosed Liabilities. Neither Seller nor any Subsidiary has any Liability of the type that would otherwise be required to be set forth on a balance sheet prepared in accordance with GAAP, except for (a) Liabilities set forth on the face of the Most Recent Balance Sheets, (b) Liabilities incurred in the Ordinary Course of Business since the Most Recent Balance Sheet Date, none of which can reasonably be expected to be material to Seller and applicable (none of which relate to (i) a breach of a Contractual Obligation, (ii) breach of warranty, (iii) a tort, (iv) an infringement of Intellectual Property rights, (v) violation of any Legal Requirement or (vi) an environmental liability), and (c) Liabilities listed on Schedule 4.7.

4.8. Absence of Certain Developments. Since the Most Recent Balance Sheet Date, the Business has been conducted only in the Ordinary Course of Business, except in connection with the transactions contemplated by, or entered into in connection with, this Agreement (and otherwise disclosed to Buyer). Without limiting the foregoing, except as set forth on Schedule 4.8:

4.8.1. Neither Seller nor any Subsidiary has (a) amended its organizational documents, (b) amended any term of its Common Stock or Subsidiary Equity Interests, (c) issued, sold, granted, or otherwise disposed of, any Common Stock or Subsidiary Equity Interests or (d) issued, granted or awarded any rights to acquire Common Stock, Subsidiary Equity Interests or other equity interests of any kind (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any derivative rights thereto);

4.8.2. Neither Seller nor any Subsidiary has become liable in respect of any Guarantee and has not incurred, assumed or otherwise become liable in respect of any Debt, except for borrowings in the Ordinary Course of Business under credit facilities in existence on the Most Recent Balance Sheet Date;

4.8.3. Neither Seller nor any Subsidiary has permitted any of its assets to become subject to an Encumbrance or sold, leased, licensed, transferred, abandoned, forfeited, or otherwise disposed of or lost the use of any of its assets (except for (i) inventory and supplies consumed in the Ordinary Course of Business, and (ii) assets sold, transferred or disposed of in the Ordinary Course of Business and replaced with items of like kind and value);

4.8.4. Neither Seller nor any Subsidiary has (a) made any declaration, setting aside or payment of any dividend or other distribution with respect to, or any repurchase, redemption or other acquisition of, any of its Common Stock or Subsidiary Equity Interests other than Tax distributions in the Ordinary Course of Business, or (b) purchased, redeemed, or otherwise acquired any of its Common Stock or Subsidiary Equity Interests;

4.8.5. there has been no loss, destruction, damage, or eminent domain taking (in each case, whether or not insured) affecting the Business or assets of Seller or any Subsidiary;

4.8.6. other than as required by applicable Legal Requirements, neither Seller nor any Subsidiary has directly or indirectly increased, made any change in, or accelerated the vesting of, any Compensation payable or paid, whether conditionally or otherwise, to (a) any current or former non-executive employee, consultant, independent contractor, partner, or agent other than in the Ordinary Course of Business or (b) any current or former executive officer or director;

4.8.7. Neither Seller nor any Subsidiary has made any loan or advance to, Guarantee for the benefit of, or made any investment in, any Person;

4.8.8. Neither Seller nor any Subsidiary has made any change in any of its methods of accounting or accounting practices or policies;

4.8.9. Neither Seller nor any Subsidiary has executed, adopted, amended, or terminated any collective bargaining agreement or other agreement with a labor union or other labor organization;

4.8.10. Neither Seller nor any Subsidiary has paid, discharged, settled, or satisfied any Action or any Liability, other than the payment of trade payables in the Ordinary Course of Business;

4.8.11. Neither Seller nor any Subsidiary has entered into any agreement or commitment relating to capital expenditures exceeding One Hundred Thousand Dollars ($100,000) individually or Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate (and Schedule 4.8 includes a complete and detailed listing of all such agreements or commitments, regardless of value (excluding acquisitions outside the Ordinary Course of Business), for the past 2 years);

4.8.12. Neither Seller nor any Subsidiary has made, changed or revoked any Tax election, elected or changed any method of accounting for Tax purposes, filed any amended Tax Return, settled any claim or Action in respect of Taxes, or entered into any Contractual Obligation in respect of Taxes with any Governmental Authority;

4.8.13. Neither Seller nor any Subsidiary has waived any right of value or suffered any loss;

4.8.14. Neither Seller nor any Subsidiary has made any write off or write down of or made any determination to write off or write down any asset or property;

4.8.15. Neither Seller nor any Subsidiary has settled any Action, pending or threatened, or had any judgment or lien entered against it, in each case in excess of $5,000;

4.8.16. Neither Seller nor any Subsidiary has canceled or terminated any insurance policy;

4.8.17. Neither Seller nor any Subsidiary has acquired (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or collection of assets;

4.8.18. Neither Seller nor any Subsidiary has commenced or terminated any line of business;

4.8.19. Neither Seller nor any Subsidiary has entered into any commitment, whether orally or in writing, to do any of the things referred to elsewhere in this Section 4.8; and

4.8.20. no other event or circumstance has occurred which has had, or would reasonably be expected to have, a Material Adverse Effect.

4.9. Debt. Seller and the Subsidiaries have no Liabilities in respect of Debt totaling more than Five Hundred Thousand Dollars ($500,000) in the aggregate except as set forth on Schedule 4.9. Schedule 4.9 sets forth a true, correct and complete list of the individual components (indicating the amount and the Person to whom such Debt is owned) of all Debt outstanding with respect to the Business.

4.10. Ownership of Assets. Except as disclosed on Schedule 4.10, either Seller or a Subsidiary has sole and exclusive, good and valid title to, or, in the case of property held under a lease or other Contractual Obligation, a sole and exclusive, enforceable leasehold interest in, or right to use and otherwise commercially exploit, all of the properties, rights, and assets, whether real or personal property and whether tangible or intangible, that are owned or purported to be owned by Seller or such Subsidiary or that are used or exploited in the business of Seller and the Subsidiaries as currently conducted. Except as disclosed on Schedule 4.10, none of the real or personal property of Seller or any Subsidiary is subject to any Encumbrance.

4.11. Accounts Receivable. All accounts and notes receivable reflected on the Most Recent Balance Sheets or that arise following such date and prior to the Closing have arisen, or will arise, in the Ordinary Course of Business, represent, or will represent, claims for bona fide services rendered by Seller, a Subsidiary, or the employees or contractors of Seller or a Subsidiary. Except as reflected on the Most Recent Balance Sheets, neither Seller nor any Subsidiary has received written notice or, to the Seller's Knowledge, oral notice from or on behalf of any obligor of any such accounts receivable that such obligor is unwilling or unable to pay any material portion of such accounts receivable.

4.12. Real Property. Schedule 4.12 sets forth a true, correct and complete list, including addresses, of each leasehold interest in real property leased, subleased, or licensed to or by, or for which a right to use or occupy has been granted to, Seller and/or any Subsidiary (the "Real Property"), and the Real Property listed on such schedule is all of the real property used by Seller and the Subsidiaries in connection with the Business. Schedule 4.12 identifies each document or instrument pursuant to which any Real Property is leased, subleased, or licensed (each a "Real Property Lease") and except for the

foregoing, there are no written or oral subleases, licenses, concessions, occupancy agreements, or other Contractual Obligations granting to any Person (other than Seller or a Subsidiary) the right of use or occupancy of the Real Property. Neither Seller nor any Subsidiary currently owns, nor has Seller or any Subsidiary previously owned, any real property whatsoever. Except as set forth in Schedule 4.12, either Seller or a Subsidiary has a valid leasehold interest in and to each of the Real Properties. There are no defaults by Seller or any Subsidiary under any Real Property Lease, and to Seller's Knowledge, no other party thereto is in default. Except as set forth in Schedule 4.12, no Affiliate of Seller is the owner, lessor, sublessor, or licensor under any Real Property Lease. Seller has delivered to Buyer accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect. To Seller's Knowledge, there is no pending or threatened appropriation, condemnation or similar Action affecting the Real Property. Since the Most Recent Balance Sheet Date, there has been no material destruction, damage or casualty with respect to any of the Real Property. The Real Property is (i) in good condition and repair (subject to normal wear and tear) and (ii) sufficient for the operation of the Business conducted therein as it is currently conducted and as it is presently proposed to be conducted. The condition and use of the Real Property conforms to each applicable certificate of occupancy and all other permits required to be issued in connection with the Real Property.

4.13. Intellectual Property. Except as disclosed on Schedule 4.13, Seller owns all rights, title and interest in and to, or will be licensed or otherwise possess, a valid and enforceable right to use all Seller Technology and all Seller Intellectual Property Rights free and clear of any Encumbrance, and without any known conflict with, or infringement of, the rights of any third parties. Except as disclosed on Schedule 4.13, Seller Intellectual Property Rights and Seller Technology includes all of the Intellectual Property Rights and Technology used in or necessary for the conduct of the Business of Seller as currently conducted.

4.14. Legal Compliance; Illegal Payments; Permits.

4.14.1. Neither Seller nor any Subsidiary is in breach or violation, in any respect of, or in default under, nor has Seller or any Subsidiary at any time during the previous ten (10) years been in breach or violation in any respect of, or default under, any Legal Requirement nor is there any circumstance or set of circumstances which could, with notice, the passage of time or otherwise, constitute such a breach, violation or default. All compensation paid, and to be paid, to Seller's and any Subsidiary's employees (inclusive of physicians, clinicians and other providers) is and at all times has been, (i) set in advance, (ii) commercially reasonable, (iii) determined in a manner that has not taken into account, directly or indirectly, the volume or value of referrals (as defined in 42 CFR 411.351) for designated health services (as defined at 42 CFR 411.351), (iv) reflective of fair market value, and (v) compliant with all of the requirements of each of the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), and the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §1395nn). Neither Seller nor any Subsidiary pays, or at any time has paid, or is bound by any contractual obligation to pay in the future, to any employee (inclusive of physicians, clinicians and other providers) any bonuses or other incentive payments. During the previous ten (10) years, no written notice has been received by, and no oral notices have been made or other claims been filed against, Seller or any Subsidiary alleging a violation of any Legal Requirement, and neither Seller nor any Subsidiary has been subject to any adverse inspection, finding, investigation, penalty assessment, audit or other compliance or enforcement action. Neither Seller, nor any Subsidiary, nor any Physician Owner, nor any of their respective directors, managers, officers, other employees or agents, has during the previous ten (10) years (i) directly or indirectly given or made, or agreed to give or make, any illegal gift, contribution, payment, incentive, or similar benefit to any supplier, customer (other than promotional gifts of nominal value), governmental official, provider or employee or other Person who was, is or

may be in a position to help or hinder Seller or any Subsidiary (or assist in connection with any actual or proposed transaction) or made, or agreed to make, any illegal contribution, or reimbursed any illegal political gift or contribution made by any other Person, to any candidate for federal, state, local, or foreign public office or (ii) caused Seller or any Subsidiary to establish or maintain any unrecorded fund or asset or made any false entries on any books or records for any purpose.

4.14.2. Seller and each Subsidiary have been duly granted all Permits under all Legal Requirements necessary for the conduct, in all respects, of the Business as currently conducted and the lawful occupancy, use, and operation of the Real Property by Seller and/or one or more Subsidiaries, as applicable. Schedule 4.14.2 describes each such Permit, including each such Permit related to Healthcare Laws. Except as set forth on Schedule 4.14.2, such Permits are valid and in full force and effect, neither Seller nor any Subsidiary is in breach or violation of, or default under, in any material respect, any such Permit, and no basis exists which, with notice or lapse of time or both, would constitute any such breach, violation or default.

4.15. Compliance with Healthcare Laws.

4.15.1. Schedule 4.15.1 sets forth a complete and comprehensive list of all ambulatory surgical centers, clinics, practices and other facilities where medical services are provided that, in each case, are operated by Seller or any Subsidiary (collectively, the "Centers"), including, with respect to each Center: (a) the physical address of such Center; (b) the types of services provided at such Center; and (c) the name of the Subsidiary that operates such Center.

4.15.2. Except as set forth on Schedule 4.15.2, neither Seller nor any Subsidiary, nor any manager, director, officer, employee or agent of Seller or any Subsidiary, has (a) violated, conducted the Business or operated any Center in violation of or noncompliance with, or used or occupied Seller's properties or assets in violation of or noncompliance with, any Healthcare Laws in any respect, or (b) received any written notice of any alleged breach, violation of or non-compliance with, default under or any citation for violation of or noncompliance with, any Healthcare Laws nor, is there a fact, arrangement, operation, circumstance or set of circumstances which could, with the passage of time or otherwise, constitute such a breach, violation, default or noncompliance. Each Center is structured (including with respect to the ownership structure) and operated, and the business at each Center is conducted, in full and complete compliance with all applicable Healthcare Laws. Each Subsidiary that is an integrated group practice (if any) meets the definition of "group practice" as defined at 42 CFR 411.352.

4.15.3. Except as set forth on Schedule 4.15.3: (a) Seller, each Subsidiary, each Physician Owner, and each other clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has the requisite Permits and provider or supplier number(s) to bill all Third Party Payor Programs that it currently bills, (b) neither Seller, any Subsidiary, any Physician Owner, nor any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has received any written notice that there is any investigation, audit, claim review, or other action pending or threatened that could result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of such Person's Permit, supplier or provider number, or such Person's disqualification or exclusion from any Third Party Payor Program; (c) all claims for all items, services and goods provided at or by a Center and submitted by or on behalf of

Seller, any Subsidiary, any Physician Owner, or any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center to Third Party Payor Programs represent claims for medically necessary items, services or goods actually provided by such Person; (d) all claims for all items, services and goods provided at or by any Center that have been submitted by or on behalf of Seller, any Subsidiary, any Physician Owner, or any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at a Center, have been submitted in compliance with applicable Laws, including any Healthcare Laws, and all rules, regulations, agreements, policies, and procedures of the Third Party Payor Programs; (e) neither Seller, any Subsidiary, any Physician Owner, nor any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has received any written notice that there are any pending or threatened audits, investigations or claims for or relating to its claims for any items, services and goods provided at or by any Center; (f) all billing practices relating to items, services and goods provided at or by a Center, and all billing practices of, Seller, the Subsidiaries, all Physician Owners, and all clinical employees of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center are and have been in compliance with all applicable Healthcare Laws, regulations, agreements and policies of all applicable Third Party Payor Programs, and neither Seller, any Subsidiary, nor any Physician Owner, nor any clinical employee of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center, has billed or received any payment or reimbursement for any items, services and goods provided at or by any Center in excess of amounts allowed by any Healthcare Law, except to the extent any such amounts are immaterial and have been repaid in full as required by, and in compliance with, all applicable Healthcare Laws and Third Party Payor Program agreements; (g) neither Seller, any Subsidiary, any Seller Owner, nor any employee of Seller, any Subsidiary or any Seller Owner who provides professional medical services at any Center, or any officer, director, manager or employee or clinical contractor of Seller or any Subsidiary, has been excluded, debarred or suspended from participation in any Federal Health Care Program or had its/his/her billing privileges revoked, nor is any such exclusion, debarment, suspension, or billing privileges revocation threatened; (h) based upon and in reliance upon Seller's monthly review of (1) the "list of Excluded Individuals/Entities" on the website of the United States Health and Human Services Office of Inspector General (http://oig.hhs.gov/fraud/exclusions.html), and the similar lists of Medicaid program exclusion by the States of Florida, Georgia or any other states that reimburse for services associated with Seller, any Subsidiary and/or any Physician Owner and (2) the "List of Parties Excluded From Federal Procurement and Non-procurement Programs" on the website of the United States General Services Administration (http://www.arnet.gov/epls/ and https://www.sam.gov), none of the shareholders, members, Seller Owners (including Physician Owners), managers, officers, directors, employees or clinical contractors of Seller or any Subsidiary has been excluded from participation in any Federal Health Care Program. None of Seller, any Subsidiary, any Physician Owner, or any officer, director or employee or clinical contractor of Seller, any Subsidiary or any Physician Owner has received any written notice from any Third Party Payor Programs of any pending or threatened investigations, audits, inquiries or surveys; and (i) Seller, the Subsidiaries, all Physician Owners, and all clinical employees of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center are in compliance with all Medicare enrollment requirements as contained in 42 C.F.R. part 424 and program instructions issued pursuant thereto, and all information on the CMS enrollment forms (the various iterations of the CMS 855, such as the 855A , 855B, 855I and 855S) that have been filed by or on behalf of such entities or individuals is complete, current, and accurate.

4.15.4. Schedule 4.15.4 lists each current physician, physician assistant and other clinical employees and clinical contractors required to be licensed, certified and/or registered to perform services at the Centers along with their respective state(s) of licensure, certification or registration (including the licensure, certification or registration number). All such licensures, certifications and registrations are valid and contain no restrictions, and all such physicians, physician assistants and clinical employees or contractors required to be licensed, certified or registered to perform services at the Centers are so licensed, certified or registered without restriction. Seller, each Subsidiary and each physician providing services at the Center have current and valid provider contracts with the Third Party Payor Programs as set forth (or required to be set forth) on Schedule 4.15.4, and are in compliance in all respects with the conditions of participation of any Federal Healthcare Program and the various agreements and conditions necessary for reimbursement under all other applicable Third Party Payor Programs. All services furnished at the Centers have been and are being performed by personnel acting within the scope of their practice as determined by State law and who otherwise met all State requirements for performing the services at the time the services were performed. Neither the execution of this Agreement nor the consummation of the Contemplated Transactions will result in the breach or default under, or grant the ability of the counterparty to terminate, any Third Party Payor Agreement listed (or required to be listed) on Schedule 4.15.4.

4.15.5. Seller and each Subsidiary have been duly granted all Permits under all Healthcare Laws necessary for the conduct, in all respects, of the Business as currently conducted. Schedule 4.15.5 describes each such Permit. Except as set forth on Schedule 4.15.5, (a) each such Permit is valid and in full force and effect, and (b) neither Seller nor any Subsidiary is in breach or violation of, or default under, in any respect, any such Permit, and, to Seller's Knowledge, no circumstance or set of circumstances exists which, with notice or lapse of time or both, would constitute any such breach, violation nor default.

4.15.6. Except as set forth on Schedule 4.15.6, each Physician Owner (a) has paid fair market value for Common Stock of Seller, and no portion of any such payments were to reward or induce referrals of any items or services reimbursable by any Third Party Payor Program; (b) has at all times received distributions proportionate with his/her ownership of Common Stock and has not received any remuneration, in cash or in kind, in exchange for referrals of items or services that are reimbursable, in whole or in part, by any Third Party Payor Programs, including any Federal Healthcare Programs; (c) with respect to any physician-owned ambulatory surgical centers, has at all times while a Physician Owner generated at least one-third (1/3) of his/her medical practice income from all sources for the previous fiscal year or 12-month period from the performance of any Procedure; (d) has at all times while a Physician Owner used one or more of the Centers as an extension of his/her medical practice and has at all times while a Physician Owner regularly performed Procedures at one or more of the Centers; and (e) has not knowingly referred a Procedure to another Physician Owner, or to any physician, owner, or employee of Seller, a Subsidiary or another Physician Owner, for performance of such Procedure at any Center nor used any Center as a passive source of income in exchange for referrals of Procedures.

4.15.7. None of Seller, any Subsidiary or any Center has experienced a data breach or disclosure of information that would constitute a data or security incident as defined by HIPAA or any other applicable Healthcare Law.

4.15.8. No Seller Owner (i) has been convicted of a criminal offense or violation under any provision of a Healthcare Law; or related to the delivery of an item or service under a Federal health care program; or related to fraud, theft, embezzlement, breach of fiduciary

responsibility, or other financial misconduct; or related to patient abuse; or a felony of any kind, (ii) has had any civil monetary penalty, assessment or sanction imposed against him or her under any provision of a Healthcare Law or in relation to a violation of a Healthcare Law, and/or (iii) has been debarred, excluded or suspended at any time from participation in any Federal Health Care Programs.

4.16. Tax Matters. Except as set forth on Schedule 4.16:

4.16.1. Seller is, and at all times since its formation has been, a C Corporation for federal and state income tax purposes. Each of Seller's Subsidiaries is, and since its formation has been, disregarded as an entity separate from Seller. No Governmental Authority has ever challenged, disputed, or contested the classification of any Subsidiary as a disregarded entity.

4.16.2. Seller, except as noted in Schedule 4.16.2, has duly and timely filed, or has caused to be duly timely filed on its behalf or on behalf of the applicable Subsidiary, with the appropriate Governmental Authority, all Tax Returns required to be filed by it and/or each Subsidiary in accordance with all applicable Legal Requirements. All such Tax Returns are true, correct and complete in all material respects. All Taxes owed by Seller (whether or not shown on any Tax Return) have been timely paid in full to the appropriate Governmental Authority. No claim has ever been made by a Governmental Authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by or required to file Tax Returns in that jurisdiction. There are no liens with respect to Taxes upon any asset of Seller.

4.16.3. Seller and each Subsidiary has deducted, withheld, and timely paid to the appropriate Governmental Authority all Taxes required by applicable Law to be deducted, withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party. Seller and each Subsidiary has timely filed or provided all information, returns or reports, including Forms 1099 and W-2 (and foreign state and local equivalents) that are required to have been filed or provided and has accurately reported all information required to be included on such returns or reports.

4.16.4. There is no foreign, federal, state or local dispute, audit, investigation, proceeding or claim concerning any Tax Return or Tax Liability of Seller pending, being conducted, claimed or raised by a Governmental Authority. Seller has provided to Buyer true and complete copies of all Tax Returns, examination reports, and statements of deficiencies filed, assessed against, or agreed to by Seller or any Subsidiary since January 1, 2010. All Tax deficiencies assessed against Seller has been fully paid or finally settled. No Tax Return of Seller has ever been audited by any Governmental Authority. Neither Seller nor any Subsidiary has received from any Governmental Authority (including from jurisdictions where Seller does not file Tax Returns) notification of intention to open an audit or review, a request for information related to any Tax matters or written notice of proposed assessment, adjustment or deficiency for any amount of Taxes proposed, asserted or assessed against Seller or any Subsidiary. To Seller's Knowledge, no such notification, request for information, or written notice of proposed assessment, adjustment or deficiency is forthcoming.

4.16.5. There are no Liens for Taxes upon any assets of Seller or any Subsidiary, except for Taxes not yet due and payable or being contested in good faith and for which adequate reserves in accordance with GAAP have been provided in the Financials.

4.16.6. Neither Seller nor any Subsidiary has waived any statute of limitations for the assessment or collection of Taxes or is the beneficiary of any extension of time within which to file any Tax Return which has not since been filed. Neither Seller nor any Subsidiary has t executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. Neither Seller nor any Subsidiary (a) is a party to any closing agreement with any Governmental Authority in respect of Taxes or (b) has received or requested from any Governmental Authority any private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes.

4.16.7. Neither Seller nor any Subsidiary has any Liability for the Taxes of any other Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract (other than Liabilities for Taxes arising under customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or otherwise by law.

4.16.8. Neither Seller nor any Subsidiary is a party to any Tax allocation, sharing, indemnification, or similar agreement, arrangement or similar contract (other than commercial contracts (i) a principal subject matter of which is not Taxes, (ii) containing customary Tax indemnification provisions, and (iii) entered into in the ordinary course of business).

4.16.9. Neither Seller nor any Subsidiary will be required to include any item of income in or exclude any item of deduction from, taxable income for any period or portion thereof ending after the Closing Date as a result of (i) any change in method of accounting for a Pre-Closing Tax Period, (ii) any "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign law) executed on or prior to the Closing Date, (iii) any intercompany transactions or any excess loss account described in Treasury Regulation § 1.1502 19 (or any corresponding or similar provision of state, local or foreign law), (iv) the installment method of accounting, the completed contract method of accounting or the cash method of accounting with respect to a transaction that occurred prior to the Closing Date, (v) any prepaid amount received on or prior to the Closing Date, (vi) the discharge of any Debt on or prior to the Closing date under Section 108(i) of the Code (or any corresponding or similar provision of state, local or foreign law), (vii) as a result of amounts earned on or before the Closing Date pursuant to Section 951 of the Code (or any corresponding or similar provision of state, local or foreign law), or (viii) as a result of any debt instrument held prior to the Closing that was acquired with "original issue discount" as defined in Section 1273(a) of the Code or subject to the rules set forth in Section 1276 of the Code.

4.16.10. Neither Seller nor any Subsidiary has not participated in a "reportable transaction" as defined in Section 6707A of the Code or Treasury Regulation § 1.6011-4 (or any predecessor provision thereto) or any corresponding or similar provision of state or local law.

4.16.11. Seller and each Subsidiary has disclosed on its federal state and local income Tax Returns all positions taken in such Tax Returns that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code (or any corresponding or similar provision of state or local law).

4.16.12. Neither Seller nor any Subsidiary is the beneficiary of any Tax incentive, Tax rebate, Tax holiday or similar arrangement or agreement with any Governmental Authority.

4.16.13. Seller does not have a permanent establishment in any foreign country and does not and has not engaged in a trade or business in any foreign country.

4.16.14. The provisions of Section 197(f)(9) of the Code will not apply to any intangible asset owned by Seller or any Subsidiary after the Closing Date.

4.17. Employee Benefit Plans.

4.17.1. For purposes of this Agreement, the term "Plan" shall mean any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA, any other bonus, profit sharing, compensation, pension, retirement, "401(k)," "SERP," severance, savings, deferred compensation, fringe benefit, insurance, welfare, post-retirement health or welfare benefit, health, life, stock option, stock appreciation right, stock purchase, restricted stock, phantom stock, restricted stock unit, performance shares, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, holiday, termination, unemployment, individual employment, consulting, executive compensation, incentive, commission, retention, change in control, other material plan, agreement, policy, trust fund or arrangement (whether written or unwritten, insured or self-insured), and any plan subject to Sections 125, 127, 129, 137 or 423 of the Code, maintained, sponsored or contributed to (or required to be maintained, sponsored or contributed to) by Seller or any trade or business, whether or not incorporated, that together with Seller would be deemed to be a "single employer" within the meaning of Section 4001(b) of ERISA or Sections 414(b), 414(c), or 414(m) of the Code (an "ERISA Affiliate" and, together with Seller, the "ERISA Employers") or to which any ERISA Employer is a party or with respect to which any ERISA Employer has or may have any Liability, in each case for the benefit of any current or former director, consultant or employee of any ERISA Employer or any dependent or beneficiary thereof.

4.17.2. Schedule 4.17 sets forth an accurate and complete list of all Plans, and no ERISA Employer has any current or contingent obligation to contribute to, or Liability under, any Plan sponsored by any Person other than an ERISA Employer.

4.17.3. No Plan is, and no ERISA Employer has ever participated in or made contributions to: (a) a "multiemployer plan," as defined in Section 4001(a)(3) of ERISA or (b) a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA.

4.17.4. No Plan is a "single employer plan," as defined in Section 4001(a)(15) of ERISA, that is subject to Title IV of ERISA. No ERISA Employer has incurred any outstanding Liability under Section 4062, 4063 or 4064 of ERISA to the Pension Benefit Guaranty Corporation or to a trustee appointed under Section 4042 of ERISA.

4.17.5. The IRS has issued a currently effective favorable determination letter with respect to each Plan that is intended to be a "qualified plan" within the meaning of Section 401 of the Code, or an opinion or advisory opinion or letter as to each such Plan which is a prototype or volume submitter plan, and each trust maintained pursuant thereto has been determined to be exempt from federal income taxation under Section 501 of the Code by the IRS. Each such Plan has been timely amended since the date of the latest favorable determination letter in accordance with all applicable Laws. Nothing has occurred with respect to the operation of any such Plan that is reasonably likely to cause the loss of such qualification

or exemption or the corresponding imposition of any Liability, penalty or tax under ERISA or the Code or the assertion of claims by "participants" (as that term is defined in Section 3(7) of ERISA) other than routine benefit claims. No ERISA Employer has utilized the Employee Plans Compliance Resolution System to remedy any qualification failure of any Plan.

4.17.6. None of the ERISA Employers, the managers, officers or directors of the ERISA Employers, nor any Plan has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or any other breach of fiduciary responsibility that could subject any ERISA Employer, or any manager, officer or director of any ERISA Employer to any tax or penalty on prohibited transactions imposed by such Section 4975 or to any Liability under Sections 409 or 502 of ERISA. There has not been any "reportable event" (as such term is defined in Section 4043 of ERISA) for which the 30-day reporting requirement has not been waived with to any Plan in the last five (5) years, and no notice of reportable event will be required to be filed in connection with the transactions contemplated under this Agreement. No ERISA Employer has utilized the U.S. Department of Labor's Voluntary Fiduciary Correction Program to correct any fiduciary violations under any Plan.

4.17.7. All Plans have been established, maintained and administered in accordance with their terms and with all provisions of applicable Laws, including ERISA and the Code, except for instances of noncompliance where neither the costs to comply nor the failure to comply, individually or in the aggregate, could have a material and adverse effect on any ERISA Employer. All reports and information required to be filed with any Authority or provided to participants or their beneficiaries have been timely filed or disclosed and, when filed or disclosed were accurate and complete. No ERISA Employer has any Liability for excise taxes under Section 4980D or 4980H of the Code.

4.17.8. Each Plan that is a "non-qualified deferred compensation plan" (within the meaning of Section 409A(d)(1) of the Code) that is subject to Section 409A of the Code ("409A Plan") has been operated in full compliance with Section 409A of the Code since January 1, 2005 and, if necessary, was, prior to January 1, 2009, amended to fully comply with the requirements of the final regulations promulgated under Section 409A of the Code. No Plan that would be a 409A Plan but for the effective date provisions applicable to Section 409A of the Code as set forth in Section 885(d) of the American Jobs Creation Act of 2004, as amended ("AJCA") has been "materially modified" within the meaning of Section 885(d)(2)(B) of AJCA after October 3, 2004 or has been operated in violation of Section 409A. No ERISA Employer has utilized any formally sanctioned correction program with respect to any 409A Plan.

4.17.9. None of the Plans promise or provide retiree or post-service medical or other retiree or post-service welfare benefits to any Person except as required by applicable Law and no ERISA Employer has represented, promised, or contracted to provide such retiree benefits to any employee, former employee, director, consultant or other Person, except as required by applicable Law.

4.17.10. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with any other event) will: (i) increase any benefits otherwise payable under any Plan; (ii) result in any acceleration of the time of payment or vesting of any such benefits; (iii) limit or prohibit the ability to amend or terminate any Plan; (iv) require the funding of any trust or other funding vehicle; or (v) renew or extend the term of any agreement in respect of compensation for an employee of

any ERISA Employer that would create any Liability to any ERISA Employer after the Closing.

4.17.11. No employee of any ERISA Employer is entitled to any gross-up, make-whole, or other additional payment from any ERISA Employer with respect to taxes, interests or penalties imposed under Section 409A of the Code.

4.17.12. No ERISA Employer has communicated to any current or former employee, manager or director any intention or commitment to establish or implement any additional Plan or to amend or modify, in any material respect, any existing Plan.

4.17.13. No Plan is subject to the Law of any jurisdiction other than the United States.

4.18. Environmental Matters. Except as set forth in Schedule 4.18, (a) Seller and each Subsidiary is and has been for the past seven (7) years in compliance in all material respects with all Environmental Laws, (b) there has been no Release or threatened Release of any Hazardous Substances on, upon, into or from any site currently or heretofore owned, leased or otherwise operated or used by Seller or any Subsidiary, including the Centers, (c) there have been no Hazardous Substances generated by Seller or any Subsidiary that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any Governmental Authority in the United States, and (d) there have been no underground storage tanks located on, no PCBs (polychlorinated biphenyls) or PCB-containing Equipment or asbestos-containing materials used, stored or present on, and no hazardous waste as defined by the Resource Conservation and Recovery Act stored or present on, any site owned or operated by Seller or any Subsidiary, except for the storage of hazardous waste by Seller or a Subsidiary in the Ordinary Course of Business and in compliance, in all material respects, with Environmental Laws. Seller has delivered, or caused to be delivered, to Buyer copies of all documents, records and information in its possession or control reasonably related to any actual or potential material liability of Seller or a Subsidiary under Environmental Laws, including previously conducted environmental site assessments, compliance audits, asbestos surveys and documents regarding any Releases at, upon, under or from any property currently or formerly owned, leased or operated by Seller or any Subsidiary.

4.19. Contracts.

4.19.1. Contracts. Except as disclosed on Schedule 4.19, neither Seller nor any Subsidiary is bound by or a party to any of the following Contractual Obligations:

(a) any Contractual Obligation relating to the acquisition or disposition of (i) any business of Seller or a Subsidiary or any portion thereof (whether by merger, consolidation, or other business combination, sale of securities, sale of assets, or otherwise) or (ii) any asset other than in the Ordinary Course of Business;

(b) any Contractual Obligation concerning or consisting of a partnership, limited liability company or joint venture agreement;

(c) any Contractual Obligation (or group of related Contractual Obligations) (i) under which Seller or any Subsidiary has created, incurred, assumed, or guaranteed any Debt (including any Debt owed to Seller or any Subsidiary from any other Person for any advance of loan of funds), or (ii) under which an Encumbrance has been placed on any of its assets;

(d) any Contractual Obligation relating to confidentiality, non-solicit or non-competition restrictions or that restricts, in any respect, the conduct of the Business by Seller or any Subsidiary;

(e) any Contractual Obligation relating to employment, personal services, consulting, an independent contractor arrangement, or similar matters;

(f) any Contractual Obligation under which Seller or any Subsidiary is, or would reasonably be expected to become, obligated to pay any investment bank, broker, financial advisor, finder, or other similar Person (including an obligation to pay any legal, accounting, brokerage, finder's, or similar fees or expenses) in connection with this Agreement or the Contemplated Transactions;

(g) any Contractual Obligation arising pursuant to a Third Party Payor Program;

(h) any other Contractual Obligation (or group of related Contractual Obligations) the performance of which involves remaining consideration to be paid or received by Seller and/or any Subsidiary in excess of Two Hundred Fifty Thousand Dollars ($250,000);

(i) any Contractual Obligation under which Seller or any Subsidiary has engaged in any promotional sale, discount, rebate or other activity with any customer (other than in the Ordinary Course of Business);

(j) any Contractual Obligation with any health care provider or facility;

(k) any Contractual Obligation under which Seller or any Subsidiary is obligated to minimum purchase requirements or commitments or exclusive dealing or "most favored nation" provisions; and

(l) any Contractual Obligation under which Seller or any Subsidiary is obligated to indemnify any Person.

4.19.2. Enforceability; Breach. Each Contractual Obligation required to be disclosed on Schedule 4.9 (Debt), Schedule 4.12 (Real Property), Schedule 4.13 (IP Contracts), Schedule 4.15 (Compliance with Healthcare Laws), Schedule 4.19 (Contracts), or Schedule 4.23 (Insurance) (each, a "Disclosed Contract") is enforceable against Seller and/or the applicable Subsidiary or Subsidiaries and, to Seller's Knowledge, each other party to such Contractual Obligation, and is in full force and effect, and will continue to be so enforceable and in full force and effect on identical terms following the consummation of the Contemplated Transactions, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, general equitable principles, and the discretion of courts in granting equitable relief. Neither Seller nor any Subsidiary has been, nor, to Seller's Knowledge, has any other party to any Disclosed Contract been, during the thirty-six (36) month period ending on the date hereof, nor is any such Person currently, in breach or violation in any material respect of, or default in any material respect under, any Disclosed Contract, nor to Seller's Knowledge has any circumstance or set of circumstances occurred that, with the lapse of time, or the giving of notice, or both, would constitute such a breach or violation. Seller has delivered to Buyer true, accurate and complete copies of each written Disclosed Contract, in each case, as amended or otherwise modified and in effect. Seller has delivered to Buyer a written summary setting forth the terms and conditions of each oral Disclosed Contract, if any.

4.20. Affiliate Transactions. Except as disclosed on Schedule 4.20, and except with respect to holdings of less than five percent (5%) of entities that are traded on a public exchange, such as the NASDAQ or the New York Stock Exchange, neither Seller nor any Subsidiary nor any shareholder, member, current or former director, manager, officer or employee, or Affiliate of Seller or any Subsidiary, is or was in the last three years a consultant, competitor, creditor, debtor, customer, client, lessor, lessee, distributor, service provider, supplier, or vendor of, or is or was in the last three years a party to any Contractual Obligation with, Seller or any Subsidiary or has or had in the last three years any interest in any of the assets used in, or necessary to, the Business as currently conducted.

4.21. Employees.

4.21.1. Except as disclosed on Schedule 4.21.1, within the last five (5) years, neither Seller nor any Subsidiary has, in connection with the operation of the Business:

(a) been subject to any material labor dispute including, but not limited to, a work slowdown, lockout, work stoppage, picketing, strike, handbilling, bannering, or other concerted activity due to any organizational activities (and, to Seller's Knowledge, there are no organizational efforts with respect to the formation of a collective bargaining unit or a workers' council presently being made or threatened with respect to Seller or any Subsidiary);

(b) recognized any labor organization or group of employees as the representative of any employees, received any written demand for recognition from any labor organization or workers' council, or been party to any petition for recognition or representation right with any Governmental Authority with respect to any employees of Seller or any Subsidiary; been involved in negotiations with any labor organization or workers' council regarding terms for a collective bargaining agreement covering any employees, or any effects bargaining agreement, neutrality or card-check recognition agreement, or other labor agreement; or been a party to any collective bargaining agreement, contract or other agreement or understanding with a labor union or other employee bargaining representative, and no such agreement is being negotiated by Seller or any Subsidiary;

(c) committed any violation of Section 8 of the National Labor Relations Act as amended, 29 U.S.C. § 158, or any other labor Law of any jurisdiction where Seller or any Subsidiary employs employees;

(d) materially violated any applicable Legal Requirements pertaining to labor and employment, employment practices, terms and conditions of employment, compensation and wages and hours in connection with the employment of any employees, including any such Laws relating to labor relations, fair employment practices, immigration, wages, hours, the classification and payment of employees and independent contractors, child labor, hiring, working conditions, meal and break periods, plant shutdown and mass layoff, privacy, health and safety, workers' compensation, leaves of absence, family and medical leave, access to facilities and employment opportunities for disabled persons, employment discrimination (including discrimination based upon sex, pregnancy, marital status, age, race, color, national origin, ethnicity, sexual orientation, disability, veteran status, religion or other classification protected by law or retaliation for exercise of rights under applicable Law), equal employment opportunities and affirmative action, employee privacy, the collection and payment of all taxes and other withholdings, and unemployment insurance and is in material compliance with each of these laws and is not subject to any consent decree or continuing reporting obligations to the United States Equal Employment Opportunity Commission, any branch of the U.S. Department of Labor or any similar state or local Governmental Authority;

(e) misclassified any individuals as consultants or independent contractors rather than as employees or as exempt rather than non-exempt for purposes of the Fair Labor Standards Act or similar state Legal Requirements or violated any term and condition of any employment contract or independent contractor agreement and is not liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security, employment insurance premiums, or other benefits or obligations for employees (other than routine payments made in the Ordinary Course of Business);

(f) participated in or made contributions to: (a) a "multiemployer plan," as defined in Section 4001(a)(3) of ERISA or (b) a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA;

(g) employed any employee who is not legally eligible for employment under applicable immigration Laws, violated any applicable Laws pertaining to immigration and work authorization, or received notice from any Governmental Authority of any investigation by any Governmental Authority regarding noncompliance with applicable immigration laws, including but not limited to U.S. Social Security Administration "No-Match" letters, or failed to maintain in its files a current and valid Form I-9 for each of its active employees;

(h) been delinquent in payments to any employees for any wages (including overtime compensation), salaries, commissions, bonuses or other direct compensation for any services performed by them or any amounts required to be reimbursed to such employees; or

(i) implemented any plant closing, mass layoff or redundancy of employees that could require notice and/or consultation (without regard to any actions that could be taken by Buyer following the Closing) under applicable Laws (including the Worker Adjustment and Retraining Notification Act of 1988, as amended, 29 U.S.C. §§ 2101, et seq., or any similar state Laws).

4.21.2. Except as disclosed on Schedule 4.21.2, there are no Actions against Seller or any Subsidiary pending, or to the Seller's Knowledge, threatened to be brought or filed, by or before any Governmental Authority by or concerning any current or former applicant, employee or independent contractor of Seller or any Subsidiary, and there have been no such Actions pending, or to the Seller's Knowledge, threatened, in the thirty-six (36) month period ending on the date hereof.

4.21.3. Schedule 4.21.3 sets forth a true and complete list, as of the date hereof, of (i) all current directors, executive officers, managers, employees, providers (including, but not limited to, physicians, physician assistants, and surgeons) relating to the respective businesses of Seller and the Subsidiaries (the "Business Employees"), including any Business Employees who are on leaves of absence for any purpose, and (ii) their work location, title, date of hire, active or inactive status, current annual base salary or hourly wage compensation and incentive or bonus compensation, vacation eligibility, and exempt or non-exempt status. As of the date hereof, no Business Employee has given written or, to Seller's Knowledge, oral notice to Seller or any Subsidiary of termination of employment with Seller or any Subsidiary. No Business Employee of Seller or any Subsidiary is employed pursuant to a visa, work permit or other work authorization.

4.21.4. To the Seller's Knowledge, no petition has been filed or proceedings instituted by any labor union, workers' council or other labor organization with any Governmental Authority seeking recognition or certification as a bargaining representative of

any employee or group of employees of Seller or any Subsidiary; there is no organizational effort currently being made or threatened by, or on behalf of, any labor union workers' council or other labor organization to organize any employees of Seller or any Subsidiary, and, to the Seller's Knowledge, there have been no such efforts for the past five (5) years; and no demand for recognition as the bargaining representative of any employee or group of employees of Seller or any Subsidiary has been made to Seller or any Subsidiary at any time during the past five (5) years.

4.21.5. There are no pending or, to the Seller's Knowledge, threatened unfair labor practice charges against Seller or any Subsidiary before the National Labor Relations Board or any analogous state or foreign Governmental Authority. Neither Seller nor any Subsidiary has, or is currently, engaged in any unfair labor practice as defined in the National Labor Relations Act.

4.21.6. Neither Seller nor any Subsidiary is subject to or has been subject to at any time in the past three (3) years, United States Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, or Section 503 of The Rehabilitation Act of 1973, in each case as amended and including all rules and regulations promulgated thereunder.

4.22. Litigation; Government Orders. Except as set forth on Schedule 4.22, there is no, and, during the thirty-six (36) month period ending on the date hereof, there have been no, Actions (a) pending, or, to Seller's Knowledge, threatened against of affecting Seller or any Subsidiary, or (b) pending, or, to Seller's Knowledge, threatened against or affecting, any officers, managers, or employees (including physician employees, physician's assistants and other clinical employees) of Seller or any Subsidiary with respect to the business of Seller or any Subsidiary. Except as set forth on Schedule 4.22, Seller is not the subject of any Government Order.

4.23. Insurance. Schedule 4.23(a) sets forth a true and complete list of all insurance policies currently in force with respect to Seller. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing have or will have been paid, Seller is in default in any material respect thereunder, and no notice of cancellation or termination has been received by Seller with respect to any such insurance policy. Schedule 4.23(a) also describes any self-insurance or co-insurance arrangements by Seller, including any reserves established thereunder. In addition, Schedule 4.23(a) contains a list of all pending claims and all claims submitted during the thirty-six (36) month period ending on the date hereof under any insurance policy maintained by Seller. Except as disclosed on Schedule 4.23(b), no insurer has (i) denied or disputed (or otherwise reserved its rights with respect to) the coverage of any such claim pending under any insurance policy or (ii) to Seller' Knowledge, threatened to cancel any such insurance policy. There is no claim which, individually or in the aggregate with other claims, could reasonably be expected to impair any current or historical limits of insurance available to Seller.

4.24. No Brokers. Neither Seller nor any Subsidiary has any Liability of any kind to, nor is Seller or any Subsidiary subject to any claim of, any broker, finder or agent in connection with the Contemplated Transactions other than those which are described on Schedule 4.24, all of which will be paid by Seller prior to the Closing.

4.25. Books and Records. All of the books and records of Seller and each Subsidiary have been maintained in the Ordinary Course of Business and fairly reflect, in all material respects, all transactions of the Business.

4.26. SEC Documents. Seller has NOT timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission ("SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the "SEC Documents"). Upon written request, Seller will deliver to Buyer true and complete copies of the SEC Documents, except for such exhibits and incorporated documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings prior the date hereof).

5. REPRESENTATIONS AND WARRANTIES OF BUYER.

In order to induce Seller to enter into and perform this Agreement and to consummate the Contemplated Transactions, Buyer represents and warrants to Seller, as of the date hereof, as follows:

5.1. Organization. Buyer is duly organized, validly existing and in good standing under the laws of the State of Michigan.

5.2. Power and Authorization. The execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which it is a party and the consummation of the Contemplated Transactions are within the power and authority of Buyer and have been duly authorized by all necessary action on the part of Buyer. This Agreement and each Ancillary Agreement to which Buyer is a party (a) have been duly executed and delivered by such party and (b) is and will be a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, and, other than with respect to any restrictive covenant contained in this Agreement or any Ancillary Agreement, general equitable principles and the discretion of courts in granting equitable relief.

5.3. Authorization of Governmental Authorities. No action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which it is a party or (b) consummation of the Contemplated Transactions by Buyer.

5.4. Non-contravention. Neither the execution, delivery and performance by Buyer of this Agreement or any Ancillary Agreement to which it is a party, nor the consummation of the Contemplated Transactions, will: (a) assuming the taking of any action required by (including any authorization, consent or approval) or in respect of, or any filing with, any Governmental Authority, violate any provision of any Legal Requirement applicable to Buyer, (b) result in a breach or violation of, or default under, Buyer's organizational documents, or (c) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, any asset of Buyer, including the Acquired Stock.

5.5. No Brokers. Buyer has no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions for which Seller or any of its Affiliates could be liable.

6. **COVENANTS**.

