UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT
PURSUANT TO SECTION 13 OR 15(d)
OF THE SECURITIES EXCHANGE ACT OF 1934

May 9, 2017
Date of report (date of earliest event reported)

Surgery Partners, Inc.
(Exact name of registrant as specified in its charter)

Delaware	001-37576	47-3620923
(State or other jurisdictions of incorporation or organization)	(Commission File Number)	(I.R.S. Employer Identification Nos.)

40 Burton Hills Boulevard, Suite 500
Nashville, Tennessee 37215
(Address of principal executive offices) (Zip Code)

(615) 234-5900
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrants under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in as defined in Rule 405 of the Securities Act of 1933 (§230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (§240.12b-2 of this chapter).

Emerging growth company ☐

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act. ☐

Item 1.01 Entry into a Material Definitive Agreement.

On May 9, 2017, Surgery Partners, Inc., a Delaware corporation ("Surgery Partners" or the "Company"), entered into a series of transactions pursuant to which the Company agreed (i) to acquire NSH Holdco, Inc., a Delaware corporation ("NSH"), through a merger of SP Merger Sub, Inc., a wholly owned subsidiary of the Company ("Merger Sub"), with and into NSH (the "Merger"), pursuant to an Agreement and Plan of Merger, by and among the Company, Merger Sub, NSH, and IPC / NSH, L.P., solely in its capacity as sellers' representative (the "Merger Agreement") and (ii) to issue to BCPE Seminole Holdings LP, a Delaware limited partnership ("Bain Capital"), an affiliate of Bain Capital Private Equity, up to 320,000 shares of preferred stock, par value $0.01 per share, of the Company, to be created out of the authorized and unissued shares of preferred stock of the Company and designated as 10.00% Series A Convertible Perpetual Participating Preferred Stock (the "Series A Preferred Stock") at a purchase price per share of $1,000 (the "Preferred Private Placement"). In connection with the Merger and the Preferred Private Placement, the Company also entered into (i) a Stock Purchase Agreement, by and among the Company, H.I.G. Surgery Centers, LLC ("H.I.G."), H.I.G. Bayside Debt & LBO Fund II L.P. (for the purposes stated therein) and Bain Capital, pursuant to which H.I.G. has agreed to sell 26,455,651 shares of common stock, par value $0.01 per share (the "Common Stock"), of the Company (the "Purchased Shares"), to Bain Capital at a purchase price per share of $19.00 in cash (the "Private Sale" and, together with the Merger and the Preferred Private Placement, the "Transactions") and (ii) an amendment to that certain Income Tax Receivable Agreement, dated September 30, 2015, by and between the Company, H.I.G. (in its capacity as the Stockholders Representative) and the other parties referred to therein. Following the consummation of the Transactions, NSH will be a wholly-owned subsidiary of the Company, and Bain Capital will be the controlling stockholder of the Company.

A copy of the press release announcing the entry into the Transactions is attached as Exhibit 99.1 hereto.

Merger Agreement

On May 9, 2017, Surgery Partners entered into the Merger Agreement pursuant to which, on the terms and subject to the conditions set forth therein, Merger Sub will merge with and into NSH, after which Merger Sub will cease to exist and NSH will become an indirect wholly-owned subsidiary of the Company. NSH will continue as the surviving company of the Merger (the "Surviving Corporation"). The respective boards of directors of Surgery Partners, Merger Sub and NSH have approved the Merger Agreement and the transactions contemplated thereby. In order to finance a portion of the Merger, the Company intends to issue new senior unsecured notes and raise additional senior secured term loan financing, and the Company has entered into customary commitment and engagement letters in connection therewith.

At the effective time of the Merger (the "Effective Time"), each issued and outstanding share of common stock of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become a validly issued, fully paid and nonassessable share of common stock of the Surviving Corporation. In addition, at the Effective Time: (i) each share of series A preferred stock of NSH, par value $0.01, issued and outstanding immediately prior to the Effective Time, other than shares to be canceled or dissenting shares, shall be converted into the right to receive the Liquidation Value, as defined and described in the Merger Agreement; (ii) each share of common stock of NSH shall be converted into the right to receive the Per Share Merger Consideration as defined and described in the Merger Agreement; (iii) each in-the-money NSH option shall be converted into the right to receive the excess (if any) of the Per Share Merger Consideration, as defined and described in the Merger Agreement, over the exercise price of such option; and (iv) all other NSH options shall be cancelled without consideration therefore.

The Merger Agreement contains customary representations, warranties and covenants in respect of each of NSH, the Company and Merger Sub. Further, the completion of the Merger is subject to various conditions, including, among others: (i) the approval by written consent of the majority stockholder of NSH, which has already been provided; (ii) the expiration of the applicable waiting periods under the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act") applicable to the Merger, the Preferred Private Placement and the Private Sale; (iii) the receipt of certain regulatory approvals and consents; and (iv) subject to certain materiality exceptions, the accuracy of the representations and warranties made by each of NSH, the Company and Merger Sub and the compliance by each of NSH, the Company and Merger Sub with their respective obligations under the Merger Agreement.