6.1. Publicity. After the Closing, Buyer will be entitled to issue any press release or make any other public announcement without obtaining Seller's prior approval so long as such press release or other public announcement does not disclose any of the specific pricing terms hereof; provided, however, that the foregoing limitation will not apply to any communications with Buyer's limited partners, members, investors, Representatives or prospective investors, if applicable. Neither Seller nor Seller Principal shall be entitled to issue any press release or make any other public announcement of any kind whatsoever with respect to this Agreement or the Contemplated Transactions without obtaining Buyer's prior approval, which shall not be unreasonably withheld or delayed.

6.2. Fees and Expenses. Seller shall be responsible for the following transaction expenses of Buyer and/or Buyer's Affiliates incurred or to be incurred by any of them or any of their respective Representatives in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions: (1) $150,000 for legal fees and expenses; and (2) $6,000 for the cost of certain background investigations (collectively, the "Reimbursed Transaction Expenses"). Seller shall pay the full amount of the Reimbursed Transaction Expenses to Buyer as promptly as practicable after the Closing, but in no event later than 2 Business Days after the Closing, by means of a wire transfer of immediately available funds pursuant to wire instructions provided by Buyer to Seller. Except as otherwise provided in the preceding sentence or elsewhere in this Agreement, all costs, expenses, and fees incurred in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions by Buyer shall be paid by Buyer, and all costs, expenses, and fees incurred in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions by Seller or a Seller Principal shall be paid by Seller.

6.3. Post-Closing Monthly Payments to Buyer. From and after the Closing Date, on each Payment Date prior to the occurrence of a Trigger Event, Seller shall make a payment to Buyer (each, a "Post-Closing Monthly Payment") in an amount equal to $175,000.00. For purposes of this Agreement: (a) the term "Payment Date" shall mean (i) January 1, 2017 and (ii) the first day of each subsequent calendar month thereafter and (b) the term "Trigger Event" shall mean the earlier to occur of (a) the consummation of an initial public offering of Seller's common stock on an established and internationally recognized stock exchange (such as the New York Stock Exchange, NASDAQ, or the Toronto Stock Exchange); and (b) such time as Buyer shall no longer hold any of the Acquired Stock or other equity interest in Seller (or a successor to Seller). In the event that Seller fails to make any payment when due pursuant to this Section 6.3, then after a grace period of 10 days, such missed payment will be subject to a default interest rate of 7.0% annually, accrued on a daily basis starting on the first day of the month immediately prior to the Payment Date with respect to the delinquent payment. (For example, if Seller fails to make its required Post-Closing Monthly Payment on January 1, 2017, then it has a grace period of up to January 10, 2017 to make such payment. If the payment remains unpaid as of January 10 and is not made until January 12, 2017, then the amount due will be $175,000.00 plus default interest at an annual rate of 7.0%, accrued for 43 days (31 days in December, plus 12 days in January).

6.4. Buyer Investor Protections. Notwithstanding any contrary provision in the organizational documents of Seller or any successor to Seller, from and after the Closing Date and for so long as Buyer holds any amount of Common Stock (or any analogous equity security in the event of any stock split, reverse stock split, reverse or forward merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind), Seller and each Seller Principal shall ensure that Buyer always has the rights set forth in this Section 6.4 below (the "Buyer Investor Protections"), including, as applicable: (i) by voting such Seller Principal's shares of Common Stock in favor of the Buyer Investor Protections, (ii) by voting in such Seller Principal's capacity as a director in favor of the Buyer Investor Protections, (iii) by encouraging other Seller Owners and directors of Seller to similarly

vote in favor of the Buyer Investor Protections, (iv) by requiring each transferee of any portion of a Seller Principal's Common Stock (and each transferee of such transferee, *ad infinitum*) to be bound by all of the obligations of the Seller Principals set forth in this Section 6.4 as a condition to the transfer of such Common Stock; and (v) upon the request of Buyer, by doing, executing, acknowledging, and/or delivering all such further agreements, resolutions, amendments to organizational documents, acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out, evidence, and/or more fully implement the Buyer Investor Protections):

(a) Preemptive Rights/Anti-Dilution Rights. From and after the Closing and at all times until a Trigger Event has occurred: (i) neither Seller nor, for the avoidance of doubt, any successor to Seller in the event of any merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind, shall issue or sell any new equity securities of any kind (including any security or other instrument convertible into an equity security) unless it first provides Buyer a preemptive right (with sufficient notice of at least 60 days and sufficient time to close a transaction) that allows Buyer to purchase Buyer's pro rata portion of such equity securities, at a price (taking into account the total post-issuance Equity Value reflected in such transaction) equal to that paid by new subscribers in such proposed new issuance, so as to maintain Buyer's pro rata ownership of Seller's equity securities and, in the event that other Seller shareholders are offered a similar preemptive right but do not exercise it, to increase Buyer's pro rata ownership; and (ii) without limiting the foregoing, neither Seller nor, for the avoidance of doubt, any successor to Seller in the event of any merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind, shall issue any equity securities of any kind (including any security or other instrument convertible into an equity security) or otherwise enter into any transaction, if such issuance or transaction would result in a total post-transaction Equity Value that is lower than $493,256,955 unless: (A) it provides Buyer notice of such proposed issuance or transaction no later than 30 days prior to the consummation of such transaction; and (B) contemporaneously with the consummation of such issuance or transaction, Seller issues to Buyer, at no cost, equity securities sufficient to ensure that Buyer's post-issuance equity ownership of Seller (or such successor) is equal to or greater than the Consideration, which equity securities shall be, upon issuance, fully paid, non-assessable and free and clear of all Encumbrances.

(b) Board Representation and Observation Rights. At all times while Buyer holds any portion of the Acquired Stock, Buyer shall have the right to appoint a designee to serve as a member of Seller's Board of Directors and another designee to serve as a non-voting observer of Seller's Board of Directors.

(c) Required Reports. In addition to any reports, communication and information Buyer is entitled to receive or review in its capacity as a stockholder, and in addition to any reports, communication and information Buyer's board representatives and observers are entitled to receive or review in their capacity as such (all of which shall be provided at the same time that they are provided to other stockholders and board members and observers, as applicable), no later than 45 days after the end of each fiscal quarter of Seller and no later than 120 days after the end of each fiscal year of Seller, as applicable, Seller shall deliver to Buyer the following financial, operating and management reports with respect to the business of Seller (including the Subsidiaries), in each case including such information and in such manner as reasonably requested by Buyer from time to time: (i) consolidated Financials, including management commentary (quarterly); (ii) annual budget, including management commentary (annually); (iii) management reports on recent acquisitions, pending acquisitions, and acquisition pipeline (quarterly, or more frequently as needed); and (iv) management reports on any other business

activity likely to cause material variations in budget (quarterly, or more frequently as needed).

6.5. Revised Physician Compensation Arrangements; Billing & Coding Audit. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall (or shall cause the applicable Subsidiary to) enter into new or amended employment agreements with all of its contracted physicians and medical service providers (and shall promptly make available to Buyer true and correct copies of all such agreements), which new or amended employment agreements (x) shall reflect a revised "best practices" bonus compensation structure in full compliance with all Healthcare Laws, but (y) shall otherwise remain substantially unchanged from the current agreements with such contracted physicians and medical service providers. Without limiting any of Buyer's rights pursuant to Section 6.4, upon Buyer's request at any time and from time to time, Seller shall (and/or shall cause the Subsidiaries to, as appropriate) promptly direct an independent third-party auditor to conduct a billing and coding audit of Seller and/or any of its Subsidiaries (at Buyer's expense) and shall fully cooperate with the auditor in conducting such an audit. In the event of any such audit (whether directed by Buyer or otherwise), Seller shall keep Buyer reasonably informed of the progress of any such audit, shall promptly provide Buyer with the results and reports of any such audit, and shall consult with Buyer on the findings of any such audit and take any actions as reasonably requested by Buyer to ensure continued "best practices" compliance with all Healthcare Laws.

6.6. 2014 & 2015 Financials. As promptly as practicable upon their completion, but in no event later than November 30, 2016, Seller shall deliver true, correct and complete copies of the 2014 & 2015 Financials to Buyer, which 2014 & 2015 Financials shall comport in all respects with the provisions set forth in Section 4.6.

6.7. SEC Compliance. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall take all necessary actions and file all necessary documents to ensure that it is compliant in all material respects with the 1934 Act.

6.8. Stock Certificate. As promptly as practicable after the Closing, but in no event later than five (5) Business Days after the Closing, Seller shall deliver to Buyer (or cause Seller's transfer agent to deliver to Buyer) a stock certificate evidencing Buyer's ownership of the Acquired Stock, duly issued and executed by the appropriate officers of Seller and otherwise in accordance with Seller's Articles of Incorporation and Bylaws.

6.9. Compliance with Laws. At all times from and after the Closing Date, Seller and each Seller Principal shall, and shall cause the business of Seller (including the Business) and each of the subsidiaries of Seller (including the Subsidiaries) to, comply with all Laws.

6.10. Further Assurances. From and after the Closing Date, upon the request of either Seller or Buyer, each of the Parties shall do, execute, acknowledge, and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out and/or evidence the Contemplated Transactions.

7. INDEMNIFICATION.

7.1. Indemnification by Seller. Subject to the provisions of this Article 7, Seller shall indemnify and hold harmless Buyer and its Affiliates, and each of the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Buyer Indemnified Persons,") from, against, and in respect of any and all Actions, Liabilities, Government Orders, Encumbrances, losses, damages, bonds, assessments, fines, penalties, Taxes, fees, costs (including reasonable costs of investigation, defense, and enforcement of this

Agreement), expenses (including actual and reasonable attorneys' and experts fees and expenses), or amounts paid in settlement (collectively referred to as "Losses") that any Buyer Indemnified Person may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.1.1. any breach of, or inaccuracy in, any representation or warranty made by Seller in this Agreement, in any Ancillary Agreement, or in any certificate delivered pursuant to this Agreement;

7.1.2. any breach or violation of, or any failure to perform, any covenant or agreement of Seller or any Seller Principal in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing;

7.1.3. any Losses attributable to (i) Taxes of Seller for any period ending on or before the Closing Date; (ii) Taxes of any other Person imposed on Seller (A) pursuant to Treasury Regulation § 1.1502-6 or any analogous or similar state, local, or foreign Law or regulation, with respect to any group of which Seller is or was a member on or prior to the Closing Date, or (B) as a result of any Tax sharing, Tax indemnification or Tax allocation agreement, arrangement, or understanding (other than customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or (iii) Taxes of any Person, which Taxes relate to an event or transaction occurring before the Closing, imposed on Seller as a transferee or successor or otherwise pursuant to any Law; or

7.1.4. any Losses related to any Liabilities that arise out of or relate to (in whole or in part) Seller, any subsidiary of Seller (including any Subsidiary), any business of Seller or its subsidiaries (including the Business) and/or the operation of any Center, in each case on or prior to the Closing, including but not limited to any Losses arising out of any failure to get any consent and approval of, or any failure to file any required notice with, any Person as may be necessary for Seller or any Seller Owner to consummate any of the Contemplated Transactions (and in all cases including, for the avoidance of doubt, all such Losses or Liabilities that arise out of or relate to, in whole or in part, matters, circumstances, information or documentation set forth, described or referenced on any of the Disclosure Schedules or otherwise disclosed or made available to Buyer prior to the Closing).

7.2. Indemnification by Buyer. Subject to the provisions of this Article 7, Buyer shall indemnify and hold harmless Seller and its Affiliates, and the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Seller Indemnified Parties") from, against, and in respect of any and all Losses which any of them may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.2.1. any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement; or

7.2.2. any breach or violation of, or any failure to perform, any covenant or agreement of Buyer in this Agreement, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing.

7.3. Certain Limitations. The indemnification provided for in Section 7.1 and Section 7.2 shall be subject to the following limitations:

7.3.1. For purposes of this Article 7, any inaccuracy in or breach of any representation or warranty (and the amount of any Losses) shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty; and

7.3.2. With respect to Buyer Indemnified Persons, Losses shall specifically include diminution in value of the Acquired Units, including any diminution in value of the Acquired Units as a result of Seller being required to satisfy any indemnification obligation hereunder.

7.4. Personal Guarantees of Seller Principals.

7.4.1. Guarantee of Post-Closing Monthly Payments. Notwithstanding anything herein to the contrary, each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of 100% of Seller's payment obligations under Section 6.3. Each Seller Principal's liability under this Section 7.4.1 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.4.2. Guarantee of Seller Indemnification Obligations. Each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of each indemnification obligation of Seller pursuant to Section 7.1 (a "Seller Indemnification Obligation"); provided, however, that in no event shall any Seller Principal's liability with respect to any Seller Indemnification Obligation exceed such Seller Principal's pro-rata portion thereof, determined in accordance with the percentage set forth for such Seller Principal on Exhibit B, which reflects such Seller Principal's approximate pro rata percentage share of the Common Stock immediately prior to the Contemplated Transactions ("Pro Rata Share"). Each Seller Principal's liability under this Section 7.4.2 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.5. Survival. No claim may be made or suit instituted seeking indemnification pursuant to Section 7.1.1 or Section 7.2.1 for any breach of, or inaccuracy in, any representation or warranty (and no indemnity obligation shall arise with respect to any such claim) unless a written notice describing such breach or inaccuracy in reasonable detail in light of the circumstances then known to the Indemnified Party is provided to the Indemnifying Party: (a) at any time, in the case of any breach of, or inaccuracy in, the Fundamental Representations, the representations and warranties set forth in Section 5.1 (Organization), Section 5.2 (Power and Authorization), Section 5.5 (No Brokers), and/or in the case of any claim or suit based upon fraud, intentional misrepresentation or willful misconduct; and (b) at any time prior to the sixty (60) month anniversary of the Closing Date, in the case of any breach of, or inaccuracy in, any other representation and warranty in this Agreement. For clarity, all of the other covenants and agreements of the Parties set forth in this Agreement shall survive the Closing in accordance with their respective terms or, if no such term is specified, indefinitely; provided that no claim may be made or suit instituted seeking indemnification pursuant to Section 7.1 or Section 7.2 unless a written notice describing such claim in reasonable detail in light of the circumstances then known to the Indemnified Party, is provided to the Indemnifying Party at any time prior to the sixtieth (60th) day after

such claim is barred by the statute of limitations under applicable Law (taking into account the survival periods set forth in this Section 7.5, any tolling periods and other extensions).

7.6. Third Party Claims.

7.6.1. Notice of Third Party Claims. Promptly after receipt by an Indemnified Person of written notice of the assertion of a claim by any Person who is not a party to this Agreement (a "Third Party Claim") that may give rise to an Indemnity Claim against an Indemnifying Party under this Article 7, the Indemnified Person shall give written notice thereof to the Indemnifying Party; provided that, no delay on the part of the Indemnified Person in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article 7, except to the extent such delay actually and materially prejudices the Indemnifying Party.

7.6.2. Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense at its sole cost and expense of any Third Party Claim that is the subject of a notice given by or on behalf of any Indemnified Person pursuant to Section 7.6.1. In addition, the Indemnifying Party will have the right to defend the Indemnified Person against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Person so long as (i) the Indemnifying Party gives written notice that they or it will defend the Third Party Claim to the Indemnified Person within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim under Section 7.6.1 stating that the Indemnifying Party will, and thereby covenants to, indemnify, defend and hold harmless the Indemnified Person from and against the entirety of any and all Losses the Indemnified Person may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Person, (iii) counsel to the Indemnified Person does not determine in good faith that an actual or potential conflict exists between the Indemnified Person and the Indemnifying Party in connection with the defense of the Third Party Claim that would make separate counsel advisable, (iv) the Third Party Claim does not relate to or otherwise arise in connection with Taxes or any criminal or regulatory enforcement Action, (v) defense of the Third Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnified Person, have a material adverse effect on the Indemnified Person, and (vi) Indemnifying Party has sufficient financial resources, in the reasonable judgment of the Indemnified Person, to satisfy the amount of any adverse monetary judgment that is reasonably likely to result ((i) through (vi) are collectively referred to as the "Litigation Conditions"). If (i) any of the Litigation Conditions ceases to be met or (ii) the Indemnifying Party fails to take reasonable steps necessary to defend diligently the Third Party Claim, the Indemnified Person may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnified Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; provided that, the Indemnifying Party will pay the fees and expenses of separate counsel retained by the Indemnified Person that are incurred prior to the Indemnifying Party's assumption of control of the defense of the Third Party Claim. The Indemnified Person shall make available to the Indemnifying Party or its agents, upon the reasonable request of the Indemnifying Party, all records and other materials in the Indemnified Person's possession at the time of such request, as may be reasonably required by the Indemnifying Party for its use in contesting any Third Party Claim and shall otherwise reasonably cooperate.

7.6.3. Limitations on Indemnifying Party Control. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Person unless such judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant, (ii) results in the full and general release of all Indemnified Persons from all Liabilities arising out of or relating to, or in connection with, the Third Party Claim and (iii) involves no finding or admission of any violation of Legal Requirements or the rights of any Person and no effect on any other claims that may be made against the Indemnified Person. If (w) a firm written offer is made to settle any Third Party Claim for which the sole relief provided is monetary damages, (x) the amount of such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim) would not exceed any of the limitations on the Indemnifying Party's indemnification obligations set forth in Article 7, (y) the Indemnifying Party agrees in writing to accept such settlement and pay all such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim), and (z) the Indemnified Party refuses to consent to such settlement, then: (I) the Indemnifying Party shall be excused from, and the Indemnified Party shall be solely responsible for, all further defense of such Third Party Claim (but no party shall be excused from its indemnification obligations hereunder until the maximum liability set forth in the immediately succeeding subsection (II) has been satisfied); and (II) the maximum liability of the Indemnifying Party relating to such Third Party Claim shall be the amount of the proposed settlement (plus indemnifiable expenses of the Indemnified Party related to such Third Party Claim to the date of such refusal to consent to settlement), if the amount thereafter recovered from the Indemnified Party on such Third Party Claim is greater than the amount of the proposed settlement.

7.6.4. Indemnified Person's Control. If the Indemnifying Party does not deliver the notice contemplated by clause (i) of Section 7.6.2 within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim pursuant to Section 7.6.1 (or is not permitted to assume control), the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim in any manner it may deem appropriate (and the Indemnified Person need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith) provided, however, that in such circumstance the Indemnifying Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claims and have access to all information from the Indemnified Party related thereto. If such notice and evidence is given on a timely basis and the Indemnifying Party conducts the defense of the Third Party Claim but any of the other conditions in Section 7.6.2 is or becomes unsatisfied, the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim; provided that, the Indemnifying Party will not be bound by the entry of any such judgment consented to, or any such compromise or settlement effected, without its prior written consent (which consent will not be unreasonably withheld, conditioned or delayed). In the event that the Indemnified Person conducts the defense of the Third Party Claim pursuant to this Section 7.6.4, the Indemnifying Party will (i) advance the Indemnified Person promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) and (ii) remain responsible for any and all other Losses that the Indemnified Person may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in this Article 7.

7.6.5. Consent to Jurisdiction Regarding Third Party Claim. Each of the Parties hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim

may be brought against any Indemnified Person for purposes of any claim which such Indemnified Person may have against any such Indemnifying Party pursuant to this Agreement in connection with such Third Party Claim, and in furtherance thereof, the provisions of Section 8.11 are incorporated herein by reference, mutatis mutandis.

7.7. Direct Claims. In the event that any Indemnified Person wishes to make a claim for indemnification under this Article 7, the Indemnified Person shall give written notice of such claim to each Indemnifying Party. For the avoidance of doubt, where the Indemnifying Party is a Seller under this Article 7, such notice shall be to Seller. Any such notice shall describe the breach or inaccuracy and other material facts and circumstances upon which such claim is based and the estimated amount of Losses involved, in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided that, no defect in the information contained in such notice from the Indemnified Person to any Indemnifying Party will relieve such Indemnifying Party from any obligation under this Article 7, except to the extent such failure to include information actually and materially prejudices such Indemnifying Party.

7.8. Manner of Payment. Any payment to be made by Seller or Buyer, as the case may be, pursuant to this Article 7 will be effected by wire transfer of immediately available funds from Seller or Buyer, as the case may be, to an account designated by Seller or Buyer, as the case may be, within five (5) Business Days after the determination thereof.

7.9. No Contribution. Neither Seller nor any of the Seller Owners will have any right of contribution from any of Buyer Indemnified Persons with respect to any Loss claimed by a Buyer Indemnified Person.

7.10. Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and each Indemnified Person's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Person (including by any of its agents, advisors, counsel or representatives) or by reason of the fact that the Indemnified Person (or any of its agents, advisors, counsel or representatives) knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Person's waiver of any condition to the Closing of the Contemplated Transactions.

7.11. Remedies Cumulative. The rights of each Buyer Indemnified Person and Seller Indemnified Party under this Article 7 are cumulative, and each Buyer Indemnified Person and Seller Indemnified Party will have the right in any particular circumstance, in its sole discretion, to enforce any provision of this Article 7 without regard to the availability of a remedy under any other provision of this Article 7. Except as set forth in the Schedules, the Buyer Indemnified Persons' right to indemnification under this Article 7 is not adversely affected by whether or not the possibility of any Loss was disclosed to the Buyer Indemnified Persons on the date of this Agreement. The representations and warranties of Seller shall not be affected or deemed waived by reason of any investigation made by or on behalf of any Buyer Indemnified Person (including any Representatives of any Buyer Indemnified Person) or by reason of the fact that any Buyer Indemnified Person or any Representatives of any Buyer Indemnified Person knew or should have known that any representation or warranty is or might be inaccurate.

7.12. Tax Treatment. All indemnification and other payments under this Article 7 shall, to the extent permitted by applicable Legal Requirements, be treated for all income Tax purposes as adjustments to the aggregate consideration paid hereunder. None of the Parties shall take any position on any Tax Return, or before any Governmental Authority, that is inconsistent with such treatment unless otherwise required by any applicable Legal Requirement.

8. **MISCELLANEOUS.**

8.1. Notices. All notices, requests, demands, claims, and other communications required or permitted to be delivered, given, or otherwise provided under this Agreement must be in writing and must be delivered, given, or otherwise provided: (a) by hand (in which case, it shall be effective upon delivery); (b) by facsimile (in which case, it shall be effective upon receipt of confirmation of good transmission); or (c) by overnight delivery by a nationally recognized courier service (in which case, it shall be effective on the Business Day after being deposited with such courier service), in each case, to the address (or facsimile number) listed below:

If to Seller or either Seller Principal:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Manuel E. Iglesias, President & Chief Executive Officer
Facsimile: 866-852-0454

with a copy (which shall not constitute notice) to:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Richard L. Williams, Esq., Chief Legal Officer
Facsimile: 866-852-0454

If to Buyer:

N5HYG LLC
38955 Hills Tech Drive
Farmington Hills, MI 48331
Attention: Chris Fowler
Facsimile: (248) 536-0869

with a copy (which shall not constitute notice) to:

Oakland Law Group PLLC
38955 Hills Tech Dr.
Farmington Hills, MI 48331
Attention: Alan Gocha
Facsimile: (248) 536-1859

Each of the Parties to this Agreement may specify a different address, email address or facsimile number by giving notice in accordance with this Section 8.1 to each of the other Parties hereto.

8.2. Succession and Assignment; No Third-Party Beneficiary. Subject to the immediately following sentence, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns and all such successors and permitted assigns shall be deemed to be a Party hereto for all purposes hereof. No Party may assign, delegate, or otherwise transfer either this Agreement or any of his, her or its rights, interests, or obligations hereunder without the prior written consent of Buyer and Seller; except that Buyer may assign this Agreement (a) to one or more of its Affiliates, or (b) after the Closing, in connection with any disposition or transfer of all or

substantially all of the equity interests of Buyer in any form of transaction. Except for the provisions of Section 7.1 and this Section 8.2, this Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder.

8.3. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be valid and binding unless it is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by any Party of any breach or violation of, default under, or inaccuracy in any representation, warranty, covenant, or agreement hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent breach, violation, default of, or inaccuracy in, any such representation, warranty, covenant, or agreement hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver thereof.

8.4. Entire Agreement. This Agreement, together with the Ancillary Agreements and any documents, Schedules, instruments, or certificates referred to herein or delivered in connection herewith, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements (including any draft agreements) with respect thereto, whether written or oral, none of which shall be used as evidence of the Parties' intent. In addition, each Party hereto acknowledges and agrees that all prior drafts of this Agreement contain attorney work product and shall in all respects be subject to the foregoing sentence.

8.5. Schedules. Nothing in any Schedule attached hereto shall be adequate to modify, qualify, or disclose an exception to a representation or warranty made in this Agreement unless such Schedule identifies the modification, qualification, or exception. Any modifications, qualifications, or exceptions to any representations or warranties disclosed on one Schedule shall constitute a modification, qualification, or exception to any other representations or warranties made in this Agreement if it is reasonably apparent that the disclosures on such Schedule should apply to such other representations and warranties.

8.6. Counterparts; Electronic Signature. This Agreement may be executed in multiple counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed by facsimile or pdf signature by any Party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

8.7. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each Party hereto intends that such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements and to otherwise give effect to the intent of the Parties.

8.8. Headings. The headings contained in this Agreement are for convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

8.9. Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The Parties hereto intend that each representation, warranty, covenant, and agreement contained herein shall have independent significance. If any Party hereto has breached or violated, or if there is an inaccuracy in, any representation, warranty, covenant, or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant, or agreement relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached or violated, or in respect of which there is not an inaccuracy, shall not detract from or mitigate the fact that the Party has breached or violated, or there is an inaccuracy in, the first representation, warranty, covenant, or agreement.

8.10. Governing Law. This Agreement, the negotiation, terms, and performance of this Agreement, the rights of the Parties under this Agreement, and all Actions arising in whole or in part under or in connection with this Agreement, shall be governed by and construed in accordance with the domestic substantive laws of the State of Nevada, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

8.11. Jurisdiction; Venue; Service of Process.

8.11.1. Jurisdiction. Each Party to this Agreement, by his, her, or its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction and venue of the Nevada state and/or United States federal courts located in Clark County, Nevada for the purpose of any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, (b) hereby waives to the extent not prohibited by applicable Legal Requirements, and agrees not to assert, by way of motion, as a defense or otherwise, in any such Action, any claim that he or she is not subject personally to the jurisdiction of the above-named court, that venue in such court is improper, that his, her or its property is exempt or immune from attachment or execution, that any such Action brought in the above-named court should be dismissed on grounds of *forum non conveniens* or improper venue, that such Action should be transferred or removed to any court other than the above-named court, that such Action should be stayed by reason of the pendency of some other Action in any other court other than the above-named court or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence or prosecute any such Action other than before the above-named court. Notwithstanding the foregoing, (i) a Party hereto may commence any Action in a court other than the above-named court solely for the purpose of enforcing an order or judgment issued by the above-named court, and (ii) the dispute resolution procedures set forth in this Section 8.11.1 shall be the sole and exclusive means by which the Parties may resolve any disputes arising thereunder and any resolution of any such dispute in accordance with such dispute resolution procedures shall be valid and binding on all of the Parties hereto.

8.11.2. Service of Process. Each Party hereto hereby (a) consents to service of process in any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, in any manner permitted by Nevada law, (b) agrees that service of process made in accordance with clause (a) or made by overnight delivery by a nationally recognized courier service at his or her address specified pursuant to Section 8.1 shall constitute good and valid service of process in any such Action, and (c)

waives and agrees not to assert (by way of motion, as a defense or otherwise) in any such Action any claim that service of process made in accordance with clause (a) or (b) does not constitute good and valid service of process.

8.12. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT HE OR IT SHALL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT, OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT, THE CONTEMPLATED TRANSACTIONS, OR THE NEGOTIATION, TERMS OR PERFORMANCE HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES HERETO. THE PARTIES HERETO FURTHER AGREE TO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING AND ANY SUCH PROCEEDING SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[*Remainder of the page intentionally left blank – signature pages follow*]

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement as of the date first above written.

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement as of the date first above written.

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

EXHIBIT A

List of Subsidiaries

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea of Delaware, LLC	Delaware	Seller
Hygea Health Holdings, Inc.	Florida	Hygea of Delaware, LLC
All Care Management Services, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Atlanta, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Georgia, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of South Florida, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Management of Orlando, LLC	Florida	Hygea of Delaware, LLC
Florida Group Healthcare, LLC	Florida	Hygea of Delaware, LLC
Palm Medical Network, LLC	Florida	Hygea of Delaware, LLC
Hygea of Georgia, LLC	Georgia	Hygea of Delaware, LLC
AARDS II, INC	Florida	Hygea of Delaware, LLC
Gemini Healthcare Fund, LLC	Florida	Hygea Health Holdings, Inc.
Palm PGA MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare Medicaid MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Mobile Clinic Services, LLC	Florida	Hygea Health Holdings, Inc.
Hygea IGP of Central Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Hydrea Acquisition Orlando, LLC	Florida	Hygea Health Holdings, Inc.

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea Acquisition Atlanta, LLC	Georgia	Hygea Health Holdings, Inc.
Hygea Acquisition Longwood, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates SE, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates East Coast, LLC	Florida	Hygea Health Holdings, Inc.
Hygea South Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Palm MSO System, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinics, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinic, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Quality Medical Centers, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan Health Exchange, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Westchester Medical Center, LLC	Florida	Gemini Healthcare Fund, LLC
Med Scripts, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan, LLC	Florida	Gemini Healthcare Fund, LLC
Mid Florida Adult Medicine, LLC	Florida	Hygea Acquisition Longwood, LLC

Exhibit B

Pro Rata Share of Seller Principals

Name of Seller Principal:	Pro Rata Share:
Manuel Iglesias	20.75%
Edward Moffly	9.61%
TOTAL:	**30.36%**

EXHIBIT "C"

STOCK TRANSFER
18 LAFAYETTE PLACE
WOODMERE, NY 11598

HYGEA HOLDINGS CORP.

STATEMENT OF ACCOUNT

FIFTH AVENUE 2254 LLC
286 NORTH MAIN STREET
STE 305
SPRING VALLEY NY 10977

ACCOUNT NUMBER 317

TICKER SYMBOL: HYGEA
CUSIP (if applicable): 44903T102

Summary of Account Holdings as of 01/26/2018

CERTIFICATED BALANCE	RESTRICTED BOOK BALANCE	FREE TRADING BOOK BALANCE	TOTAL SHARES IN ACCOUNT
0	0.0000	100,000.0000	100,000

Transaction Activity for the Period 01/01/2018 – 01/26/2018

DATE	CERTIFICATE NUMBER/ TRANSACTION DESCRIPTION	SHARES IN/ SHARES OUT	SHARE BALANCE

* Certificate Balanced - Reflects the aggregate number of shares issued with physical certificate(s).
* Restricted Book Balance - Reflects the aggregate number of restricted shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Free-Trading Book Balance - Reflects the aggregate number of free-trading shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Total Shares - The sum of all certificated and all book shares.

If you have any questions or concerns, please do not hesitate to contact us at (212) 828-8436 or via email at info@vstocktransfer.com.

Ex. C-1

STOCK TRANSFER
18 LAFAYETTE PLACE
WOODMERE, NY 11598

HYGEA HOLDINGS CORP.

STATEMENT OF ACCOUNT

HILLCREST ACQUISITIONS, LLC
286 N. MAIN STREET
SUITE 305
SPRING VALLEY NY 10977

ACCOUNT NUMBER 301

TICKER SYMBOL: HYGEA
CUSIP (if applicable): 44903T102

Summary of Account Holdings as of 01/26/2018

CERTIFICATED BALANCE	RESTRICTED BOOK BALANCE	FREE TRADING BOOK BALANCE	TOTAL SHARES IN ACCOUNT
250,000	0.0000	0.0000	250,000

Transaction Activity for the Period 01/01/2018 – 01/26/2018

DATE	CERTIFICATE NUMBER/ TRANSACTION DESCRIPTION	SHARES IN/ SHARES OUT	SHARE BALANCE

* Certificate Balanced - Reflects the aggregate number of shares issued with physical certificate(s).
* Restricted Book Balance - Reflects the aggregate number of restricted shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Free-Trading Book Balance - Reflects the aggregate number of free-trading shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Total Shares - The sum of all certificated and all book shares.

If you have any questions or concerns, please do not hesitate to contact us at (212) 828-8436 or via email at info@vstocktransfer.com.

Ex. C-2

STOCK TRANSFER
18 LAFAYETTE PLACE
WOODMERE, NY 11598

HYGEA HOLDINGS CORP.

STATEMENT OF ACCOUNT

HILLCREST CENTER SVI
86 NORTH MAIN STREET
SUITE 305
SPRING VALLEY NY 10977

ACCOUNT NUMBER 304

TICKER SYMBOL: HYGEA
CUSIP (If applicable): 44903T102

Summary of Account Holdings as of 01/26/2018

CERTIFICATED BALANCE	RESTRICTED BOOK BALANCE	FREE TRADING BOOK BALANCE	TOTAL SHARES IN ACCOUNT
250,000	0.0000	0.0000	250,000

Transaction Activity for the Period 01/01/2018 – 01/26/2018

DATE	CERTIFICATE NUMBER/ TRANSACTION DESCRIPTION	SHARES IN/ SHARES OUT	SHARE BALANCE

* Certificate Balanced - Reflects the aggregate number of shares issued with physical certificate(s).
* Restricted Book Balance - Reflects the aggregate number of restricted shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Free-Trading Book Balance - Reflects the aggregate number of free-trading shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Total Shares - The sum of all certificated and all book shares.

If you have any questions or concerns, please do not hesitate to contact us at (212) 828-8436 or via email at info@vstocktransfer.com.

Ex. C-3

STOCK TRANSFER
18 LAFAYETTE PLACE
WOODMERE, NY 11598

HYGEA HOLDINGS CORP.

STATEMENT OF ACCOUNT

HILLCREST CENTER SVII
86 NORTH MAIN STREET
SUITE 305
SPEING VALLEY NY 10977

ACCOUNT NUMBER 305

TICKER SYMBOL: HYGEA
CUSIP (if applicable): 44903T102

Summary of Account Holdings as of 01/26/2018

CERTIFICATED BALANCE	RESTRICTED BOOK BALANCE	FREE TRADING BOOK BALANCE	TOTAL SHARES IN ACCOUNT
250,000	0.0000	0.0000	250,000

Transaction Activity for the Period 01/01/2018 – 01/26/2018

DATE	CERTIFICATE NUMBER/ TRANSACTION DESCRIPTION	SHARES IN/ SHARES OUT	SHARE BALANCE

* Certificate Balanced - Reflects the aggregate number of shares issued with physical certificate(s).
* Restricted Book Balance - Reflects the aggregate number of restricted shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Free-Trading Book Balance - Reflects the aggregate number of free-trading shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Total Shares - The sum of all certificated and all book shares.

If you have any questions or concerns, please do not hesitate to contact us at (212) 828-8436 or via email at info@vstocktransfer.com.

Ex. C - 4

STOCK TRANSFER
18 LAFAYETTE PLACE
WOODMERE, NY 11598

HYGEA HOLDINGS CORP.

STATEMENT OF ACCOUNT

HILLCREST CENTER SV III
1 HILLCREST CENTER DR. #232
SPRING VALLEY NY 10977

ACCOUNT NUMBER 316

TICKER SYMBOL: HYGEA
CUSIP (if applicable): 44903T102

Summary of Account Holdings as of 01/26/2018

CERTIFICATED BALANCE	RESTRICTED BOOK BALANCE	FREE TRADING BOOK BALANCE	TOTAL SHARES IN ACCOUNT
0	500,000.0000	0.0000	500,000

Transaction Activity for the Period 01/01/2018 – 01/26/2018

DATE	CERTIFICATE NUMBER/ TRANSACTION DESCRIPTION	SHARES IN/ SHARES OUT	SHARE BALANCE

* Certificate Balanced - Reflects the aggregate number of shares issued with physical certificate(s).
* Restricted Book Balance - Reflects the aggregate number of restricted shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Free-Trading Book Balance - Reflects the aggregate number of free-trading shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Total Shares - The sum of all certificated and all book shares.

If you have any questions or concerns, please do not hesitate to contact us at (212) 828-8436 or via email at info@vstocktransfer.com.

Ex. C-5

STOCK TRANSFER
18 LAFAYETTE PLACE
WOODMERE, NY 11598

HYGEA HOLDINGS CORP.

STATEMENT OF ACCOUNT

LEONITE CAPITAL LLC
36 TENNYSON PLACE
FLOOR 2
PASSIC NJ 07055

ACCOUNT NUMBER 312

TICKER SYMBOL: HYGEA
CUSIP (if applicable): 44903T102

Summary of Account Holdings as of 01/26/2018

CERTIFICATED BALANCE	RESTRICTED BOOK BALANCE	FREE TRADING BOOK BALANCE	TOTAL SHARES IN ACCOUNT
0	500,000.0000	0.0000	500,000

Transaction Activity for the Period 01/01/2018 – 01/26/2018

DATE	CERTIFICATE NUMBER/ TRANSACTION DESCRIPTION	SHARES IN/ SHARES OUT	SHARE BALANCE

* Certificate Balanced - Reflects the aggregate number of shares issued with physical certificate(s).
* Restricted Book Balance - Reflects the aggregate number of restricted shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Free-Trading Book Balance - Reflects the aggregate number of free-trading shares that VStock Transfer maintains for you in an electronic account and a physical certificate was not issued.
* Total Shares - The sum of all certificated and all book shares.

If you have any questions or concerns, please do not hesitate to contact us at (212) 828-8436 or via email at info@vstocktransfer.com.

Ex. C - 6

EXHIBIT "D"

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
CURTIS PARK, SUITE 1A
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106
LAS VEGAS, NEVADA 89106

Declaration of Christopher Fowler

STATE OF MICHIGAN)
) SS
COUNTY OF OAKLAND)

I, Christopher Fowler, having been first duly sworn on oath, depose and state as follows:

1. I am over the age of eighteen years and have personal knowledge concerning this matter.

2. I am competent and willing to testify in court to the same if necessary.

3. I reviewed and am familiar with the factual allegations and issues raised in the above-captioned complaint and accompanying petition for appointment of a receiver.

4. I am also familiar with the operations and status of Hygea Holdings Corp. ("Hygea"), based upon my regular interactions with representatives of Hygea in my capacity as an agent and/or representative of N5HYG, LLC, a shareholder of Hygea.

5. The allegations in the complaint and attached petition for appointment of a receiver are consistent with my understanding and knowledge of the operations and status of Hygea, which is based upon my regular and recent interactions with representatives of Hygea. Among other things, I have learned that:

a. Hygea paid its payroll through its American Express account for some time until it was apparently poised to fail to "make payroll" this past fall, until it ultimately was apparently able to do so;

b. Hygea hired an outside consultant, FTI, to review its financial performance. FTI has met with constant roadblocks, as Moffly and Iglesias have refused to share information. Nonetheless, FTI has concluded that certain financial information provided by Hygea's management to its shareholders was "fabricated"; determined that Hygea's performance was negatively impacted by severe

operational deficiencies; and was told by Iglesias that Iglesias had "cooked the books" to avoid problems with a previous lender;

c. the payroll payments have again ceased, including payments owed to physicians and some management-level and other administrative staff; and

d. Hygea has failed to pay payroll taxes and is delinquent in payments to one or more large lenders.

6. Further declarant sayeth naught.

I declare the foregoing to be true and correct.

Executed on this 26 day of January, 2018 at 12:44pm.

Christopher Fowler

LAW OFFICES
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
A PROFESSIONAL CORPORATION
QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106
LAS VEGAS, NEVADA 89106

EXHIBIT “9”

RIS
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135
Telephone: (702) 471-7000
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tasca@ballardspahr.com
gallm@ballardspahr.com
ewingk@ballardspahr.com

Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. A-18-768510-B Dept No. XXVII **Hearing Date: March 7, 2018** **Hearing Time: 10:30 a.m.**

DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR CHANGE OF VENUE

Defendant Hygea Holdings Corp. ("Hygea"), by and through its counsel of record, Ballard Spahr LLP, submits this Reply in support of its Motion for Change of Venue (the "Motion"). This Reply is based on NRS 13.050, 78.650(1), and 78.630(1); the pleadings and papers on file; and any oral argument the Court may entertain at the hearing on the Motion.

///

Plaintiffs' Opposition to the Motion makes the same arguments they made in opposition to Hygea's motion to dismiss for lack of subject matter jurisdiction. Given that Hygea filed its Motion (for change of venue) after having reviewed that opposition, Hygea pre-emptively addressed Defendants' arguments in its moving brief, including that:

- If locality requirements of NRS 78.650(1) and 78.630(1) do not speak to subject matter jurisdiction, then they must speak to venue. Logically, it must be one or the other.
- If the requirements of NRS 78.650(1) and 78.630(1) speak to venue, then they are mandatory venue requirements, meaning Hygea may request—as a matter of right—that the Court transfer this lawsuit to the district court in the county of Hygea's registered office, that being the First Judicial District in Carson City.
- The use of the word "may" in NRS 78.650(1) and 78.630(1) does not mean that the requirement to file in Carson City is permissive. The use of the word "may" can only reasonably be construed to mean that under circumstances described in those statutes, a shareholder is *permitted* to file an action for a receiver. In other words, it provides the basis for a cause of action and/or remedy. Plaintiffs' interpretation would render the provisions' requirements to file in the county of the registered office meaningless.
- The forum selection clause contained in the stock purchase agreement ("SPA") between one of fourteen Plaintiffs—NY5HG, LLC—does not control venue in this action because this action for the appointment of a receiver does not "arise in connection with" the SPA, as demanded by the plain words of the agreement. This is addressed below for purposes of providing the Court persuasive legal authority on the matter.
- Even if this action could be construed to arise in connection with the SPA, there is no authority for Plaintiffs' proposition that an agreement with one plaintiff can bind Hygea to litigate with the remaining plaintiffs in Clark County, Nevada, ***especially where a stock purchase agreement with another Plaintiff (Claudio Arellano)*** mandates that all disputes arising in connection with ***that agreement*** be litigated in ***Miami-Dade County, Florida***. This is addressed further below, including Plaintiffs' convenient failure to point out this inconsistency in any opposition or oral argument.

Hygea will not repeat the foregoing arguments herein (except as noted) given that they are included in Hygea's moving brief. Hygea, however, briefly sets forth

///

Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

additional authority and arguments below, including so that the Court is fully informed of the circumstances framing this matter.

I. THIS ACTION DOES NOT ARISE "IN CONNECTION WITH" THE STOCK PURCHASE AGREEMENT BETWEEN N5HYG AND HYGEA

The SPA between N5HYG and Hygea has no application to venue ***in this case***. The SPA clearly states that the parties submit to be "subject personally" to Clark County courts only "for the purpose of any Action between any of the Parties hereto arising in whole or in part under or ***in connection with this Agreement*** . . . ." Compl., Ex. B., Stock Purchase Agreement by and among N5HYG LLC, Hygea Holdings Corp., and the Seller Principals Named Herein at Section 8.11. Reasonable minds can only conclude that this action for the appointment of a receiver does not arise "in connection with" the SPA. Indeed, even though Plaintiffs made the bald assertion that the SPA controls the forum of this action, Plaintiffs provide no explanation whatsoever as to how this action for the appointment of a receiver arises in connection with an agreement concerning the sale of stock other than to state that "N5HYG's shareholder rights obviously adhere 'in connection with' the Stock Purchase Agreement." Opposition at 3, n.1. If the connection is so "obvious," Plaintiffs should have no trouble articulating the connection. Yet, they do not.

Rather, they make the attenuated argument *by footnote* that because the SPA establishes and governs N5HYG's rights as a shareholder, it somehow controls the forum of this action for the appointment of a receiver. This argument is nonsensical. Indeed, N5HYG's rights as a shareholder to petition for the appointment of a receiver are defined and governed *exclusively* by NRS Chapter 78. And, pursuant to NRS 78.650(1) and NRS 78.630(1), N5HYG's right to file a petition for the appointment of a receiver is limited to the district court of the county in which Hygea's registered office is located, that being the First Judicial District in Carson City.

Plaintiffs make the further attenuated argument *by footnote* that because Hygea's opposition to the appointment of a receiver rests on its purported effort to

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1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

"rewrite" the SPA's representation that N5HYG's shares represent 8.57% of the company's issued and outstanding stock, Hygea has conceded that this action arises "in connection with" the SPA or caused this action to arise thereunder. Hygea, however, cannot (by argument) change whether Plaintiffs' pleading arises under a particular contract. Further, it is in fact N5HYG, *not Hygea*, that relies on the SPA for its position on why the Court should ignore the requirement that Plaintiffs hold 10% of Hygea's issued and outstanding stock at the time it might appoint a receiver (they do not).[1] Hygea does not rely on the SPA to make its argument that Plaintiffs lack standing. Hygea instead relies on its own personal knowledge of its capital structure when it asserts that Plaintiffs do not own 10% of its issued and outstanding common stock. *See* Hygea's Opposition to the Emergency Petition, Ex. B at ¶¶ 44–47. Even if Hygea relied on the SPA, this action would still not arise "in connection with" the SPA merely because Hygea used the SPA as evidence herein.

Case law from the Ninth Circuit, cited to favorably by the Nevada Supreme Court provides guidance on what "in connection with" means. In interpreting an arbitration clause covering "[a]ll disputes arising in connection with [an] agreement," between an investor of air bag systems and a supplier of components, the Ninth Circuit reasoned that the language "reache[d] every dispute between the parties having a significant relationship to the contract and all disputes having their origin or genesis in the contract." *Simula, Inc. v. Autoliv, Inc.*, 175 F.3d 716, 720-21 (9th Cir. 1999) (quoted and cited to favorably by the Nevada Supreme Court *in Matter of*

[1] Moreover, Plaintiffs are wrong in this argument. Hygea has indeed issued significant common stock since entering the SPA in October of 2016, but it is Plaintiffs who attempt to rewrite the SPA by arguing that it contains a non-dilution provision that prevented Plaintiffs from issuing further shares after October 5, 2016. Again, Plaintiffs conveniently ignore ***another relevant*** provision of the SPA that permits Hygea to issue additional shares in connection with the exercise of previously issued warrants, which warrants were disclosed via Schedule 4.5.1 of the SPA and made available to N5HYG for inspection by Hygea. *See* SPA, ¶ 4.5.1 ("***Except for those warrants to purchase Common Stock listed on Schedule 4.5.1***, complete and correct copies of which have been made available by [Hygea] to [N5HYG], . . . [Hygea] has not issued, nor has agreed to issue, any equity interest of any kind . . . .") (emphasis added).

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Kent & Jane Whipple Tr., No. 69945, 399 P.3d 332 (Table), 2017 WL 2813974 (filed June 28, 2017) (unpublished disposition)).

By its plain terms the SPA concerns the sale of stock by Hygea to NY5HG. This action concerns the appointment of a receiver based on the purported mismanagement and/or insolvency of the corporation. *See generally* Complaint and Emergency Petition. By no sensible interpretation could one say that the case below has "a significant relationship to the contract" or "its origin or genesis in the contract." The SPA does not permit Plaintiffs to move for the appointment of a receiver; that right is based in statute, including NRS 78.650 and NRS 78.630.

II. A FORUM SELECTION CLAUSE WITH ONE PLAINTIFF CANNOT BIND HYGEA TO LITIGATE WITH OTHER PLAINTIFFS, PARTICULARLY WHERE A COMPETING FORUM SELECTION CLAUSE EXISTS

Even if this action could be construed to arise in connection with the SPA, there is no authority for Plaintiffs' proposition that an agreement with ***one of fourteen*** Plaintiffs can bind Hygea to litigate with the remaining thirteen plaintiffs in Clark County. This is especially true where, as here, the stock purchase agreement between Plaintiff Claudio Arellano and Hygea contains a competing forum selection clause demanding that the parties submit to jurisdiction of ***Miami-Dade County, Florida*** for "any action arising out of or relating to this Agreement" and that "any action shall be resolved exclusively in the federal and state courts located in ***Miami-Dade County Florida***." Compl., Ex. A, Agreement between All Care Management Services, Inc. and Claudio Arellano concerning the sale of stock of All Care Management Services, Inc. to Hygea Holdings Corp. at § 8.4.

If Plaintiffs are going to argue that forum selection clauses contained in stock purchase agreements control this action for the appointment of a receiver, the Plaintiffs need to reconcile how the competing provision contained in Mr. Arellano's stock purchase agreement does not control the filing of this action in Miami-Dade County, Florida. They, however, do not. Indeed, Plaintiffs have now twice failed to mention this inconsistency: a first time in their opposition to Hygea's motion to

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dismiss and a second time in their Opposition to the Motion at hand.

Regardless, Hygea reiterates that a forum selection clause between one plaintiff and the defendant (or in this case, two plaintiffs, albeit for different forums) cannot bind Hygea to litigate with the remaining plaintiffs. The case by the Plaintiffs for the proposition that Hygea is bound to all plaintiffs—*Holland Am. Line Inc. v. Wartsila N. Am., Inc.*—is inapposite. *See* 485 F.3d 450, 456 (9th Cir. 2007). That case concerned the binding of all defendants, where the alleged conduct of those defendants not party to the agreement related closely to the contractual relationship. *See id.* Here, there are no defendants other than Hygea to bind to the SPA (whichever SPA may be applicable), and *Holland* does not suggest that any particular defendant should be bound to a group of Plaintiffs by a contract with one of them. Moreover, there is no indication that other defendants in *Holland* had made competing forum selection agreements with Holland. *See id.*

III. CONCLUSION

For the foregoing reasons and the reason set forth in Hygea's Motion, the Court should transfer Plaintiffs' Emergency Complaint to the First Judicial District of Nevada, in and for Carson City.

Dated: March 5, 2018

BALLARD SPAHR LLP

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on March 5, 2018, an electronic copy of the foregoing **DEFENDANT'S REPLY IN SUPPORT OF ITS MOTION FOR CHANGE OF VENUE** was e-mailed to the following, as well as filed and served via the Court's electronic service system:

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EXHIBIT “10”

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DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, vs. HYGEA HOLDINGS CORP., Defendant	CASE NO.: A-18-768510-B DEPT. NO.: Department 13

EMERGENCY PETITION FOR APPOINTMENT OF RECEIVER

For their Emergency Petition for Appointment of a Receiver, Plaintiffs rely upon their Complaint, the attached Memorandum of Law, all authorities cited therein, all affidavits, and any other materials or information provided to this Honorable Court.

DATED this 26th day of January, 2018.

ALBRIGHT, STODDARD, WARNICK
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MEMORANDUM OF LAW IN SUPPORT OF PETITION FOR APPOINTMENT OF RECEIVER

INTRODUCTION

Hygea is on the brink of collapse, and if the Court does not protect it over the next few weeks, it will almost certainly fail. Hygea is a holding company for medical practices: basically, it buys doctors' offices; pays the doctors a salary; and – in theory – makes money through economies of scale and effective operations. Its promised strength is in its opportunity and capability (if managed correctly) to service its substantial network of patients, which Hygea has represented to be in excess of 100,000.

But over the last several months, it has missed payments to its lenders, employees, and other creditors. Now the substantial reimbursements from the government for Medicare/Medicaid patients are coming due. If the established pattern persists, any such funds paid to Hygea will disappear, lost to mismanagement or worse. If the ineffective management continues through this imminent reimbursement period, doctors will be unpaid, and abandon their Hygea-owned practices. The subsidiary practices rendered worthless, Hygea will collapse at a total loss to its shareholders and jeopardizing patient care. Only the Court can avert this scenario.

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BACKGROUND

Defendant Hygea Holdings Corp. ("Hygea") is a Nevada corporation that buys and runs medical practices. It buys the practices from their doctor owners; the doctors go from being owners to employees, and receive a salary from Hygea. Hygea's value proposition is: let Hygea uses its economies of scale and operational expertise to effectively operate the practices from a business perspective, and let the doctors focus on medical care. Hygea's opportunity to service its substantial network of patients is perhaps its greatest asset.

The Plaintiffs are significant shareholders in Hygea, having collectively paid well in excess of $30 million for their shares. In a recent public filing, Hygea represented the 23,437,500 shares that N5HYG bought to represent 8.57 percent of the shares of Hygea. *See* **Exhibit "B"** attached to the Complaint on file herein. Based on those calculations, Plaintiff Arellano, Crown, Fifth Avenue, Halevi Enterprises, Hillcrest Acquisitions, Hillcrest SV I, Hillcrest SV II, Hillcrest SV III, Ibh, Leonite, and RYMSSG thus collectively own 5,663,200 shares – approximately 2.07 percent of the shares of Hygea. Together, based upon Hygea's calculations and representations set forth in the N5HYG Stock Purchase Agreement, the Plaintiffs herein currently own more than 10 percent of the shares of Hygea. Based on representations Hygea has made to Plaintiffs, Hygea has well over 30 shareholders, in addition to Plaintiffs.

Hygea's top executives are CEO Manuel Iglesias ("Iglesias") and CFO Ted Moffly ("Moffly"). Due to extensive mismanagement, Hygea is failing and running out of cash.

Given Hygea's apparent troubles, Hygea hired an outside consultant in 2017, FTI, to review its financial performance. FTI was met with constant "roadblocks," as Moffly and Iglesias refused to share information. Nonetheless, FTI concluded that certain financial information provided by Hygea's management to its shareholders was "fabricated"; determined that Hygea's performance was negatively impacted by severe operational deficiencies; and was told by Iglesias that Iglesias had "cooked the books" to avoid problems with a previous lender. **Exhibit "D"**

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attached to the Complaint on file herein. This is consistent with Plaintiffs' experience with Hygea.[1]

As its financial position began to worsen, Hygea apparently paid its payroll through its American Express account for some time until it was apparently poised to fail to "make payroll" this past fall, until it ultimately was apparently able to do so. Upon information and belief, Hygea owes approximately $10 million to American Express. And now, based on the recent representations of Hygea representatives, Plaintiffs have since learned that the payroll payments have again ceased, including payments owed to physicians and some management-level and other administrative staff. **Exhibit "D."** attached to the Complaint on file herein. Indeed, Hygea is already defending at least one recent lawsuit filed by an employee to whom it failed to pay overtime. *See Espinoza v. Hygea Holdings Corp., et al*, Case 1:17-cv-24180 (N.D. Fla. 2017).

In short, Hygea has had problems making its primary payments – payroll – and this problem has reached a crisis level where the paychecks simply are not being paid. Further, Hygea has failed to pay payroll taxes and is delinquent in payments to one or more large lenders. **Exhibit "D,"** attached to the Complaint on file herein. These financial conditions suggest that the company is at or near the point of insolvency, which is consistent with what Plaintiffs have been able to learn about Hygea's finances.

The coming days and weeks are pivotal to Hygea's survival. Healthcare companies such as Hygea typically receive substantial Medicaid/Medicare reimbursement checks from state governments/the United States government. These payments come twice a year – the first of which is traditionally early in the calendar year – and are existentially significant for the company. If these funds or other income are mismanaged or, worse, improperly diverted by Moffly or

---

[1] It is also consistent with Hygea's failure to provide financial information required under the N5HYG Stock Purchase Agreement. Under Section 6.6, Hygea promised to provide accurate and complete 2014 and 2015 financials by November 30, 2016. This deadline is past, but Hygea has failed to provide the promised financials or the promised projections and assumptions.

Iglesias, then Hygea will continue to be unable to make payroll. If it fails to pay its physicians, they will abandon their Hygea-owned practices and Hygea will entirely collapse.

The impact of such a collapse would be felt among Hygea doctors and other employees, whose livelihoods would be greatly harmed; patients, whose treatment would suffer from the likely interruption in service; and Hygea's shareholders, including, but not limited to Plaintiffs, whose investments would be jeopardized if Hygea's greatest asset is wasted.

Moreover, Hygea has periodically, and again recently, represented to shareholders that one or more "white knight" investors would provide an influx of capital to assist the company. Of course, this has never come to fruition. Moreover, even if true, such an influx of cash would further heighten the need for a receiver to oversee any such transaction, given Hygea management's demonstrated inability to properly manage its finances.

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ARGUMENT

I. The Court should appoint a receiver under NRS 78.650.

Fortunately, Nevada's Private Corporations statute gives the Court broad authority to rescue Hygea by appointing a receiver. Under NRS 78.650:

> 1. Any holder or holders of one-tenth of the issued and outstanding stock may apply to the district court in the county in which the corporation has its principal place of business or, if the principal place of business is not located in this State, to the district court in the county in which the corporation's registered office is located, for an order dissolving the corporation and appointing a receiver to wind up its affairs, and by injunction restrain the corporation from exercising any of its powers or doing business whatsoever, except by and through a receiver appointed by the court, whenever:
>
> (a) The corporation has willfully violated its charter;
>
> (b) Its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs;
>
> (c) Its trustees or directors have been guilty of misfeasance, malfeasance or nonfeasance;
>
> (d) The corporation is unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of the directors or trustees;

(e) The assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise;

(f) The corporation has abandoned its business;

(g) The corporation has not proceeded diligently to wind up its affairs, or to distribute its assets in a reasonable time;

(h) The corporation has become insolvent;

(i) The corporation, although not insolvent, is for any cause not able to pay its debts or other obligations as they mature; or

(j) The corporation is not about to resume its business with safety to the public.

2. The application may be for the appointment of a receiver, without at the same time applying for the dissolution of the corporation, and notwithstanding the absence, if any there be, of any action or other proceeding in the premises pending in such court.

Thus, "[u]nder [this statute], the district court may appoint a temporary receiver in a number of instances, including, but not limited to, situations where corporate directors are guilty of fraud or gross mismanagement or where the assets of the corporation are in danger of waste." *Med. Device All., Inc. v. Ahr*, 116 Nev. 851, 862, 8 P.3d 135, 142 (2000), *abrogated on other grounds*, *Costello v. Casler*, 127 Nev. 436, 440 n.4, 254 P.3d 631, 634 (2011). This is exactly the sort of situation in which such an appointment is appropriate.

A. The Court has authority to appoint a receiver under NRS 78.650(1).

As set forth above, NRS 78.650(1) applies if the plaintiffs own between them at least ten percent of the corporation's stock. As described above, based upon Hygea's calculations and representations set forth in the N5HYG Stock Purchase Agreement, the Plaintiffs herein currently own more than 10 percent of the shares of Hygea, thus exceeding the statutory threshold.

Even if the statute applied only to non-closely held corporations, there is no doubt that Hygea is not a closely held corporation for purposes of the statute. First, in order to qualify as a closely held corporation exempt from the NRS 78.650, Hygea would need to have fewer than 30

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shareholders: "[a]ll of the issued stock of the corporation of all classes, exclusive of treasury shares, must be represented by certificates and must be held of record by a specified number of persons, *not to exceed 30*." NRS 78A.0201)(a) (emphasis added). As of October 2016, Hygea represented that it had 275, **Exhibit "B,"** p. 2, attached to the Complaint on file herein, and there is no indication that number has since decreased.

Moreover, Hygea has not satisfied the manifold additional requirements to be considered a closely held corporation under Nevada law. For example, pursuant to NRS 78A.020(2), "[t]he articles of incorporation of a close corporation *must*:

> (a) Set forth the matters required by NRS 78.035 except that the articles *must* state that there will be *no board of directors if so agreed* pursuant to NRS 78A.070.
>
> (b) Contain a heading stating the name of the corporation and that it is a close corporation.

Id (emphasis added). Hygea's Articles of Incorporation ("Articles") do not satisfy either requirement. NRS 78A.020(2)(a) is not satisfied because the Articles clearly provide that "the number of directors shall not be reduced to less than one (1)" and there is no mention of NRS 78A.070 as required by the statute. **Exhibit "E,"** at 3. Furthermore, NRS 78A.020(2)(b) is not satisfied because nowhere do the Articles indicate that Hygea is a close corporation. *See generally,* **Exhibit "E."** In fact, the Articles clearly indicate that they are adopted "PURSUANT TO NRS 78" which governs ordinary corporations, and not NRS Chapter 78A, governing close corporations. *See, e.g.,* NRS 78A.020 *et. seq.*

In short, Hygea has failed to satisfy the many requirements of a close corporation under Nevada law, any one of which is sufficient to preclude Hygea from being considered closely held.[2]

B. Appointment of a receiver under NRS 78.650(1) is appropriate.

[2] Even if Hygea were a closely held corporation, this would not prevent the Plaintiffs from requesting dissolution. *See, e.g., Bedore v. Familian,* 125 P.3d 1168, 1171, 122 Nev. 5, 10 (2006) ("NRS 78A.140(1)(a) allows shareholders of a close corporation to request dissolution or appointment of a receiver when division among the shareholders threatens 'irreparable injury.'").

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This is exactly the sort of case in which appointment of a receiver under NRS 78.650(1) is appropriate. First of all, the top executives Iglesias and Moffly have engaged in misconduct in mismanaging the business, and, at the very least, the Board has failed in its obligation to oversee them. Under the statute, a trustee for the corporation is warranted if:

> (a) Its trustees or directors have been guilty of fraud or collusion or gross mismanagement in the conduct or control of its affairs; or
>
> (b) Its trustees or directors have been guilty of misfeasance, malfeasance or nonfeasance;

Misfeasance or nonfeasance equates to negligence. *See, e.g., Robertson v. Sichel,* 127 U.S. 507, 515–516, 8 S.Ct. 1286, 3 L.Ed. 203 (1888) ("A public officer or agent is not responsible for the misfeasances or positive wrongs, or for the nonfeasances, or negligences, or omissions of duty, of the subagents or servants or other persons properly employed by or under him, in the discharge of his official duties," quoted approvingly in *Ashcroft v. Iqbal*, 556 U.S. 662, 676, 129 S. Ct. 1937, 1948, 173 L. Ed. 2d 868 (2009)). At the very least, Hygea's top management has been negligent. In fact, there is substantial evidence that the conduct has risen to the level of intentional culpability. The financial statements provided to shareholders were "fabricated," and Iglesias admitted to "cooking to books" in order to avoid "problems" with a lender.

Hygea's financial distress is an independent reason why a receiver should be appointed. Under NRS 78.650(1)(h), a receiver is warranted if "[t]he corporation has become insolvent." Here, Hygea is apparently presumably insolvent. "A debtor is insolvent if the sum of the debtor's debts is greater than all of the debtor's assets at a fair valuation." Nev. Rev. Stat. Ann. § 112.160(1). Here, there is no way to prove insolvency until a receiver is appointed and is able to review the company's books. But "[a] debtor who is generally not paying his or her debts as they become due is presumed to be insolvent." Nev. Rev. Stat. Ann. § 112.160(2). As discussed above, Hygea has missed its payment to its shareholders and lender, and is currently failing to make payroll. It is thus presumptively insolvent.

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Even if Hygea is not presumptively insolvent, it falls within NRS 78.650(1)(i), which provides for a receiver if "[t]he corporation, although not insolvent, is for any cause not able to pay its debts or other obligations as they mature."

Of course, management's misconduct and the failure to pay obligations are related. If Hygea is not, in fact, facing insolvency-level distress, then disastrous mismanagement is the only explanation for why it is failing to make payments as rudimentary as payroll and payroll taxes. Conversely, if, *arguendo*, management was honest and competent, then the failure to make payroll and other required payments can only be explained by objectively dire financial circumstances that would themselves justify the appointment of a receiver. In truth, it is surely the case that management's misconduct has at the very least exacerbated the present desperate situation.

In any event, subsections (d) and (e) clearly apply as well. They provide for a receiver if:

> (d) The corporation is unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of the directors or trustees;
>
> (e) The assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise;

As discussed above, Hygea is scheduled to receive substantial government reimbursements over the next few days and weeks. If the pattern of mismanagement holds, these funds will likely be mismanaged or diverted. If that is allowed to happen, the funds needed to pay doctor, nurse, and clinical staff salaries will be unavailable. Doctors will abandon their Hygea practices and the corporation will collapse.

In short, a receiver would be appropriate if the corporation was mismanaged, *or* failing to pay its bills, *or* if there was a risk of future mismanagement. Here, there is mismanagement *and* missed critical payments *and* an imminent risk of corporate collapse from further mismanagement. Once again, this is exactly the sort of situation for which the statute was enacted.

II. Hygea's distress also warrants appointment of a receiver under additional statutes.

Several additional bases exist for the appointment of a receiver. For example, for many of the same reasons as explained above, a receiver would be warranted under NRS 78.630:

> 1. Whenever any corporation becomes insolvent or suspends its ordinary business for want of money to carry on the business, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditors holding 10 percent of the outstanding indebtedness, or stockholders owning 10 percent of the outstanding stock entitled to vote, may, by petition setting forth the facts and circumstances of the case, apply to the district court of the county in which the principal office of the corporation is located or, if the principal office is not located in this State, to the district court in the county in which the corporation's registered office is located for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees.
>
> 2. The court, being satisfied by affidavit or otherwise of the sufficiency of the application and of the truth of the allegations contained in the petition and upon hearing after such notice as the court by order may direct, shall proceed in a summary way to hear the affidavits, proofs and allegations which may be offered in behalf of the parties.
>
> 3. If upon such inquiry it appears to the court that the corporation has become insolvent and is not about to resume its business in a short time thereafter, or that its business has been and is being conducted at a great loss and greatly prejudicial to the interests of its creditors or stockholders, so that its business cannot be conducted with safety to the public, it may issue an injunction to restrain the corporation and its officers and agents from exercising any of its privileges or franchises and from collecting or receiving any debts or paying out, selling, assigning or transferring any of its estate, money, lands, tenements or effects, except to a receiver appointed by the court, until the court otherwise orders.

As explained above, the corporation is presumptively insolvent; it has "suspend[ed] its ordinary business for want of money to carry on the business" in that it has ceased to pay its doctors; and "its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders" as indicated by its severe financial distress and inability to pay obligations.

Additionally, it is also appropriate to appoint a receiver in this case pursuant to NRS 32.010, which provides that:

> "Cases in which receiver may be appointed. A receiver may be appointed by the court in which an action is pending, or by the judge thereof:
>
> 1. In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject any property or fund to the creditor's claim, or between

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> partners or others jointly owning or interested in any property or fund, on application of the plaintiff, or of any party whose right to or interest in the property or fund, or the proceeds thereof, is probable, and where it is shown that the property or fund is in danger of being lost, removed or materially injured.
> ...
> 6. In all other cases where receivers have heretofore been appointed by the usages of the courts of equity."

NRS 32.010. Plaintiffs clearly have demonstrated a property interest in Hygea that is in danger of materially injury, in light of Hygea's precarious financial position, its mismanagement, and the possible looting by management. Moreover, the appointment of a receiver under these circumstances is entirely consistent with the Court's equitable authority. For all of these reasons, the appointment of a receiver is undoubtedly warranted.

III. Plaintiffs propose Fredrick P. Waid to serve as receiver

Plaintiffs propose that the Court appoint Fredrick P. Waid, Esq. as receiver over Hygea. Mr. Waid has extensive experience and has been appointed by numerous state and federal courts to serve as a receiver, special servicer, successor trustee, and interim corporate officer. **Exhibit "F."** In addition, he has worked with the SEC and other regulatory agencies to investigate investment-related and other violations. *Id.* Over the last twenty years, Mr. Waid has also served as an officer and director at numerous healthcare companies, including Med Qual, HCR Net, Claimlogic, Nevada Cancer Center, and Sierra Health Affiliates, and he is currently an officer and director of Evincemed Corp., a healthcare information technology company. *Id.* He also spent twenty-one years as an officer and director of Farmers & Merchants Bank, Red Rock Community Bank, and Bank of Las Vegas. *Id.*

Mr. Waid's extensive experience in banking and finance, as a receiver, and as a regulatory investigator, combined with his extensive experience in the healthcare industry, make him an ideal candidate to serve as receiver over Hygea—a financially distressed healthcare company that has been mismanaged and defrauded by its officers. Mr. Waid has informed Plaintiffs that he is available to take on the role of receiver should the Court decide to appoint him.

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CONCLUSION

For all of the reasons set forth throughout, the Court should appoint a receiver to manage the affairs of Hygea Holding Corp.

DATED this 26th day of January, 2018.

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QUAIL PARK, SUITE D-4
801 SOUTH RANCHO DRIVE
LAS VEGAS, NEVADA 89106

EXHIBIT "E"

STATE OF NEVADA

BARBARA K. CEGAVSKE
Secretary of State

JEFFERY LANDERFELT
Deputy Secretary
for Commercial Recordings

OFFICE OF THE
SECRETARY OF STATE

Certified Copy

December 11, 2015

Job Number: C20151209-2075
Reference Number: 00010152027-48
Expedite:
Through Date:

The undersigned filing officer hereby certifies that the attached copies are true and exact copies of all requested statements and related subsequent documentation filed with the Secretary of State's Office, Commercial Recordings Division listed on the attached report.

Document Number(s)	Description	Number of Pages
20080570516-84	Articles of Incorporation	2 Pages/1 Copies
20110361332-02	Amendment	1 Pages/1 Copies

Respectfully,

Barbara K. Cegavske

BARBARA K. CEGAVSKE
Secretary of State

Certified By: Christine Rakow
Certificate Number: C20151209-2075
You may verify this certificate
online at **http://www.nvsos.gov/**

Commercial Recording Division
202 N. Carson Street
Carson City, Nevada 89701-4201
Telephone (775) 684-5708
Fax (775) 684-7138

DEAN HELLER
Secretary of State
206 North Carson Street
Carson City, Nevada 89701-4299
(775) 684 5708
Website: secretaryofstate.biz

Filed in the office of
Ross Miller
Secretary of State
State of Nevada

Document Number	20080570516-84
Filing Date and Time	08/26/2008 9:45 AM
Entity Number	E0550162008-5

Articles of Incorporation
(PURSUANT TO NRS 78)

Important: Read attached instructions before completing form. ABOVE SPACE IS FOR OFFICE USE ONLY

1. Name of Corporation:
Piper Acquisition II, Inc.

2. Resident Agent Name and Street Address:
(must be a Nevada address where process may be served)
VCorp Services, LLC
Name
1409 Bonita Avenue, Las Vegas, NEVADA, 89104
Street Address, City, State, Zip Code
Optional Mailing Address, City, State, Zip Code

3. Shares:
(number of shares corporation authorized to issue)
Number of shares with par value: 260,000,000 Par value: $ .0001 Number of shares without par value: -0-

4. Names & Addresses, of Board of Directors/Trustees:
(attach additional page if there is more than 3 directors/trustees)
1. Stephen M. Fleming, Esq.
Name
c/o Fleming PLLC 403 Merrick Ave, 2nd Fl, E. Meadow, NY, 11554
Street Address, City, State, Zip Code
2. Name
Street Address, City, State, Zip Code
3. Name
Street Address, City, State, Zip Code

5. Purpose:
(optional-see instructions)
The purpose of this Corporation shall be:
To engage in any lawful activity

6. Names, Address and Signature of Incorporator:
(attach additional page if there is more than 1 incorporator)
Stephen M. Fleming, Esq.
Name
Signature
c/o Fleming PLLC 403 Merrick Ave, 2nd Fl, E. Meadow, NY, 11554
Address, City, State, Zip Code

7. Certificate of Acceptance of Appointment of Resident Agent:
I hereby accept appointment as Resident Agent for the above named corporation.
Authorized Signature of R.A. or On Behalf of R.A. Company, Date 8/26/08

This form must be accompanied by appropriate fees. See attached fee schedule.

Nevada Secretary of State Form 78 ARTICLES 2003
Revised on: 11/21/03

NV001 - 10/16/2004 CT System Online

Exhibit A

EIGHT: The corporation is authorized to issue two classes of stock. One class of stock shall be common stock, par value $0.0001, of which the Corporation shall have the authority to issue 250,000,000 shares. The second class of stock shall be preferred stock, par value $0.0001, of which the corporation shall have the authority to issue 10,000,000 shares. The preferred stock, or any series thereof, shall have such designations, preferences and relative, participating, optional or other special rights and qualifications, limitations or restrictions thereof as shall be expressed in the resolution or resolutions providing for the issue of such stock adopted by the board of directors and may be made dependent upon facts ascertainable outside such resolution or resolutions of the board of directors, provided that the matter in which such facts shall operate upon such designations, preferences, rights and qualifications; limitations or restrictions of such class or series of stock is clearly and expressly set forth in the resolution or resolutions providing for the issuance of such stock by the board of directors.

NINTH: The governing board of this corporation shall be known as the Board of Directors, and the number of directors may from time to time be increased or decreased in such manner as shall be provided by the bylaws of this corporation, providing that the number of directors shall not be reduced to less than one (1).

TENTH: After the amount of the subscription price, the purchase price, of the par value of the stock of any class or series is paid into the corporation, owners or holders of shares of any stock in the corporation may never be assessed to pay the debts of the corporation.

ELEVENTH: The corporation is to have a perpetual existence.

TWELFTH: No director or officer of the corporation shall be personally liable to the corporation or any of its stockholders for damages for breach of fiduciary duty as a director or officer of for any act or omission of any such director or officer; however, the foregoing provision shall not eliminate or limit the liability of a director or officer for (a) acts or omissions which involve intentional misconduct, fraud or a knowing violation of law; or (b) the payment of dividends in violation of Section 78.300 of the Nevada Revised Statutes. Any repeal or modification of this Article by the stockholders of this corporation shall be prospective only and shall not adversely affect any limitation on the personal liability of a director or officer of the corporation for acts or omissions prior to such repeal or modification.

THIRTEENTH: No shareholder shall be entitled as a matter of right to subscribe for or receive additional shares of any class of stock of the corporation, whether now or hereafter authorized, or any bonds, debentures or securities convertible into stock, but such additional shares of stock or other securities convertible into stock may be issued or disposed of by the Board of Directors to such persons and on such terms as in its discretion it shall deem advisable.

FOURTEENTH: This corporation reserves the right to amend, alter, change or repeal and provision contained in the Articles of Incorporation, in the manner now or hereafter prescribed by statute, or by the Articles of Incorporation, and all rights conferred upon the Stockholders herein are granted subject to this reservation.

ROSS MILLER
Secretary of State
204 North Carson Street, Suite 1
Carson City, Nevada 89701-4520
(775) 684 5708
Website: www.nvsos.gov

Filed in the office of	Document Number
Ross Miller Secretary of State State of Nevada	20110361332-02
	Filing Date and Time 05/16/2011 8:00 AM
	Entity Number E0550162008-5

Certificate of Amendment
(PURSUANT TO NRS 78.385 AND 78.390)

USE BLACK INK ONLY - DO NOT HIGHLIGHT — ABOVE SPACE IS FOR OFFICE USE ONLY

Certificate of Amendment to Articles of Incorporation For Nevada Profit Corporations (Pursuant to NRS 78.385 and 78.390 - After Issuance of Stock)

1. Name of corporation:
PIPER ACQUISITION II, INC.

2. The articles have been amended as follows: (provide article numbers, if available)
Article ONE NAME: The complete name of the Corporation shall be Hygea Holdings Corp.

3. The vote by which the stockholders holding shares in the corporation entitling them to exercise a least a majority of the voting power, or such greater proportion of the voting power as may be required in the case of a vote by classes or series, or as may be required by the provisions of the articles of incorporation* have voted in favor of the amendment is: 64.4%

4. Effective date of filing: (optional) 5/16/11
(must not be later than 90 days after the certificate is filed)

5. Signature: (required)

X _____
Signature of Officer

*If any proposed amendment would alter or change any preference or any relative or other right given to any class or series of outstanding shares, then the amendment must be approved by the vote, in addition to the affirmative vote otherwise required, of the holders of shares representing a majority of the voting power of each class or series affected by the amendment regardless to limitations or restrictions on the voting power thereof.

IMPORTANT: Failure to include any of the above information and submit with the proper fees may cause this filing to be rejected.

This form must be accompanied by appropriate fees.

Nevada Secretary of State Amend Profit-After
Revised: 3-6-09

EXHIBIT "F"

FREDRICK P. WAID, ESQ.

10080 W. Alta Drive, Suite 200, Las Vegas, Nevada 89145
(702) 385-2500 office (702) 280-5759 mobile
fwaid@hutchlegal.com

Fred is an Of Counsel member of the law firm of Hutchison & Steffen. He is also an officer and director of Evincemed Corp., a healthcare information technology company. Since 1997, Fred has served as an officer, director, general counsel and advisor to various healthcare companies including Med Qual, HCR Net, Claimlogic, Nevada Cancer Center and Sierra Health Affiliates.

Fred has been appointed by state and federal courts as a receiver, special servicer, successor trustee and interim corporate officer. He has led and worked on investigative teams with the Securities and Exchange Commission and other regulatory agencies.

From 1994 until 2015, Fred served as an officer and director of Farmers & Merchants Bank, Red Rock Community Bank and Bank of Las Vegas.

A graduate of Baylor Law School and Brigham Young University, Fred has served on a number of charitable boards and foundations.

Fred and his wife are the parents of six children.

EXHIBIT “11”

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Nevada Bar No. 14124
Maria A. Gall, Esq.
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Kyle E. Ewing, Esq.
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scarlson@kcnvlaw.com
tzimmerman@kcnvlaw.com

Attorneys for Defendant

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.,

Defendant.

Case No. 18 OC 00071 1B

Dept No. II

DEFENDANT'S RESPONSE TO THE COURT'S MARCH 28, 2018, ORDER SETTING CONFERENCE UNDER N.R.C.P. 16(a)

DEFENDANT'S RESPONSE TO THE COURT'S MARCH 28, 2018, ORDER SETTING CONFERENCE UNDER N.R.C.P. 16(a)

Defendant Hygea Holdings Corp. ("Hygea"), by and through its counsel of record, hereby submits this Response to the Court's March 28, 2018, Order Setting Conference under N.R.C.P. 16(a). In Section I, Hygea sets forth each outstanding motion currently before the Court, in reverse chronological order, along with the date that motion was filed and a brief summary of the motion.[1] In Section II, Hygea sets forth in summary form, the matters it hopes to discuss before the Court at the status check set for April 6, 2018.

I. OUTSTANDING MOTIONS

A. Defendant's Motion to Dismiss or, Alternatively, for Summary Judgment filed March 23, 2018

Plaintiffs seek a receiver pursuant to NRS 78.650, 78.630, and 32.010 on the purported basis that Hygea is on the brink of "imminent financial collapse." Hygea strongly disputes Plaintiffs' allegations, and points out that in over two months since the filing of Plaintiffs' emergency petition, Hygea has not collapsed, and indeed, is in sound financial health. If this matter proceeds to the merits, Hygea will present evidence to rebut Plaintiffs' allegations, which *at best* paint a hyperbolic and misleading picture of Hygea's financial health and *at worst* offer outright fabrications. However, there are serious, threshold issues this Court must decide before it can turn to the merits. Plaintiffs' complaint is fatally flawed and must be dismissed because Plaintiffs: (1) do not collectively hold 10% of the corporation's issued and outstanding stock, as is required by NRS 78.650 and 78.630, and therefore lack standing to maintain this lawsuit; (2) seek to maintain their claim for the appointment of a receiver under NRS 32.010, when no ancillary action is pending, as is required by that statute and binding case law interpreting that statute; and

[1] The undersigned certifies that no such summary exceeds 200 words.

(3) have failed to name Hygea's directors as necessary and indispensable parties, as is required by Nevada precedent.

B. Joint Motion for Protective Order, filed March, 5, 2018[2]

The Parties agree that a protective order is necessary to facilitate the resolution of disputes over confidentiality but disagree as to certain provisions of the proposed order, including, without limitation, provisions relating to designations of "attorneys eyes only," whether confidential information may be used in other lawsuits, and to whom authorized disclosures may be made. It is Defendant's position that:

- A designation of "Attorneys' Eyes Only" is appropriate given the potential that it may disclose highly confidential business information, including letters of intent reflecting confidential negotiations between a potential purchaser and/or investor of the corporation and Defendant;
- Confidential information discovered in this lawsuit should not be used to end-run the discovery requirements in other proceedings between certain of the Plaintiffs (N5HYG, LLC) and Defendant, including in the federal securities litigation where there is no protective order given discovery therein is stayed;
- Disclosure of confidential information should be limited to those persons necessary to facilitate litigation in the case in which the protective order is sought, including to counsel of record (as opposed to any counsel); and
- All those to whom confidential information is shared should be bound to the

[2] The Joint Motion was submitted to the Eighth Judicial District Court on order shortening time, which the court signed and placed on calendar for oral argument. However, it appears that due to a clerical oversight, the executed order was not submitted for electronic filing and, therefore, may not have been forwarded by the Eighth Judicial District Court as part of the record upon transfer of venue. Defendant's counsel is in the process of checking with the clerk of the First Judicial District Court as to whether the Joint Motion was forwarded to this Court, and if it was not, Defendant's counsel will (re)file the Joint Motion with this Court.

requirements of the protective order, including trial and hearing witnesses.

C. Plaintiffs' Motion for Limited Waiver of N.R.C.P. 16 Requirements, filed March 2, 2018

Plaintiffs seek expedited discovery. However, the Eighth Judicial District Court—prior to transfer of venue—denied the relief sought by Plaintiffs' Motion. At the Parties' February 28 telephonic hearing, Judge Allf stated that it was not her intent to suspend Rule 16 in this case and that pre-hearing discovery was unnecessary because Plaintiffs presumptively had enough to satisfy Rule 11 at the time they filed their complaint and petition. This Court should deny the Motion for those same reasons.

Even if the Court is inclined to entertain Plaintiff's request, it should deny the Motion because Plaintiffs fail to set forth good cause for Rule 16.1(f) relief. Plaintiffs do not explain:

- Why relevance alone supports good cause to place an undue burden on Hygea to produce the items it plans to rely on for its "financial viability claims;"
- How Plaintiffs' alleged contractual right to a document dictates the bounds of discovery; or
- How Plaintiffs' status as shareholders entitles them to seek all records of the corporation.

To the extent the Court is inclined to grant the Motion, Hygea asserts that it is entitled to an even playing field and, therefore, to pre-hearing discovery from Plaintiffs.

D. Plaintiffs' Motion for Injunction Against Witness Intimidation, filed February 28, 2018

Plaintiffs' Motion is nothing more than an attempt to take another bite at the apple with respect to the interim relief the Eighth Judicial District Court denied, as well as its decision to reject Plaintiffs' proposition that the court order Hygea to waive any confidentiality or non-disclosure

agreement Hygea may have with an employee or counter-party. By the Motion, Plaintiffs seek to enjoin Hygea from interacting with any "actual or potential witness in this matter," which necessarily includes Hygea's employees, shareholders, C-suite executives, and contractual partners. Plaintiffs not only overreach with their request, they also fail to provide any competent evidence or authority for the proposition that a non-specific injunction against "witness intimidation" is warranted or could be issued by this Court. Plaintiffs' Motion should be denied because:

- The letter sent by Hygea to Dr. Cohen, upon which Plaintiffs base their Motion, speaks for itself, but in no reasonable world can it be interpreted as intimidating Dr. Cohen into withholding testimony in this lawsuit; and
- There is no need to invoke this Court's equitable powers to, in essence, require Hygea to follow the law—Hygea and its management are already enjoined from intimidating witnesses by Nevada's and Florida's criminal codes.

E. Plaintiffs' Emergency Petition for Appointment of Receiver, filed January 26, 2018

Plaintiffs initiated this lawsuit on January 26, 2018 by filing an "emergency" complaint and petition for the appointment of a receiver under NRS 78.650, 78.630, and 32.010. Plaintiffs alleged at that time that Hygea was mere days or moments away from catastrophic collapse. Over two months later, and despite no such doomsday scenario unfolding, the Plaintiffs continue to cry wolf. Plaintiffs ask this Court to appoint a receiver based on nothing more than declarations consisting of hearsay (and double and triple hearsay), alleging that Hygea is insolvent, on the brink of insolvency, missing payments, being mismanaged, and/or that Hygea's top management has committed fraud and/or negligence. Alongside its opposition to the petition, Hygea submitted declarations, based on personal knowledge, which address each and every such mistruth or misleading statement. Plaintiffs' petition fails to describe the purpose or scope of the requested

receivership or how their proposed receiver—with no prior knowledge of the corporation's business—could successfully manage its complex operations and cure its alleged ills. The Eighth Judicial District Court, after oral argument on February 21, 2018, set the petition out for an evidentiary hearing after finding insufficient evidence existed to appoint a receiver or grant "interim relief."

II. MATTERS TO BE DISCUSSED

A. Consolidation of Hearing with Trial on the Merits

Plaintiffs' *preliminary* list of witnesses identified 16 persons to testify at the evidentiary hearing. Hygea's preliminary list of witnesses identified 4 additional (i.e., non-overlapping) persons to testify at the evidentiary hearing. Hygea sees no reason to conduct what will be at least a 3 day evidentiary hearing only to repeat the same process 6-12 months later at a trial of this matter. Indeed, at this juncture, Hygea anticipates that an evidentiary hearing of at least 20 witnesses will take at least 5 judicial days (not 3). For the parties, the Court, and the witnesses to repeat such hearing would be an incredible waste of resources. Thus, if the Court denies Defendant's Motion to Dismiss, it is Defendant's position that the evidentiary hearing should be combined with the trial on the merits of this matter pursuant to N.R.C.P. 65(a)(2). The pleadings should be framed (at which time Defendant anticipates it will make counterclaims), and then an expedited, yet reasonable discovery period should be set, after which the matter should proceed to trial.

B. The Filing of Motions in Limine, including to Exclude or Limit the Testimony of Hygea's Former General Counsel

On or about January 30, 2018, the undersigned counsel of Ballard Spahr LLP was retained by Richard Williams, Esq.—at that time, Hygea's general counsel—to represent Hygea in this lawsuit. Mr. Williams subsequently left the company, after which Mr. Williams e-mailed

Plaintiffs' counsel certain privileged and confidential information Mr. Williams learned in the course of his representing Hygea (despite Mr. Williams's self-serving assertion to the contrary). That e-mail is a part of the Court record, including most recently as an exhibit to Plaintiffs' request for an emergency status conference. Mr. Williams is also identified on Plaintiffs' preliminary list of witnesses. It is Hygea's position that Mr. Williams should not be permitted to testify in this matter—whether live or by declaration (or indirectly by the introduction of his correspondence). The Court should not condone what is clearly a violation of Mr. Williams's continuing ethical obligations, including under Rules 1.6 and 1.9 of the Nevada Rules of Professional Conduct (or the Florida equivalent, where Mr. Williams is barred), or the threat that by his testimony Mr. Williams is very likely to violate the attorney-client privilege. Only Hygea has the right to waive the attorney-client privilege—its former general counsel cannot.

[continued on following page]

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned hereby affirms this document does not contain the social security number of any person.

DATED this 2nd day of April, 2018.

KAEMPFER CROWELL

By: _____

Severin A. Carlson, Esq.
Nevada Bar No. 9373
Tara C. Zimmerman, Esq.
Nevada Bar No. 12146
50 West Liberty St., Suite 700
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Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle A. Ewing, Esq.
Nevada Bar No. 14051
BALLARD SPAHR LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on April 2, 2018, a true and correct copy of **DEFENDANT'S RESPONSE TO THE COURT'S MARCH 28, 2018, ORDER SETTING CONFERENCE UNDER N.R.C.P. 16(a)** was served on the following counsel of record by U.S. Mail, postage-prepaid:

G. Mark Albright, Esq.
D. Chris Albright, Esq.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Ogonna M. Brown, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
400 South Fourth Street
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James W. Puzey, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
800 South Meadows Parkway, #800
Reno, Nevada 89521

Christopher D. Kaye, Esq.
(admitted pro hac vice)
THE MILLER LAW FIRM, P.C.
950 W. University Drive, Suite 300
Rochester, Michigan 48307

Attorneys for Plaintiffs

An Employee of Kaempfer Crowell

EXHIBIT “12”

STRICTLY CONFIDENTIAL
EXECUTION VERSION

STOCK PURCHASE AGREEMENT

by and among

N5HYG LLC,

HYGEA HOLDINGS CORP.,

and

THE SELLER PRINCIPALS NAMED HEREIN,

Dated as of October 5, 2016

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(continued)

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EXHIBITS

Exhibit A: List of Subsidiaries

STOCK PURCHASE AGREEMENT

This Stock Purchase Agreement (as amended or otherwise modified in accordance with the terms hereof, this "Agreement"), dated as of October 5, 2016 (the "Effective Date"), is entered into by and among **N5HYG LLC**, a Michigan limited liability company ("Buyer"), **HYGEA HOLDINGS CORP.**, a Nevada corporation ("Seller"), and the Seller Principals (defined below). Buyer, Seller and the Seller Principals are sometimes referred to in this Agreement collectively as the "Parties" or individually as a "Party." Any reference to "Seller" herein shall include any predecessor of Seller. Unless the context otherwise requires, terms used in this Agreement that are capitalized and not otherwise defined in context will have the meanings set forth or cross-referenced in Article 1.

RECITALS

WHEREAS, the Seller Principals each own (directly and indirectly, as applicable) common stock of Seller ("Common Stock") which in the aggregate constitutes 30.36% of the issued and outstanding Common Stock (not taking into account the exercise of any warrants, options or similar rights to acquire Common Stock, and prior to taking into account the Contemplated Transactions);

WHEREAS, Seller owns (directly and indirectly, as applicable) 100% of the issued and outstanding capital stock or other equity interests of each of the entities listed on Exhibit A hereto (collectively, the "Subsidiaries," and each, a "Subsidiary");

WHEREAS, through the Subsidiaries, Seller owns and operates a health care business focused primarily on the delivery of primary-care-based health care to patients (currently numbering approximately 175,000 patients) through its integrated group practices and through the Palm Network, Seller's independent practice association and managed services organization (collectively, the "Business") throughout Florida and Georgia;

WHEREAS, Seller and the Seller Principals have determined it is in their collective best interest that Seller issue to Buyer an amount of Common Stock such that immediately following such issuance Buyer shall own Twenty-Three Million Four Hundred Thirty-Seven Thousand Five Hundred (23,437,500) shares of Common Stock, constituting 8.57% of all of the issued and outstanding Common Stock, not taking into account the exercise of any warrants, options or similar rights to acquire Common Stock, but taking into account the Contemplated Transactions (the "Acquired Stock");

WHEREAS, as payment for the Acquired Stock, Buyer shall contribute the Consideration to Seller;

WHEREAS, Buyer, Seller and Seller Principals have determined that the Consideration, which reflects a price per share of Acquired Stock equal to $1.28 (the "Per-Share Price"), is consistent with the fair market value of the Acquired Stock and includes a payment for the goodwill inherent in the Acquired Stock;

WHEREAS, Seller Principals will receive an indirect financial benefit from the Contemplated Transactions; and

WHEREAS, the Buyer, Seller and Seller Principals desire to make certain representations, warranties, covenants and agreements in connection with this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the premises and mutual promises herein made, and in consideration of the representations, warranties, covenants and agreements herein contained, the Parties, intending to be legally bound, hereby agree as follows:

1. **DEFINITIONS.**

As used herein, the following terms shall have the following meanings:

"1934 Act" is defined in Section 4.26.

"2013 Yearly Financials" is defined in Section 4.6.1.

"2014 & 2015 Yearly Financials" is defined in Section 4.6.1.

"409A Plan" is defined in Section 4.17.8.

"Acquired Stock" is defined in the Recitals.

"Action" means any claim, action, cause of action, law suit (whether in contract or tort or otherwise) or audit, litigation (whether at law or in equity and whether civil or criminal), assessment, grievance, arbitration, investigation, hearing, mediation, charge, complaint, inquiry, demand, notice or proceeding to, from, by or before any Governmental Authority or any mediator.

"Affiliate" means, with respect to any specified Person at any time, (a) each Person directly or indirectly controlling, controlled by or under direct or indirect common control with such specified Person at such time, (b) each Person who is at such time an officer, manager (with respect to a limited liability company), or a member of a board of directors of, or direct or indirect beneficial holder of at least 5% of any class of the capital stock of, such specified Person, (c) if such specified Person is an individual, the Family Members of such Person and (d) the Family Members of each officer, manager, director, or holder described in clause (b) above.

"Agreement" is defined in the Preamble.

"AJCA" is defined in Section 4.17.8.

"Ancillary Agreements" means each agreement, document, instrument or certificate contemplated by this Agreement or to be executed by Buyer, Seller, or any Seller Principal in connection with the consummation of the Contemplated Transactions, in each case only as applicable to the relevant party or parties to such Ancillary Agreement, as indicated by the context in which such term is used.

"Business" is defined in the Recitals.

"Business Day" means any day, other than a Saturday, Sunday or any other day on which banks located in New York are authorized or required by applicable Legal Requirement to be closed.

"Business Employee" is defined in Section 4.21.3.

"Buyer" is defined in the Preamble.

"Buyer Indemnified Persons" is defined in Section 7.1.

"Buyer Investor Protections" is defined in Section 6.4.

"Center" is defined in Section 4.15.1.

"Closing" is defined in Section 3.2.

"Closing Date" is defined in Section 3.2.

"Code" means the U.S. Internal Revenue Code of 1986, as amended.

"Common Stock" is defined in the Recitals.

"Compensation" means, with respect to any Person, all wages, earnings, salaries, commissions, compensation, remuneration, incentives, bonuses, or benefits of any kind or character whatsoever (including issuances or grants of equity interests or the right to acquire equity interests or compensation based on the value or increase in value of equity interests), required to be made or that have been made directly or indirectly by any Seller to such Person or Affiliates of such Person.

"Consideration" is defined in Section 3.3.

"Contemplated Transactions" means, collectively, the transactions contemplated by this Agreement, including (a) the transfer by Seller of the Acquired Stock to Buyer in exchange for the Consideration and (b) the execution, delivery, and performance of this Agreement and the Ancillary Agreements.

"Contractual Obligation" means, with respect to any Person, any contract, agreement, deed, mortgage, lease, sublease, license, sublicense or other legally enforceable commitment, promise, undertaking, obligation, arrangement, instrument or understanding, whether written or oral, to which or by which such Person is a party or otherwise subject or bound or to which or by which any property, business, operation or right of such Person is subject or bound.

"Data Room" means that certain virtual data room hosted by Seller in connection with the Contemplated Transactions using Sharepoint Online/Microsoft Office 365 under the folder name "Investors."

"Debt" means, with respect to any Person, all Liabilities of such Person, without duplication (a) for borrowed money (including overdraft facilities) or in respect of loans or advances (including, in any case, any prepayment premiums due or arising as a result of the consummation of the Contemplated Transactions), (b) evidenced by notes, bonds, debentures, or similar Contractual Obligations, (c) for deferred rent or the deferred purchase price of property, goods, or services (other than trade payables or accruals incurred in the Ordinary Course of Business, but in any case including any deferred purchase price Liabilities, earnouts, contingency payments, installment payments, deferred revenue, customer deposits, seller notes, promissory notes, or similar Liabilities, in each case related to past acquisitions and whether or not contingent), (d) under capital leases or synthetic obligations which would be required to be capitalized in accordance with GAAP, (e) in respect of letters of credit and bankers' acceptances (in each case whether or not drawn, contingent, or otherwise), (f) for obligations arising under any interest rate, commodity, or other similar swap, cap, collar, futures contract, or other hedging arrangement, (g) for any credit card payables with respect to charges having a transaction date of 30 days or more prior to the Closing Date or related to non-business related activities, (h) all accrued interest expense, (i) accounts payable over 60 days, (j) accounts payable to any of such Person's Affiliates, directors, shareholders, officers, employees, or Representatives, (k) overdrawn or negative balance cash accounts, (l) all

obligations of the type referred to in clauses (a) through (k) above of other Persons secured by any Encumbrance on any property or asset of such Person, whether or not such obligation is assumed by such Person all obligations of the type referred to in clauses (a) through (k) above of any other Person the payment of which such Person has Guaranteed, and (n) accrued but unpaid interest, fees, penalties, premiums (including in respect of prepayment) arising with respect to any of the items described in clauses (a) through (l) above).

"Direct Owners" is defined in Section 4.5.1.

"Disclosed Contract" is defined in Section 4.19.2.

"Disclosure Schedules" is defined in Section 2.2.

"Effective Date" is defined in the Recitals.

"Encumbrance" means any charge, claim, community or other marital property interest, condition, equitable interest, lien, lease, license, option, pledge, security interest, mortgage, deed of trust, right of way, easement, encroachment, servitude, preemptive right, anti-dilution right, right of first offer or first refusal, or buy/sell agreement and any other restriction, encumbrance, or covenant with respect to, or condition governing the use, construction, voting (in the case of any security or equity interest), transfer or exercise of or receipt of income from, any other attribute of ownership.

"Environment" means soil, surface waters, groundwater, land, stream sediments, surface or subsurface strata, ambient air, or indoor air, including any material or substance used in the physical structure of any building or improvement.

"Environmental Laws" means any Legal Requirement relating to (a) releases or threatened releases of Hazardous Substances, (b) pollution or protection of health or the environment or natural resources, or (c) the manufacture, handling, transport, use, treatment, storage, recycling or disposal of or exposure to Hazardous Substances.

"Equity Value" means the enterprise value of Seller (including all of its subsidiaries) less Debt, all calculated in accordance with GAAP.

ERISA" is defined in Section 4.17.1.

"ERISA Affiliate" is defined in Section 4.17.1.

"ERISA Employer" is defined in Section 4.17.1.

"Family Member" means, with respect to any individual, (a) such Person's spouse, (b) each parent, brother, sister or natural or adopted child of such Person or such Person's spouse, (c) each trust created for the benefit of one or more of the Persons described in clauses (a) and (b) above and (d) each custodian or guardian of any property of one or more of the Persons described in clauses (a) through (c) above in his or her capacity as such custodian or guardian.

"Federal Health Care Program" means any plan or program that provides health benefits, whether directly, through insurance, or otherwise, which is funded directly, in whole or in part, by the United States Government or a state health care program, including, but not limited to, the Medicare and Medicaid programs.

"Financials" is defined in Section 4.6.1.

"Fundamental Representations" means the representations and warranties of Seller set forth in Section 4.1 (Organization), Section 4.2 (Power and Authorization), Section 4.5 (Capitalization; Subsidiaries), Section 4.10 (Ownership of Assets), Section 4.14 (Legal Compliance; Illegal Payments; Permits), Section 4.15 (Compliance with Healthcare Laws), Section 4.16 (Tax Matters), Section 4.17 (Employee Benefit Plans), Section 4.21 (Employees) and Section 4.24 (No Brokers).

"GAAP" means generally accepted accounting principles in the United States, as in effect on the Closing Date or as of the period(s) indicated.

"Government Order" means any order, writ, judgment, injunction, decree, stipulation, ruling, determination, or award entered by or with any Governmental Authority.

"Governmental Authority" means any United States federal, state, or local or any foreign government, or political subdivision thereof, or foreign state, or any multinational organization or authority or any authority, agency, or commission entitled to exercise any administrative, executive, judicial, legislative, police, or regulatory power, any court or tribunal (or any department, bureau or division thereof), or any arbitrator or arbitral body.

"Guarantee" by any Person means any obligation, contingent or otherwise, of such Person directly or indirectly guaranteeing or otherwise supporting in whole or in part the payment of any Debt or other obligation of any other Person and, without limiting the generality of the foregoing, any obligation, direct or indirect, contingent or otherwise, of such Person (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Debt or other obligation of such other Person (whether arising by virtue of partnership arrangements, by agreement to keep well, to purchase assets, goods, securities or services, to take or pay, or to maintain financial statement conditions or otherwise) or (b) entered into for the purpose of assuring in any other manner the obligee of such Debt or other obligations of the payment of such Debt or to protect such obligee against loss in respect of such Debt (in whole or in part). The term "Guarantee" used as a verb has a correlative meaning.

"Hazardous Substance" means and includes each substance designated as a hazardous waste, hazardous substance, hazardous material, pollutant, contaminant or toxic substance or as designated with words of similar meaning and regulatory effect under any Environmental Law, petroleum and petroleum products or derivatives, asbestos and urea formaldehyde, polychlorinated biphenyls, Medical Waste, and any other substance for which liability or standards of conduct may be imposed under Environmental Law.

"Healthcare Laws" means all federal and state laws, rules or regulations, and published program instructions relating to the regulation, provision or administration of, or payment for, healthcare products or services, including, but not limited to (a) the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §1395nn), the criminal health care fraud statute (18 U.S. Code § 1347, the civil False Claims Act (31 U.S.C. §3729 et seq.), the Federal Food, Drug, and Cosmetics Act (21 U.S. Code §301 et. seq.), the Federal Controlled Substances Act (21 U.S. Code §801 et. seq.), the Clinical Laboratory Improvement Amendments of 1988 (42 U.S. Code §263a et. seq.), TRICARE (10 U.S.C. Section 1071 et seq.), Sections 1320a-7, 1320a-7a and 1320a-7b of Title 42 of the United States Code and the regulations promulgated pursuant to such statutes; (b) the Health Insurance Portability and Accountability Act of 1996 (Pub. L. No. 104-191) and the regulations promulgated thereunder; (c) Medicare (Title XVIII of the Social Security Act) and the regulations and program instructions and other legally enforceable requirements promulgated thereunder; (d) Medicaid (Title XIX of the Social Security Act) and the regulations and other legally enforceable

requirements promulgated thereunder; (e) quality, safety and medical necessity laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services; (f) rules governing the provision of services to employees with workers compensation coverage or licensure or certification as a healthcare organization to provide such services; and (g) licensure laws, rules or regulations relating to the regulation, provision or administration of, or payment for, healthcare products or services, including laws relating to the so-called "corporate practice of medicine" and fee splitting, each of (a) through (g) as amended from time to time.

"Indemnified Person" means, with respect to any Indemnity Claim, each Buyer Indemnified Person or Seller Indemnified Party asserting the Indemnity Claim (or on whose behalf the Indemnity Claim is asserted) under Article 7.

"Indemnifying Party" means, with respect to any Indemnity Claim, the party or parties against whom such Indemnity Claim may be or has been asserted.

"Indemnity Claim" means a claim for indemnity Article 7.

"Indirect Owners" is defined in Section 4.5.1.

"Intellectual Property Rights" means the entire right, title, and interest in and to all proprietary rights of every kind and nature however denominated, throughout the world, including (a) patents, patent applications, industrial designs, industrial design applications, and patent disclosures, together with all reissues, continuations, continuations-in-part, revisions, divisionals, extensions, reviews and reexaminations in connection therewith, (b) confidential information, trade secrets, database rights, and all other proprietary rights in Technology, (c) trademarks, trade names, service marks, service names, brands, trade dress and logos, and all other indicia of origin, all applications, registrations, and renewals in connection therewith, and the goodwill and activities associated therewith, (d) domain names, rights of privacy and publicity, and moral rights, including all rights of authorship, use, publication, reproduction, distribution, performance transformation, moral rights and rights of ownership of copyrightable works, copyrights and registrations and applications associated therewith, mask work rights (e) any and all registrations, applications, recordings, licenses, common-law rights, and contractual rights relating to any of the foregoing, and (e) all rights of privacy and publicity, including rights to the use of names, likenesses, images, voices, signatures and biographical information of real persons, as well as all Actions and rights to sue at law or in equity for any past or future infringement or other impairment of any of the foregoing, including the right to receive all proceeds and damages therefrom, and all rights to obtain renewals, continuations, divisions, or other extensions of legal protections pertaining thereto, and (f) all copies and tangible embodiments or descriptions of any of the foregoing (in whatever form or medium).

"IRS" means the Internal Revenue Service.

"Legal Requirement" or "Law" means any constitution, law (including common law), statute, standard, ordinance, code, rule, regulation, resolution, or promulgation, or any Government Order, or any license, franchise, permit, or similar right granted under any of the foregoing, or any similar provision or duty or obligation having the force or effect of law, including, and for the avoidance of doubt, any Healthcare Law.

"Liability" means, with respect to any Person, any liability or obligation of such Person, whether known or unknown, whether asserted or unasserted, whether determined, determinable or otherwise, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, whether incurred or consequential, whether due or to become due.

"Litigation Conditions" is defined in Section 7.6.2.

"Losses" is defined in Section 7.1.

"Material Adverse Effect" means any event, circumstance, development, condition, occurrence, state of facts, change or effect that, when considered individually or in the aggregate has been, or would be reasonably likely to be, materially adverse to (a) the business condition (financial or otherwise), or the business, assets, liabilities of Seller, or (b) the ability of Seller or either Seller Principal to perform their respective obligations under this Agreement or to consummate the Contemplated Transactions, in either case, other than any event, circumstance, development, condition, occurrence, state of facts, change or effect arising out of: (i) general business, financial, credit or economic conditions in the United States; (ii) acts of war (whether or not declared), sabotage or terrorism, military actions or the escalation thereof; (iii) any change in or adoption of any applicable Legal Requirement or GAAP, and (iv) natural disasters, acts of nature or acts of god such as landslides, floods, fires, explosions, lightning and induction caused by lightning causing damage to equipment, earthquakes subsidence, storms, cyclones, typhoons, hurricanes, tornados, tsunamis, perils of sea, volcanic activity, and other extreme weather conditions and any other extraordinary operation of the forces of nature; except, in the case of subparts (i), (ii), (iii) or (iv) of this definition, only to the extent that such events, circumstances, developments, conditions, occurrences, states of facts, changes or effects do not have a disproportionate effect on Seller relative to other participants in the industries in which Seller operates.

"Most Recent Balance Sheets" is defined in Section 4.6.1.

"Most Recent Balance Sheet Date" is defined in Section 4.6.1.

"Most Recent Financials" is defined in Section 4.6.1.

"Ordinary Course of Business" means an action taken by any Person in the ordinary course of such Person's business which is consistent with the past customs and practices of such Person.

"Party" is defined in the Preamble.

"Payment Date" is defined in Section 6.3.

"Payor" means any insurer, health maintenance organization, third party administrator, employer, union, trust, governmental program (including but not limited to any Third Party Payor Program), or other consumer or customer of health care services that has authorized Seller as a provider of health care services to the members, beneficiaries, participants or the like, thereof or to whom Seller has submitted a claim for services.

"Per-Share Price" is defined in the Recitals.

"Permits" means, with respect to any Person, any license, accreditation, bond, franchise, permit, consent, approval, right, privilege, certificate, registration, accreditation or other similar authorization issued by, or otherwise granted by, any Governmental Authority or any other Person to which or by which such Person is subject or bound or to which or by which any property, business, operation, or right of such Person is subject or bound.

"Person" means any individual or corporation, association, partnership, limited liability company, joint venture, joint stock, or other company, business trust, trust, organization, labor union, Governmental Authority, or other entity of any kind.

"Physician Owner" is defined in Section 4.5.1.

"Plan" is defined in Section 4.17.1.

"Post-Closing Monthly Payment" is defined in Section 6.3.

"Procedure" shall mean any procedure or procedures on the list of Medicare-covered procedures for ambulatory surgical centers in accordance with regulations issued by the U.S. Department of Health and Human Services.

"Pro Rata Share" is defined in Section 7.4.2.

"Put Notice" is defined in Section 6.3.

"Put Option" is defined in Section 6.3.

"Put Price" is defined in Section 6.3.

"Real Property" is defined in Section 4.12.

"Real Property Leases" is defined in Section 4.12.

"Reimbursed Transaction Expenses" is defined in Section 6.2.

"Release" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, migrating, disposing or dumping of a Hazardous Substance into the Environment (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Substance) and any condition that results in the exposure of a person to a Hazardous Substance.

"Representative" means, with respect to any Person, any director, manager, officer, employee, agent, consultant, advisor, or other representative of such Person, including legal counsel, accountants, and financial advisors.

"SEC" is defined in Section 4.26.

"SEC Documents" is defined in Section 4.26.

"Seller" is defined in the Preamble.

"Seller Indemnification Obligations" is defined in Section 7.4.

"Seller Indemnified Parties" is defined in Section 7.2.

"Seller Intellectual Property Rights" means all Intellectual Property Rights owned by Seller or used by Seller in connection with each of the Business as currently conducted, including all Intellectual Property Rights in and to Seller Technology.

"Seller Owners" is defined in Section 4.5.1.

"Seller Principals" means the following Seller Owners: (a) Manuel Iglesias (Co-Founder, Director and Chief Executive Officer of Seller) and (b) Edward Moffly (Co-Founder, Director and Chief Financial Officer of Seller).

"Seller Technology" means any and all Technology used in connection with the Business as currently conducted.

"Seller's Knowledge" shall mean the knowledge of each of the Seller Principals, Richard Williams (the Chief Legal Officer and General Counsel of Seller), and each officer, manager or member of the board of directors (or equivalent governing body) of Seller and each Subsidiary. For purposes of this Agreement, any such individual shall be deemed to have knowledge of a particular fact or other matter if (a) such individual is actually aware of such fact or other matter or (b) a prudent individual could be expected to discover or otherwise become aware of such fact or other matter after reasonable investigation.

"Subsidiary" is defined in the Recitals.

"Subsidiary Equity Interests" is defined in Section 4.5.2.

"Tax" or "Taxes" means (a) any and all federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs, duties, capital stock, franchise, profits, built-in gain, withholding, social security (or similar taxes, including FICA), unemployment, disability, real property, intangible property, personal property, escheat, abandoned or unclaimed property obligation, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind or any charge or fee of any kind in the nature of (or similar to) taxes imposed by any Governmental Authority or any Legal Requirement, including any interest, penalty, or addition thereto, in each case whether disputed or not and (b) any Liability for the payment of any amounts of the type described in clause (a) of this definition as a result of (i) being a member of an affiliated, consolidated, combined or unitary group or being a party to any agreement or arrangement whereby liability for payment of such amounts was determined or taken into account with reference to the Liability of another Person, in each case, for any period, (ii) as a result of any tax sharing, tax indemnification or tax allocation agreement, arrangement or understanding (other than commercial contracts (A) a principal subject matter of which is not Taxes, (B) containing customary Tax indemnification provisions, and (C) entered into in the ordinary course of business), (iii) or as a result of being liable for the payment of another Person's taxes as a transferee or successor, by contract or otherwise.

"Tax Return" means any return, statement, election, form, declaration, report, claim for refund or information return or statement relating to Taxes, including any schedule, supplement or attachment thereto, and including any amendment thereof.

"Technology" means all inventions, works, discoveries, innovations, know-how, information (including ideas, research and development, formulas, algorithms, compositions, processes and techniques, data, designs, drawings, specifications, graphics, illustrations, artwork, documentation, and manuals), databases, computer software, firmware, computer hardware, integrated circuits and integrated circuit masks, electronic, electrical, and mechanical equipment, and all other forms of technology, including improvements, modifications, works in process, derivatives, or changes, whether tangible or intangible, embodied in any form, whether or not protectable or protected by patent, copyright, mask work right, trade secret law, or otherwise, and all documents and other materials recording any of the foregoing.

"Third Party Claim" is defined in Section 7.6.1.

"Third Party Payor Programs" means all Third Party Payor Programs (including but not limited to, Federal Health Care Programs, workers compensation, or any other state health care programs, as well as Blue Cross and/or Blue Shield, managed care plans, or any other private insurance program).

"Treasury Regulations" means the regulations promulgated under the Code.

"Trigger Event" is defined in Section 6.3.

"Yearly Financials" is defined in Section 4.6.1.

2. GENERAL RULES OF INTERPRETATION; SCHEDULES.

2.1. General Rules. Except as otherwise explicitly specified to the contrary, (a) references to a Section, Article, Exhibit or Schedule means a Section or Article of, or Exhibit or Schedule to, this Agreement, unless another agreement is specified, (b) the word "including" shall be construed as "including without limitation", (c) references to a particular statute or regulation include all rules and regulations thereunder and any predecessor or successor statute, rules or regulation, in each case as amended or otherwise modified from time to time, (d) words in the singular or plural form include the plural and singular form, respectively, (e) words expressed in the masculine shall include the feminine and neuter genders and vice versa, (f) the word "will" shall have the same meaning as the word "shall", (g) the word "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends and shall not simply mean "if", (h) references to "day" or "days" in the lower case means calendar days, (i) references to the "date hereof" are to the date of this Agreement, (j) the words "hereof", "herein", "hereto", and "hereunder", and words of similar import, shall refer to this Agreement as a whole and not any particular provisions of this Agreement, (k) references to dollars or "$" are to United States dollars, and (l) references to a particular Person include such Person's successors and assigns to the extent not prohibited by this Agreement.

2.2. Disclosure Schedules. Disclosure in any section of the Schedules to this Agreement (the "Disclosure Schedules") shall apply only to the indicated section of this Agreement except to the extent that it is readily apparent from the face of such disclosure that such disclosure is relevant to another section of this Agreement. The inclusion of any information in the Schedules shall not be deemed to be an admission or acknowledgment, in and of itself that such information is required by the terms hereof to be disclosed, is material or has resulted in or is reasonably likely to result in a Material Adverse Effect. Complete and correct copies of all documents referred to in the Disclosure Schedules were made available to Buyer in the Data Room or sent via electronic mail to Dan Miller (Managing Director of Buyer's parent company) at DMiller@RINCapital.com prior to the Closing Date.

3. STOCK PURCHASE.

3.1. The Stock Purchase. Upon the Closing, in exchange for the Consideration contributed by Buyer to Seller, Buyer shall purchase from Seller and Seller shall sell, issue, transfer, assign, convey and deliver to Buyer the Acquired Stock free and clear of any and all liens, mortgages, liens, pledges, security interests, conditional sales agreements, right of first refusals, options, restrictions, liabilities, encumbrances, or charges.

3.2. Closing. The closing of the Contemplated Transactions hereby (the "Closing") will take place remotely via the electronic exchange of documents and signature pages on the Effective Date (the "Closing Date"), or in such other manner as the Parties agree in writing. For accounting and

computational purposes (other than for Tax purposes), the Closing will be deemed to have occurred at 12:01 a.m. (Eastern Time) on the Closing Date.

3.3. Consideration. The consideration to be paid for the Acquired Stock shall be Thirty Million and no/100 Dollars ($30,000,000.00) (the "Consideration"). The Consideration shall be paid as of the Closing effected by wire transfer of immediately available funds to an account provided to Buyer by Seller in writing prior to the Closing.

3.4. Deliverables by Seller. At the Closing, Seller shall deliver (or cause to be delivered) to Buyer the following items:

3.4.1. all documents that are necessary to transfer to Buyer good and valid title to the Acquired Stock free and clear of any lien, with any necessary transfer tax stamps affixed or accompanied by evidence that all equity transfer taxes have been paid;

3.4.2. a certificate of incumbency verifying the authority of the respective officers of Seller executing this Agreement, and any other agreements contemplated hereby, or making certifications for Closing;

3.4.3. a certificate from the Secretary of Seller certifying that all board of directors and shareholder approvals necessary to consummate the transactions contemplated by this Agreement and the Ancillary Agreements to which Seller is a party have been obtained and attaching thereto: (i) a copy of the articles of organization of Seller, and (ii) a copy of the resolutions of the board of directors of Seller, evidencing the approval of this Agreement and the Ancillary Agreements to which each is a party and the transactions contemplated hereby and thereby;

3.4.4. a certificate signed by Seller certifying the satisfaction of the conditions set forth in Sections 3.7(b) and 3.7(c);

3.4.5. duly executed counterparts of each Ancillary Agreement to which a Seller or a Seller Principal is a party;

3.4.6. all of the consents, waivers and similar instruments that are set forth on Schedule 4.3, each in form and substance reasonably satisfactory to Buyer; and

3.4.7. such other documents and certificates as Buyer may reasonably request or as may be required pursuant to this Agreement.

3.5. Deliverables by Buyer. At the Closing, Buyer shall deliver (or cause to be delivered) to or on behalf of Seller the following items:

3.5.1. payment of the Consideration in accordance with Section 3.3;

3.5.2. a certificate of incumbency verifying the authority of the respective officer(s), manager(s) and/or director(s) of Buyer executing this Agreement, or any other agreements contemplated hereby, or making certifications for Closing;

3.5.3. a certificate from the Secretary of Buyer certifying that all governance approvals necessary to consummate the transactions contemplated by this Agreement, and the Ancillary Agreements to which it is a party have been obtained;

3.5.4. a certificate signed by Buyer certifying the satisfaction of the conditions set forth in Sections 3.6(b) and 3.6(c);

3.5.5. duly executed counterparts of each Ancillary Agreement to which a Buyer is a party; and

3.5.6. such other documents and certificates as Seller may reasonably request or as may be required pursuant to this Agreement.

3.6. Seller Closing Conditions. Seller's obligations to consummate the transactions contemplated hereunder are expressly conditioned upon the satisfaction of the following conditions (unless the same are expressly waived by Seller):

(a) receipt by Seller of the various documents and items set forth at Section 3.5 hereof;

(b) the representations and warranties of Buyer will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing; and

(c) Buyer will have performed and complied in all material respects with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by them at or prior to the Closing.

3.7. Buyer Closing Conditions. Buyer's obligations to consummate the transactions contemplated hereunder are expressly conditioned upon the satisfaction of the following conditions (unless the same are expressly waived by Buyer):

(a) receipt by Buyer of the various documents and items set forth in Section 3.4 hereof;

(b) the representations and warranties of Seller will be true and correct in all respects at and as of the Closing with the same force and effect as if made as of the Closing;

(c) Seller and each Seller Principal (as applicable) will have performed and complied in all material respects with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by them at or prior to the Closing; and

(d) since the date hereof, there will have occurred no event, change, fact, or condition, nor will there exist any circumstance which, singly or in the aggregate with all other events, changes, facts, conditions and circumstances, has resulted or would reasonably be expected to result in a Material Adverse Effect.

4. REPRESENTATIONS AND WARRANTIES OF SELLER.

In order to induce Buyer to enter into and perform this Agreement and to consummate the Contemplated Transactions, Seller hereby represents and warrants to Buyer, as of the date hereof as follows:

4.1. Organization;. Each of Seller and each Subsidiary is (a) duly organized, validly existing and in good standing under the laws of the state of its incorporation or formation and (b) duly qualified to do business and in good standing in each other jurisdiction where such qualification is required. Seller has delivered to Buyer true, accurate and complete copies of the organizational documents of Seller and each Subsidiary. Schedule 4.1 sets forth a true and correct list of the current directors, managers, officers and

stockholders or other equity holders of Seller and each Seller Subsidiary, as applicable. No earn-out payments, and no payments for referrals to Seller or any Subsidiary of Medicare or Medicaid patients, have been made or promised by Seller, any Subsidiary, or any Affiliate, officer, director, manager or agent thereof in connection with the acquisition of any Subsidiary or the acquisition of the business or assets of any other entity.

4.2. Power and Authorization. Seller has the requisite capacity to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery and performance by Seller of this Agreement and each Ancillary Agreement to which Seller is a party and the consummation of the Contemplated Transactions are within the power and authority of Seller and have been duly authorized by all necessary action on the part of Seller. This Agreement and each Ancillary Agreement to which Seller is a party (a) have been duly executed and delivered by Seller and (b) are the legal, valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, and, other than with respect to any restrictive covenant contained in this Agreement or any Ancillary Agreement, general equitable principles and the discretion of courts in granting equitable relief. Seller and each Subsidiary has the full corporate or limited liability company power and authority necessary to own and use its properties and assets and carry on its business as currently conducted.

4.3. Authorization of Governmental Authorities. Except as disclosed on Schedule 4.3, no action by (including any authorization, consent or approval), or in respect of, or filing with, or notice to, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by Seller and each Ancillary Agreement to which Seller is a party or (b) consummation of the Contemplated Transactions by Seller.

4.4. Non-contravention. Except as disclosed on Schedule 4.4, neither the execution, delivery and performance by Seller of this Agreement nor the execution, delivery and performance by Seller of any Ancillary Agreement nor the consummation of the Contemplated Transactions will: (a) assuming the taking of any action by (including any authorization, consent or approval), or in respect of, or any filing with, any Governmental Authority, in each case, as disclosed on Schedule 4.3, violate any Legal Requirement applicable to Seller, any Subsidiary or the Business; (b) result in the modification, acceleration, termination, breach or violation of, or default under, any Contractual Obligation to which Seller or any Subsidiary is a party; (c) require any action by (including any authorization, consent or approval) or in respect of (including notice to), any Person under any Contractual Obligation of Seller or any Subsidiary; (d) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, the Common Stock or any asset owned or held by Seller or any Subsidiary; or (e) result in a breach or violation of, or default under, the organizational documents of Seller or any Subsidiary.

4.5. Capitalization; Subsidiaries.

4.5.1. Capitalization of Seller. Except for those warrants to purchase Common Stock listed on Schedule 4.5.1, complete and correct copies of which have been made available by Seller to Buyer, other than the Common Stock, Seller has not issued, nor has agreed to issue, any equity interest of any kind (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any security or other instrument convertible into an equity security of Seller, or any derivative right of any of the foregoing). None of the Common Stock (including, for the avoidance of doubt, the Acquired Stock) is subject to, and none of Seller, either Seller Principal or, to Seller's Knowledge, any of the Seller Owners is a party to, any shareholders' agreement or similar agreement, any voting agreement, any pre-emptive rights, any rights of first offer or rights of first refusal, or any

similar Encumbrance of any kind with respect to the Common Stock. All of the issued and outstanding shares of Common Stock have been duly authorized, validly issued, and are fully paid and non-assessable, as applicable. Seller has complied in all material respects with all federal and state securities Laws and exemptions (including all applicable rules and regulations promulgated by the SEC, any applicable state securities regulators, and/or any exchange upon which any Common Stock is traded) in connection with the issuance and sale of all of the Common Stock (including the Acquired Stock). All of the issued and outstanding Common Stock is held of record and beneficially owned by the Persons set forth on Schedule 4.5.1 (the "Direct Owners") in the respective amounts set forth on Schedule 4.5.1. When used in this Agreement: (a) the term "Indirect Owner" means each Person that has a direct or indirect beneficial ownership interest in a Direct Owner; (b) the term "Seller Owners" means, collectively, all of the Direct Owners and the Indirect Owners; and (c) the term "Physician Owner" means each Seller Owner who is a physician (including any medical doctors, doctors of osteopathy, physiatrists, chiropractors or dentists). Schedule 4.5.1 sets forth a list of all Physician Owners, as well as the respective approximate percentages of direct or indirect beneficial ownership interest held by each such Physician Owner in one or more Direct Owners. The Acquired Stock has been duly authorized, validly issued and, upon payment of the Consideration, will be fully paid and non-assessable and, upon the Closing, Buyer shall have sole and exclusive, good and valid title to the Acquired Stock, not subject to any Encumbrance.

4.5.2. Capitalization of Subsidiaries; Affiliates. Seller has no subsidiaries or Affiliates other than the Subsidiaries. Exhibit A sets forth a complete list of all of the Subsidiaries. Seller owns, either directly or indirectly, 100% of the issued and outstanding capital stock, membership interests or other equity interests of each Subsidiary (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any derivative rights thereto) (the "Subsidiary Equity Interests"). None of the Subsidiary Equity Interests is subject to, and none of Seller, either Seller Principal, any Subsidiary or, to Seller's Knowledge, any of the Seller Owners is a party to, any shareholders' agreement or similar agreement, any voting agreement, any pre-emptive rights, any rights of first offer or rights of first refusal, or any similar Encumbrance of any kind with respect to any Subsidiary Equity Interests. All of the issued and outstanding Subsidiary Equity Interests have been duly authorized, validly issued, and are fully paid and non-assessable, as applicable. Seller and each Subsidiary, as applicable, have complied in all material respects with all federal and state securities Laws and exemptions (including all applicable rules and regulations promulgated by the SEC, any applicable state securities regulators, and/or any exchange upon which any Common Stock is traded) in connection with the issuance and sale of all of the Subsidiary Equity Interests. All of the issued and outstanding Subsidiary Equity Interests are held of record and beneficially owned by the Persons designated on Exhibit A in the respective amounts set forth on Exhibit A.

4.6. Financial Matters.

4.6.1. Financial Statements. Attached to Schedule 4.6.1 are true, correct and complete copies of each of the following: (a) the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2013 and the related statements of profit and loss and changes in equity for the fiscal year then ended (the "2013 Yearly Financials"); and (b) that certain "Hydrea Holdings Corp. Quality of Earnings Report Update – TTM June 30, 2016" prepared by independent accounting firm CliftonLarsonAllen LLP, dated as of October 3, 2016, including an unaudited consolidated balance sheet of Seller and the Subsidiaries as of June 30, 2016 (respectively, the "Most Recent Balance Sheet," and the "Most Recent Balance Sheet

Date") and the related unaudited consolidated statement of profit and loss and changes in equity of Seller and the Subsidiaries for the 6-month period then ended (collectively, the "Most Recent Financials"). Seller, together with CPA firm RT&C (Rodriguez, Trueba & Co) is in the process of completing the preparation of the consolidated audited balance sheets of Seller and the Subsidiaries as of December 31, 2014 and December 31, 2015 and the related statements of profit and loss and changes in equity for the fiscal years then ended (the "2014 & 2015 Yearly Financials" and, collectively with the Audited Financials, the "Yearly Financials"), true and correct copies of which shall be provided to Buyer promptly upon completion, but in any event no later than November 30, 2016, which 2014 & 2015 Yearly Financials (together with the Most Recent Financials), when completed and provided to Buyer, shall reflect shareholders' equity as of June 30, 2016 that is no less than $95,000,000. The Most Recent Financials and the Yearly Financials are referred to herein collectively as the "Financials."

4.6.2. Except for the absence of footnote disclosure and any customary year-end adjustments that would not, individually or in the aggregate, be reasonably expected to be material, solely with respect to the Most Recent Financials, each of the Financials has been (or, with respect to the 2014 & 2015 Yearly Financials, will be) prepared in accordance with GAAP (except as set forth on Schedule 4.6.2) and presents (or, with respect to the 2014 & 2015 Yearly Financials, will present) fairly in all material respects the financial position and results of operations of Seller as at the dates and for the periods indicated therein. The Financials were (or, with respect to the 2014 & 2015 Yearly Financials, will be) derived from the books and records of Seller and the Subsidiaries.

4.7. Absence of Undisclosed Liabilities. Neither Seller nor any Subsidiary has any Liability of the type that would otherwise be required to be set forth on a balance sheet prepared in accordance with GAAP, except for (a) Liabilities set forth on the face of the Most Recent Balance Sheets, (b) Liabilities incurred in the Ordinary Course of Business since the Most Recent Balance Sheet Date, none of which can reasonably be expected to be material to Seller and applicable (none of which relate to (i) a breach of a Contractual Obligation, (ii) breach of warranty, (iii) a tort, (iv) an infringement of Intellectual Property rights, (v) violation of any Legal Requirement or (vi) an environmental liability), and (c) Liabilities listed on Schedule 4.7.

4.8. Absence of Certain Developments. Since the Most Recent Balance Sheet Date, the Business has been conducted only in the Ordinary Course of Business, except in connection with the transactions contemplated by, or entered into in connection with, this Agreement (and otherwise disclosed to Buyer). Without limiting the foregoing, except as set forth on Schedule 4.8:

4.8.1. Neither Seller nor any Subsidiary has (a) amended its organizational documents, (b) amended any term of its Common Stock or Subsidiary Equity Interests, (c) issued, sold, granted, or otherwise disposed of, any Common Stock or Subsidiary Equity Interests or (d) issued, granted or awarded any rights to acquire Common Stock, Subsidiary Equity Interests or other equity interests of any kind (including any preferred stock, warrants, options, "phantom equity," or other equity interests of any kind whatsoever, including any derivative rights thereto);

4.8.2. Neither Seller nor any Subsidiary has become liable in respect of any Guarantee and has not incurred, assumed or otherwise become liable in respect of any Debt, except for borrowings in the Ordinary Course of Business under credit facilities in existence on the Most Recent Balance Sheet Date;

4.8.3. Neither Seller nor any Subsidiary has permitted any of its assets to become subject to an Encumbrance or sold, leased, licensed, transferred, abandoned, forfeited, or otherwise disposed of or lost the use of any of its assets (except for (i) inventory and supplies consumed in the Ordinary Course of Business, and (ii) assets sold, transferred or disposed of in the Ordinary Course of Business and replaced with items of like kind and value);

4.8.4. Neither Seller nor any Subsidiary has (a) made any declaration, setting aside or payment of any dividend or other distribution with respect to, or any repurchase, redemption or other acquisition of, any of its Common Stock or Subsidiary Equity Interests other than Tax distributions in the Ordinary Course of Business, or (b) purchased, redeemed, or otherwise acquired any of its Common Stock or Subsidiary Equity Interests;

4.8.5. there has been no loss, destruction, damage, or eminent domain taking (in each case, whether or not insured) affecting the Business or assets of Seller or any Subsidiary;

4.8.6. other than as required by applicable Legal Requirements, neither Seller nor any Subsidiary has directly or indirectly increased, made any change in, or accelerated the vesting of, any Compensation payable or paid, whether conditionally or otherwise, to (a) any current or former non-executive employee, consultant, independent contractor, partner, or agent other than in the Ordinary Course of Business or (b) any current or former executive officer or director;

4.8.7. Neither Seller nor any Subsidiary has made any loan or advance to, Guarantee for the benefit of, or made any investment in, any Person;

4.8.8. Neither Seller nor any Subsidiary has made any change in any of its methods of accounting or accounting practices or policies;

4.8.9. Neither Seller nor any Subsidiary has executed, adopted, amended, or terminated any collective bargaining agreement or other agreement with a labor union or other labor organization;

4.8.10. Neither Seller nor any Subsidiary has paid, discharged, settled, or satisfied any Action or any Liability, other than the payment of trade payables in the Ordinary Course of Business;

4.8.11. Neither Seller nor any Subsidiary has entered into any agreement or commitment relating to capital expenditures exceeding One Hundred Thousand Dollars ($100,000) individually or Two Hundred Fifty Thousand Dollars ($250,000) in the aggregate (and Schedule 4.8 includes a complete and detailed listing of all such agreements or commitments, regardless of value (excluding acquisitions outside the Ordinary Course of Business), for the past 2 years);

4.8.12. Neither Seller nor any Subsidiary has made, changed or revoked any Tax election, elected or changed any method of accounting for Tax purposes, filed any amended Tax Return, settled any claim or Action in respect of Taxes, or entered into any Contractual Obligation in respect of Taxes with any Governmental Authority;

4.8.13. Neither Seller nor any Subsidiary has waived any right of value or suffered any loss;

4.8.14. Neither Seller nor any Subsidiary has made any write off or write down of or made any determination to write off or write down any asset or property;

4.8.15. Neither Seller nor any Subsidiary has settled any Action, pending or threatened, or had any judgment or lien entered against it, in each case in excess of $5,000;

4.8.16. Neither Seller nor any Subsidiary has canceled or terminated any insurance policy;

4.8.17. Neither Seller nor any Subsidiary has acquired (by merger, consolidation or acquisition of stock or assets) any corporation, partnership or other business organization or division thereof or collection of assets;

4.8.18. Neither Seller nor any Subsidiary has commenced or terminated any line of business;

4.8.19. Neither Seller nor any Subsidiary has entered into any commitment, whether orally or in writing, to do any of the things referred to elsewhere in this Section 4.8; and

4.8.20. no other event or circumstance has occurred which has had, or would reasonably be expected to have, a Material Adverse Effect.

4.9. Debt. Seller and the Subsidiaries have no Liabilities in respect of Debt totaling more than Five Hundred Thousand Dollars ($500,000) in the aggregate except as set forth on Schedule 4.9. Schedule 4.9 sets forth a true, correct and complete list of the individual components (indicating the amount and the Person to whom such Debt is owned) of all Debt outstanding with respect to the Business.

4.10. Ownership of Assets. Except as disclosed on Schedule 4.10, either Seller or a Subsidiary has sole and exclusive, good and valid title to, or, in the case of property held under a lease or other Contractual Obligation, a sole and exclusive, enforceable leasehold interest in, or right to use and otherwise commercially exploit, all of the properties, rights, and assets, whether real or personal property and whether tangible or intangible, that are owned or purported to be owned by Seller or such Subsidiary or that are used or exploited in the business of Seller and the Subsidiaries as currently conducted. Except as disclosed on Schedule 4.10, none of the real or personal property of Seller or any Subsidiary is subject to any Encumbrance.

4.11. Accounts Receivable. All accounts and notes receivable reflected on the Most Recent Balance Sheets or that arise following such date and prior to the Closing have arisen, or will arise, in the Ordinary Course of Business, represent, or will represent, claims for bona fide services rendered by Seller, a Subsidiary, or the employees or contractors of Seller or a Subsidiary. Except as reflected on the Most Recent Balance Sheets, neither Seller nor any Subsidiary has received written notice or, to the Seller's Knowledge, oral notice from or on behalf of any obligor of any such accounts receivable that such obligor is unwilling or unable to pay any material portion of such accounts receivable.

4.12. Real Property. Schedule 4.12 sets forth a true, correct and complete list, including addresses, of each leasehold interest in real property leased, subleased, or licensed to or by, or for which a right to use or occupy has been granted to, Seller and/or any Subsidiary (the "Real Property"), and the Real Property listed on such schedule is all of the real property used by Seller and the Subsidiaries in connection with the Business. Schedule 4.12 identifies each document or instrument pursuant to which any Real Property is leased, subleased, or licensed (each a "Real Property Lease") and except for the

foregoing, there are no written or oral subleases, licenses, concessions, occupancy agreements, or other Contractual Obligations granting to any Person (other than Seller or a Subsidiary) the right of use or occupancy of the Real Property. Neither Seller nor any Subsidiary currently owns, nor has Seller or any Subsidiary previously owned, any real property whatsoever. Except as set forth in Schedule 4.12, either Seller or a Subsidiary has a valid leasehold interest in and to each of the Real Properties. There are no defaults by Seller or any Subsidiary under any Real Property Lease, and to Seller's Knowledge, no other party thereto is in default. Except as set forth in Schedule 4.12, no Affiliate of Seller is the owner, lessor, sublessor, or licensor under any Real Property Lease. Seller has delivered to Buyer accurate and complete copies of the Real Property Leases, in each case as amended or otherwise modified and in effect. To Seller's Knowledge, there is no pending or threatened appropriation, condemnation or similar Action affecting the Real Property. Since the Most Recent Balance Sheet Date, there has been no material destruction, damage or casualty with respect to any of the Real Property. The Real Property is (i) in good condition and repair (subject to normal wear and tear) and (ii) sufficient for the operation of the Business conducted therein as it is currently conducted and as it is presently proposed to be conducted. The condition and use of the Real Property conforms to each applicable certificate of occupancy and all other permits required to be issued in connection with the Real Property.

4.13. Intellectual Property. Except as disclosed on Schedule 4.13, Seller owns all rights, title and interest in and to, or will be licensed or otherwise possess, a valid and enforceable right to use all Seller Technology and all Seller Intellectual Property Rights free and clear of any Encumbrance, and without any known conflict with, or infringement of, the rights of any third parties. Except as disclosed on Schedule 4.13, Seller Intellectual Property Rights and Seller Technology includes all of the Intellectual Property Rights and Technology used in or necessary for the conduct of the Business of Seller as currently conducted.

4.14. Legal Compliance; Illegal Payments; Permits.

4.14.1. Neither Seller nor any Subsidiary is in breach or violation, in any respect of, or in default under, nor has Seller or any Subsidiary at any time during the previous ten (10) years been in breach or violation in any respect of, or default under, any Legal Requirement nor is there any circumstance or set of circumstances which could, with notice, the passage of time or otherwise, constitute such a breach, violation or default. All compensation paid, and to be paid, to Seller's and any Subsidiary's employees (inclusive of physicians, clinicians and other providers) is and at all times has been, (i) set in advance, (ii) commercially reasonable, (iii) determined in a manner that has not taken into account, directly or indirectly, the volume or value of referrals (as defined in 42 CFR 411.351) for designated health services (as defined at 42 CFR 411.351), (iv) reflective of fair market value, and (v) compliant with all of the requirements of each of the federal Anti-Kickback Statute (42 U.S.C. §1320a-7b(b)), and the Physician Self-Referral Law, commonly known as the "Stark Law" (42 U.S.C. §1395nn). Neither Seller nor any Subsidiary pays, or at any time has paid, or is bound by any contractual obligation to pay in the future, to any employee (inclusive of physicians, clinicians and other providers) any bonuses or other incentive payments. During the previous ten (10) years, no written notice has been received by, and no oral notices have been made or other claims been filed against, Seller or any Subsidiary alleging a violation of any Legal Requirement, and neither Seller nor any Subsidiary has been subject to any adverse inspection, finding, investigation, penalty assessment, audit or other compliance or enforcement action. Neither Seller, nor any Subsidiary, nor any Physician Owner, nor any of their respective directors, managers, officers, other employees or agents, has during the previous ten (10) years (i) directly or indirectly given or made, or agreed to give or make, any illegal gift, contribution, payment, incentive, or similar benefit to any supplier, customer (other than promotional gifts of nominal value), governmental official, provider or employee or other Person who was, is or

may be in a position to help or hinder Seller or any Subsidiary (or assist in connection with any actual or proposed transaction) or made, or agreed to make, any illegal contribution, or reimbursed any illegal political gift or contribution made by any other Person, to any candidate for federal, state, local, or foreign public office or (ii) caused Seller or any Subsidiary to establish or maintain any unrecorded fund or asset or made any false entries on any books or records for any purpose.

4.14.2. Seller and each Subsidiary have been duly granted all Permits under all Legal Requirements necessary for the conduct, in all respects, of the Business as currently conducted and the lawful occupancy, use, and operation of the Real Property by Seller and/or one or more Subsidiaries, as applicable. Schedule 4.14.2 describes each such Permit, including each such Permit related to Healthcare Laws. Except as set forth on Schedule 4.14.2, such Permits are valid and in full force and effect, neither Seller nor any Subsidiary is in breach or violation of, or default under, in any material respect, any such Permit, and no basis exists which, with notice or lapse of time or both, would constitute any such breach, violation or default.

4.15. Compliance with Healthcare Laws.

4.15.1. Schedule 4.15.1 sets forth a complete and comprehensive list of all ambulatory surgical centers, clinics, practices and other facilities where medical services are provided that, in each case, are operated by Seller or any Subsidiary (collectively, the "Centers"), including, with respect to each Center: (a) the physical address of such Center; (b) the types of services provided at such Center; and (c) the name of the Subsidiary that operates such Center.

4.15.2. Except as set forth on Schedule 4.15.2, neither Seller nor any Subsidiary, nor any manager, director, officer, employee or agent of Seller or any Subsidiary, has (a) violated, conducted the Business or operated any Center in violation of or noncompliance with, or used or occupied Seller's properties or assets in violation of or noncompliance with, any Healthcare Laws in any respect, or (b) received any written notice of any alleged breach, violation of or non-compliance with, default under or any citation for violation of or noncompliance with, any Healthcare Laws nor, is there a fact, arrangement, operation, circumstance or set of circumstances which could, with the passage of time or otherwise, constitute such a breach, violation, default or noncompliance. Each Center is structured (including with respect to the ownership structure) and operated, and the business at each Center is conducted, in full and complete compliance with all applicable Healthcare Laws. Each Subsidiary that is an integrated group practice (if any) meets the definition of "group practice" as defined at 42 CFR 411.352.

4.15.3. Except as set forth on Schedule 4.15.3: (a) Seller, each Subsidiary, each Physician Owner, and each other clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has the requisite Permits and provider or supplier number(s) to bill all Third Party Payor Programs that it currently bills, (b) neither Seller, any Subsidiary, any Physician Owner, nor any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has received any written notice that there is any investigation, audit, claim review, or other action pending or threatened that could result in a revocation, suspension, termination, probation, restriction, limitation, or non-renewal of such Person's Permit, supplier or provider number, or such Person's disqualification or exclusion from any Third Party Payor Program; (c) all claims for all items, services and goods provided at or by a Center and submitted by or on behalf of

Seller, any Subsidiary, any Physician Owner, or any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center to Third Party Payor Programs represent claims for medically necessary items, services or goods actually provided by such Person; (d) all claims for all items, services and goods provided at or by any Center that have been submitted by or on behalf of Seller, any Subsidiary, any Physician Owner, or any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at a Center, have been submitted in compliance with applicable Laws, including any Healthcare Laws, and all rules, regulations, agreements, policies, and procedures of the Third Party Payor Programs; (e) neither Seller, any Subsidiary, any Physician Owner, nor any clinical employee of Seller, a Subsidiary or a Physician Owner who provides professional medical services at any Center, has received any written notice that there are any pending or threatened audits, investigations or claims for or relating to its claims for any items, services and goods provided at or by any Center; (f) all billing practices relating to items, services and goods provided at or by a Center, and all billing practices of, Seller, the Subsidiaries, all Physician Owners, and all clinical employees of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center are and have been in compliance with all applicable Healthcare Laws, regulations, agreements and policies of all applicable Third Party Payor Programs, and neither Seller, any Subsidiary, nor any Physician Owner, nor any clinical employee of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center, has billed or received any payment or reimbursement for any items, services and goods provided at or by any Center in excess of amounts allowed by any Healthcare Law, except to the extent any such amounts are immaterial and have been repaid in full as required by, and in compliance with, all applicable Healthcare Laws and Third Party Payor Program agreements; (g) neither Seller, any Subsidiary, any Seller Owner, nor any employee of Seller, any Subsidiary or any Seller Owner who provides professional medical services at any Center, or any officer, director, manager or employee or clinical contractor of Seller or any Subsidiary, has been excluded, debarred or suspended from participation in any Federal Health Care Program or had its/his/her billing privileges revoked, nor is any such exclusion, debarment, suspension, or billing privileges revocation threatened; (h) based upon and in reliance upon Seller's monthly review of (1) the "list of Excluded Individuals/Entities" on the website of the United States Health and Human Services Office of Inspector General (http://oig.hhs.gov/fraud/exclusions.html), and the similar lists of Medicaid program exclusion by the States of Florida, Georgia or any other states that reimburse for services associated with Seller, any Subsidiary and/or any Physician Owner and (2) the "List of Parties Excluded From Federal Procurement and Non-procurement Programs" on the website of the United States General Services Administration (http://www.arnet.gov/epls/ and https://www.sam.gov), none of the shareholders, members, Seller Owners (including Physician Owners), managers, officers, directors, employees or clinical contractors of Seller or any Subsidiary has been excluded from participation in any Federal Health Care Program. None of Seller, any Subsidiary, any Physician Owner, or any officer, director or employee or clinical contractor of Seller, any Subsidiary or any Physician Owner has received any written notice from any Third Party Payor Programs of any pending or threatened investigations, audits, inquiries or surveys; and (i) Seller, the Subsidiaries, all Physician Owners, and all clinical employees of Seller, any Subsidiary or any Physician Owner who provides professional medical services at any Center are in compliance with all Medicare enrollment requirements as contained in 42 C.F.R. part 424 and program instructions issued pursuant thereto, and all information on the CMS enrollment forms (the various iterations of the CMS 855, such as the 855A , 855B, 855I and 855S) that have been filed by or on behalf of such entities or individuals is complete, current, and accurate.

4.15.4. Schedule 4.15.4 lists each current physician, physician assistant and other clinical employees and clinical contractors required to be licensed, certified and/or registered to perform services at the Centers along with their respective state(s) of licensure, certification or registration (including the licensure, certification or registration number). All such licensures, certifications and registrations are valid and contain no restrictions, and all such physicians, physician assistants and clinical employees or contractors required to be licensed, certified or registered to perform services at the Centers are so licensed, certified or registered without restriction. Seller, each Subsidiary and each physician providing services at the Center have current and valid provider contracts with the Third Party Payor Programs as set forth (or required to be set forth) on Schedule 4.15.4, and are in compliance in all respects with the conditions of participation of any Federal Healthcare Program and the various agreements and conditions necessary for reimbursement under all other applicable Third Party Payor Programs. All services furnished at the Centers have been and are being performed by personnel acting within the scope of their practice as determined by State law and who otherwise met all State requirements for performing the services at the time the services were performed. Neither the execution of this Agreement nor the consummation of the Contemplated Transactions will result in the breach or default under, or grant the ability of the counterparty to terminate, any Third Party Payor Agreement listed (or required to be listed) on Schedule 4.15.4.

4.15.5. Seller and each Subsidiary have been duly granted all Permits under all Healthcare Laws necessary for the conduct, in all respects, of the Business as currently conducted. Schedule 4.15.5 describes each such Permit. Except as set forth on Schedule 4.15.5, (a) each such Permit is valid and in full force and effect, and (b) neither Seller nor any Subsidiary is in breach or violation of, or default under, in any respect, any such Permit, and, to Seller's Knowledge, no circumstance or set of circumstances exists which, with notice or lapse of time or both, would constitute any such breach, violation nor default.

4.15.6. Except as set forth on Schedule 4.15.6, each Physician Owner (a) has paid fair market value for Common Stock of Seller, and no portion of any such payments were to reward or induce referrals of any items or services reimbursable by any Third Party Payor Program; (b) has at all times received distributions proportionate with his/her ownership of Common Stock and has not received any remuneration, in cash or in kind, in exchange for referrals of items or services that are reimbursable, in whole or in part, by any Third Party Payor Programs, including any Federal Healthcare Programs; (c) with respect to any physician-owned ambulatory surgical centers, has at all times while a Physician Owner generated at least one-third (1/3) of his/her medical practice income from all sources for the previous fiscal year or 12-month period from the performance of any Procedure; (d) has at all times while a Physician Owner used one or more of the Centers as an extension of his/her medical practice and has at all times while a Physician Owner regularly performed Procedures at one or more of the Centers; and (e) has not knowingly referred a Procedure to another Physician Owner, or to any physician, owner, or employee of Seller, a Subsidiary or another Physician Owner, for performance of such Procedure at any Center nor used any Center as a passive source of income in exchange for referrals of Procedures.

4.15.7. None of Seller, any Subsidiary or any Center has experienced a data breach or disclosure of information that would constitute a data or security incident as defined by HIPAA or any other applicable Healthcare Law.

4.15.8. No Seller Owner (i) has been convicted of a criminal offense or violation under any provision of a Healthcare Law; or related to the delivery of an item or service under a Federal health care program; or related to fraud, theft, embezzlement, breach of fiduciary

responsibility, or other financial misconduct; or related to patient abuse; or a felony of any kind, (ii) has had any civil monetary penalty, assessment or sanction imposed against him or her under any provision of a Healthcare Law or in relation to a violation of a Healthcare Law, and/or (iii) has been debarred, excluded or suspended at any time from participation in any Federal Health Care Programs.

4.16. Tax Matters. Except as set forth on Schedule 4.16:

4.16.1. Seller is, and at all times since its formation has been, a C Corporation for federal and state income tax purposes. Each of Seller's Subsidiaries is, and since its formation has been, disregarded as an entity separate from Seller. No Governmental Authority has ever challenged, disputed, or contested the classification of any Subsidiary as a disregarded entity.

4.16.2. Seller, except as noted in Schedule 4.16.2, has duly and timely filed, or has caused to be duly timely filed on its behalf or on behalf of the applicable Subsidiary, with the appropriate Governmental Authority, all Tax Returns required to be filed by it and/or each Subsidiary in accordance with all applicable Legal Requirements. All such Tax Returns are true, correct and complete in all material respects. All Taxes owed by Seller (whether or not shown on any Tax Return) have been timely paid in full to the appropriate Governmental Authority. No claim has ever been made by a Governmental Authority in a jurisdiction where Seller does not file Tax Returns that Seller is or may be subject to taxation by or required to file Tax Returns in that jurisdiction. There are no liens with respect to Taxes upon any asset of Seller.

4.16.3. Seller and each Subsidiary has deducted, withheld, and timely paid to the appropriate Governmental Authority all Taxes required by applicable Law to be deducted, withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder or other third party. Seller and each Subsidiary has timely filed or provided all information, returns or reports, including Forms 1099 and W-2 (and foreign state and local equivalents) that are required to have been filed or provided and has accurately reported all information required to be included on such returns or reports.

4.16.4. There is no foreign, federal, state or local dispute, audit, investigation, proceeding or claim concerning any Tax Return or Tax Liability of Seller pending, being conducted, claimed or raised by a Governmental Authority. Seller has provided to Buyer true and complete copies of all Tax Returns, examination reports, and statements of deficiencies filed, assessed against, or agreed to by Seller or any Subsidiary since January 1, 2010. All Tax deficiencies assessed against Seller has been fully paid or finally settled. No Tax Return of Seller has ever been audited by any Governmental Authority. Neither Seller nor any Subsidiary has received from any Governmental Authority (including from jurisdictions where Seller does not file Tax Returns) notification of intention to open an audit or review, a request for information related to any Tax matters or written notice of proposed assessment, adjustment or deficiency for any amount of Taxes proposed, asserted or assessed against Seller or any Subsidiary. To Seller's Knowledge, no such notification, request for information, or written notice of proposed assessment, adjustment or deficiency is forthcoming.

4.16.5. There are no Liens for Taxes upon any assets of Seller or any Subsidiary, except for Taxes not yet due and payable or being contested in good faith and for which adequate reserves in accordance with GAAP have been provided in the Financials.

4.16.6. Neither Seller nor any Subsidiary has waived any statute of limitations for the assessment or collection of Taxes or is the beneficiary of any extension of time within which to file any Tax Return which has not since been filed. Neither Seller nor any Subsidiary has t executed any power of attorney with respect to any Tax, other than powers of attorney that are no longer in force. Neither Seller nor any Subsidiary (a) is a party to any closing agreement with any Governmental Authority in respect of Taxes or (b) has received or requested from any Governmental Authority any private letter rulings, technical advice memoranda or similar agreements or rulings relating to Taxes.

4.16.7. Neither Seller nor any Subsidiary has any Liability for the Taxes of any other Person under Treasury Regulation § 1.1502-6 (or any similar provision of state, local or foreign law), as a transferee or successor, by contract (other than Liabilities for Taxes arising under customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or otherwise by law.

4.16.8. Neither Seller nor any Subsidiary is a party to any Tax allocation, sharing, indemnification, or similar agreement, arrangement or similar contract (other than commercial contracts (i) a principal subject matter of which is not Taxes, (ii) containing customary Tax indemnification provisions, and (iii) entered into in the ordinary course of business).

4.16.9. Neither Seller nor any Subsidiary will be required to include any item of income in or exclude any item of deduction from, taxable income for any period or portion thereof ending after the Closing Date as a result of (i) any change in method of accounting for a Pre-Closing Tax Period, (ii) any "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of state, local or foreign law) executed on or prior to the Closing Date, (iii) any intercompany transactions or any excess loss account described in Treasury Regulation § 1.1502 19 (or any corresponding or similar provision of state, local or foreign law), (iv) the installment method of accounting, the completed contract method of accounting or the cash method of accounting with respect to a transaction that occurred prior to the Closing Date, (v) any prepaid amount received on or prior to the Closing Date, (vi) the discharge of any Debt on or prior to the Closing date under Section 108(i) of the Code (or any corresponding or similar provision of state, local or foreign law), (vii) as a result of amounts earned on or before the Closing Date pursuant to Section 951 of the Code (or any corresponding or similar provision of state, local or foreign law), or (viii) as a result of any debt instrument held prior to the Closing that was acquired with "original issue discount" as defined in Section 1273(a) of the Code or subject to the rules set forth in Section 1276 of the Code.

4.16.10. Neither Seller nor any Subsidiary has not participated in a "reportable transaction" as defined in Section 6707A of the Code or Treasury Regulation § 1.6011-4 (or any predecessor provision thereto) or any corresponding or similar provision of state or local law.

4.16.11. Seller and each Subsidiary has disclosed on its federal state and local income Tax Returns all positions taken in such Tax Returns that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code (or any corresponding or similar provision of state or local law).

4.16.12. Neither Seller nor any Subsidiary is the beneficiary of any Tax incentive, Tax rebate, Tax holiday or similar arrangement or agreement with any Governmental Authority.

4.16.13. Seller does not have a permanent establishment in any foreign country and does not and has not engaged in a trade or business in any foreign country.

4.16.14. The provisions of Section 197(f)(9) of the Code will not apply to any intangible asset owned by Seller or any Subsidiary after the Closing Date.

4.17. Employee Benefit Plans.

4.17.1. For purposes of this Agreement, the term "Plan" shall mean any employee benefit plan (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), whether or not subject to ERISA, any other bonus, profit sharing, compensation, pension, retirement, "401(k)," "SERP," severance, savings, deferred compensation, fringe benefit, insurance, welfare, post-retirement health or welfare benefit, health, life, stock option, stock appreciation right, stock purchase, restricted stock, phantom stock, restricted stock unit, performance shares, tuition refund, service award, company car or car allowance, scholarship, housing or living allowances, relocation, disability, accident, sick pay, sick leave, accrued leave, vacation, holiday, termination, unemployment, individual employment, consulting, executive compensation, incentive, commission, retention, change in control, other material plan, agreement, policy, trust fund or arrangement (whether written or unwritten, insured or self-insured), and any plan subject to Sections 125, 127, 129, 137 or 423 of the Code, maintained, sponsored or contributed to (or required to be maintained, sponsored or contributed to) by Seller or any trade or business, whether or not incorporated, that together with Seller would be deemed to be a "single employer" within the meaning of Section 4001(b) of ERISA or Sections 414(b), 414(c), or 414(m) of the Code (an "ERISA Affiliate" and, together with Seller, the "ERISA Employers") or to which any ERISA Employer is a party or with respect to which any ERISA Employer has or may have any Liability, in each case for the benefit of any current or former director, consultant or employee of any ERISA Employer or any dependent or beneficiary thereof.

4.17.2. Schedule 4.17 sets forth an accurate and complete list of all Plans, and no ERISA Employer has any current or contingent obligation to contribute to, or Liability under, any Plan sponsored by any Person other than an ERISA Employer.

4.17.3. No Plan is, and no ERISA Employer has ever participated in or made contributions to: (a) a "multiemployer plan," as defined in Section 4001(a)(3) of ERISA or (b) a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA.

4.17.4. No Plan is a "single employer plan," as defined in Section 4001(a)(15) of ERISA, that is subject to Title IV of ERISA. No ERISA Employer has incurred any outstanding Liability under Section 4062, 4063 or 4064 of ERISA to the Pension Benefit Guaranty Corporation or to a trustee appointed under Section 4042 of ERISA.

4.17.5. The IRS has issued a currently effective favorable determination letter with respect to each Plan that is intended to be a "qualified plan" within the meaning of Section 401 of the Code, or an opinion or advisory opinion or letter as to each such Plan which is a prototype or volume submitter plan, and each trust maintained pursuant thereto has been determined to be exempt from federal income taxation under Section 501 of the Code by the IRS. Each such Plan has been timely amended since the date of the latest favorable determination letter in accordance with all applicable Laws. Nothing has occurred with respect to the operation of any such Plan that is reasonably likely to cause the loss of such qualification

or exemption or the corresponding imposition of any Liability, penalty or tax under ERISA or the Code or the assertion of claims by "participants" (as that term is defined in Section 3(7) of ERISA) other than routine benefit claims. No ERISA Employer has utilized the Employee Plans Compliance Resolution System to remedy any qualification failure of any Plan.

4.17.6. None of the ERISA Employers, the managers, officers or directors of the ERISA Employers, nor any Plan has engaged in a "prohibited transaction" (as such term is defined in Section 406 of ERISA or Section 4975 of the Code) or any other breach of fiduciary responsibility that could subject any ERISA Employer, or any manager, officer or director of any ERISA Employer to any tax or penalty on prohibited transactions imposed by such Section 4975 or to any Liability under Sections 409 or 502 of ERISA. There has not been any "reportable event" (as such term is defined in Section 4043 of ERISA) for which the 30-day reporting requirement has not been waived with to any Plan in the last five (5) years, and no notice of reportable event will be required to be filed in connection with the transactions contemplated under this Agreement. No ERISA Employer has utilized the U.S. Department of Labor's Voluntary Fiduciary Correction Program to correct any fiduciary violations under any Plan.

4.17.7. All Plans have been established, maintained and administered in accordance with their terms and with all provisions of applicable Laws, including ERISA and the Code, except for instances of noncompliance where neither the costs to comply nor the failure to comply, individually or in the aggregate, could have a material and adverse effect on any ERISA Employer. All reports and information required to be filed with any Authority or provided to participants or their beneficiaries have been timely filed or disclosed and, when filed or disclosed were accurate and complete. No ERISA Employer has any Liability for excise taxes under Section 4980D or 4980H of the Code.

4.17.8. Each Plan that is a "non-qualified deferred compensation plan" (within the meaning of Section 409A(d)(1) of the Code) that is subject to Section 409A of the Code ("409A Plan") has been operated in full compliance with Section 409A of the Code since January 1, 2005 and, if necessary, was, prior to January 1, 2009, amended to fully comply with the requirements of the final regulations promulgated under Section 409A of the Code. No Plan that would be a 409A Plan but for the effective date provisions applicable to Section 409A of the Code as set forth in Section 885(d) of the American Jobs Creation Act of 2004, as amended ("AJCA") has been "materially modified" within the meaning of Section 885(d)(2)(B) of AJCA after October 3, 2004 or has been operated in violation of Section 409A. No ERISA Employer has utilized any formally sanctioned correction program with respect to any 409A Plan.

4.17.9. None of the Plans promise or provide retiree or post-service medical or other retiree or post-service welfare benefits to any Person except as required by applicable Law and no ERISA Employer has represented, promised, or contracted to provide such retiree benefits to any employee, former employee, director, consultant or other Person, except as required by applicable Law.

4.17.10. Neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby (either alone or in conjunction with any other event) will: (i) increase any benefits otherwise payable under any Plan; (ii) result in any acceleration of the time of payment or vesting of any such benefits; (iii) limit or prohibit the ability to amend or terminate any Plan; (iv) require the funding of any trust or other funding vehicle; or (v) renew or extend the term of any agreement in respect of compensation for an employee of

any ERISA Employer that would create any Liability to any ERISA Employer after the Closing.

4.17.11. No employee of any ERISA Employer is entitled to any gross-up, make-whole, or other additional payment from any ERISA Employer with respect to taxes, interests or penalties imposed under Section 409A of the Code.

4.17.12. No ERISA Employer has communicated to any current or former employee, manager or director any intention or commitment to establish or implement any additional Plan or to amend or modify, in any material respect, any existing Plan.

4.17.13. No Plan is subject to the Law of any jurisdiction other than the United States.

4.18. Environmental Matters. Except as set forth in Schedule 4.18, (a) Seller and each Subsidiary is and has been for the past seven (7) years in compliance in all material respects with all Environmental Laws, (b) there has been no Release or threatened Release of any Hazardous Substances on, upon, into or from any site currently or heretofore owned, leased or otherwise operated or used by Seller or any Subsidiary, including the Centers, (c) there have been no Hazardous Substances generated by Seller or any Subsidiary that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any Governmental Authority in the United States, and (d) there have been no underground storage tanks located on, no PCBs (polychlorinated biphenyls) or PCB-containing Equipment or asbestos-containing materials used, stored or present on, and no hazardous waste as defined by the Resource Conservation and Recovery Act stored or present on, any site owned or operated by Seller or any Subsidiary, except for the storage of hazardous waste by Seller or a Subsidiary in the Ordinary Course of Business and in compliance, in all material respects, with Environmental Laws. Seller has delivered, or caused to be delivered, to Buyer copies of all documents, records and information in its possession or control reasonably related to any actual or potential material liability of Seller or a Subsidiary under Environmental Laws, including previously conducted environmental site assessments, compliance audits, asbestos surveys and documents regarding any Releases at, upon, under or from any property currently or formerly owned, leased or operated by Seller or any Subsidiary.

4.19. Contracts.

4.19.1. Contracts. Except as disclosed on Schedule 4.19, neither Seller nor any Subsidiary is bound by or a party to any of the following Contractual Obligations:

(a) any Contractual Obligation relating to the acquisition or disposition of (i) any business of Seller or a Subsidiary or any portion thereof (whether by merger, consolidation, or other business combination, sale of securities, sale of assets, or otherwise) or (ii) any asset other than in the Ordinary Course of Business;

(b) any Contractual Obligation concerning or consisting of a partnership, limited liability company or joint venture agreement;

(c) any Contractual Obligation (or group of related Contractual Obligations) (i) under which Seller or any Subsidiary has created, incurred, assumed, or guaranteed any Debt (including any Debt owed to Seller or any Subsidiary from any other Person for any advance of loan of funds), or (ii) under which an Encumbrance has been placed on any of its assets;

(d) any Contractual Obligation relating to confidentiality, non-solicit or non-competition restrictions or that restricts, in any respect, the conduct of the Business by Seller or any Subsidiary;

(e) any Contractual Obligation relating to employment, personal services, consulting, an independent contractor arrangement, or similar matters;

(f) any Contractual Obligation under which Seller or any Subsidiary is, or would reasonably be expected to become, obligated to pay any investment bank, broker, financial advisor, finder, or other similar Person (including an obligation to pay any legal, accounting, brokerage, finder's, or similar fees or expenses) in connection with this Agreement or the Contemplated Transactions;

(g) any Contractual Obligation arising pursuant to a Third Party Payor Program;

(h) any other Contractual Obligation (or group of related Contractual Obligations) the performance of which involves remaining consideration to be paid or received by Seller and/or any Subsidiary in excess of Two Hundred Fifty Thousand Dollars ($250,000);

(i) any Contractual Obligation under which Seller or any Subsidiary has engaged in any promotional sale, discount, rebate or other activity with any customer (other than in the Ordinary Course of Business);

(j) any Contractual Obligation with any health care provider or facility;

(k) any Contractual Obligation under which Seller or any Subsidiary is obligated to minimum purchase requirements or commitments or exclusive dealing or "most favored nation" provisions; and

(l) any Contractual Obligation under which Seller or any Subsidiary is obligated to indemnify any Person.

4.19.2. Enforceability; Breach. Each Contractual Obligation required to be disclosed on Schedule 4.9 (Debt), Schedule 4.12 (Real Property), Schedule 4.13 (IP Contracts), Schedule 4.15 (Compliance with Healthcare Laws), Schedule 4.19 (Contracts), or Schedule 4.23 (Insurance) (each, a "Disclosed Contract") is enforceable against Seller and/or the applicable Subsidiary or Subsidiaries and, to Seller's Knowledge, each other party to such Contractual Obligation, and is in full force and effect, and will continue to be so enforceable and in full force and effect on identical terms following the consummation of the Contemplated Transactions, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, general equitable principles, and the discretion of courts in granting equitable relief. Neither Seller nor any Subsidiary has been, nor, to Seller's Knowledge, has any other party to any Disclosed Contract been, during the thirty-six (36) month period ending on the date hereof, nor is any such Person currently, in breach or violation in any material respect of, or default in any material respect under, any Disclosed Contract, nor to Seller's Knowledge has any circumstance or set of circumstances occurred that, with the lapse of time, or the giving of notice, or both, would constitute such a breach or violation. Seller has delivered to Buyer true, accurate and complete copies of each written Disclosed Contract, in each case, as amended or otherwise modified and in effect. Seller has delivered to Buyer a written summary setting forth the terms and conditions of each oral Disclosed Contract, if any.

4.20. Affiliate Transactions. Except as disclosed on Schedule 4.20, and except with respect to holdings of less than five percent (5%) of entities that are traded on a public exchange, such as the NASDAQ or the New York Stock Exchange, neither Seller nor any Subsidiary nor any shareholder, member, current or former director, manager, officer or employee, or Affiliate of Seller or any Subsidiary, is or was in the last three years a consultant, competitor, creditor, debtor, customer, client, lessor, lessee, distributor, service provider, supplier, or vendor of, or is or was in the last three years a party to any Contractual Obligation with, Seller or any Subsidiary or has or had in the last three years any interest in any of the assets used in, or necessary to, the Business as currently conducted.

4.21. Employees.

4.21.1. Except as disclosed on Schedule 4.21.1, within the last five (5) years, neither Seller nor any Subsidiary has, in connection with the operation of the Business:

(a) been subject to any material labor dispute including, but not limited to, a work slowdown, lockout, work stoppage, picketing, strike, handbilling, bannering, or other concerted activity due to any organizational activities (and, to Seller's Knowledge, there are no organizational efforts with respect to the formation of a collective bargaining unit or a workers' council presently being made or threatened with respect to Seller or any Subsidiary);

(b) recognized any labor organization or group of employees as the representative of any employees, received any written demand for recognition from any labor organization or workers' council, or been party to any petition for recognition or representation right with any Governmental Authority with respect to any employees of Seller or any Subsidiary; been involved in negotiations with any labor organization or workers' council regarding terms for a collective bargaining agreement covering any employees, or any effects bargaining agreement, neutrality or card-check recognition agreement, or other labor agreement; or been a party to any collective bargaining agreement, contract or other agreement or understanding with a labor union or other employee bargaining representative, and no such agreement is being negotiated by Seller or any Subsidiary;

(c) committed any violation of Section 8 of the National Labor Relations Act as amended, 29 U.S.C. § 158, or any other labor Law of any jurisdiction where Seller or any Subsidiary employs employees;

(d) materially violated any applicable Legal Requirements pertaining to labor and employment, employment practices, terms and conditions of employment, compensation and wages and hours in connection with the employment of any employees, including any such Laws relating to labor relations, fair employment practices, immigration, wages, hours, the classification and payment of employees and independent contractors, child labor, hiring, working conditions, meal and break periods, plant shutdown and mass layoff, privacy, health and safety, workers' compensation, leaves of absence, family and medical leave, access to facilities and employment opportunities for disabled persons, employment discrimination (including discrimination based upon sex, pregnancy, marital status, age, race, color, national origin, ethnicity, sexual orientation, disability, veteran status, religion or other classification protected by law or retaliation for exercise of rights under applicable Law), equal employment opportunities and affirmative action, employee privacy, the collection and payment of all taxes and other withholdings, and unemployment insurance and is in material compliance with each of these laws and is not subject to any consent decree or continuing reporting obligations to the United States Equal Employment Opportunity Commission, any branch of the U.S. Department of Labor or any similar state or local Governmental Authority;

(e) misclassified any individuals as consultants or independent contractors rather than as employees or as exempt rather than non-exempt for purposes of the Fair Labor Standards Act or similar state Legal Requirements or violated any term and condition of any employment contract or independent contractor agreement and is not liable for any payment to any trust or other fund or to any Governmental Authority, with respect to unemployment compensation benefits, social security, employment insurance premiums, or other benefits or obligations for employees (other than routine payments made in the Ordinary Course of Business);

(f) participated in or made contributions to: (a) a "multiemployer plan," as defined in Section 4001(a)(3) of ERISA or (b) a plan that has two or more contributing sponsors at least two of whom are not under common control within the meaning of Section 4063 of ERISA;

(g) employed any employee who is not legally eligible for employment under applicable immigration Laws, violated any applicable Laws pertaining to immigration and work authorization, or received notice from any Governmental Authority of any investigation by any Governmental Authority regarding noncompliance with applicable immigration laws, including but not limited to U.S. Social Security Administration "No-Match" letters, or failed to maintain in its files a current and valid Form I-9 for each of its active employees;

(h) been delinquent in payments to any employees for any wages (including overtime compensation), salaries, commissions, bonuses or other direct compensation for any services performed by them or any amounts required to be reimbursed to such employees; or

(i) implemented any plant closing, mass layoff or redundancy of employees that could require notice and/or consultation (without regard to any actions that could be taken by Buyer following the Closing) under applicable Laws (including the Worker Adjustment and Retraining Notification Act of 1988, as amended, 29 U.S.C. §§ 2101, et seq., or any similar state Laws).

4.21.2. Except as disclosed on Schedule 4.21.2, there are no Actions against Seller or any Subsidiary pending, or to the Seller's Knowledge, threatened to be brought or filed, by or before any Governmental Authority by or concerning any current or former applicant, employee or independent contractor of Seller or any Subsidiary, and there have been no such Actions pending, or to the Seller's Knowledge, threatened, in the thirty-six (36) month period ending on the date hereof.

4.21.3. Schedule 4.21.3 sets forth a true and complete list, as of the date hereof, of (i) all current directors, executive officers, managers, employees, providers (including, but not limited to, physicians, physician assistants, and surgeons) relating to the respective businesses of Seller and the Subsidiaries (the "Business Employees"), including any Business Employees who are on leaves of absence for any purpose, and (ii) their work location, title, date of hire, active or inactive status, current annual base salary or hourly wage compensation and incentive or bonus compensation, vacation eligibility, and exempt or non-exempt status. As of the date hereof, no Business Employee has given written or, to Seller's Knowledge, oral notice to Seller or any Subsidiary of termination of employment with Seller or any Subsidiary. No Business Employee of Seller or any Subsidiary is employed pursuant to a visa, work permit or other work authorization.

4.21.4. To the Seller's Knowledge, no petition has been filed or proceedings instituted by any labor union, workers' council or other labor organization with any Governmental Authority seeking recognition or certification as a bargaining representative of

any employee or group of employees of Seller or any Subsidiary; there is no organizational effort currently being made or threatened by, or on behalf of, any labor union workers' council or other labor organization to organize any employees of Seller or any Subsidiary, and, to the Seller's Knowledge, there have been no such efforts for the past five (5) years; and no demand for recognition as the bargaining representative of any employee or group of employees of Seller or any Subsidiary has been made to Seller or any Subsidiary at any time during the past five (5) years.

4.21.5. There are no pending or, to the Seller's Knowledge, threatened unfair labor practice charges against Seller or any Subsidiary before the National Labor Relations Board or any analogous state or foreign Governmental Authority. Neither Seller nor any Subsidiary has, or is currently, engaged in any unfair labor practice as defined in the National Labor Relations Act.

4.21.6. Neither Seller nor any Subsidiary is subject to or has been subject to at any time in the past three (3) years, United States Executive Order 11246, the Vietnam Era Veterans' Readjustment Assistance Act of 1974, or Section 503 of The Rehabilitation Act of 1973, in each case as amended and including all rules and regulations promulgated thereunder.

4.22. Litigation; Government Orders. Except as set forth on Schedule 4.22, there is no, and, during the thirty-six (36) month period ending on the date hereof, there have been no, Actions (a) pending, or, to Seller's Knowledge, threatened against of affecting Seller or any Subsidiary, or (b) pending, or, to Seller's Knowledge, threatened against or affecting, any officers, managers, or employees (including physician employees, physician's assistants and other clinical employees) of Seller or any Subsidiary with respect to the business of Seller or any Subsidiary. Except as set forth on Schedule 4.22, Seller is not the subject of any Government Order.

4.23. Insurance. Schedule 4.23(a) sets forth a true and complete list of all insurance policies currently in force with respect to Seller. All such policies are in full force and effect, all premiums with respect thereto covering all periods up to and including the Closing have or will have been paid, Seller is in default in any material respect thereunder, and no notice of cancellation or termination has been received by Seller with respect to any such insurance policy. Schedule 4.23(a) also describes any self-insurance or co-insurance arrangements by Seller, including any reserves established thereunder. In addition, Schedule 4.23(a) contains a list of all pending claims and all claims submitted during the thirty-six (36) month period ending on the date hereof under any insurance policy maintained by Seller. Except as disclosed on Schedule 4.23(b), no insurer has (i) denied or disputed (or otherwise reserved its rights with respect to) the coverage of any such claim pending under any insurance policy or (ii) to Seller' Knowledge, threatened to cancel any such insurance policy. There is no claim which, individually or in the aggregate with other claims, could reasonably be expected to impair any current or historical limits of insurance available to Seller.

4.24. No Brokers. Neither Seller nor any Subsidiary has any Liability of any kind to, nor is Seller or any Subsidiary subject to any claim of, any broker, finder or agent in connection with the Contemplated Transactions other than those which are described on Schedule 4.24, all of which will be paid by Seller prior to the Closing.

4.25. Books and Records. All of the books and records of Seller and each Subsidiary have been maintained in the Ordinary Course of Business and fairly reflect, in all material respects, all transactions of the Business.

4.26. SEC Documents. Seller has NOT timely filed all reports, schedules, forms, statements and other documents required to be filed by it with the Securities and Exchange Commission ("SEC") pursuant to the reporting requirements of the Securities Exchange Act of 1934, as amended (the "1934 Act") (all of the foregoing filed prior to the date hereof and all exhibits included therein and financial statements and schedules thereto and documents (other than exhibits to such documents) incorporated by reference therein, being hereinafter referred to herein as the "SEC Documents"). Upon written request, Seller will deliver to Buyer true and complete copies of the SEC Documents, except for such exhibits and incorporated documents. As of their respective dates, the SEC Documents complied in all material respects with the requirements of the 1934 Act and the rules and regulations of the SEC promulgated thereunder applicable to the SEC Documents, and none of the SEC Documents, at the time they were filed with the SEC, contained any untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading. None of the statements made in any such SEC Documents is, or has been, required to be amended or updated under applicable law (except for such statements as have been amended or updated in subsequent filings prior the date hereof).

5. REPRESENTATIONS AND WARRANTIES OF BUYER.

In order to induce Seller to enter into and perform this Agreement and to consummate the Contemplated Transactions, Buyer represents and warrants to Seller, as of the date hereof, as follows:

5.1. Organization. Buyer is duly organized, validly existing and in good standing under the laws of the State of Michigan.

5.2. Power and Authorization. The execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which it is a party and the consummation of the Contemplated Transactions are within the power and authority of Buyer and have been duly authorized by all necessary action on the part of Buyer. This Agreement and each Ancillary Agreement to which Buyer is a party (a) have been duly executed and delivered by such party and (b) is and will be a legal, valid and binding obligation of such party, enforceable against such party in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other similar Laws affecting the enforceability of creditors' rights generally, and, other than with respect to any restrictive covenant contained in this Agreement or any Ancillary Agreement, general equitable principles and the discretion of courts in granting equitable relief.

5.3. Authorization of Governmental Authorities. No action by (including any authorization, consent or approval), or in respect of, or filing with, any Governmental Authority is required for, or in connection with, the valid and lawful (a) authorization, execution, delivery and performance by Buyer of this Agreement and each Ancillary Agreement to which it is a party or (b) consummation of the Contemplated Transactions by Buyer.

5.4. Non-contravention. Neither the execution, delivery and performance by Buyer of this Agreement or any Ancillary Agreement to which it is a party, nor the consummation of the Contemplated Transactions, will: (a) assuming the taking of any action required by (including any authorization, consent or approval) or in respect of, or any filing with, any Governmental Authority, violate any provision of any Legal Requirement applicable to Buyer, (b) result in a breach or violation of, or default under, Buyer's organizational documents, or (c) result in the creation or imposition of an Encumbrance upon, or the forfeiture of, any asset of Buyer, including the Acquired Stock.

5.5. No Brokers. Buyer has no Liability of any kind to any broker, finder or agent with respect to the Contemplated Transactions for which Seller or any of its Affiliates could be liable.

6. COVENANTS.

6.1. Publicity. After the Closing, Buyer will be entitled to issue any press release or make any other public announcement without obtaining Seller's prior approval so long as such press release or other public announcement does not disclose any of the specific pricing terms hereof; provided, however, that the foregoing limitation will not apply to any communications with Buyer's limited partners, members, investors, Representatives or prospective investors, if applicable. Neither Seller nor Seller Principal shall be entitled to issue any press release or make any other public announcement of any kind whatsoever with respect to this Agreement or the Contemplated Transactions without obtaining Buyer's prior approval, which shall not be unreasonably withheld or delayed.

6.2. Fees and Expenses. Seller shall be responsible for the following transaction expenses of Buyer and/or Buyer's Affiliates incurred or to be incurred by any of them or any of their respective Representatives in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions: (1) $150,000 for legal fees and expenses; and (2) $6,000 for the cost of certain background investigations (collectively, the "Reimbursed Transaction Expenses"). Seller shall pay the full amount of the Reimbursed Transaction Expenses to Buyer as promptly as practicable after the Closing, but in no event later than 2 Business Days after the Closing, by means of a wire transfer of immediately available funds pursuant to wire instructions provided by Buyer to Seller. Except as otherwise provided in the preceding sentence or elsewhere in this Agreement, all costs, expenses, and fees incurred in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions by Buyer shall be paid by Buyer, and all costs, expenses, and fees incurred in connection with the negotiation, execution, or performance of this Agreement or the Contemplated Transactions by Seller or a Seller Principal shall be paid by Seller.

6.3. Post-Closing Monthly Payments to Buyer. From and after the Closing Date, on each Payment Date prior to the occurrence of a Trigger Event, Seller shall make a payment to Buyer (each, a "Post-Closing Monthly Payment") in an amount equal to $175,000.00. For purposes of this Agreement: (a) the term "Payment Date" shall mean (i) January 1, 2017 and (ii) the first day of each subsequent calendar month thereafter and (b) the term "Trigger Event" shall mean the earlier to occur of (a) the consummation of an initial public offering of Seller's common stock on an established and internationally recognized stock exchange (such as the New York Stock Exchange, NASDAQ, or the Toronto Stock Exchange); and (b) such time as Buyer shall no longer hold any of the Acquired Stock or other equity interest in Seller (or a successor to Seller). In the event that Seller fails to make any payment when due pursuant to this Section 6.3, then after a grace period of 10 days, such missed payment will be subject to a default interest rate of 7.0% annually, accrued on a daily basis starting on the first day of the month immediately prior to the Payment Date with respect to the delinquent payment. (For example, if Seller fails to make its required Post-Closing Monthly Payment on January 1, 2017, then it has a grace period of up to January 10, 2017 to make such payment. If the payment remains unpaid as of January 10 and is not made until January 12, 2017, then the amount due will be $175,000.00 plus default interest at an annual rate of 7.0%, accrued for 43 days (31 days in December, plus 12 days in January).

6.4. Buyer Investor Protections. Notwithstanding any contrary provision in the organizational documents of Seller or any successor to Seller, from and after the Closing Date and for so long as Buyer holds any amount of Common Stock (or any analogous equity security in the event of any stock split, reverse stock split, reverse or forward merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind), Seller and each Seller Principal shall ensure that Buyer always has the rights set forth in this Section 6.4 below (the "Buyer Investor Protections"), including, as applicable: (i) by voting such Seller Principal's shares of Common Stock in favor of the Buyer Investor Protections, (ii) by voting in such Seller Principal's capacity as a director in favor of the Buyer Investor Protections, (iii) by encouraging other Seller Owners and directors of Seller to similarly

vote in favor of the Buyer Investor Protections, (iv) by requiring each transferee of any portion of a Seller Principal's Common Stock (and each transferee of such transferee, *ad infinitum*) to be bound by all of the obligations of the Seller Principals set forth in this Section 6.4 as a condition to the transfer of such Common Stock; and (v) upon the request of Buyer, by doing, executing, acknowledging, and/or delivering all such further agreements, resolutions, amendments to organizational documents, acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out, evidence, and/or more fully implement the Buyer Investor Protections):

(a) Preemptive Rights/Anti-Dilution Rights. From and after the Closing and at all times until a Trigger Event has occurred: (i) neither Seller nor, for the avoidance of doubt, any successor to Seller in the event of any merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind, shall issue or sell any new equity securities of any kind (including any security or other instrument convertible into an equity security) unless it first provides Buyer a preemptive right (with sufficient notice of at least 60 days and sufficient time to close a transaction) that allows Buyer to purchase Buyer's pro rata portion of such equity securities, at a price (taking into account the total post-issuance Equity Value reflected in such transaction) equal to that paid by new subscribers in such proposed new issuance, so as to maintain Buyer's pro rata ownership of Seller's equity securities and, in the event that other Seller shareholders are offered a similar preemptive right but do not exercise it, to increase Buyer's pro rata ownership; and (ii) without limiting the foregoing, neither Seller nor, for the avoidance of doubt, any successor to Seller in the event of any merger, consolidation, recapitalization, redomestication, conversion, or other restructuring transaction of any kind, shall issue any equity securities of any kind (including any security or other instrument convertible into an equity security) or otherwise enter into any transaction, if such issuance or transaction would result in a total post-transaction Equity Value that is lower than $493,256,955 unless: (A) it provides Buyer notice of such proposed issuance or transaction no later than 30 days prior to the consummation of such transaction; and (B) contemporaneously with the consummation of such issuance or transaction, Seller issues to Buyer, at no cost, equity securities sufficient to ensure that Buyer's post-issuance equity ownership of Seller (or such successor) is equal to or greater than the Consideration, which equity securities shall be, upon issuance, fully paid, non-assessable and free and clear of all Encumbrances.

(b) Board Representation and Observation Rights. At all times while Buyer holds any portion of the Acquired Stock, Buyer shall have the right to appoint a designee to serve as a member of Seller's Board of Directors and another designee to serve as a non-voting observer of Seller's Board of Directors.

(c) Required Reports. In addition to any reports, communication and information Buyer is entitled to receive or review in its capacity as a stockholder, and in addition to any reports, communication and information Buyer's board representatives and observers are entitled to receive or review in their capacity as such (all of which shall be provided at the same time that they are provided to other stockholders and board members and observers, as applicable), no later than 45 days after the end of each fiscal quarter of Seller and no later than 120 days after the end of each fiscal year of Seller, as applicable, Seller shall deliver to Buyer the following financial, operating and management reports with respect to the business of Seller (including the Subsidiaries), in each case including such information and in such manner as reasonably requested by Buyer from time to time: (i) consolidated Financials, including management commentary (quarterly); (ii) annual budget, including management commentary (annually); (iii) management reports on recent acquisitions, pending acquisitions, and acquisition pipeline (quarterly, or more frequently as needed); and (iv) management reports on any other business

activity likely to cause material variations in budget (quarterly, or more frequently as needed).

6.5. Revised Physician Compensation Arrangements; Billing & Coding Audit. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall (or shall cause the applicable Subsidiary to) enter into new or amended employment agreements with all of its contracted physicians and medical service providers (and shall promptly make available to Buyer true and correct copies of all such agreements), which new or amended employment agreements (x) shall reflect a revised "best practices" bonus compensation structure in full compliance with all Healthcare Laws, but (y) shall otherwise remain substantially unchanged from the current agreements with such contracted physicians and medical service providers. Without limiting any of Buyer's rights pursuant to Section 6.4, upon Buyer's request at any time and from time to time, Seller shall (and/or shall cause the Subsidiaries to, as appropriate) promptly direct an independent third-party auditor to conduct a billing and coding audit of Seller and/or any of its Subsidiaries (at Buyer's expense) and shall fully cooperate with the auditor in conducting such an audit. In the event of any such audit (whether directed by Buyer or otherwise), Seller shall keep Buyer reasonably informed of the progress of any such audit, shall promptly provide Buyer with the results and reports of any such audit, and shall consult with Buyer on the findings of any such audit and take any actions as reasonably requested by Buyer to ensure continued "best practices" compliance with all Healthcare Laws.

6.6. 2014 & 2015 Financials. As promptly as practicable upon their completion, but in no event later than November 30, 2016, Seller shall deliver true, correct and complete copies of the 2014 & 2015 Financials to Buyer, which 2014 & 2015 Financials shall comport in all respects with the provisions set forth in Section 4.6.

6.7. SEC Compliance. As promptly as practicable after the Closing Date, but in no event later than December 31, 2016, Seller shall take all necessary actions and file all necessary documents to ensure that it is compliant in all material respects with the 1934 Act.

6.8. Stock Certificate. As promptly as practicable after the Closing, but in no event later than five (5) Business Days after the Closing, Seller shall deliver to Buyer (or cause Seller's transfer agent to deliver to Buyer) a stock certificate evidencing Buyer's ownership of the Acquired Stock, duly issued and executed by the appropriate officers of Seller and otherwise in accordance with Seller's Articles of Incorporation and Bylaws.

6.9. Compliance with Laws. At all times from and after the Closing Date, Seller and each Seller Principal shall, and shall cause the business of Seller (including the Business) and each of the subsidiaries of Seller (including the Subsidiaries) to, comply with all Laws.

6.10. Further Assurances. From and after the Closing Date, upon the request of either Seller or Buyer, each of the Parties shall do, execute, acknowledge, and deliver all such further acts, assurances, deeds, assignments, transfers, conveyances, and other instruments and papers as may be reasonably required or appropriate to carry out and/or evidence the Contemplated Transactions.

7. INDEMNIFICATION.

7.1. Indemnification by Seller. Subject to the provisions of this Article 7, Seller shall indemnify and hold harmless Buyer and its Affiliates, and each of the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Buyer Indemnified Persons,") from, against, and in respect of any and all Actions, Liabilities, Government Orders, Encumbrances, losses, damages, bonds, assessments, fines, penalties, Taxes, fees, costs (including reasonable costs of investigation, defense, and enforcement of this

Agreement), expenses (including actual and reasonable attorneys' and experts fees and expenses), or amounts paid in settlement (collectively referred to as "Losses") that any Buyer Indemnified Person may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.1.1. any breach of, or inaccuracy in, any representation or warranty made by Seller in this Agreement, in any Ancillary Agreement, or in any certificate delivered pursuant to this Agreement;

7.1.2. any breach or violation of, or any failure to perform, any covenant or agreement of Seller or any Seller Principal in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing;

7.1.3. any Losses attributable to (i) Taxes of Seller for any period ending on or before the Closing Date; (ii) Taxes of any other Person imposed on Seller (A) pursuant to Treasury Regulation § 1.1502-6 or any analogous or similar state, local, or foreign Law or regulation, with respect to any group of which Seller is or was a member on or prior to the Closing Date, or (B) as a result of any Tax sharing, Tax indemnification or Tax allocation agreement, arrangement, or understanding (other than customary Tax indemnification provisions contained in commercial contracts entered into in the ordinary course of business, a principal subject matter of which is not Taxes), or (iii) Taxes of any Person, which Taxes relate to an event or transaction occurring before the Closing, imposed on Seller as a transferee or successor or otherwise pursuant to any Law; or

7.1.4. any Losses related to any Liabilities that arise out of or relate to (in whole or in part) Seller, any subsidiary of Seller (including any Subsidiary), any business of Seller or its subsidiaries (including the Business) and/or the operation of any Center, in each case on or prior to the Closing, including but not limited to any Losses arising out of any failure to get any consent and approval of, or any failure to file any required notice with, any Person as may be necessary for Seller or any Seller Owner to consummate any of the Contemplated Transactions (and in all cases including, for the avoidance of doubt, all such Losses or Liabilities that arise out of or relate to, in whole or in part, matters, circumstances, information or documentation set forth, described or referenced on any of the Disclosure Schedules or otherwise disclosed or made available to Buyer prior to the Closing).

7.2. Indemnification by Buyer. Subject to the provisions of this Article 7, Buyer shall indemnify and hold harmless Seller and its Affiliates, and the directors, officers, stockholders, partners, members, managers, employees, agents, consultants, advisors, and Representatives of each of the foregoing Persons (the "Seller Indemnified Parties") from, against, and in respect of any and all Losses which any of them may suffer, incur, sustain, or become subject to as a result of, arising out of, or directly or indirectly relating to:

7.2.1. any breach of, or inaccuracy in, any representation or warranty made by Buyer in this Agreement, the Ancillary Agreements, or in any certificate delivered pursuant to this Agreement; or

7.2.2. any breach or violation of, or any failure to perform, any covenant or agreement of Buyer in this Agreement, or in any certificate delivered pursuant to this Agreement, but excluding any such covenant or other agreement that by its nature is required to be performed at, by or prior to the Closing.

7.3. Certain Limitations. The indemnification provided for in Section 7.1 and Section 7.2 shall be subject to the following limitations:

7.3.1. For purposes of this Article 7, any inaccuracy in or breach of any representation or warranty (and the amount of any Losses) shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty; and

7.3.2. With respect to Buyer Indemnified Persons, Losses shall specifically include diminution in value of the Acquired Units, including any diminution in value of the Acquired Units as a result of Seller being required to satisfy any indemnification obligation hereunder.

7.4. Personal Guarantees of Seller Principals.

7.4.1. Guarantee of Post-Closing Monthly Payments. Notwithstanding anything herein to the contrary, each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of 100% of Seller's payment obligations under Section 6.3. Each Seller Principal's liability under this Section 7.4.1 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.4.2. Guarantee of Seller Indemnification Obligations. Each Seller Principal hereby absolutely and unconditionally guarantees, jointly and severally with all other Seller Principals, the prompt and punctual payment by Seller of each indemnification obligation of Seller pursuant to Section 7.1 (a "Seller Indemnification Obligation"); provided, however, that in no event shall any Seller Principal's liability with respect to any Seller Indemnification Obligation exceed such Seller Principal's pro-rata portion thereof, determined in accordance with the percentage set forth for such Seller Principal on Exhibit B, which reflects such Seller Principal's approximate pro rata percentage share of the Common Stock immediately prior to the Contemplated Transactions ("Pro Rata Share"). Each Seller Principal's liability under this Section 7.4.2 is primary, direct and unconditional and shall not require Buyer to resort to any other Person, including Seller, or any other right, remedy or collateral, whether held as collateral for satisfaction of obligations set forth herein.

7.5. Survival. No claim may be made or suit instituted seeking indemnification pursuant to Section 7.1.1 or Section 7.2.1 for any breach of, or inaccuracy in, any representation or warranty (and no indemnity obligation shall arise with respect to any such claim) unless a written notice describing such breach or inaccuracy in reasonable detail in light of the circumstances then known to the Indemnified Party is provided to the Indemnifying Party: (a) at any time, in the case of any breach of, or inaccuracy in, the Fundamental Representations, the representations and warranties set forth in Section 5.1 (Organization), Section 5.2 (Power and Authorization), Section 5.5 (No Brokers), and/or in the case of any claim or suit based upon fraud, intentional misrepresentation or willful misconduct; and (b) at any time prior to the sixty (60) month anniversary of the Closing Date, in the case of any breach of, or inaccuracy in, any other representation and warranty in this Agreement. For clarity, all of the other covenants and agreements of the Parties set forth in this Agreement shall survive the Closing in accordance with their respective terms or, if no such term is specified, indefinitely; provided that no claim may be made or suit instituted seeking indemnification pursuant to Section 7.1 or Section 7.2 unless a written notice describing such claim in reasonable detail in light of the circumstances then known to the Indemnified Party, is provided to the Indemnifying Party at any time prior to the sixtieth (60th) day after

such claim is barred by the statute of limitations under applicable Law (taking into account the survival periods set forth in this Section 7.5, any tolling periods and other extensions).

7.6. Third Party Claims.

7.6.1. Notice of Third Party Claims. Promptly after receipt by an Indemnified Person of written notice of the assertion of a claim by any Person who is not a party to this Agreement (a "Third Party Claim") that may give rise to an Indemnity Claim against an Indemnifying Party under this Article 7, the Indemnified Person shall give written notice thereof to the Indemnifying Party; provided that, no delay on the part of the Indemnified Person in notifying the Indemnifying Party will relieve the Indemnifying Party from any obligation under this Article 7, except to the extent such delay actually and materially prejudices the Indemnifying Party.

7.6.2. Assumption of Defense, etc. The Indemnifying Party will be entitled to participate in the defense at its sole cost and expense of any Third Party Claim that is the subject of a notice given by or on behalf of any Indemnified Person pursuant to Section 7.6.1. In addition, the Indemnifying Party will have the right to defend the Indemnified Person against the Third Party Claim with counsel of its choice reasonably satisfactory to the Indemnified Person so long as (i) the Indemnifying Party gives written notice that they or it will defend the Third Party Claim to the Indemnified Person within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim under Section 7.6.1 stating that the Indemnifying Party will, and thereby covenants to, indemnify, defend and hold harmless the Indemnified Person from and against the entirety of any and all Losses the Indemnified Person may suffer resulting from, arising out of, relating to, in the nature of, or caused by the Third Party Claim, (ii) the Third Party Claim involves only money damages and does not seek an injunction or other equitable relief against the Indemnified Person, (iii) counsel to the Indemnified Person does not determine in good faith that an actual or potential conflict exists between the Indemnified Person and the Indemnifying Party in connection with the defense of the Third Party Claim that would make separate counsel advisable, (iv) the Third Party Claim does not relate to or otherwise arise in connection with Taxes or any criminal or regulatory enforcement Action, (v) defense of the Third Party Claim by the Indemnifying Party will not, in the reasonable judgment of the Indemnified Person, have a material adverse effect on the Indemnified Person, and (vi) Indemnifying Party has sufficient financial resources, in the reasonable judgment of the Indemnified Person, to satisfy the amount of any adverse monetary judgment that is reasonably likely to result ((i) through (vi) are collectively referred to as the "Litigation Conditions"). If (i) any of the Litigation Conditions ceases to be met or (ii) the Indemnifying Party fails to take reasonable steps necessary to defend diligently the Third Party Claim, the Indemnified Person may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses paid or incurred in connection with such defense. The Indemnified Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claim; provided that, the Indemnifying Party will pay the fees and expenses of separate counsel retained by the Indemnified Person that are incurred prior to the Indemnifying Party's assumption of control of the defense of the Third Party Claim. The Indemnified Person shall make available to the Indemnifying Party or its agents, upon the reasonable request of the Indemnifying Party, all records and other materials in the Indemnified Person's possession at the time of such request, as may be reasonably required by the Indemnifying Party for its use in contesting any Third Party Claim and shall otherwise reasonably cooperate.

7.6.3. Limitations on Indemnifying Party Control. The Indemnifying Party will not consent to the entry of any judgment or enter into any compromise or settlement with respect to the Third Party Claim without the prior written consent of the Indemnified Person unless such judgment, compromise or settlement (i) provides for the payment by the Indemnifying Party of money as sole relief for the claimant, (ii) results in the full and general release of all Indemnified Persons from all Liabilities arising out of or relating to, or in connection with, the Third Party Claim and (iii) involves no finding or admission of any violation of Legal Requirements or the rights of any Person and no effect on any other claims that may be made against the Indemnified Person. If (w) a firm written offer is made to settle any Third Party Claim for which the sole relief provided is monetary damages, (x) the amount of such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim) would not exceed any of the limitations on the Indemnifying Party's indemnification obligations set forth in Article 7, (y) the Indemnifying Party agrees in writing to accept such settlement and pay all such monetary damages (plus all indemnifiable expenses of the Indemnified Party related to such Third Party Claim), and (z) the Indemnified Party refuses to consent to such settlement, then: (I) the Indemnifying Party shall be excused from, and the Indemnified Party shall be solely responsible for, all further defense of such Third Party Claim (but no party shall be excused from its indemnification obligations hereunder until the maximum liability set forth in the immediately succeeding subsection (II) has been satisfied); and (II) the maximum liability of the Indemnifying Party relating to such Third Party Claim shall be the amount of the proposed settlement (plus indemnifiable expenses of the Indemnified Party related to such Third Party Claim to the date of such refusal to consent to settlement), if the amount thereafter recovered from the Indemnified Party on such Third Party Claim is greater than the amount of the proposed settlement.

7.6.4. Indemnified Person's Control. If the Indemnifying Party does not deliver the notice contemplated by clause (i) of Section 7.6.2 within thirty (30) days after the Indemnified Person has given notice of the Third Party Claim pursuant to Section 7.6.1 (or is not permitted to assume control), the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim in any manner it may deem appropriate (and the Indemnified Person need not consult with, or obtain any consent from, the Indemnifying Party in connection therewith) provided, however, that in such circumstance the Indemnifying Person may retain separate co-counsel at its sole cost and expense and participate in the defense of the Third Party Claims and have access to all information from the Indemnified Party related thereto. If such notice and evidence is given on a timely basis and the Indemnifying Party conducts the defense of the Third Party Claim but any of the other conditions in Section 7.6.2 is or becomes unsatisfied, the Indemnified Person may defend, and may consent to the entry of any judgment or enter into any compromise or settlement with respect to, the Third Party Claim; provided that, the Indemnifying Party will not be bound by the entry of any such judgment consented to, or any such compromise or settlement effected, without its prior written consent (which consent will not be unreasonably withheld, conditioned or delayed). In the event that the Indemnified Person conducts the defense of the Third Party Claim pursuant to this Section 7.6.4, the Indemnifying Party will (i) advance the Indemnified Person promptly and periodically for the costs of defending against the Third Party Claim (including reasonable attorneys' fees and expenses) and (ii) remain responsible for any and all other Losses that the Indemnified Person may incur or suffer resulting from, arising out of, relating to, in the nature of or caused by the Third Party Claim to the fullest extent provided in this Article 7.

7.6.5. Consent to Jurisdiction Regarding Third Party Claim. Each of the Parties hereby consents to the non-exclusive jurisdiction of any court in which any Third Party Claim

may be brought against any Indemnified Person for purposes of any claim which such Indemnified Person may have against any such Indemnifying Party pursuant to this Agreement in connection with such Third Party Claim, and in furtherance thereof, the provisions of Section 8.11 are incorporated herein by reference, mutatis mutandis.

7.7. Direct Claims. In the event that any Indemnified Person wishes to make a claim for indemnification under this Article 7, the Indemnified Person shall give written notice of such claim to each Indemnifying Party. For the avoidance of doubt, where the Indemnifying Party is a Seller under this Article 7, such notice shall be to Seller. Any such notice shall describe the breach or inaccuracy and other material facts and circumstances upon which such claim is based and the estimated amount of Losses involved, in each case, in reasonable detail in light of the facts then known to the Indemnified Person; provided that, no defect in the information contained in such notice from the Indemnified Person to any Indemnifying Party will relieve such Indemnifying Party from any obligation under this Article 7, except to the extent such failure to include information actually and materially prejudices such Indemnifying Party.

7.8. Manner of Payment. Any payment to be made by Seller or Buyer, as the case may be, pursuant to this Article 7 will be effected by wire transfer of immediately available funds from Seller or Buyer, as the case may be, to an account designated by Seller or Buyer, as the case may be, within five (5) Business Days after the determination thereof.

7.9. No Contribution. Neither Seller nor any of the Seller Owners will have any right of contribution from any of Buyer Indemnified Persons with respect to any Loss claimed by a Buyer Indemnified Person.

7.10. Effect of Investigation. The representations, warranties and covenants of the Indemnifying Party, and each Indemnified Person's right to indemnification with respect thereto, shall not be affected or deemed waived by reason of any investigation made by or on behalf of the Indemnified Person (including by any of its agents, advisors, counsel or representatives) or by reason of the fact that the Indemnified Person (or any of its agents, advisors, counsel or representatives) knew or should have known that any such representation or warranty is, was or might be inaccurate or by reason of the Indemnified Person's waiver of any condition to the Closing of the Contemplated Transactions.

7.11. Remedies Cumulative. The rights of each Buyer Indemnified Person and Seller Indemnified Party under this Article 7 are cumulative, and each Buyer Indemnified Person and Seller Indemnified Party will have the right in any particular circumstance, in its sole discretion, to enforce any provision of this Article 7 without regard to the availability of a remedy under any other provision of this Article 7. Except as set forth in the Schedules, the Buyer Indemnified Persons' right to indemnification under this Article 7 is not adversely affected by whether or not the possibility of any Loss was disclosed to the Buyer Indemnified Persons on the date of this Agreement. The representations and warranties of Seller shall not be affected or deemed waived by reason of any investigation made by or on behalf of any Buyer Indemnified Person (including any Representatives of any Buyer Indemnified Person) or by reason of the fact that any Buyer Indemnified Person or any Representatives of any Buyer Indemnified Person knew or should have known that any representation or warranty is or might be inaccurate.

7.12. Tax Treatment. All indemnification and other payments under this Article 7 shall, to the extent permitted by applicable Legal Requirements, be treated for all income Tax purposes as adjustments to the aggregate consideration paid hereunder. None of the Parties shall take any position on any Tax Return, or before any Governmental Authority, that is inconsistent with such treatment unless otherwise required by any applicable Legal Requirement.

8. **MISCELLANEOUS.**

8.1. Notices. All notices, requests, demands, claims, and other communications required or permitted to be delivered, given, or otherwise provided under this Agreement must be in writing and must be delivered, given, or otherwise provided: (a) by hand (in which case, it shall be effective upon delivery); (b) by facsimile (in which case, it shall be effective upon receipt of confirmation of good transmission); or (c) by overnight delivery by a nationally recognized courier service (in which case, it shall be effective on the Business Day after being deposited with such courier service), in each case, to the address (or facsimile number) listed below:

If to Seller or either Seller Principal:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Manuel E. Iglesias, President & Chief Executive Officer
Facsimile: 866-852-0454

with a copy (which shall not constitute notice) to:

Hygea Holdings Corp.
8750 NW 36 Street, Suite 300
Miami, FL 33178
Attention: Richard L. Williams, Esq., Chief Legal Officer
Facsimile: 866-852-0454

If to Buyer:

N5HYG LLC
38955 Hills Tech Drive
Farmington Hills, MI 48331
Attention: Chris Fowler
Facsimile: (248) 536-0869

with a copy (which shall not constitute notice) to:

Oakland Law Group PLLC
38955 Hills Tech Dr.
Farmington Hills, MI 48331
Attention: Alan Gocha
Facsimile: (248) 536-1859

Each of the Parties to this Agreement may specify a different address, email address or facsimile number by giving notice in accordance with this Section 8.1 to each of the other Parties hereto.

8.2. Succession and Assignment; No Third-Party Beneficiary. Subject to the immediately following sentence, this Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns and all such successors and permitted assigns shall be deemed to be a Party hereto for all purposes hereof. No Party may assign, delegate, or otherwise transfer either this Agreement or any of his, her or its rights, interests, or obligations hereunder without the prior written consent of Buyer and Seller; except that Buyer may assign this Agreement (a) to one or more of its Affiliates, or (b) after the Closing, in connection with any disposition or transfer of all or

substantially all of the equity interests of Buyer in any form of transaction. Except for the provisions of Section 7.1 and this Section 8.2, this Agreement is for the sole benefit of the Parties hereto and their successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give any Person, other than the Parties hereto and such successors and permitted assigns, any legal or equitable rights hereunder.

8.3. Amendments and Waivers. No amendment or waiver of any provision of this Agreement shall be valid and binding unless it is in writing and signed, in the case of an amendment, by Buyer and Seller, or in the case of a waiver, by the Party against whom the waiver is to be effective. No waiver by any Party of any breach or violation of, default under, or inaccuracy in any representation, warranty, covenant, or agreement hereunder, whether intentional or not, shall be deemed to extend to any prior or subsequent breach, violation, default of, or inaccuracy in, any such representation, warranty, covenant, or agreement hereunder or affect in any way any rights arising by virtue of any prior or subsequent such occurrence. No delay or omission on the part of any Party in exercising any right, power, or remedy under this Agreement shall operate as a waiver thereof.

8.4. Entire Agreement. This Agreement, together with the Ancillary Agreements and any documents, Schedules, instruments, or certificates referred to herein or delivered in connection herewith, constitutes the entire agreement among the Parties hereto with respect to the subject matter hereof and supersedes any and all prior discussions, negotiations, proposals, undertakings, understandings, and agreements (including any draft agreements) with respect thereto, whether written or oral, none of which shall be used as evidence of the Parties' intent. In addition, each Party hereto acknowledges and agrees that all prior drafts of this Agreement contain attorney work product and shall in all respects be subject to the foregoing sentence.

8.5. Schedules. Nothing in any Schedule attached hereto shall be adequate to modify, qualify, or disclose an exception to a representation or warranty made in this Agreement unless such Schedule identifies the modification, qualification, or exception. Any modifications, qualifications, or exceptions to any representations or warranties disclosed on one Schedule shall constitute a modification, qualification, or exception to any other representations or warranties made in this Agreement if it is reasonably apparent that the disclosures on such Schedule should apply to such other representations and warranties.

8.6. Counterparts; Electronic Signature. This Agreement may be executed in multiple counterparts, all of which shall be considered one and the same agreement, and shall become effective when one or more counterparts have been signed by each of the Parties and delivered to the other Parties, it being understood that all Parties need not sign the same counterpart. This Agreement may be executed by facsimile or pdf signature by any Party and such signature shall be deemed binding for all purposes hereof without delivery of an original signature being thereafter required.

8.7. Severability. Any term or provision of this Agreement that is invalid or unenforceable in any situation in any jurisdiction shall not affect the validity or enforceability of the remaining terms and provisions hereof or the validity or enforceability of the offending term or provision in any other situation or in any other jurisdiction. In the event that any provision hereof would, under applicable Legal Requirements, be invalid or unenforceable in any respect, each Party hereto intends that such provision shall be construed by modifying or limiting it so as to be valid and enforceable to the maximum extent compatible with, and possible under, applicable Legal Requirements and to otherwise give effect to the intent of the Parties.

8.8. Headings. The headings contained in this Agreement are for convenience purposes only and shall not in any way affect the meaning or interpretation hereof.

8.9. Construction. The Parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement. The Parties hereto intend that each representation, warranty, covenant, and agreement contained herein shall have independent significance. If any Party hereto has breached or violated, or if there is an inaccuracy in, any representation, warranty, covenant, or agreement contained herein in any respect, the fact that there exists another representation, warranty, covenant, or agreement relating to the same subject matter (regardless of the relative levels of specificity) which the Party has not breached or violated, or in respect of which there is not an inaccuracy, shall not detract from or mitigate the fact that the Party has breached or violated, or there is an inaccuracy in, the first representation, warranty, covenant, or agreement.

8.10. Governing Law. This Agreement, the negotiation, terms, and performance of this Agreement, the rights of the Parties under this Agreement, and all Actions arising in whole or in part under or in connection with this Agreement, shall be governed by and construed in accordance with the domestic substantive laws of the State of Nevada, without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any other jurisdiction.

8.11. Jurisdiction; Venue; Service of Process.

8.11.1. Jurisdiction. Each Party to this Agreement, by his, her, or its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction and venue of the Nevada state and/or United States federal courts located in Clark County, Nevada for the purpose of any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, (b) hereby waives to the extent not prohibited by applicable Legal Requirements, and agrees not to assert, by way of motion, as a defense or otherwise, in any such Action, any claim that he or she is not subject personally to the jurisdiction of the above-named court, that venue in such court is improper, that his, her or its property is exempt or immune from attachment or execution, that any such Action brought in the above-named court should be dismissed on grounds of *forum non conveniens* or improper venue, that such Action should be transferred or removed to any court other than the above-named court, that such Action should be stayed by reason of the pendency of some other Action in any other court other than the above-named court or that this Agreement or the subject matter hereof may not be enforced in or by such court, and (c) hereby agrees not to commence or prosecute any such Action other than before the above-named court. Notwithstanding the foregoing, (i) a Party hereto may commence any Action in a court other than the above-named court solely for the purpose of enforcing an order or judgment issued by the above-named court, and (ii) the dispute resolution procedures set forth in this Section 8.11.1 shall be the sole and exclusive means by which the Parties may resolve any disputes arising thereunder and any resolution of any such dispute in accordance with such dispute resolution procedures shall be valid and binding on all of the Parties hereto.

8.11.2. Service of Process. Each Party hereto hereby (a) consents to service of process in any Action between any of the Parties hereto arising in whole or in part under or in connection with this Agreement, any Ancillary Agreement, the Contemplated Transactions, or the negotiation, terms or performance hereof or thereof, in any manner permitted by Nevada law, (b) agrees that service of process made in accordance with clause (a) or made by overnight delivery by a nationally recognized courier service at his or her address specified pursuant to Section 8.1 shall constitute good and valid service of process in any such Action, and (c)

waives and agrees not to assert (by way of motion, as a defense or otherwise) in any such Action any claim that service of process made in accordance with clause (a) or (b) does not constitute good and valid service of process.

8.12. Waiver of Jury Trial. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW THAT CANNOT BE WAIVED, EACH OF THE PARTIES HERETO HEREBY WAIVES, AND COVENANTS THAT HE OR IT SHALL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT, OR OTHERWISE), ANY RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING IN WHOLE OR IN PART UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY ANCILLARY AGREEMENT, THE CONTEMPLATED TRANSACTIONS, OR THE NEGOTIATION, TERMS OR PERFORMANCE HEREOF OR THEREOF, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT, OR OTHERWISE. THE PARTIES HERETO AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY, AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES HERETO. THE PARTIES HERETO FURTHER AGREE TO IRREVOCABLY WAIVE THEIR RIGHT TO A TRIAL BY JURY IN ANY PROCEEDING AND ANY SUCH PROCEEDING SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

[*Remainder of the page intentionally left blank – signature pages follow*]

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement as of the date first above written.

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

IN WITNESS WHEREOF, each of the undersigned Parties has executed this Agreement as of the date first above written.

BUYER:

N5HYG LLC,
a Michigan limited liability company

By: _____
Name: Manoj Bhargava
Title: Manager

SELLER:

HYGEA HOLDINGS CORP.,
a Nevada corporation

By: _____
Name: Manuel Iglesias
Title: Chief Executive Officer

SELLER PRINCIPALS:

By signing below, each of the undersigned individuals agrees to be bound by all of the obligations of the Seller Principals under this Agreement, including without limitation the personal guaranty obligations set forth in Section 7.4.

_____
Manuel Iglesias, individually

_____
Edward Moffly, individually

EXHIBIT A

List of Subsidiaries

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea of Delaware, LLC	Delaware	Seller
Hygea Health Holdings, Inc.	Florida	Hygea of Delaware, LLC
All Care Management Services, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Atlanta, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of Georgia, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Alliance of South Florida, LLC	Florida	Hygea of Delaware, LLC
Physicians Group Management of Orlando, LLC	Florida	Hygea of Delaware, LLC
Florida Group Healthcare, LLC	Florida	Hygea of Delaware, LLC
Palm Medical Network, LLC	Florida	Hygea of Delaware, LLC
Hygea of Georgia, LLC	Georgia	Hygea of Delaware, LLC
AARDS II, INC	Florida	Hygea of Delaware, LLC
Gemini Healthcare Fund, LLC	Florida	Hygea Health Holdings, Inc.
Palm PGA MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Palm Allcare Medicaid MSO, Inc.	Florida	Hygea Health Holdings, Inc.
Mobile Clinic Services, LLC	Florida	Hygea Health Holdings, Inc.
Hygea IGP of Central Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Hydrea Acquisition Orlando, LLC	Florida	Hygea Health Holdings, Inc.

Name of Subsidiary:	Jurisdiction of Incorporation/ Formation:	Direct Owner of 100% of Subsidiary Equity Interests:
Hygea Acquisition Atlanta, LLC	Georgia	Hygea Health Holdings, Inc.
Hygea Acquisition Longwood, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates SE, LLC	Florida	Hygea Health Holdings, Inc.
Physician Management Associates East Coast, LLC	Florida	Hygea Health Holdings, Inc.
Hygea South Florida, Inc.	Florida	Hygea Health Holdings, Inc.
Palm MSO System, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinics, Inc.	Florida	Hygea Health Holdings, Inc.
Med Plan Clinic, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Quality Medical Centers, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan Health Exchange, LLC	Florida	Gemini Healthcare Fund, LLC
Medcare Westchester Medical Center, LLC	Florida	Gemini Healthcare Fund, LLC
Med Scripts, LLC	Florida	Gemini Healthcare Fund, LLC
Med Plan, LLC	Florida	Gemini Healthcare Fund, LLC
Mid Florida Adult Medicine, LLC	Florida	Hygea Acquisition Longwood, LLC

Exhibit B

Pro Rata Share of Seller Principals

Name of Seller Principal:	Pro Rata Share:
Manuel Iglesias	20.75%
Edward Moffly	9.61%
TOTAL:	**30.36%**

EXHIBIT “13”

MCOV
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
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Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. A-18-768510-B Dept No. XXVII

MOTION FOR CHANGE OF VENUE

Defendant Hygea Holdings Corp. ("Hygea"), by and through its counsel of record, Ballard Spahr LLP, submits this Motion for Change of Venue (the "Motion"). Hygea makes this Motion in the alternative to its Motion to Dismiss for Lack of Jurisdiction Pursuant to N.R.C.P. 8(a)(1), 12(b)(1), and 12(h)(3), or, Alternatively, for Summary Judgment Pursuant to N.R.C.P. 56(b). This Motion to Change is based on NRS 13.050, NRS 78.650, and NRS 78.630; the pleadings and papers on file; and any

oral argument presented at the hearing to be set for this Motion.

Dated: February 16, 2018

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

NOTICE OF MOTION

PLEASE TAKE NOTICE that the undersigned will bring the above and foregoing Motion for hearing before the Court on the 21 day of March, 2018 at the hour of 9:30 A.m., in Department XXVII of the above-entitled Court.

Dated: February 16, 2018

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Complaint is limited to a request for the appointment of a receiver, which Plaintiffs seek pursuant to three statutory bases: NRS 78.650, 78.630, and 32.010. However, under the plain language of NRS 78.650 and 78.630, this action had to be filed in the district court in the county in which Hygea's registered office is located—that being the First Judicial District Court—because Hygea's principal place of business is in Florida. As set forth in the Motion to Dismiss, Hygea submits that the foregoing requirement is a jurisdictional requirement because, as held by the Nevada Supreme Court, "the appointment of receivers is controlled by statute," *State ex rel. Nenzel v. Second Judicial Dist. Court in & for Washoe Cty.*, 49 Nev. 145, 241 P. 317, 320 (1925), and "[w]here the statute provides for the appointment of receivers, the statutory requirements must be met or the appointment is void and in excess of jurisdiction." *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, 64 Nev. 487, 494, 185 P.2d 320, 323 (1947) (emphasis added). If, however, the Court construes the requirements of NRS 78.650 and 78.630 to mean venue rather than jurisdiction, then by this Motion, Hygea requests as a matter of right that the Court transfer this action to the First Judicial District Court in Carson City, Nevada.

II. PROCEDURAL HISTORY

On January 26, 2018, Plaintiffs Claudio Arellano, Crown Equity's LLC, Fifth Avenue 2254 LLC, Halevi Enterprises LLC, Halevi SV 1 LLC, Halevi SV 2 LLC, Hillcrest Acquisitions LLC, Hillcrest Center SV I LLC, IBH Capital LLC, Leonite Capital LLC, N5HYG LLC, and RYMSSG Group LLC concurrently filed their Complaint for Emergency Appointment of Receiver and their Emergency Petition for Appointment of Receiver. On January 30, 2018, Plaintiffs served Hygea with the Complaint and Emergency Petition but not the Summons. On January 31, 2018, Plaintiffs re-served the Complaint, along with the Summons. On February 7, 2018, Hygea filed its Motion to Dismiss for Lack of Jurisdiction Pursuant to N.R.C.P.

8(a)(1), 12(b)(1), and 12(h)(3), or, Alternatively, for Summary Judgment Pursuant to N.R.C.P. 56(b) (the "Motion to Dismiss"). On February 16, 2018, Hygea filed its Demand for Change of Venue in the alternative to its Motion to Dismiss.

II. LEGAL STANDARD

A defendant is entitled as a matter of right to a transfer of venue "[i]f the county designated for that purpose in the complaint be not the proper county." NRS 13.050(1). *See Stocks v. Stocks*, 64 Nev. 431, 183 P.2d 617 (1947) (concluding that a transfer of venue was required under the mandatory provisions of the predecessor to NRS 13.050(1)). The written demand and a motion to change venue may be filed concurrently. *O'Banion v. O'Banion*, 87 Nev. 88, 89, 482 P.2d 313, 314 (1971). Moreover, a motion for change of venue deprives the court of all jurisdiction except to decide the defendant's residence and to transfer the case. *See Williams v. Keller*, 6 Nev. 141 (1870) (when the movant is clearly entitled to a change venue, any subsequent proceedings should be had in the transferee court). The plaintiff has the burden of proving that the county in which the action was filed is the proper venue. *Washoe Cty. v. Wildeveld*, 103 Nev. 380, 382, 741 P.2d 810, 811 (1987) (citing *Ash Springs Dev. Corp. v. Crunk*, 95 Nev. 73, 589 P.2d 1023 (1979)).

III. LEGAL ARGUMENT

Plaintiffs' first and primary basis for the appointment of a receiver is NRS 78.650(1). *See* Compl. at ¶ 52. NRS 78.650(1) provides in relevant part:

> Any holder or holders of one-tenth of the issued and outstanding stock *may apply to the district court in the county in which the corporation has its principal place of business or*, if the principal place of business is not located in this State, *to the district court in the county in which the corporation's registered office is located*, for an order dissolving the corporation and appointing a receiver . . . .

NRS 78.650(1) (emphasis added). Plaintiffs' second basis for the appointment of a receiver is NRS 78.630. *See* Compl. at ¶ 53. NRS 78.630(1) provides in relevant part:

> Whenever any corporation becomes insolvent or suspends its ordinary business for want of money to carry on the

> business, or if its business has been and is being conducted at a great loss and greatly prejudicial to the interest of its creditors or stockholders, any creditors holding 10 percent of the outstanding indebtedness, or stockholders owning 10 percent of the outstanding stock entitled to vote, may, by petition setting forth the facts and circumstances of the case, *apply to the district court of the county in which the principal office of the corporation is located or*, if the principal office is not located in this State, *to the district court in the county in which the corporation's registered office is located* for a writ of injunction and the appointment of a receiver or receivers or trustee or trustees.

NRS 78.630(1) (emphasis added).

By these statutes' plain terms, an application for an appointment of a receiver under the statutes must be made to a district court either (i) in the county in which the corporation has its principal place of business or (ii) in the county in which it maintains its registered office. *See id.* Hygea's principal place of business is in Doral, Florida. Therefore, this action had to be filed in the First Judicial District Court in Carson City, Nevada, where Hygea maintains its Nevada registered office. *See* Motion to Dismiss, Ex. A, Decl. of Kyle A. Ewing at ¶¶ 4–7; Ex. A-1, Nevada Secretary of State printout identifying Carson City as the location of Hygea's registered office; Ex. A-2, Florida Secretary of State printout identifying Doral, Florida as the location of Hygea's principal place of business.

Plaintiffs argue in their opposition to Hygea's Motion to Dismiss that venue is proper in Clark County because the word "may" in NRS 78.650(1) and 78.630(1) makes the requirement to file in the county of the corporation's registered office permissive, rather than mandatory. Plaintiffs are wrong. The use of the word "may" in NRS 78.650(1) and 78.630(1) can only be logically construed to mean that under circumstances described in those statutes, a shareholder is *permitted* to file an action for a receiver. In other words, it provides the basis for a cause of action and/or remedy. No other interpretation makes sense.

Indeed, Plaintiffs' interpretation would render the provision's requirement to file in the county of the registered office meaningless. If the statutory authority of NRS 78.650(1) and 78.630(1) is permissive, then Plaintiffs could have filed this action

anywhere in Nevada. If that is what the Legislature had intended, then there would have been no reason for the Legislature to have included locality within the statutes' requirements. The Court cannot read such an absurd result into what are otherwise plainly worded statutes.

Plaintiffs also argue in their opposition to Hygea's Motion to Dismiss that Hygea agreed with Plaintiff N5HYG LLC to litigate any disputes arising *in connection with* the parties' Stock Purchase Agreement (the "SPA") in Clark County, Nevada. This is yet another baseless argument. This action does not arise *in connection with* the parties' SPA. Indeed, even though Plaintiffs make the bald assertion that the SPA controls the forum of this action, Plaintiffs provide no explanation whatsoever as to *how* this action *for the appointment of a receiver* arises *in connection with* the Agreement. Nor can they because it plainly does not.

Moreover, even if this action could be construed to arise in connection with the SPA, there is no authority for Plaintiffs' proposition that an agreement with one plaintiff can bind Hygea to litigate with the remaining plaintiffs in Clark County, Nevada. The case cited by Plaintiffs for this proposition—*Holland Am. Line Inc. v. Wartsila N. Am., Inc.*—is inapposite. That case concerned the binding of all *defendants* where the alleged conduct of those defendants not party to the agreement related closely to the contractual relationship. 485 F.3d 450, 456 (9th Cir. 2007). Here, there are no other defendants to bind to the SPA.

Finally, Plaintiffs argue in their opposition to Hygea's Motion to Dismiss that Hygea has waived its ability to challenge venue because it has not made the statutorily required demand. A demand for mandatory change of venue is only waived if not filed within the defendant's time to answer the complaint. *See Hood v. Kirby*, 99 Nev. 386, 387, 663 P.2d 348, 349 (1983). Even the filing of an answer to the merits of a complaint does not waive the right to make a timely demand and motion for change of venue. *Byers v. Graton*, 82 Nev. 92, 94, 411 P.2d 480, 481 (1966). Here, Hygea is well within the time to answer because its time to answer has

been suspended by the filing of its Motion to Dismiss. Even if the Court disregarded the filing of the Motion to Dismiss, Hygea's Demand was still timely because it would have had until February 20, 2018, to answer the Complaint, and Hygea filed its demand on February 16.

IV. CONCLUSION

For the foregoing reasons, to the extent the Court construes NRS 78.650(1) and 78.630(1) to mean venue and not jurisdiction, Hygea requests that the Court transfer this action to the First Judicial District Court in Carson City, Nevada.

Dated: February 16, 2018

BALLARD SPAHR LLP

By: /s/ Maria A. Gall
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Attorneys for Defendant

CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on February 16, 2018, an electronic copy of the foregoing **MOTION FOR CHANGE OF VENUE** was filed and served on the following via the Court's electronic service system:

G. Mark Albright, Esq.
D. Chris Albright, Esq.
ALBRIGHT, STODDARD, WARNICK & ALBRIGHT
801 South Rancho Drive, Suite D-4
Las Vegas, Nevada 89106

Ogonna M. Brown, Esq.
HOLLY DRIGGS, WALCH FINE WRAY PUZEY THOMPSON
400 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Plaintiffs

/s/ Maria A. Gall
An employee of BALLARD SPAHR LLP

EXHIBIT “14”

ORD
Joel E. Tasca, Esq.
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Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
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Attorneys for Defendant

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. A-18-768510-B Dept No. XXVII Hearing Date: March 7, 2018 Hearing Time: 10:30 a.m.

Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

ORDER GRANTING DEFENDANTS' MOTION FOR CHANGE OF VENUE

The Motion for Change of Venue (the "Motion") brought by Defendant Hygea Holdings Corp. ("Hygea") came before this Court for hearing on Order Shortening Time on March 7, 2018. Maria A. Gall, Esq. and Kyle A. Ewing, Esq. of the law firm Ballard Spahr LLP appeared on behalf of Hygea. Christopher D. Kaye, Esq. of The Miller Law Firm; Ogonna M. Brown, Esq., of Holley Driggs Walch Fine Wray Puzey Thompson; and G. Mark Albright, Esq. of Albright, Stoddard, Warnick & Albright appeared on behalf of Plaintiffs.

The Court, having considered the Motion and the briefing related thereto, all pleadings and papers already on file in this matter, and having heard from the parties, is persuaded by the Motion and hereby finds that, pursuant to NRS 78.650(1) and NRS 78.630(1) and for the reasons stated on the record, venue for this lawsuit properly lies with the First Judicial District Court in Carson City, Nevada, and therefore,

IT IS HEREBY ORDERED that the Motion is GRANTED;

IT IS FURTHER ORDERED, including by stipulation and agreement of the parties as stated on the record at the hearing, that Hygea's Notice of Withdrawal of Demand for Change of Venue and Motion for Change of Venue filed on March 6, 2018, is hereby withdrawn and/or stricken; and

IT IS FURTHER ORDERED that this lawsuit, including all pleadings, papers, files and record of the proceedings in this Court, is transferred to the First Judicial District Court.

Dated this 8 day of March, 2018.

Nancy L. Allf

THE HONORABLE NANCY L. ALLF
DISTRICT COURT JUDGE

Ballard Spahr LLP
1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Submitted by:

BALLARD SPAHR LLP

By: _____
Joel E. Tasca, Esq.
Nevada Bar No. 14124
Maria A. Gall, Esq.
Nevada Bar No. 14200
Kyle E. Ewing, Esq.
Nevada Bar No. 14051
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Attorneys for Defendant

Approved as to form but not content:

ALBRIGHT, STODDARD, WARNICK & ALBRIGHT

By: _____
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Christopher D. Kaye, Esq.
THE MILLER LAW FIRM, P.C.
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Attorneys for Plaintiffs

EXHIBIT “15”

IN THE SUPREME COURT OF THE STATE OF NEVADA

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III, LLC; LEONITE CAPITAL LLC; IBH CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Appellants,

v.

HYGEA HOLDINGS CORP.; MANUEL IGLESIA, an individual; EDWARD MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY, an individual; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D.; an individual, KEITH COLLINS, M.D.; an individual, JACK MANN M.D.; an individual, and JOSEPH CAMPANELLA, an individual.

Respondents.

No. 76969

APPELLANTS' CIVIL APPEAL DOCKETING STATEMENT

ROBERT L. EISENBERG (SBN 950)
rle@lge.net
Lemons, Grundy & Eisenberg
6005 Plumas Street, Third Floor
Reno, Nevada 89519
775-786-6868
ATTORNEYS FOR APPELLANTS

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

See previous page and attachment

No. 76969

DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See* KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District First Department II

County _____ Judge James E. Wilson, Jr.

District Ct. Case No. 18 OC 00071 1B

2. Attorney filing this docketing statement:

Attorney Robert L. Eisenberg Telephone 775-780-6868

Firm Lemons, Grundy & Eisenberg

Address 6005 Plumas Street, Third Floor
Reno NV 89519

Client(s) See Attachment

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Joel E. Tasca, Telephone 702-471-7000

Firm Ballard Spahr LLP

Address 1980 Festival Plaza Drive, Suite 900
Las Vegas, Nevada 89135

Client(s) See Attachment

Attorney Severin A. Carlson Telephone 775-852-3900

Firm Kaempfer Crowell

Address 50 West Liberty St., Suite 700
Reno, Nevada 89501

Client(s) Same as above

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- ☒ Judgment after bench trial
- ☐ Judgment after jury verdict
- ☐ Summary judgment
- ☐ Default judgment
- ☐ Grant/Denial of NRCP 60(b) relief
- ☐ Grant/Denial of injunction
- ☐ Grant/Denial of declaratory relief
- ☐ Review of agency determination
- ☒ Dismissal:
  - ☒ Lack of jurisdiction
  - ☐ Failure to state a claim
  - ☐ Failure to prosecute
  - ☐ Other (specify): _____
- ☐ Divorce Decree:
  - ☐ Original ☐ Modification
- ☒ Other disposition (specify): Attorneys' fees

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Hygea Holdings Corp. v. District Court (Arellano); No. 75215; original writ proceeding; writ denied.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (*e.g.*, bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

See attached.

8. Nature of the action. Briefly describe the nature of the action and the result below:

This is an action solely seeking appointment of a receiver on an emergency and expedited basis. The district court denied the claim on jurisdictional grounds and awarded attorneys' fees against Plaintiffs in the amount of more than $700,000.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

First issue on appeal is whether the district court erred when it denied Plaintiffs' claim for the appointment of a receiver under NRS 78.650 on the basis that the court had no jurisdiction to hear the claim because the Plaintiffs did not provide evidence that they constituted 10 percent of the outstanding shares in Hygea.

Second issue on appeal is whether the district court erred when it dismissed Plaintiffs' claim for the appointment of a receiver under NRS 32.010 on the basis that there was no other action pending as an ancillary proceeding.

Third issue on appeal is whether the district court erred when it dismissed Plaintiffs' claim for the appointment of a receiver under NRS 78.630 on the basis that there was no evidence that Hygea's business had been and was being conducted at a great loss that was greatly prejudicial to the interests of its creditors or stockholders.

Fourth issue on appeal is whether the district court erred when it awarded attorneys' fees to Defendants.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

We are not aware of any such cases.

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☒ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain: This appeal involves substantial issues of first impression regarding requirements in receivership cases and awards of attorneys' fees in such cases.

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

The case is retained by the Supreme Court pursuant to NRAP 17(a)(10) as an issue of first impression and NRAP 17(a)(11) as an issue of statewide public importance. The substantive issue of first impression, with statewide importance, deals with the correct interpretation of the ten-percent stock ownership requirement of NRS 78.650, as well as other issues involving interpretation of that statute, and correct standards for attorneys' fee awards in receivership cases.

14. Trial. If this action proceeded to trial, how many days did the trial last? 4

Was it a bench or jury trial? Consolidated evidentiary hearing and bench trial

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
No.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from See attachment

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served See attachment

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☐ NRCP 50(b) Date of filing _____

☒ NRCP 52(b) Date of filing Filed and served by mail on 6/18/18

☒ NRCP 59 Date of filing Filed and served by mail on 6/18/18

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. *See* AA Primo Builders v. Washington, 126 Nev. ____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion 8/9/18; see attachment

(c) Date written notice of entry of order resolving tolling motion was served 8/14/18

Was service by:

☐ Delivery

☒ Mail

19. Date notice of appeal filed September 12, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

20. Specify statute or rule governing the time limit for filing the notice of appeal, *e.g.*, NRAP 4(a) or other

See attachment.

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

☒ NRAP 3A(b)(1)	☐ NRS 38.205
☐ NRAP 3A(b)(2)	☐ NRS 233B.150
☐ NRAP 3A(b)(3)	☐ NRS 703.376
☒ Other (specify) NRAP 3A(b)(4) and (8)	

(b) Explain how each authority provides a basis for appeal from the judgment or order:

See attachment

22. List all parties involved in the action or consolidated actions in the district court:

(a) Parties:

See Attachment

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

NRS 78.650: Claim for appointment of receiver, denied at May 18, 2018 evidentiary hearing and in Findings of Fact and Conclusions of Law filed on May 30, 2018
NRS 32.010: Claim for appointment of receiver, dismissed on May 16, 2018 at the evidentiary hearing
NRS 78.630: Claim for appointment of receiver, dismissed on May 16, 2018 at the evidentiary hearing

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☒ Yes, but see attachment

☐ No

25. If you answered "No" to question 24, complete the following:

(a) Specify the claims remaining pending below:

(b) Specify the parties remaining below:

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☐ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☐ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (*e.g.*, order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

all appellants
Name of appellant

ROBERT L. EISENBERG
Name of counsel of record

Oct. 19, 2018
Date

Robert L. Eisenberg
Signature of counsel of record

Washoe County NV
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the _____ day of _____ , _____ , I served a copy of this completed docketing statement upon all counsel of record:

☐ By personally serving it upon him/her; or

☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

SEE ATTACHED

Dated this _____ day of _____ , _____

_____
Signature

CERTIFICATE OF SERVICE

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date the foregoing Docketing Statement was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

Maria Gall
James Puzey
Kyle Ewing
Joel Tasca
Tara Zimmerman
G. Albright
D. Albright
Clark Vellis
Severin Carlson

I further certify that on this date I served a copy of the foreoing, postage prepaid, by U.S. mail to:

Christopher Kaye
The Miller Law Firm
950 W. University Drive, Suite 300
Rochester, Michigan 48307

David Wasick (Settlement Judge)
P.O. Box 568
Glenbrook, Nevada 89413

DATED: 10/18/18

Vicki Shapiro, Assistant to
Robert L. Eisenberg

ATTACHMENT TO APPELLANTS' DOCKETING STATEMENT

FULL CAPTION:

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III, LLC; LEONITE CAPITAL LLC; IBH CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Appellants,

v.

HYGEA HOLDINGS CORP.; MANUEL IGLESIA, an individual; EDWARD MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY, an individual; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D.; an individual, KEITH COLLINS, M.D.; an individual, JACK MANN M.D.; an individual, and JOSEPH CAMPANELLA, an individual.

Respondents.

2. **Clients of attorney filing this docket statement**:

Client(s): CLAUDIO ARELLANO; CROWN EQUITY'SLLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III, LLC; LEONITE CAPITAL LLC; IBH CAPITAL LLC;N5HYG LLC; and RYMSSG GROUP, LLC

3. **Clients of attorney(s) representing respondents(s):**

Client(s): HYGEA HOLDINGS CORP.; MANUEL IGLESIA, an individual; EDWARD MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY, an individual; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D., an individual; KEITH COLLINS, M.D., an individual; JACK MANN M.D., an individual, and JOSEPH CAMPANELLA, an individual

7. **Pending and prior proceedings in other courts:**

The present appeal stems from an emergency action seeking solely the appointment of a receiver. Some of the parties to this appeal are subject to other pending litigation:

a. N5HYG, LLC, a Michigan Company, and Nevada 5, Inc., a Nevada Corporation v. Hygea Holdings Corp., et al, Case No. A-17-762664-B, District Court of Clark County, Dept. No. 27. Case is still pending.

b. Claudio Arellano, individually, v. Hygea Holdings Corp., et al, Case No. 2017-019495-CA-01, Circuit Court of the Eleventh Judicial Circuit in and for Miami-Dade County, Florida. Case is still pending

16. **Date of entry of written judgment or order appealed from:**

Findings of Fact and Conclusions of Law: May 30, 2018

Order awarding attorneys' fees: August 13, 2018

Amended Order awarding attorney's fees: October 10, 2018 (appeal to be filed)

17. **Date written notice of entry of judgment or order was served:**

Findings of Fact etc.: May 31, 2018

Attorneys' Fees order: August 20, 2018

Amended Attorneys' Fees order: October 11, 2018

18. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b) or 59):**

The post-judgment tolling motion was a Motion to Amend the Findings of Fact and Conclusions of Law filed and serviced by mail on June 18, 2018. A written order resolving the tolling motion was entered on August 9, 2018. Defendants served an unstamped copy of the notice of entry of order on August 14, 2018.

20. **Statute or rule governing time limit for notice of appeal**

Timeliness of the notice of appeal is governed by NRAP 4(a)(1) [30 days after notice of entry of order being appealed] and 4(a)(4) [30 days after notice of entry of order on tolling motion]. This appeal was filed within 30 days after notice of entry of the order awarding attorneys' fees, and within 30 days after notice of entry of the order on the tolling motion.

The court should note that the order on the tolling motion granted the motion in part, and denied it in part. The order indicated that the court intended to enter an Amended Findings of Fact and Conclusions of Law. This would have constituted an amended judgment under NRAP 4(a)(5). The court has never entered the amended judgment. Additionally, the attorneys' fee order indicated that the court

would be determining additional post-judgment fees to be added to the award. The amended order awarding additional attorneys' fees was entered on October 10, 2018, and appellants will be filing an amended notice of appeal to include appeal of that amended order.

Under these circumstances, the record was unclear as to whether the time to appeal already commenced on the primary order/judgment and on the attorneys' fee order. Consequently, footnote 1 in appellants' notice of appeal indicated that the notice was being filed as a protective notice of appeal under *Fernandez v. Infusaid Corp.,* 110 Nev. 187, 192-93, 871 P.2d 29 (1994).

21(b). **Explanation of appealability**

The order entered on May 30, 2018, was the final order [judgment] in the receivership action, and is therefore an appealable final judgment under NRAP 3A(b)(1) **and** an appealable order refusing to appoint a receiver under NRAP 3A(b)(4). The order awarding attorneys' fees is an appealable special order after final judgment under NRAP 3A(b)(8). *Winston Products v. DeBoer*, 122 Nev. 517, 525, 124 P.3d 726, 731 (2006).

22(a). **List all parties involved in the action or consolidated actions in the district court:**

Plaintiffs:
CLAUDIO ARELLANO
CROWN EQUITY'S LLC
FIFTH AVENUE 2254 LLC

HALEVI ENTERPRISES LLC
HALEVI SV 1 LLC
HALEVI SV 2 LLC
HILLCREST ACQUISITIONS LLC
HILLCREST CENTER SV I LLC
HILLCREST CENTER SV II LLC
HILLCREST CENTER SV III, LLC
LEONITE CAPITAL LLC
IBH CAPITAL LLC
N5HYG LLC
RYMSSB GROUP, LLC

Defendants:
HYGEA HOLDINGS CORP.
MANUEL IGLESIA
EDWARD MOFFLY
DANIEL T. MCGOWAN
FRANK KELLY
MARTHA MAIRENA CASTILLO
GLENN MARRICHI, M.D.
KEITH COLLINS, M.D.
JACK MANN M.D.
JOSEPH CAMPANELLA

24. **Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated action below?**

The Receivership Action Judgment adjudicated all of the receivership claims involving all of the parties cabined within that distinct claim. But it does not – and was never intended to – adjudicate any claims, rights, or liabilities beyond the distinct question of whether a receivership was warranted. The court found that it lacked jurisdiction to consider appointment of a receiver on May 18, 2018.

27. **Attached List of documents:**

- First Amended Complaint for Appointment of Receiver
- Findings of Fact and Conclusions of Law; and Notice of Entry of Findings of Fact and Conclusions of Law
- Order Granting Defendants' Motion for Attorneys' Fees; and Notice of Entry of Order Granting Defendants' Motion for Attorneys' Fees
- Order Granting in Part and Denying in Part Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law; and Notice of Entry of Entry of Order Granting in Part and Denying in Part Plaintiff's Motion to Amend Findings of Fact and Conclusions of Law (not stamped)
- Amended Order Granting Defendants' Motion for Attorneys' Fees; Notice of Entry of Amended Order Granting Defendants' Motion for Attorneys' Fees

ATTACHMENTS TO NO. 27

ATTACHMENTS TO NO. 27

COPY

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Attorneys for Plaintiff N5HYG, LLC

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; MANUEL IGLESIAS, an individual; EDWARD

Case No.: 18 OC 00071 1B

Dept. No.: II

FIRST AMENDED COMPLAINT FOR APPOINTMENT OF RECEIVER

MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D., an individual; KEITH COLLINS, M.D., an individual; JACK MANN, M.D., an individual; and JOSEPH CAMPANELLA, an individual,

Defendants.

Plaintiffs CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, state for their Complaint as follows:

1. Defendant HYGEA HOLDINGS CORP. ("Hygea") is a Nevada corporation. Its business is acquiring and managing physician practices and similar medical providers.

2. Defendant MANUEL IGLESIAS ("Iglesias") is a citizen and resident of the State of Florida. He is a member of Hygea's Board of Directors.

3. Defendant EDWARD MOFFLY ("Moffly") is a citizen and resident of the State of Florida. He is a member of Hygea's Board of Directors.

4. Defendant DANIEL T. MCGOWAN ("McGowan") is a citizen and resident of the State of New York. He is a member of Hygea's Board of Directors.

5. Defendant FRANK KELLY ("Kelly") is a citizen and resident of the State of Georgia. He is a member of Hygea's Board of Directors.

6. Defendant MARTHA MAIRENA CASTILLO ("Castillo") is a citizen and resident of the State of Florida. She is a member of Hygea's Board of Directors.

7. Defendant GLENN MARRICHI, M.D. ("Marrichi") is a citizen and resident of the State of Georgia. He is a member of Hygea's Board of Directors.

8. Defendant KEITH COLLINS, M.D. ("Collins") is a citizen and resident of the State of Florida. He is a member of Hygea's Board of Directors.

9. Defendant JACK MANN, M.D. ("Mann") is a citizen and resident of the State of New York. He is a member of Hygea's Board of Directors.

10. Defendant JOSEPH CAMPANELLA ("Campanella") is a citizen and resident of the State of California. He is a member of Hygea's Board of Directors.

11. Plaintiff CLAUDIO ARELLANO ("Arellano") is an individual residing in the State of Florida.

12. Plaintiff Arellano paid $2,813,200 for his 2,813,200 shares of Hygea pursuant to a December 2014 Stock Purchase Agreement (the "Arellano Stock Purchase Agreement"). **Exhibit "1,"** pp. 10-11. Pursuant to the terms of the Arellano Stock Purchase Agreement, Arellano holds 2,313,200 shares in Hygea as of the date of this filing; the balance of 500,000 shares is due to be issued to him in December 2018.

13. N5HYG paid $30 million for its shares of Hygea in an October 2016 Stock Purchase Agreement (the "N5HYG Stock Purchase Agreement"). Hygea represented the 23,437,500 shares that N5HYG bought to represent 8.57 percent of the shares of Hygea.

14. All Plaintiffs are aware of an action that was initially filed in this Court on October 5th, 2017. It was assigned to Department 25 and received case number A-17-762664-B. One of the defendants removed the case to Federal District Court of Nevada, where it is currently pending at *N5HYG, LLC, et al v. Hygea Holdings Corp., et al*, No. 2:17-cv-02870-JCM-PAL, Judge James C. Mahan.

15. In that action, Defendant Hygea filed a motion to dismiss the plaintiffs' complaint [Dkt. # 11], to which Hygea attached as Exhibit A the aforestated Stock Purchase Agreement stating that Hygea sold to N5HYG "Twenty-Three Million Four Hundred Thirty-Seven Thousand Five Hundred (23,437,500) shares of Common Stock, constituting 8.57% of all of the issued and outstanding Common Stock . . . ." **Exhibit "2,"** p. 1.

16. Plaintiff Fifth Avenue 2254, LLC ("Fifth Avenue") is a limited liability company organized under the laws of the State of New York.

17. Plaintiff Fifth Avenue is a registered shareholder of Hygea possessing 100,000 shares. **Exhibit "3,"** p. 1.

18. Plaintiff Hillcrest Acquisitions, LLC ("Hillcrest Acquisitions") is a limited liability company organized under the laws of the State of New York.

19. Plaintiff Hillcrest Acquisitions is a registered shareholder of Hygea possessing 250,000 shares. **Exhibit "3,"** p. 2.

20. Plaintiff Hillcrest Center SV I, LLC ("Hillcrest SV I") is a limited liability company organized under the laws of the State of New York.

21. Plaintiff Hillcrest Center SV I is a registered shareholder of Hygea possessing 250,000 shares, for which it paid $125,000. **Exhibit "3,"** p. 3.

22. Plaintiff Hillcrest Center SV II, LLC ("Hillcrest SV II") is a limited liability company organized under the laws of the State of New York.

23. Plaintiff Hillcrest Center SV II is a registered shareholder of Hygea possessing 250,000 shares, for which it paid $125,000. **Exhibit "3,"** p. 4.

24. Plaintiff Hillcrest Center SV III, LLC ("Hillcrest SV III") is a limited liability company organized under the laws of the State of New York.

25. Plaintiff Hillcrest Center SV III is a registered shareholder of Hygea possessing 500,000 shares, for which it paid $125,000. **Exhibit "3,"** p. 5.

26. Plaintiff Leonite Capital, LLC ("Leonite") is a limited liability company organized under the laws of the State of Delaware.

27. Plaintiff Leonite is a registered shareholder of Hygea possessing 500,000 shares, for which it paid $125,000. **Exhibit "3,"** p. 6.

28. Plaintiff Crown Equity's LLC ("Crown") is a limited liability company organized under the laws of the State of Delaware.

29. Plaintiff Crown is a registered shareholder of Hygea possessing 250,000 shares.

30. Plaintiff Halevi Enterprises, LLC ("Halevi Enterprises") is a limited liability company organized under the laws of the State of Delaware.

31. Plaintiff Halevi Enterprises is a registered shareholder of Hygea possessing 500,000 shares.

32. Plaintiff Halevi SV1, LLC ("Halevi SV1") is a limited liability company organized under the laws of the State of Delaware.

33. Plaintiff Halevi SV1 is a registered shareholder of Hygea possessing 250,000 shares.

34. Plaintiff Halevi SV2, LLC ("Halevi SV2") is a limited liability company organized under the laws of the State of Delaware.

35. Plaintiff Halevi SV2 is a registered shareholder of Hygea possessing 250,000 shares.

36. Plaintiff Ibh Capital LLC ("Ibh") is a limited liability company organized under the laws of the State of Delaware.

37. Plaintiff Ibh is a registered shareholder of Hygea possessing 250,000 shares.

38. Plaintiff RYMSSG Group, LLC ("RYMSSG") is a limited liability company organized under the laws of the State of Delaware.

39. Plaintiff RYMSSG is a registered shareholder of Hygea possessing 250,000 shares for which it paid $100,000.

40. Plaintiff N5HYG, LLC ("N5HYG") is a limited liability company organized under the laws of the State of Michigan for the purpose of acquiring owning shares in Hygea. All of its membership shares are owned by Nevada 5, Inc., a corporation organized under the laws of the State of Nevada.

41. Based on the N5HYG Stock Purchase Agreement's calculations, Plaintiff Arellano, Crown, Fifth Avenue, Halevi Enterprises, Halevi SV1, Halevi SV2, Hillcrest Acquisitions, Hillcrest SV I, Hillcrest SV II, Hillcrest SV III, Ibh, Leonite, and RYMSSG thus collectively own 5,663,200 shares – approximately 2.07 percent of the shares of Hygea.

42. Together, based upon Hygea's calculations and representations set forth in the N5HYG Stock Purchase Agreement, the Plaintiffs herein currently own more than 10 percent of the shares of Hygea.

43. Hygea has well more than 30 shareholders.

44. Venue and jurisdiction are proper in this Court.

45. Hygea is managed by a Board of Directors. Its top executives are CEO Manuel Iglesias ("Iglesias") and CFO Ted Moffly ("Moffly").

46. Hygea's business model is that it acquires and manages independent medical practices, primarily doctors' practices, focusing on the Southeastern United States and Florida in particular. It acquires practices from their doctor owners; the doctors go from being owners to employees, paid a salary by Hygea or its subsidiary medical practice. Hygea's fundamental value proposition is: let the doctors focus on medical care, while Hygea uses its economies of scale and operational expertise to effectively operate the practices from a business perspective.

47. Hygea's opportunity to service its substantial network of patients, which Hygea has represented to be in excess of 100,000, is perhaps its greatest asset.

48. Hygea is failing and running out of cash.

49. Apparently, Hygea paid its payroll through its American Express account for some time until it was apparently poised to fail to "make payroll" this past fall, until it ultimately was apparently able to do so. Upon information and belief, Hygea owes approximately $10 million to American Express. **Exhibit "4."**.

50. Given Hygea's apparent troubles, Hygea hired an outside consultant, FTI, to review its financial performance. FTI has met with constant "roadblocks," as Moffly and Iglesias have refused to share information. Nonetheless, FTI has concluded that certain financial information provided by Hygea's management to its shareholders was "fabricated"; determined that Hygea's performance was negatively impacted by severe operational deficiencies; and was told by Iglesias that Iglesias had "cooked the books" to avoid problems with a previous lender. **Exhibit "4."**

51. This is consistent with Plaintiffs' experience with Hygea.

52. Based on the recent representations of Hygea representatives, Plaintiffs have since learned that the payroll payments have again ceased, including payments owed to physicians and some management-level and other administrative staff. Further, Hygea has failed to pay payroll taxes and is delinquent in payments to one or more large lenders. **Exhibit "4."**

53. These financial conditions suggest that the company is at or near the point of insolvency, which is consistent with what Plaintiffs have been able to learn about Hygea's finances.

54. The coming days and weeks are pivotal to Hygea's survival. Healthcare companies such as Hygea typically receive substantial public insurance reimbursements from the government (i.e., for Medicare/Medicaid.). These payments come twice a year – the first of which is traditionally early in the calendar year – and are existentially significant for the company. If these funds or other income are mismanaged or, worse, improperly diverted by Moffly or Iglesias, then then Hygea will continue to be unable to make payroll. If it fails to pay its physicians, they will abandon their Hygea-owned practices and Hygea will entirely collapse.

55. The impact of such a collapse would be felt among Hygea doctors and other employees, whose livelihoods would be greatly harmed; patients, whose treatment would suffer from the likely interruption in service; and Hygea's shareholders, including, but not limited to Plaintiffs, whose investments would be jeopardized if Hygea's greatest asset is wasted.

56. Moreover, Hygea has periodically, and again recently, represented to shareholders that one or more "white knight" investors would provide an influx of capital to assist the company. Of course, this has never come to fruition. Moreover, even if true, such an influx of cash would further heighten the need for a receiver to oversee any such transaction, given Hygea, management's demonstrated inability to properly manage its finances.

57. Plaintiff Arellano filed a complaint for damages against Hygea, Iglesias, and another Hygea executive captioned as Filing # 60229406 in the Circuit Court of the 11th Judicial Circuit, Miami-Dade County, Florida on August 10, 2017. However, this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action.

58. Plaintiff N5HYG joined in filing a complaint for damages against Hygea, Iglesias, Moffly, and Hygea's Board of Directors captioned as case number A-17-762664-B in this Court on October 5th 2017. It was assigned to Department 25. A default was entered against Hygea, although Hygea has moved to have it set aside. One of the defendants removed it to Federal Court,

where it was assigned case number 2:17-cv-02870-JCM-PAL. The plaintiffs in that action have moved to remand the case to this Court. Further, this action involves different parties, a discreet claim under a Nevada statute which specifically confers jurisdiction on this Court, and seeks a remedy separate, apart, and distinct from the existing action.

COUNT I – APPOINTMENT OF A RECEIVER

59. Plaintiffs restate each allegation as if set forth fully here.

60. Nevada law provides for the appointment of a receiver under the circumstances set forth here.

61. For example, under NRS 78.650, the Court may appoint a receiver for the mismanagement of Hygea.

62. Likewise, a receiver may be appointed under NRS 32.010 *et seq* and NRS 78.630.

63. Plaintiffs have been forced to retain attorneys to prosecute this action and are entitled to recover attorneys fees incurred.

WHEREFORE Plaintiffs pray that this Honorable Court appoint a receiver to manage Hygea Holdings Corp. and such other related relief that the Court deems appropriate.

DATED this 18th day of April, 2018.

HOLLEY, DRIGGS, WALCH,
FINE, WRAY, PUZEY & THOMPSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 18th day of APRIL, 2018, and pursuant to NRCP 5(b), I caused to be delivered by U.S. Mail a true copy of the foregoing document addressed as follows:

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HOLLEY·DRIGGS·WALCH
FINE·WRAY·PUZEY·THOMPSON

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; et. al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; et. al.,

Defendants.

Case No. 18 OC 00071 1B
Dept No. II

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On May 14, 2018, the bench trial of this matter commenced, with the trial continuing through May 18, 2018. Plaintiffs Claudio Arellano, Crown Equities LLC; Fifth Avenue 2254 LLC; Halevi Enterprises LLC; Halevi SV 1 LLC; Halevi SV 2 LLC; Hillcrest Acquisitions LLC; Hillcrest Center SV I LLC; Ibh Capital LLC; Leonite Capital LLC; N5HYG LLC ("N5HYG"); and RYMSSG Group, LLC (collectively, the "Plaintiffs"), appeared at trial, by and through their counsel of record, Christopher D. Kaye, Esq., and David Viar, Esq., of the The Miller Law Firm, P.C., and Clark Vellis, Esq. of Holley, Driggs, Walch, Fine, Wray, Puzey, and Thompson. Defendants Hygea Holdings Corp. ("Hygea" or the "Company"), Manuel Iglesias, Edward Moffly, Daniel T. McGowan, Frank Kelly, Martha Mairena Castillo, Glenn Marrichi, Keith Collins, M.D., Jack Mann, M.D., and Joseph Campanella (collectively, the "Defendants" and, together with the Plaintiffs, the "Parties") also appeared at the trial, by and through their counsel of record, Maria A. Gall, Esq., and Kyle A. Ewing, Esq., of Ballard Spahr, LLP, and Severin A.

Carlson, Esq. and Tara C. Zimmerman, Esq. of Kaempfer Crowell.

The Court, having reviewed and considered the pleadings and papers on file herein and evidence admitted during the trial; having heard and considered the witnesses called to testify at the trial; having considered the oral and written arguments of counsel; and for good cause therefore, hereby enters the following findings of fact and conclusions of law:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

I. PROCEDURAL BACKGROUND

This is an action in which Plaintiffs sought the appointment of a receiver over the Company pursuant to NRS 78.650, NRS 78.630, and NRS 32.010. Plaintiffs filed this action on January 26, 2018, in the Eighth Judicial District Court of Nevada, in and for Clark County by the filing of an Emergency Complaint (the "Complaint"). On the same day, Plaintiffs filed an Emergency Petition (the "Petition") for Appointment of Receiver, requesting preliminary injunctive relief and the appointment of a temporary receiver.

Hygea opposed that Petition on February 20, 2018. The Eighth Judicial District Court, specifically Department XXVII, heard oral argument on the Petition but reserved decision thereon pending a to-be-set evidentiary hearing. Prior to opposing the Petition, on February 16, 2018, Defendant Hygea filed a Motion for Change of Venue (the "Venue Motion") in the Eighth Judicial District Court. That court heard the Venue Motion on order shortening time on March 7, 2018, and granted the venue change by way of its March 8, 2018, Order. The case was subsequently transferred to this Court.

Upon transfer, this Court scheduled a status hearing for April 6, 2018, and asked the Parties to submit memoranda advising the Court of outstanding motions and any other matters each party wanted to discuss at the status hearing. Among other things, the Company in its memorandum requested that the Court combine the to-be-set evidentiary hearing with the trial on

the merits pursuant to N.R.C.P. 65(a)(2). At the April 6, 2018, status hearing, Hygea reiterated its request and moved orally to advance the trial of the action on the merits and consolidate the same with the hearing of Plaintiffs' Petition under N.R.C.P 65(a)(2) (the "Consolidation Motion"). After hearing argument from the Parties, the Court granted the Consolidation Motion

The Court offered the weeks of April 23, 2018, May 14, 2018, or a week in or after July 2018 for a consolidated trial of the matter. Hygea suggested a week in or after July 2018 so that the Court could first decide the Company's pending Motion to Dismiss, or alternatively, for Summary Judgment, but indicated that it would be prepared to proceed the week of May 14, 2018 if necessary; Plaintiffs requested the week of April 23, 2018. The Court set trial of the matter for five (5) calendar days beginning May 14, 2018.

Prior to the consolidated trial, the Parties conducted limited discovery pursuant to the Court's April 23, 2018, Order granting limited relief from N.R.C.P. 16 in light of the consolidated trial. Also pursuant to the April 23, 2018, Order and in preparation for the trial of the matter, on April 23, 2018, the Parties disclosed their witnesses and Plaintiffs scheduled the trial depositions of two witnesses. At a hearing on Defendants' Motion for a Protective Order to preclude the trial depositions of Norman Gaylis, M.D. and Dan Miller and Plaintiffs' Motion to Preclude the Testimony of Craig Greene, the Court offered to continue the trial of the matter. Defendants represented that they were not opposed to a continuance so that the Court could decide what Defendants believed to be threshold issues raised in their Motion to Dismiss, or alternatively, for Summary Judgment, but that if the Court declined to address the motion, Defendants were prepared to proceed on May 14, 2018. Plaintiffs represented that they did not want a continuance and were prepared to proceed on May 14, 2018. Based on the Parties' representations, the Court did not continue the trial, and a bench trial of this matter was held from May 14, 2018, through May 18, 2018.

On May 16, 2018, Defendants moved at the close of the evidence offered by Plaintiffs for judgment as a matter of law under N.R.C.P. 50(a) with respect to all claims. After hearing argument from both Parties, the Court denied Plaintiffs' request for a receiver under NRS 32.010 because, based on *State ex re. Nenzel*, 49 Nev. 145, 241 P. 317 (1925), NRS 32.010 requires that there be an action pending other than that for the request for a receivership, and in this case, there were no other claims pending. The Court also denied Plaintiffs' request for a receiver under NRS 78.630 after finding that there was not sufficient evidence that Hygea has been and is being conducted at a great loss and great loss and greatly prejudicial to the interest of its creditors and stockholders. The Court further denied Plaintiffs' request for a receiver in part under NRS 78.650 after finding that there was no evidence that Hygea had willfully violated its charter (NRS 78.650(1)(a)), that Hygea's directors had been guilty of fraud or collusion in its affairs (NRS 78.650(1)(b)), that Hygea abandoned its business (NRS 78.650(1)(f)), that Hygea had become insolvent (NRS 78.650(1)(h)), or that Hygea is not about to resume its business with safety to the public (NRS 78.650(1)(j)).

The Court, however, found that there was some evidence that Hygea's management's failure to be able to account for cash flow to the degree that an audited financial statement could be prepared, even though not required by the regulators, created a reasonable inference that the directors have been guilty of gross mismanagement (NRS 78.650(1)(b)), that the directors have been guilty of misfeasance, malfeasance, or nonfeasance (NRS 78.650(1)(c)), that Hygea is unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of its directors (NRS 78.650(1)(d)), that the assets of Hygea are in danger of waste, sacrifice, or loss (NRS 78.650(1)(e)), and that Hygea, although solvent, is for cause not able to pay its debts or other obligations as they mature (NRS 78.650(1)(i)). Accordingly, the Court denied Hygea's motion for judgment as a matter of law with respect to the foregoing, and

the trial proceeded with Hygea's defense on those issues.

On May 17, 2018, during the fourth day of the trial, after Plaintiffs claimed that they were prejudiced by the late disclosure of a custodian of records affidavit authenticating a previously produced V Stock Transfer List Defendants proposed be admitted to demonstrate the Company's shares issued and outstanding, the Court again asked if the Parties wished to continue the trial. Neither Plaintiffs nor Defendants indicated that they wanted a continuance. Thus, after the trial concluded on May 18, 2018, the Court orally announced its preliminary findings of fact and conclusions of law on the record and rendered judgment on the matter in favor of Defendants. The Court now sets forth its final findings of fact and conclusions of law.

II. FINDINGS OF FACT

The Court finds that the following facts were proven by a preponderance of the evidence:

1. N5HYG entered a Stock Purchase Agreement (the "SPA") in October of 2016 in which it purchased 23,437,500 shares of Hygea Holdings Corp., which, at that time, represented 8.57% of the issued and outstanding stock of Hygea.

2. Section 6.4(a) of the SPA contains a provision providing for certain preemptive and anti-dilution rights, including the right to notice if Hygea issued stock that would dilute N5HYG's pro rata ownership of Hygea's shares.

3. Section 6.3(a) of the SPA contains a provision providing for certain post-closing monthly payments to N5HYG, including a payment in the amount equal to $175,000 until the occurrence of a "trigger event" as defined by the SPA. Hygea stopped paying the $175,000 post-closing payment after June of 2017 and has accrued $1,750,000 in missed payments to N5HYG.

4. Hygea has failed to adequately share financial information with its stockholders, and some information provided by the Company to its stockholders has not been accurate.

5. Hygea has not provided audited financial statements to its stockholders, including

N5HYG, and the last set of audited financial statements Hygea completed was for the year 2013.

6. Minutes from a January 27, 2017, meeting of Hygea's Board of Directors (the "Board") indicate that, at that time, Hygea's audited financial statements for the years 2014 and 2015 would be completed within a matter of weeks. However, the audited financial statements for 2014 and 2015 were never completed.

7. The failure to complete audited financial statements were material for a time, when Hygea sought to "go public" on the Canadian financial markets.

8. At the point that Hygea's Board decided that it would no longer be in the Company's best interests to "go public," the Board decided not to pursue audited financial statements, including those for the years 2014 and 2015.

9. Audited financial statements are not required by any regulatory agency for a private company such as Hygea, and the Board made a statutorily protected business decision not to incur the expense or otherwise spend the resources necessary to obtain audited financial statements.

10. In 2017 Hygea hired FTI Consulting, Inc. and specifically Mr. Timothy Dragelin of FTI, a testifying witness, to provide Hygea with certain management consulting. FTI's mission was to assist the Company in completing the financial statement audits for the years 2014 and 2015, with the hope that Hygea would go public, and to develop a work plan for the company and its proposed "RTO" or reverse takeover in Canada.

11. Mr. Dragelin testified that Hygea's books and records were not complete when Mr. Dragelin was working at Hygea and that there were no finalized financial statements, and, that being the case, no financial statements were in any shape to be audited.

12. Mr. Dragelin further testified that the combination of incomplete financial statements, lack of supporting documentation required to complete the audits, and significant

discord among management, posed significant impediments to Hygea's profitable operation.

13. Mr. Dragelin testified that prior to Mr. Sergey Savchenko being hired as the Company's director of finance, there was little financial management at Hygea but that once Mr. Savchenko did come on board, Mr. Savechenko was helpful in moving forward Hygea's ability to prepare timely financial documents.

14. Mr. Dragelin further testified that there remained, however, a lack of documentary support for large revenues and a lack of documentation regarding acquisitions and loans at the time that he left Hygea in June or July 2017.

15. Mr. Dragelin explained that FTI's role was that of a consultant and, accordingly, he and his team made certain proposals to Hygea, some of which Hygea accepted and some of which it declined to accept.

16. Mr. Dragelin also explained challenges to gathering and completing Hygea's financial data based on the nature of its business. For instance, Hygea would not have had real data on costs until the end of 2017, at which point the Centers for Medicare and Medicaid Services would make two annual adjustment payments going forward, a preliminary one in September of 2018 and a final in July of 2019; he explained that how Hygea would be paid in 2018 relates to data from as far back as 2016 and 2017.

17. In Mr. Dragelin's opinion, some of Hygea's stated financial numbers that were discussed with him lacked credibility and were outside the bounds of what he considered credible assumptions. Mr. Dragelin believes a number of proposals by Hygea relating to financial numbers that FTI thought could be supported.

18. Mr. Dragelin observed officers of Hygea ignoring issues, including financial issues, failing to value its acquisitions, and making assumptions that were not appropriate, possibly resulting in overvaluing of an acquisition or several acquisitions.

19. Mr. Dragelin observed that Hygea required only the signatory authority of its Chief Executive Officer, then Mr. Iglesias, with respect to which Hygea vendors were approved, who could pay those vendors, and general access to Hygea's cash accounts.

20. Mr. Dragelin witnessed an intentional misstatement of financial information by Mr. Iglesias when Mr. Igelsias told Mr. Dragelin that a loan-type transaction would be otherwise structured.

21. Based upon observations it appeared to Mr. Dragelin that Mr. Iglesias appeared to have a misunderstanding with respect to the relationship between Hygea's balance sheet and its EBITDA number (earnings before interest, taxes, depreciation, and amortization).

22. Exhibit 41-B, which are minutes memorializing an August 9, 2017, Board meeting (the "August 2017 Minutes"), explains that Mr. Iglesias, then the CEO of Hygea, reported to the Board that the focus would be to maximize the return on Hygea's own system and focus inward, slowing acquisitions and concentrating on Hygea's position in the current political climate.

23. The August 2017 Minutes also reported that one of the blemishes on Hygea's progress was cash flow and that there were substantial obligations soon coming due, including an approximately $9 million payment to the sellers of VRG Group MedPlan on August 24, which the Company would not be able to honor.

24. The August 2017 Minutes also report that the CEO wished to raise approximately $15 million to $20 million in equity financing through a private placement in case the Company's plans for going public were further delayed.

25. The August 2017 Minutes also reflect that Mr. Dragelin pointed out that numerous of the Company's processes were not formalized, that acquisitions were not properly and/or timely integrated into Hygea's system, that there was a lack of coordination among the

Company's departments, and that other matters contributed to the result that information flow at Hygea was not what it should be.

26. The August 2017 Minutes further state that Mr. Dragelin advised that various deficiencies in the Hygea organization were already being overcome at that point in time; he explained that Mr. Sergey Savchenko, also a testifying witness at the trial, had been retained by the Company as its director of finance for his expertise in both financial and more general accounting and that various trust issues within management were being addressed, but that the Company's liquidity challenges still required resolution.

27. The August 2017 Minutes further indicate that Mr. Dragelin said the company needed "real-time" financial statements on a monthly basis.

28. The August 2017 Minutes further state that Mr. Daniel McGowan, a Hygea director, opined that the Company could live or die on the audits.

29. Finally, the August 2017 Minutes reflect that Dr. Norman Gaylis stated that the Company needed to do a better job of integrating acquired practices to market to replace hospitals with Hygea's resources and to develop better contracts.

30. Exhibit 25 is an electronic mail message from Christopher Fowler, a testifying witness at the trial who is an employee of RIN Capital, LLC ("RIN") and the agent/representative of N5HYG, to Mr. McGowan, dated September 20, 2017 (the "September 20 E-Mail"). In the email Mr. Fowler lists items that he wants to see addressed or clarified, including that the Board never received the Bridging Finance, Inc. cash flow projections, which show negative monthly cash flow.

31. Mr. Fowler further stated in the September 20 E-Mail that the projections provided by the Board did not include acquisition payables of $16.4 million, which, in Mr. Fowler's view, indicated more than $5 million in negative cash flow.

32. Mr. Fowler further complained in the September 20 E-Mail that the Bridging Finance cash flow projections required a statement of written assumptions, and that, in his view, the Board was not being properly informed of outstanding legal matters, including a yet-to-be-filed lawsuit from N5HYG.

33. Mr. Fowler further indicated in the September 20 E-Mail that the Board should undertake to review all outstanding contracts, that Hygea's CEO (at that time, Mr. Iglesias) was mismanaging by, for instance, failing to provide accurate quarterly and annual audited financial statements to stockholders, by failing to inform the Board of current or pending defaults under multiple contractual agreements which could affect cash flow by significantly underperforming versus the plan, by failing to provide timely and accurate projections with written assumptions to the Board, and by failing to adhere to corporate policies and procedures.

34. Hygea was a rapidly growing corporation and that this rapid growth caused a lot of challenges for Hygea.

35. Hygea has issued stock as "currency" to buy medical practices since October of 2016.

36. Had Hygea used treasury stock to buy medical practices, which does not require the issuance of new shares, Hygea would not have diluted N5HYG's ownership share of Hygea; there is no evidence in the record, however, indicating whether Hygea possessed any treasury stock at any relevant time.

37. Hygea has a number of creditors, including Dr. Norman Gaylis, a testifying witness at the trial (approximately $2.3 million owing); CuraScript (between $2 million and $2.5 million owing); American Express (approximately $8.5 million owing); Bridging Finance (between approximately $60 million and $75 million owing with interest accruing at fifteen percent (15%) per annum).

38. For a period of time Hygea employed Mr. Dan Miller, another testifying witness, as the Company's Chief Operations Officer, but Mr. Miller left Hygea because it was failing to pay him; there was a time during which Hygea was also unable to pay other executives in a timely matter.

39. Hygea stopped (at least for some time) using a recognized payroll company and instead went to paper checks to pay its payroll; the checks were, at least for a time, received more sporadically by Hygea's employees, and Hygea provided no explanation as to why the change to paper checks was made.

40. In February of 2018, payroll checks issued to two Hygea employees working at the offices of Dr. Edward Persaud "bounced."

41. It had become evident that Hygea needed operational changes by the latter half of 2017; Hygea, for instance, had a history of not timely closing its financial statements, making it difficult for executives to manage the business.

42. Hygea offered Dr. Gaylis the position of President of Hygea in November of 2017, but Dr. Gaylis declined that position when he did not receive requested information demonstrating that Hygea was compliant in paying its payroll taxes, information showing that Hygea was dealing with other financial obligations, or information explaining how certain obligations would be met.

43. Dr. Gaylis is still affiliated with Hygea as an employee-physician and as a stockholder, and, on February 28, 2018, Dr. Gaylis communicated that he believed Hygea needed an immediate change of management and that the change in management needed to be "complete," or, alternatively, a receiver.

44. In Dr. Gaylis's opinion, if a receiver is appointed, it is likely Hygea's contracts with health management organizations ("HMO's") would be terminated.

45. The appointment of a receiver would put Hygea at increased risk for cancellation of the contracts it has with the HMOs, which account for approximately 70 percent (70%) of Hygea's gross revenue.

46. If the Company's HMO contracts were terminated, it would likely be the death knell for Hygea.

47. In 2017, Hygea prioritized maximizing revenue and, in so doing, failed to pay sufficient attention to operational inefficiencies that resulted in limited infrastructure, records, and processes to make, monitor, and manage Hygea's money.

48. Mr. Iglesias and his family members are, collectively, Hygea's largest stockholders.

49. Mr. Iglesias and his family are also creditors of Hygea, having loaned Hygea approximately $4 million to cover operational costs in 2017. In 2018, Mr. Iglesias and his family loaned additional amounts to Hygea, including after having secured a $3 million promissory note.

50. Mr. Iglesias acknowledged that he lacked the technical expertise to take Hygea to the next level.

51. Mr. Iglesias testified that the total number of Hygea shares issued and outstanding is approximately 432 million.

52. The relationship between Hygea and RIN, an agent of N5HYG that advised N5HYG to invest in Hygea, soured when the Board decided to pursue private equity financing rather than attempt to go public.

53. Liquidation of Hygea would result in a loss of all stockholder equity.

54. All Parties involved in the case have indicated that their goal is to have Hygea succeed so that Hygea will continue to have value for the stockholders.

55. Bridging Finance is currently funding Hygea's short-term cash shortfall.

56. Hygea's Board recently appointed a new Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer.

57. After Mr. Iglesias resigned as Chief Executive Officer, the Board appointed Dr. Keith Collins, another testifying witness and a director of Hygea since 2013, as Chief Executive Officer, while Mr. Iglesias became the co-chair of the Board.

58. Other members of the Board include Mr. McGowan, currently the other co-chair of Hygea's Board and a longtime Hygea director, who was a leader in the New York state healthcare market, and Mr. Glenn Marrichi, who was at one point an executive of a national marketing company.

59. Dr. Keith Collins' education and experience include a term as Chief Medical Officer of an HMO with six smaller plans that evolved into a multibillion dollar, publicly traded organization with operations in sixteen states; Dr. Collins eventually served as a vice president for business development of said HMO, which role included acquisition turnaround and HMO plan start-ups.

60. Dr. Collins was the founding Chief Executive Officer of the fastest growing HMO in New York City for a time.

61. Dr. Collins was vice president to another health network operating in New York and New Jersey and that, all in, he has over twenty years of experience creating and/or operating physician networks, all of which were successful to at least some extent and none of which failed.

62. The Board also appointed Mr. Savchenko as Hygea's acting Chief Financial Officer; Mr. Savchenko has a very strong financial background, including in connection with absorbing acquisitions at other organizations.

63. Dr. Collins, since taking the helm at Hygea, has been very active in his interaction with the Board, meeting with the Board every week to ten days; ensuring that Hygea replaced all executives that are appointed by the Board; and championing the establishment of a Board governance committee to better steer management's oversight of practices and its governance of a larger organization with appropriate checks and balances.

64. Dr. Collins recommended and oversaw the Board's approval of Dr. Gaylis as the new vice president of medical affairs and, as referenced above, Mr. Savchenko as the new, acting Chief Financial Officer.

65. Dr. Collins also identified twelve key employees at Hygea, made changes to their roles and duties, interviewed those people and the people they interface with, and made further appropriate changes to those roles.

66. Dr. Collins testified that Hygea's new management forecasts cash surpluses from operations beginning in July.

67. Dr. Collins takes his new role as Chief Executive Officer extremely seriously, in part because federal regulations dictate that any person associated with a failed provider that takes money from Medicare, such as Hygea, is forbidden from working with another Medicare provider for two years and, as a practical matter, that person is forever tainted in the Medicare industry; Dr. Collins' reputation is extremely valuable to him and such a taint would be unacceptable.

68. Hygea made the decision not to pursue a public financing offering in the fall of 2017 and conceded that Hygea has not always been able to pay its debt timely, in part because Hygea has experienced projected income failing to materialize.

69. Hygea is not paying Bridging Finance, which has agreed to capitalize Hygea's monthly interest payment until Hygea either goes public or is sold to a private equity investor.

70. The Bridging Finance debt is accumulating interest at fourteen percent (14%), which results in approximately $1 million a month in interest debt, currently being capitalized to the principal of the loan; Hygea's operational cash flow projections for 2018 do not include this monthly amount and also do not provide for payments associated with an approximately $8.5 million balance associated with an American Express line of credit.

71. Hygea's projected operating cash flow through 2018 shows an operating loss through June of 2018 and then a relatively modest (compared to the size of the business) positive cash flow for the last six months of 2018.

72. When Hygea acquires a new medical practice, it takes anywhere from six to twelve to even twenty-four months before Hygea begins collecting cash revenue, but Hygea incurs the cash expenses associated with the acquisition immediately.

73. Bridging Finance is helping to finance the short-term critical debts and obligations of Hygea.

III. LEGAL PRINCIPLES

As stated above, Plaintiffs petitioned for a receiver pursuant to NRS 32.010, 78.630, and 78.650. Given the Court's decision on Defendants' motion for judgment as a matter of law, only subsections 1(b)–(j), (i), and (j) of NRS 78.650 remained at issue following closure of Plaintiffs' case.

With respect to those claims that remained at issue, NRS 78.650 provides in *relevant* part that:

> 1. Any holder or holders of one-tenth of the issued and outstanding stock may apply to the district court . . . for an order dissolving the corporation and appointing a receiver to wind up its affairs, and by injunction restrain the corporation from exercising any of its powers or doing business whatsoever, except by and through a receiver appointed by the court, whenever:
>
> . . .

(b) Its trustees or directors have been guilty of . . . gross mismanagement in the conduct or control of its affairs;

(c) Its trustees or directors have been guilty of misfeasance, malfeasance or nonfeasance;

(d) The corporation is unable to conduct the business or conserve its assets by reason of the act, neglect or refusal to function of any of the directors . . .;

(e) The assets of the corporation are in danger of waste, sacrifice or loss through attachment, foreclosure, litigation or otherwise;

. . .

(i) The corporation, although not insolvent, is for any cause not able to pay its debts or obligations as they mature . . . ;

. . .

4. The court may, if good cause exists therefor, appoint one or more receivers for such purpose, but in all cases directors or trustees who have been guilty of no negligence nor active breach of duty must be preferred in making the appointment. The court may at any time for sufficient cause make a decree terminating the receivership, or dissolving the corporation and terminating its existence, or both, as may be proper.

Among other things, NRS 78.650 demands that the stockholder(s) petitioning for the appointment of a receiver hold one-tenth of the corporation's issued and outstanding stock. In *Shelton v. Second Judicial Dist. Court in & for Washoe Cty.*, the Nevada Supreme Court held that "[w]here the statute provides for the appointment of receivers, the statutory requirements must be met or the appointment is *void and in excess of jurisdiction.*" 64 Nev. 487, 494, 185 P.2d 320, 323 (1947). Moreover, a district court must find that the applicant(s) for the receiver holds one-tenth of the issued and outstanding stock of the corporation at the time the court considers the application. *Searchlight Dev., Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968) ("The district court does not have jurisdiction to appoint a corporate receiver, unless the applicant holder or holders of one-tenth of the issued and outstanding stock has legal title *at the*

time the court considers the application.") (emphasis added).

IV. ANALYSIS

A. Do Plaintiffs Hold One-Tenth of Hygea's Stock Issued and Outstanding?

As the Nevada Supreme Court stated in *Searchlight*, the time at which the Court must determine whether Plaintiffs hold the requisite one-tenth of the Company's shares issued and outstanding is the time at which the Court is considering the stockholders' application for the appointment of a receiver. *See Searchlight*, 84 Nev. at 109, 437 P.2d at 90. The Parties stipulated to the amount of shares that Plaintiffs own, so the Court has the numerator for the ten percent calculation, but the Court *does not* have any evidence of the total number of issued and outstanding shares as of today, this week, this month, or at *any time* during the last eighty-eight days since Mr. Edward Moffly, Hygea's former Chief Financial Officer and a Hygea director, made his declaration on February 19, 2018 or since even further back, to the time that Hygea and N5HYG executed the SPA in October of 2016. Neither of those—Mr. Moffly's declaration nor the SPA—inform the Court as to what the number of issued and outstanding shares is as of the beginning of the trial on Monday, May 14, 2018, or the end of trial on May 18, 2018.

Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ("V Stock"). That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stpcl Tramsfer as to what the current number of shares issued and outstanding is. There are discovery procedures to obtain that information. The Court acknowledges that this was an expedited process, but notes that—had Plaintiffs moved for such relief—the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock, but the Plaintiffs appear to assume that any information they would have received

regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock.

The question before the Court is then as follows: "is it fair to hold Plaintiffs to their burden?" In answering that question, the Court considers what Plaintiffs did to try to determine the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and through May 18, 2018 (the time at which the Court considered appointment of a receiver), which the Court finds is hardly anything. There is no evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information. Accordingly, Plaintiffs accepted the risk of bearing the burden of not knowing the number of shares issued and outstanding as they proceeded to trial without either obtaining the information or moving for a continuance to provide time to obtain the information. Had Plaintiffs come to Court with evidence that they had tried in good faith to secure the number of shares issued and outstanding and/or showed inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the Court could have made adverse inferences against Hygea and the individual Defendants, precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other sanctions. The record, however, is devoid of any evidence of Plaintiffs' efforts.

With that being the case, the Court does not know the number of shares issued and outstanding. Accordingly, it lacks the denominator necessary to complete the calculation and analysis necessary to determine whether Plaintiffs in fact hold ten percent of Hygea shares issued and outstanding. As such, the Court finds that Plaintiffs have failed to demonstrate by a preponderance of the evidence whether they hold ten percent (or "one-tenth") of Hygea's issued and outstanding stock. Under *Searchlight*, the Court cannot consider appointment of a receiver under NRS 78.650. *See id.*

B. Even if Plaintiffs Held One-Tenth of Hygea's Stock Issued and Outstanding, Is There a Basis and Good Cause for the Appointment of a Receiver?

An appellate court may disagree with this Court's analysis on the 10% issue, therefore the Court also provides analysis and substantive conclusions of law consistent with the above findings of fact on the remaining grounds for appointment of a receiver. With respect to those remaining grounds, the Court finds as follows:

- Under subsection 1(b), the Court finds that Plaintiffs have failed to establish—by a preponderance of the evidence—that the directors have been guilty of gross mismanagement in the conduct or control of Hygea's affairs;

- Under subsection 1(c), the Court finds that Plaintiffs have failed to establish—by a preponderance of the evidence—that the directors have been guilty of misfeasance or malfeasance; however, the Court *does* find, that Plaintiffs have established by a preponderance of the evidence that the directors have been guilty of nonfeasance;

- Under subsection 1(d), 1(e), and (1)(i), that nonfeasance resulted in Hygea not being able to conserve its assets by reason of the directors' neglect, placed Hygea's assets in danger of waste, sacrifice, or loss, and caused Hygea to not be able to pay its debts or obligations as they mature except through costly agreements and/or loans.

While the Court acknowledges that it is easy for the Plaintiffs to come to Court (and for the Court now to sit) and pass judgment on the Board, the Court finds that the directors appear to have been sitting in the driver seat of Hygea, where they properly belong, but allowed themselves to be blinded by the huge success of the business's acquisitive model in early 2017 and failed to pay attention to what was going on in the back seat, the processes and procedures for accounting for and managing Hygea's income. The Board should have been paying attention to both, and in particular how Hygea's management was governing the Company's affairs. Accordingly, the Court finds that while Plaintiffs have not established that any director was guilty of any misfeasance or malfeasance by a preponderance of the evidence, Plaintiffs have shown that the Board *is* guilty of nonfeasance.

The fact that the Court finds that the Board was guilty of nonfeasance under NRS 78.650(1)(c) does not, however, mean that a receiver is automatically appointed or end the Court's analysis. The legislature could have chosen to word NRS 78.650 such that if a district court finds that any of the items listed in NRS 78.650(1) are found that a receiver *must* be appointed. Instead, though, NRS 78.650(4) provides that this Court *may*, if good cause exists, appoint a receiver, providing the Court with discretion to consider other factors. *See* NRS 78.650(4).

The Court considers first and foremost that Hygea's business model is both ingenious and successful and/or can be successful if properly managed going forward. The Court finds that Hygea currently appears to be in trouble because its infrastructure, records, and processes did not keep pace with its rapid acquisition of medical practices. Hygea's Board should have detected these issues earlier than it did and should have addressed the issues related to infrastructure, records, and processes before now. The Court also gives considerable weight in its considerations to the fact that all Parties profess the desire to have Hygea continue to operate. Further, the Court considers the fact that the appointment of a receiver will (in the best case) increase the risk that the HMO's will cancel the contracts they have with Hygea, which could very well cause the death of the Company. If that occurs, all Parties lose.

Finally, the Court finds that in addition to the increased risk of HMO's terminating their contracts with Hygea, the appointment of a receiver would heap additional confusion on the management of Hygea, which has just changed over its C-Suite executives for new leadership. Similarly, the time that would be required for a new receiver or other leader to get acquainted with Hygea and put positive change in motion would likely provide additional stress and detriment to Hygea. Accordingly, and in light of all of the foregoing, the Court concludes that

Dr. Collins, Hygea's new Chief Executive Officer, is at least as qualified to continue to guide Hygea as its CEO as would be the receiver proposed by the Plaintiffs.

V. CONCLUSIONS OF LAW

1. Plaintiffs have failed to establish by a preponderance of the evidence that they hold one-tenth of the issued and outstanding stock of Hygea and have thus failed to establish that this Court has jurisdiction to appoint a receiver under NRS 78.650(1) and the Nevada Supreme Court's decision in *Searchlight*. 84 Nev. at 109, 437 P.2d at 90.

2. Accordingly, the Amended Complaint and Petition for Appointment of a Receiver must be, and the same hereby are, **DENIED**, and judgment is entered in favor of Defendants.

Out of an abundance of caution, however, the Court makes the following conclusions on the substantive merits of Plaintiffs' Amended Complaint and Petition for Appointment of a Receiver under subsections (1)(b)–(e) and (i) of NRS 78.650:

3. Hygea's Board is guilty of nonfeasance as a whole under NRS 78.650(1)(c).

4. No good cause exists to appoint a receiver over Hygea.

5. Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance.

6. Finally, the Court concludes that good cause does exist to instead allow Dr. Collins to continue to serve as the Chief Executive Officer of Hygea.

7. Accordingly, Plaintiffs' Amended Complaint and Petition for Appointment of a Receiver must be, and the same hereby are, **DENIED**, and judgment is entered in favor of Defendants.

Dated this 30 day of May, 2018.

THE HONORABLE JAMES WILSON
DISTRICT COURT JUDGE

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of The First Judicial District Court, and I certify that on this 31 day of May 2018 I deposited for mailing at Carson City, Nevada, or caused to be delivered by messenger service, a true and correct copy of the foregoing order and addressed to the following:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; MANUEL IGLESIAS, an individual; EDWARD

Case No.: 18 OC 00071 1B

Dept. No.: II

PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D., an individual; KEITH COLLINS, M.D., an individual; JACK MANN, M.D., an individual; and JOSEPH CAMPANELLA, an individual,

Defendants.

I. INTRODUCTION AND LEGAL STANDARD

The Findings of Fact and Conclusions of Law ("Findings and Conclusions") in this case merit a handful of adjustments. While Plaintiffs obviously disagree with the Court's ultimate disposition of the case, the adjustments proposed in this Motion do not pertain to that disposition. Rather, this Motion is an effort to ensure that the Findings and Conclusions adhere to the record and the Court's findings as articulated from the Bench. The proposed edits are largely the same as Plaintiffs had proposed to the Court during the process of settling the Findings and Conclusions. Thus, respectfully, Plaintiffs ask that the Findings and Conclusions be adjusted as proposed below.

The Court Rules provide for such adjustment. The Nevada Rules of Civil Procedure (NRCP) states that "[i]n all actions tried upon the facts without a jury . . . the court shall find the facts specifically and state separately its conclusions of law thereon and judgment shall be entered pursuant to Rule 58." Nev. R. Civ. P. 52(a). In turn, Rule 58 provides that upon a decision by the court, "the court shall promptly approve the form and sign the judgment, and the judgment shall be filed by the clerk." Nev. R. Civ. P. 58(a)(2). "The findings [in actions tried without a jury] must be sufficient to indicate the factual bases for the court's ultimate conclusions." *Bing Const. Co. of Nevada v. Vasey-Scott Engineering Co., Inc.*, 100 Nev. 72, 73, 674 P.2d 1107, 1107 (1984) (citing *Lagrange Constr. v. Del E. Webb Corp.*, 83 Nev. 524, 435 P.2d 515 (1967)). Findings must be supported by evidence on the record. *Foley v. Morse & Mowbray*, 109 Nev. 116, 124, 848 P.2d

519, 524 (1993) (stating that the Nevada Supreme Court remanded when the trial court made findings of fact and conclusions of law concerning a particular matter that was "questionable because the court did not admit evidence pertaining to the issue.").

Such findings are subject to adjustment. NRCP 52(b) permits a court to "amend its findings or make additional findings and may amend the judgment accordingly" upon the motion of a moving party in cases tried without a jury. Such an amendment is particularly appropriate here, where the Findings and Conclusions almost entirely adopt the language proposed by Defendants. "[A] critical view of a finding is appropriate where the findings of fact and conclusions of law were not the original product of a disinterested mind." *Foley v. Morse & Mowbray*, 109 Nev. 116, 123, 848 P.2d 519, 524 (1993) (citing *Flowers v. Crouch-Walker Corp.*, 552 F.2d 1277, 1284 (7th Cir. 1977)). Here, as in *Foley*, the Court is of course disinterested. But, as in *Foley*, the text proposed by the litigant must be carefully scrutinized to ensure it reflects the record and the Court's decision.

In addition, NRCP 59(e) permits a party to move to alter or amend a judgment. *See* Nev. R. Civ. P. 59(e). Although Rule 59 deals largely with new trials, it also provides a basis for amendment of a judgment where, as here, a party does not seek a new trial but rather clarification of the Court's Findings of Fact and Conclusions of Law stemming from the concluded trial. NRCP 60 also provides a basis for the corrections that Plaintiffs seek. *See* Nev. R. Civ. P. 60. For example, many of the changes Plaintiffs seek amount to adjustments to the Court's language to better reflect the evidentiary record, the Court's findings as articulated from the Bench, or both, thus falling squarely within the provision for such corrections in NRCP 60(a). Nev. R. Civ. P. 60(a) ("Clerical mistakes in judgments, orders or other parts of the record and errors therein arising from oversight or omission may be corrected by the court at any time of its own initiative or on the motion of any party and after such notice, if any, as the court orders.").

II. ADJUSTMENTS THAT THE COURT SHOULD MAKE TO ITS FINDINGS OF FACT AND CONCLUSIONS OF LAW

First Paragraph, Page 1 at 16. Plaintiff Hillcrest Center SV II LLC should be included as one of the Plaintiffs, as Plaintiffs previously proposed. The reference to this Plaintiff seems to have been inadvertently excluded from Defendants' proposal. When the Court adopted Defendants' proposed language, the apparent "scriveners error" in Defendants' proposal made its way into the adopted Findings.

The Last Paragraph of the Procedural Background, Page 5 at 2-6. This paragraph discusses the fact that the purported "V Stock roster" of alleged Hygea shareholders was not introduced into evidence. This recitation should reflect the fact that Defendants themselves withdrew their offer of the exhibit.

As the Court will recall, and as the Findings and Conclusions reflect, after some discussion of the roster and its potential admission, the Court offered the parties a continuance, there was a recess, the parties conferred, and neither party sought a continuance after the recess. What Plaintiffs suggested, and still believe should be included, is reference to the fact that, immediately after the recess, the Defendants withdrew the proposed exhibit:

> Your Honor, I might save you some time. We'll withdraw our motion to admit 17.
> THE COURT: We're back on 18 OC 71, Arellano v. Hygea. All counsel are present. You want to withdraw your offer of 195.
> MR. CARLSON: Correct, Your Honor. Thank you.

May 17 Transcript at 847:20-848:1.

The Findings and Conclusions currently state the following:

> On May 17, 2018, during the fourth day of the trial, after Plaintiffs claimed that they were prejudiced by the late disclosure of a custodian of records affidavit authenticating a previously produced V Stock Transfer List Defendants proposed be admitted to demonstrate the Company's shares issued and outstanding, the Court again asked if the Parties wished to continue the trial. Neither Plaintiffs nor Defendants indicated that they wanted a continuance.

Instead, this paragraph should be corrected to state the following:

> On May 17, 2018, during the fourth day of the trial, after Plaintiffs claimed that they were prejudiced by the late disclosure of a custodian of records affidavit authenticating a previously produced V Stock Transfer List Defendants proposed be admitted to demonstrate the Company's shares issued and outstanding, the Court again asked if the Parties wished to continue the trial. ~~Neither Plaintiffs nor Defendants indicated that they wanted a continuance.~~ The Court went into recess as the Parties conferred regarding the proposal. Immediately upon the end of the recess, Defendants voluntarily withdrew the proposed declaration and, thereby, indicated their intention to forego seeking the admission of the V Stock Transfer List, thus mooting the immediate issue of a continuance.

Paragraph 2, Page 5 at 15-17. As Plaintiffs previously proposed, the term "to N5HYG if Hygea is issuing" should be included. The current text states:

> 2. Section 6.4(a) of the SPA contains a provision providing for certain preemptive and anti-dilution rights, including the right to notice if Hygea issued stock that would dilute N5HYG's pro rata ownership of Hygea's shares.

Instead, this language should read:

> 2. Section 6.4(a) of the SPA contains a provision providing for certain preemptive and anti-dilution rights, including the right to notice to N5HYG if Hygea is issuing ~~if Hygea issued~~ stock that would dilute N5HYG's pro rata ownership of Hygea's shares.

Section 6.4(a) of the Stock Purchase Agreement states that Hygea cannot "issue or sell any new equity securities of any kind…unless…it provides [N5HYG] notice of such proposed issuance or transaction…." *See* Stock Purchase Agreement, **Exhibit 1** at p. 33. Plaintiffs' language more accurately reflects the requirement of the Stock Purchase Agreement that Hygea provide prior notice to N5HYG if Hygea "is issuing" stock to allow N5HYG to exercise its anti-dilution rights—not notice that Hygea already "issued" stock.

Paragraph 9, Page 6 at 11-14. As Plaintiffs previously proposed, the term "statutorily protected" should be removed. The current text states the following:

> 9. Audited financial statements are not required by any regulatory agency for a private company such as Hygea, and the Board made a statutorily protected business decision not to incur the expense or otherwise spend the resources necessary to obtain audited financial statements.

Instead, this language should read:

> 9. Audited financial statements are not required by any regulatory agency for a private company such as Hygea, and the Board made ~~a statutorily protected business~~ decision not to incur the expense or otherwise spend the resources necessary to obtain audited financial statements.

Plaintiffs' proposal is proper for multiple reasons. *First*, the issue of whether the decision to forego audited financial statements was "statutorily protected" is a legal conclusion, not a finding of fact. *Second*, even if it were factual in nature, there was no testimony or other evidence to support it. It appears that the only time the word "statutorily" was used at trial was during counsel's argument. *See, e.g.*, May 14 Transcript at 44:11-18 (counsel arguing in her opening statement that "Mr. Iglesias made his decisions . . . pursuant to a statutorily protected business judgment"); May 18 Transcript at 908:10-18 (counsel arguing in her closing statement that management's decision to forego audited financial statements is a "statutorily protected business decision."). *Third*, the finding of statutory protection is not necessary in order to support the Court's conclusions.

Furthermore, the inclusion of the term "statutorily protected" could be unfairly prejudicial to at least one of the Plaintiffs, N5HYG, in its breach of contract case against Hygea. The lack of audits is a material issue in the breach of contract case, because N5HYG's stock purchase agreement with Hygea *required* the provision of audited financial statements. *See* Stock Purchase Agreement, **Exhibit 2** at p. 14-15 (Section 4.6.1. of the agreement providing that Hygea was "in the process of completing" audited financial statements and that "true and correct copies of which shall be provided to [Plaintiff N5HYG] upon completion, but it any event no later than November 30, 2016"). Of course, even if the decision to forego audits was "statutorily protected"—in the

sense that it was not a basis for a breach of fiduciary duty or mismanagement claim against the Board (which Plaintiffs also dispute) —Hygea is still not immune from a *breach of contract* claim. But Defendants will almost certainly use this language to seek dismissal of a component of Plaintiff N5HYG' s contract claim.[1]

Paragraph 35, Page 10 at 14-15. As Plaintiffs previously noted, the Court found that Hygea had previously "used" stock as currency, but not that it had "issued" stock as currency. The Court was explicit about this distinction between using and issuing; the Court explained that while it had found that "Hygea *used* some stock as currency to buy medical practices," the "Treasury stock [was] *not* the *issuance* of new shares, so they would not dilute N5's percentage ownership share." May 18 Transcript at 953:19-22 (emphasis added). The Court was, thus, careful to avoid finding that shares had been "issued" to be used as such currency.

Defendants' proposed language was at odds with the Court's careful language:

> Hygea has issued stock as "currency" to buy medical practices since October of 2016.

Accordingly, the Finding should be amended to instead read in the following manner:

> Hygea has ~~issued~~ used stock as "currency" to buy medical practices since October of 2016.

Paragraph 51, Page 12 at 17-18. The Finding's language regarding Mr. Iglesias's testimony as to the number of outstanding shares accurately reflects the Court's statement during

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[1] This risk is especially ironic, given Defendants' frequently expressed (and unfounded) concern that Plaintiffs were using the receivership proceeding as a vehicle to advance their position in the other litigation. *See, e.g.*, May 15 Transcript at 287:20-25 (arguing that Plaintiffs should not be able to call Hygea's former CEO Mr. Iglesias as a witness because "plaintiffs are incredibly interested about the allegations of representations made in the time period leading up to when N5HYG became a shareholder in this lawsuit, which we do not believe is relevant here, and which essentially are the allegations in the securities lawsuit pending before Judge Mayhan in federal court."). Having frequently tendered such protests, Defendants cannot now propose, and seek to retain, this language in order to assist them in the other case.

its recitation of its opinion. However, the Court had previously stricken this testimony, after Plaintiffs objected to it under the hearsay and best evidence rules:

> Q. Mr. Iglesias, do you know how many shares Hygea has issued and outstanding?
> A. Approximately 432 million.
> Q. How do you know that it's 432 million?
> A. That is the latest amount on the VStock Transfer list that is both in the record, and I took the opportunity yesterday to look into the VStock website for Hygea. And the numbers have not changed since the submittal, the January 21 VStock register to plaintiffs.
> MR. KAYE: **Objection, Your Honor. And I would move to strike that answer for a couple of reasons. First of all, that's hearsay. Second of all, I believe it misstates what's in the record. And third of all, best evidence rule.**
> THE COURT: Ms. Gall?
> MS. GALL: Your Honor, with respect to the objection regarding hearsay, I don't believe it's necessarily hearsay. I do believe that Mr. Iglesias testified that he logged in to the VStock account to confirm the number.
> I do agree that he did misstate that the VStock register is in the -- is in the record. It is not. With respect to the best evidence rule, I'm not sure a document merely memorializing the number of shares issued and outstanding falls under the best evidence rule versus the knowledge of the plaintiff.
> THE COURT: How is that not an out-of-court statement? The information that he looked at apparently on the Internet, **how is that not an out-of-court statement that it seems you're trying to offer for the truth of the matter asserted the number of shares?**
> MS. GALL: I'm not sure that the number of shares as reflected on the VStock register is what I'm trying to get in. I'm merely trying to get in Mr. Iglesias' knowledge of how many shares are issued and outstanding.
> THE COURT: Mr. Kaye?
> MR. KAYE: Your Honor, first of all, I think it's very hard to see any sort of difference in that distinction. It seems to me to be two sides of the same coin.
> At the very least, that's what -- the witness I believe led with the number, started talking about the numbering and said he saw it when he went on the Internet and logged in.
> I do believe it falls within the best evidence rule. We've submitted in one of the earlier papers in this case, I believe it was in response to the motion to dismiss, Stephans v. State case, 127 Nev. 712, talks about how the knowledge of a price tag was excluded under -- under NRS 52.225 because in that case, Scott does not appear to have any knowledge of value

apart from the price tag. His testimony squarely implicated best evidence rule. And that's the same sort of thing here.

THE COURT: **Both objections are sustained.**

May 16 Transcript at 622:19-625:1 (emphasis added). In short, because the Court excluded Mr. Iglesias's testimony as to the number of shares, the Findings and Conclusions should not reflect the excluded testimony.

Moreover, the Court later expressly disavowed having any evidence of the number of shares. The Court concluded that "the Court does not have any evidence of the total number of issued and outstanding shares as of today, this week, or this month, or at any time during the last 88 days since Mr. Moffly made his declaration on February 19th or back to the Stock Purchase Agreement in October of 2016." May 18 Transcript at 963:1-7.

Analysis, Second and Third Paragraphs, 17:16-18:17. As the Court will recall, a key issue in the case was whether the Plaintiffs had "10 percent of the outstanding stock entitled to vote." The parties agreed on the "numerator" – that is, how many shares the Plaintiffs held. They disagreed on the "denominator," or how many shares of outstanding stock entitled to vote were issued. The Court found that:

> Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ('V Stock'). That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stock Transfer[2] as to what the current number of shares issued and outstanding is.

Findings and Conclusions at 17:16-20. It continued:

> [H]ad Plaintiffs moved for such relief the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock, but the Plaintiffs appear to assume that any information they would have received regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because

[2] This spelling is in the original. Even if the Court declines to accept Plaintiffs' proposed alteration, a correction may be appropriate.

the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock.

Id. at 17:22-18:3.

The Court concluded that Plaintiffs did "hardly anything" to "try to determine the actual number of shares issued, 18:3-8, and that "[t]he record... is devoid of any evidence of Plaintiffs' efforts" to secure such information. *Id.* at 18:17.

In fact, Plaintiffs undertook multiple efforts to secure the information:

- On February 28, before the case was transferred, counsel participated in a telephonic conference with Judge Allf. Plaintiffs requested certain minimal discovery, and Defendants refused because there was no formal motion for discovery before the Court.

- On March 1, Plaintiffs filed a Motion seeking limited discovery, and specifically requesting the V Stock Transfer List for shares issued. Defendants opposed this motion.

- In an Order dated April 23, 2018, this Court ordered that the requested stock-related discovery be produced by April 23, 2018.

- On May 1, 2018, Plaintiffs moved for contempt, explaining that the stock-related materials produced by Defendants were out-of-date, incomplete, and facially inaccurate. The relevant arguments on the issue are attached as **Exhibit 3**.[3]

At trial, Plaintiffs did make proper and sustained objections to the introduction of the V Stock list and to testimony based on its contents. But, as discussed above, it was ultimately Defendants who withdrew the proposed exhibit.

Plaintiffs argued that, in the absence of the V Stock list, the best evidence—and, indeed, the only meaningful evidence—of the number of outstanding shares was management's warranty given when it sold Plaintiff N5HYG its shares in October 2016.[4] The Court did indeed find that

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[3] The briefing shows that, even if there was not on-the-record "evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information," Findings and Conclusions at 18:8-9, there is material in the case record showing such interference.

[4] This was actually a secondary argument. Plaintiffs primarily argued that Defendants were estopped from arguing that new shares had been issued after N5HYG bought its shares in 2016: the stock purchase agreement warranted that the purchased shares were 8.57 percent of the "issued and outstanding Common Stock," *See* Stock Purchase Agreement at p. 1, **Exhibit 4**; the Agreement had an anti-dilution provision, *See* Stock Purchase Agreement at p. 33, **Exhibit 1**; and N5HYG's representative testified that he never received notice of any dilution until filing the lawsuit. May 14 Transcript at 64:20. The Court implicitly rejected this estoppel argument.

this evidence was insufficient for Plaintiffs to meet their burden.

In the alternative, Plaintiffs could have stipulated to the admission of the V Stock list; argued as they had in the motion-for-contempt briefing that it was unreliable; and argued that the Court should thus infer that the Plaintiffs actually held ten percent of the company's shares.

Plaintiffs believed – and continue to believe – that either approach merits (or would have merited) a finding that they met the ten percent threshold. But in any event, it is simply not accurate that the Plaintiffs never attempted to secure the shareholder information. Moreover, the case record reflected these efforts by virtue of the April 23 Order and the subsequent contempt motion. The Court's analysis should therefore not state that there were no such efforts.

Accordingly, the two paragraphs, which currently read as follows, should be amended:

> Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ("V Stock"). That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stock Transfer as to what the current number of shares issued and outstanding is. There are discovery procedures to obtain that information. The Court acknowledges that this was an expedited process, but notes that-had Plaintiffs moved for such relief-the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock, but the Plaintiffs appear to assume that any information they would have received regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock.
>
> The question before the Court is then as follows: "is it fair to hold Plaintiffs to their burden?" In answering that question, the Court considers what Plaintiffs did to try to determine the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and through May 18, 2018 (the time at which the Court considered appointment of a receiver), which the Court finds is hardly anything. There is no evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information. Accordingly, Plaintiffs accepted the risk of bearing the burden of not knowing the number of shares issued and outstanding as they proceeded to trial without either obtaining the information or moving for a continuance to provide time to obtain the information. Had Plaintiffs come to Court with evidence that they had tried in good faith to secure the number of shares issued and outstanding and/or showed inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the Court could have made adverse inferences against Hygea and the individual Defendants,

precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other sanctions. The record, however, is devoid of any evidence of Plaintiffs' efforts.

The above paragraphs should be amended to read as follows:

Plaintiffs have argued that it would be unfair to hold them to their burden of proof on the ten percent stock ownership issue because that information is within the possession of either Hygea or its agent, V Stock Transfer ("V Stock"). ~~That might be a plausible argument if Plaintiffs came to this Court with evidence of their efforts to obtain information from Hygea or V Stock Transfer as to what the current number of shares issued and outstanding is. There are discovery procedures to obtain that information.~~ The Court acknowledges that this was an expedited process, ~~but notes that had Plaintiffs moved for such relief the Court could have ordered production of documents or at least tried to get Hygea to produce information from V Stock,~~ but the Plaintiffs appear to assume that any information they would have received regarding the number of issued and outstanding shares would be inaccurate. That may or may not be true, but the Court cannot make such a determination because ~~the Plaintiffs did not get or attempt to get issued and outstanding share information from Hygea or V Stock~~ the information that was available was not introduced into evidence, in part because of Plaintiffs' objections.

The question before the Court is then as follows: "is it fair to hold Plaintiffs to their burden?" ~~In answering that question, the Court considers what Plaintiffs did to try to determine the actual number of shares issued and outstanding as of May 14, 2018 (the start of trial) and through May 18, 2018 (the time at which the Court considered appointment of a receiver), which the Court finds is hardly anything. There is no evidence that Defendants in any way interfered with Plaintiffs' ability to secure that information. Accordingly,~~ Plaintiffs accepted the risk of bearing the burden of not knowing the number of shares issued and outstanding as they proceeded to trial without either obtaining the information or moving for a continuance to provide time to obtain the information. Had Plaintiffs ~~come to Court with evidence that they had tried in good faith to secure the number of shares issued and outstanding and/or~~ showed inaccuracies or an outright refusal or inability of Hygea or V Stock to produce the number, the Court could have made adverse inferences against Hygea and the individual Defendants, precluded Defendants from even arguing that the Plaintiffs owned less than ten percent, or other sanctions. ~~The record, however, is devoid of any evidence of Plaintiffs' efforts.~~[5]

Conclusion of Law No. 5, Page 21:15-16, and preceding Analysis at Page 20:17-18.

From the Bench, the Court explained that "[t]he Court has considered the remaining portion of 78.506(4) that says if a receiver's going to be appointed, innocent directors have to be preferred,

[5] Plaintiffs propose this amendment while preserving their rights to challenge the Court's conclusion.

but the Court has found that the directors are not innocent, but guilty of nonfeasance. So there's not a preference that any of the directors be appointed." May 18 Transcript at 967:24-968:4. Defendants included this in their proposed Findings of Fact and Conclusions of Law, and Plaintiffs did not object:

> The Court has also given consideration to that portion of NRS 78.650(4) that provides that if a receiver is to be appointed, innocent directors must be preferred. Given the Court's above finding that the Board is, generally, guilty of nonfeasance under NRS 78.650(1)(c), however, the Court finds that there is no preference that Dr. Collins or any of the directors be appointed.

However, the final issued Findings of Fact and Conclusions of Law did not contain this analytical conclusion. Had it been included then, based on the parties' proposals, it would have been found on Page 20 between Lines 17 and 18.

Then, in the Conclusion of Law No. 5, the Defendants proposed a finding of:

> Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance, no good cause exists to appoint a Hygea director as a receiver.

Plaintiffs suggested that this be amended to read as follows:

> Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance, good cause exists not to appoint a Hygea director as a receiver.

Plaintiffs' proposed language is consistent with the Court's language from the Bench: "Good cause exists not to give a non-officer director of Hygea a preference in appointment" as a Receiver. May 18 Transcript at 969:16-18.

Yet the Conclusion the Court ultimately issued reads: "Relatedly, and in light of this conclusion but also because the Court has found the Board generally guilty of nonfeasance." Findings and Conclusions at 21:15-16. This reads as if the second half of the sentence has been excised. And, indeed, both parties had included a second half, to reflect the Court's conclusion from the Bench that no Hygea director should be appointed receiver in light of the Court's finding

that the Board as a whole was guilty of nonfeasance.

The Court's reasoning expressed from the Bench on this point was sound, and Plaintiffs continue to believe that their proposed Conclusion No. 5 best reflects the Court's decision.

CONCLUSION

For all of the reasons set forth above, the Court should amend its Findings of Fact and Conclusions of Law as proposed by Plaintiffs.

AFFIRMATION

The undersigned does hereby affirm that the preceding **MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** does not contain the social security number of any person.

DATED this 18th day of JUNE, 2018.

HOLLEY, DRIGGS, WALCH, FINE, WRAY, PUZEY & THOMPSON

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on the 18th day of June, 2018, and pursuant to NRCP 5(b), I caused to be delivered by U.S. Mail a true copy of the foregoing document addressed as follows:

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The undersigned affirms that

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC, Plaintiffs, v. HYGEA HOLDINGS CORP., Defendant.	Case No. 18 OC 00071 1B Dept No. II **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW**

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that on May 30, 2018, the Court entered its Findings of Fact and Conclusions of Law in this matter. A copy of the foregoing is attached hereto as **Exhibit 1**.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

DATED this 31st day of May, 2018.

KAEMPFER CROWELL

By: _____

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on May 31st, 2018, a true and correct copy of **NOTICE OF ENTRY OF FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served on the following counsel of record by U.S. Mail, postage-prepaid:

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO, et. al., Plaintiffs, v. HYGEA HOLDINGS CORP., et. al., Defendants.	Case No. 18 OC 00071 1B Dept No. II

ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

Defendants' Motion for Fees (the "Motion"), filed June 20, 2018, was submitted to this Court for decision on July 20, 2018. The Court, having considered the Motion and the briefing related thereto, as well as all pleadings and papers on file is this matter, is persuaded by the Motion and hereby finds that Motion should be granted.

1. By their Motion, Defendants seek an award of their attorneys' fees and costs under NRS 18.010(2)(b), FJDCR 15(13), and/or N.R.C.P. 68.

a. Pursuant to NRS 18.010(2)(b), the court may award attorneys' fees and costs to a prevailing party if a "claim . . . of the opposing party was brought or maintained without reasonable ground . . . ." The court is directed by NRS 18.010(2)(b) to "liberally construe the provisions of this paragraph in favor of awarding attorneys' fees in all appropriate situations."

b. Pursuant to N.R.C.P. 68, any party may serve an offer of judgment on an opposing party 10 days before trial. If the opposing party does not accept the offer and then "fails to obtain a more favorable judgment," then the court may award post-offer attorneys' fees to the offering party.

2. The Court finds that Defendants are the prevailing parties in this matter because the Court found against Plaintiffs and in favor of Defendants.

3. The Court further finds that Plaintiffs maintained their claims for the appointment of a receiver under NRS 78.650 and 78.630 without reasonable ground because:

a. Plaintiffs failed to present competent evidence that they held ten percent of Hygea's issued and outstanding stock at the time they filed their Complaint or at the time of trial, the latter being the relevant time under *Searchlight Dev. Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968) for purposes of establishing standing to request appointment of a receiver.

b. Moreover, as set forth in the Court's Findings of Facts and Conclusions of Law, Plaintiffs did "hardly anything" to determine the actual number of shares issued and outstanding at or near the time of trial.

c. Further, Plaintiffs rejected the Court's offers to continue the trial to allow Plaintiffs to either seek further discovery on the number of Hygea shares issued and outstanding.

d. Thus, the fact that Plaintiffs maintained their claims without reasonable ground is evidenced by the lack of competent evidence at trial, and also by their failure to conduct a reasonable investigation to determine whether they owned at least ten percent of Hygea's issued and outstanding stock.

4. The Court concluded Plaintiffs failed to prove the threshold requirement that Plaintiffs owned ten percent of Hygea's issued and outstanding stock. That conclusion resulted in the denial of Plaintiffs' request for appointment of a receiver and judgment for Defendants. Nevertheless, to avoid delay and unnecessary expense, this Court made findings of fact and conclusions of law on Plaintiffs' allegations related to the statutory grounds for appointing a receiver, so that if an appellate court disagreed with this Court's ten-percent-stock-ownership conclusion, the appellate court would be able to resolve issues related to the request to appoint a receiver. The Court based its decision on this motion for attorney's fees based upon Plaintiffs' failure to prove ten percent stock ownership and failure to prove a receiver should be appointed.

5. The denials of Defendants' Motion to Dismiss or, Alternatively, Motion for Summary Judgment does not foreclose an award of attorneys' fees and costs because the survival of Plaintiffs' claims under N.R.C.P. 12(b)(5) "is irrelevant to [this Court's] inquiry as to whether the claims of the complaint were groundless." *Bergmann*, 109 Nev. at 675, 856 P.2d at 563. As set forth above, Plaintiffs' claims that they possessed the requisite ten percent stock ownership at the time they sought appointment of a receiver under NRS 78.650 and NRS 78.630 was not supported by any competent evidence at trial. Similarly, Defendants' alternative motion for summary judgment was denied as premature given the limited discovery that had been conducted at the time the motion was made. Accordingly, the fact that Plaintiffs' claims' survived the motion for summary judgment has no bearing on whether the claims were maintained through trial without reasonable grounds.

6. As to Defendants' offer of judgment and Motion pursuant to N.R.C.P. 68, Defendant offered two forms of consideration in exchange for a judgment in their favor on Plaintiffs' claims for the appointment of a receiver: (I) the filing fees Plaintiffs' incurred by

bringing this case (monetary relief) and (ii) the resignation of Mr. Iglesias and Mr. Moffly as directors of Hygea and an agreement that they not accept a position as an offer or director of Hygea in the future

7. As an initial matter, the Court finds that offers of judgment under N.R.C.P. 68 are available to defendants even when a plaintiff's claim sounds in equity and the compromise offered is equitable in nature. *Cf. Kent v. Kent*, 108 Nev. 398, 404, 835 P.2d 8, 11 (1992).

8. Next, the Court finds and concludes that Defendants are entitled to their post-offer attorneys' fees under N.R.C.P. 68 because, as set forth above, Plaintiffs brought and maintained their claims without competent evidence that they held ten percent of Hygea's issued and outstanding stock which led this Court to conclude the claims were not brought or maintained in good faith. *See Beattie v. Thomas*, 99 Nev. 579, 588, 668 P.2d 268, 274 (1983) (setting forth lack of good faith as one factor the court considers prior to awarding fees to the offering party, along with the good faith and reasonableness of the offering party's offer, the reasonableness of the offeree party's rejection, and the reasonableness of the fees sought). If the moving party presents enough evidence for the court to consider the aforementioned factors, it is not an abuse of discretion for the court to grant the motion and enter the award for reasonable fees and costs.

9. With respect to those factors other than the offeree party's lack of good faith in bringing its claims, the Court finds that Defendants' made their offer of judgment in good faith. Both the original and amended complaint relate primarily to the alleged misconduct of Defendants Manuel Iglesias and Edward Moffly, who at the time of said conduct were Hygea's CEO and CFO, respectively. By the time of the trial, both Messrs. Iglesias and Moffly had resigned from their c-suite positions but remained directors of

Hygea. In addition, Mr. Iglesias and his shareholder group are collectively the largest Hygea shareholder. Accordingly, even if a receiver removed Messrs. Iglesias and Moffly from their directorships during the receivership, when the receivership terminated, Messrs. Iglesias and Moffly could use their voting power to potentially re-associate themselves in the same positions. The only people capable of avoiding that practical result—and thus the only people capable of making such a powerful compromise to Plaintiffs—were Messrs. Iglesias and Moffly themselves. Thus, Defendants' appear to have constructed their offer in good faith and with an eye to address the concerns Plaintiffs set forth in the Amended Complaint.

10. The Court also finds that Plaintiffs unreasonably rejected Defendants' offer because Plaintiffs knew or should have known they did not have competent evidence that they owned ten percent of Hygea's issued and outstanding stock.

11. Finally, the Court finds that Defendants' fees are reasonable. *Brunzell v. Golden Gate Nat'l Bank*, 85 Nev. 345, 349–50, 455 P.2d 31, 33 (1969); FJDCR 15(13)(A)-(E):

a. Defense counsel, and specifically those present at the trial of this matter, appeared to be experienced litigators, whose fees are commensurate with their ability, training, education, experience, and skill, as well as the local legal market.

b. The litigation at hand was at all times complex in nature, requiring counsel to have specific knowledge of Nevada's receivership and corporate laws. Defense counsel litigated this case, under a short time frame, and produced high quality legal work.

c. Defense counsel successfully defended against Plaintiffs' request for a

receivership. The benefits derived from the trial on behalf of Defendants included the denial of the request for a receiver, which, as this Court found, would likely have been the death-knell of the company.

d. Given the foregoing, the attorneys' fees and costs sought by Defendants are reasonable.

12. The Court rejects Plaintiffs' argument that the Motion should be denied because it is unclear to whom any award of fees would be paid. Plaintiffs cite no authority requiring Defendants to identify the ultimate beneficiary of any fee award. Indeed, what happens to any fees collected by Defendants is only Defendants' concern.

13. Plaintiffs argued defendant's counsel's billing records are grossly exaggerated or needless or ill-advised undertakings. Plaintiff's set forth five examples, by way of example only, of such exaggerated, needless or ill-advised undertakings. Considering what was at stake in this case, which the Court finds to be the probable survival of Hygea, and Plaintiffs' lack of competent evidence on the ten-percent-stock issue, the Court concludes the services rendered and fees charged by defendants' counsel are reasonable.

14. Plaintiffs also requested an evidentiary hearing on the fees requested by Defendants. Plaintiffs provided no facts, law, or argument as to specific services or charges, other than the five examples mentioned above. Factual contentions in any post-trial motion must be initially presented and heard upon affidavits. DCR 13(6). Failure of a motion to be supported by points and authorities is consent to the denial of the motion. FJDCR 15(5). Because Plaintiffs failed to provide any factual basis, law, or argument to hold an evidentiary hearing on any specific fees the request for an evidentiary hearing is denied.

IT IS ORDERED:

Defendants' Motion and awards attorneys' fees in the amount of $644,076.50, plus any further reasonable post-judgment attorneys' fees, is granted.

Defendants are directed to file an addendum to their Motion evidencing their additional post-judgment attorneys' fees and costs, along with a proposed judgment consistent with this Order, within ten (10) court days from the entry of this Order.

Plaintiffs' request for an evidentiary hearing is denied.

August 13, 2018

JAMES E. WILSON JR.
District Court Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on August 13, 2018, I served a copy of this document by placing a true copy in an envelope addressed to:

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the envelope sealed and then deposited in the Court's central mailing basket in the Court Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street, Carson City, Nevada for mailing.

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO, et al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP., et al.,

Defendants.

Case No. 18 OC 00071 1B
Dept. No. II

NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

PLEASE TAKE NOTICE that on August 10th, 2018, the Court entered its Order Granting in Part and Denying in Part Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law in this matter. A copy of the Order is attached hereto as **Exhibit 1**.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 14th day of August, 2018.

KAEMPFER CROWELL

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on August 14th, 2018, a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW** was served on the following counsel of record by U.S. Mail, postage-prepaid, with a courtesy copy sent by e-mail:

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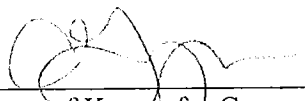

An Employee of Kaempfer Crowell

EXHIBIT INDEX

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EXHIBIT 1

EXHIBIT 1

IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO; CROWN EQUITY'S LLC; FIFTH AVENUE 2254 LLC; HALEVI ENTERPRISES LLC; HALEVI SV 1 LLC; HALEVI SV 2 LLC; HILLCREST ACQUISITIONS LLC; HILLCREST CENTER SV I LLC; HILLCREST CENTER SV II LLC; HILLCREST CENTER SV III LLC; IBH CAPITAL LLC; LEONITE CAPITAL LLC; N5HYG LLC; and RYMSSG GROUP, LLC,

Plaintiffs,

v.

HYGEA HOLDINGS CORP.; MANUEL IGLESIAS, an individual; EDWARD MOFFLY, an individual; DANIEL T. MCGOWAN, an individual; FRANK KELLY; MARTHA MAIRENA CASTILLO, an individual; GLENN MARRICHI, M.D., an individual; KEITH COLLINS, M.D., an individual; JACK MANN, M.D., an individual; and JOSEPH CAMPANELLA, an individual,

Defendants.

Case No.: 18 OC 00071 1B

Dept. No.: II

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFFS' MOTION TO AMEND FINDINGS OF FACT AND CONCLUSIONS OF LAW

The Court, having considered Plaintiffs' Motion to Amend Findings of Fact and Conclusions of Law, Defendants' Response thereto, and Plaintiffs' Reply in support thereof, and the Court otherwise being duly advised on the premises, hereby orders as follows:

///

IT IS SO ORDERED:

Plaintiffs' Motion is GRANTED in part and DENIED in part. In order to better reflect the evidence presented and admitted at the May 2018 bench trial of this matter, the trial proceedings as reflected by the record, and the Court's consideration of the issues of fact and law properly before it in this action, the Findings of Facts and Conclusions of Law entered May 30, 2018 are hereby amended as follows:

First Paragraph, Page 1, line 16 is amended to include Plaintiff Hillcrest Center SV II LLC as one of the Plaintiffs.

Findings of Fact ("FOF") Paragraph 2 is amended to state (strikethrough text deleted; underlined text added):

> 2. Section 6.4(a) of the SPA contains a provision providing for certain preemptive and anti-dilution rights, including the right to notice to N5HYG <u>if Hygea is issuing</u> ~~if Hygea issued~~ stock that would dilute N5HYG's pro rata ownership of Hygea's shares.

FOF Paragraph 9 is amended to state (strikethrough text deleted):

> 9. Audited financial statements are not required by any regulatory agency for a private company such as Hygea, and the Board made ~~a statutorily protected business~~ decision not to incur the expense or otherwise spend the resources necessary to obtain audited financial statements.

FOF Paragraph 51 is deleted in its entirety.

Plaintiff's motion as to all other requested changes is denied.

IT IS FURTHER ORDERED:

Defendant prepare and file within ten days an Amended Findings of Fact and Conclusions of Law consistent with this order.

August 9, 2018

James E. Wilson Jr.
District Judge

CERTIFICATE OF SERVICE

I certify that I am an employee of the First Judicial District Court of Nevada; that on August 9, 2018, I served a copy of this document by placing a true copy in an envelope addressed to:

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the envelope sealed and then deposited in the Court's central mailing basket in the Court Clerk's Office for delivery to the United States Post Office at 1111 South Roop Street, Carson City, Nevada for mailing.

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO, et al.,

Plaintiffs,

v.

HYGEA HOLDINGS CORP., et al.,

Defendants.

Case No. 18 OC 00071 1B
Dept. No. II

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

PLEASE TAKE NOTICE that on August 13th, 2018, the Court entered its Order Granting Defendants' Motion for Attorneys' Fees in this matter. A copy of the Order is attached hereto as **Exhibit 1**.

The undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 20th day of August, 2018.

KAEMPFER CROWELL

By: _____

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CERTIFICATE OF SERVICE

Pursuant to N.R.C.P. 5, I hereby certify that on August 20th, 2018, a true and correct copy of **NOTICE OF ENTRY OF ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES** was served on the following counsel of record by U.S. Mail, postage-prepaid, with a courtesy copy sent by e-mail:

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EXHIBIT 1

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IN THE FIRST JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA

IN AND FOR CARSON CITY

CLAUDIO ARELLANO, et. al., Plaintiffs, v. HYGEA HOLDINGS CORP., et. al., Defendants.	Case No. 18 OC 00071 1B Dept No. II

ORDER GRANTING DEFENDANTS' MOTION FOR ATTORNEYS' FEES

Defendants' Motion for Fees (the "Motion"), filed June 20, 2018, was submitted to this Court for decision on July 20, 2018. The Court, having considered the Motion and the briefing related thereto, as well as all pleadings and papers on file is this matter, is persuaded by the Motion and hereby finds that Motion should be granted.

1. By their Motion, Defendants seek an award of their attorneys' fees and costs under NRS 18.010(2)(b), FJDCR 15(13), and/or N.R.C.P. 68.

a. Pursuant to NRS 18.010(2)(b), the court may award attorneys' fees and costs to a prevailing party if a "claim . . . of the opposing party was brought or maintained without reasonable ground . . . ." The court is directed by NRS 18.010(2)(b) to "liberally construe the provisions of this paragraph in favor of awarding attorneys' fees in all appropriate situations."

b. Pursuant to N.R.C.P. 68, any party may serve an offer of judgment on an opposing party 10 days before trial. If the opposing party does not accept the offer and then "fails to obtain a more favorable judgment," then the court may award post-offer attorneys' fees to the offering party.

2. The Court finds that Defendants are the prevailing parties in this matter because the Court found against Plaintiffs and in favor of Defendants.

3. The Court further finds that Plaintiffs maintained their claims for the appointment of a receiver under NRS 78.650 and 78.630 without reasonable ground because:

a. Plaintiffs failed to present competent evidence that they held ten percent of Hygea's issued and outstanding stock at the time they filed their Complaint or at the time of trial, the latter being the relevant time under *Searchlight Dev. Inc. v. Martello*, 84 Nev. 102, 109, 437 P.2d 86, 90 (1968) for purposes of establishing standing to request appointment of a receiver.

b. Moreover, as set forth in the Court's Findings of Facts and Conclusions of Law, Plaintiffs did "hardly anything" to determine the actual number of shares issued and outstanding at or near the time of trial.

c. Further, Plaintiffs rejected the Court's offers to continue the trial to allow Plaintiffs to either seek further discovery on the number of Hygea shares issued and outstanding.

d. Thus, the fact that Plaintiffs maintained their claims without reasonable ground is evidenced by the lack of competent evidence at trial, and also by their failure to conduct a reasonable investigation to determine whether they owned at least ten percent of Hygea's issued and outstanding stock.