The Merger Agreement may be terminated under certain circumstances. Upon the termination of the Merger Agreement, under specified circumstances, the Company will be required to pay to NSH a termination fee of $45,600,000 (the "Termination Fee"). The Merger is expected to close during 2017 (subject to satisfaction of applicable closing conditions).

The foregoing summary of the Merger Agreement and the Merger does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Merger Agreement, a copy of which is filed as Exhibit 2.1 to the Current Report on Form 8-K and incorporated into this Item 1.01 by reference herein.

The Merger Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Merger Agreement were made only for purposes of the Merger Agreement as of the specific dates therein, were solely for the benefit of the parties to the Merger Agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Merger Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Merger Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Merger Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Preferred Securities Purchase Agreement and Series A Preferred Stock

On May 9, 2017, Surgery Partners entered into a Securities Purchase Agreement (the "Preferred Stock Purchase Agreement") with Bain Capital, pursuant to which, on the terms and subject to the conditions set forth therein, Bain Capital will acquire and the Company will issue, up to 320,000 shares of Series A Preferred Stock, at a price per share of $1,000.00. Upon the closing of the Preferred Private Placement, Bain Capital and its affiliates will own all of the outstanding preferred stock of Surgery Partners, which, assuming an issuance of 320,000 shares of Series A Preferred Stock and calculated based on the number of shares of Common Stock of the Company outstanding on May 10, 2017, would represent approximately 26% of the voting power of all classes of capital stock of Surgery Partners. A copy of the Preferred Stock Purchase Agreement is attached hereto as Exhibit 10.1 and is incorporated by reference herein.

The Preferred Stock Purchase Agreement contains customary representations, warranties and covenants in respect of each of the Company and Bain Capital. Further, the completion of the Preferred Private Placement is subject to the Merger occurring substantially concurrently, as well as various other conditions, including, among others: (i) the expiration of the applicable waiting periods under the HSR Act; (ii) the receipt of certain regulatory approvals and consents, including with respect to the issuance of the Series A Preferred Stock; (iii) the satisfaction of all NASDAQ listing requirements; (iv) the filing of an Amended and Restated Certificate of Incorporation of the Company and the Certificate of Designations, Preferences, Rights and Limitations of the 10.00% Series A Convertible Perpetual Participating Preferred Stock of Surgery Partners, Inc. (the "Series A Certificate of Designation"); (v) no material adverse effect on the Company; (vi) the receipt of the approval of the Company's stockholders to the Transactions; and (vii) subject to certain materiality exceptions, the accuracy of the representations and warranties made by the Company and Bain Capital and the compliance by each of the Company and Bain Capital with their respective obligations under the Preferred Stock Purchase Agreement. The Preferred Stock Purchase Agreement also provides that in the event that the Termination Fee is payable by the Company to NSH pursuant to the Merger Agreement, in certain circumstances, subject to the terms and conditions of the Preferred Stock Purchase Agreement, Bain Capital shall reimburse the Company for the full amount, or one half of the amount, of the Termination Fee and certain related fees and expenses.

The Series A Preferred Stock will rank senior to the Common Stock and any other capital stock of the Company, with respect to dividends, redemption and any other rights upon the liquidation, dissolution or winding up of the Company, and the holders thereof are entitled to vote with the holders of Common Stock, together as a single class, on all matters submitted to a vote of the Company's stockholders. In addition to any dividends that may be declared with respect to the Common Stock, each share of Series A Preferred Stock will accrue dividends daily at a

dividend rate of 10%, compounding quarterly, and in any given quarter, subject to certain conditions, the Board of Directors of the Company (the "Board") may declare a cash dividend in an amount up to 50% of the amount of such accrued and accumulated dividend through the end of such quarter, and any quarterly dividend paid in cash shall not compound on the applicable date and shall not be included in the accrued value of the Series A Preferred Stock. The Company cannot redeem the Series A Preferred Stock prior to the fifth anniversary of its issuance and thereafter, may redeem all, but not less than all, of the Series A Preferred Stock for cash pursuant to and subject to the terms and conditions of the Series A Certificate of Designation. The Series A Preferred Stock may also be redeemed by the holder thereof upon the occurrence of certain change of control transactions of the Company or the Common Stock ceasing to be listed or quoted on a trading market.

The Series A Preferred Stock will initially be convertible into shares of Common Stock at a price per share of Common Stock equal to $19.00, subject to adjustments as provided in the Series A Certificate of Designation, at any time at the option of such holder. In addition, subject to the terms and conditions of the Series A Certificate of Designation, the Company may require the conversion of all, but not less than all, of the Series A Preferred Stock, after the second anniversary of the date of issuance, if the volume weighted average closing price of the Common Stock for any twenty out of thirty consecutive trading days prior to such date, equals or exceeds $42.00 per share. For as long as the Sponsor Entities continue to own the Required Percentage, the Company has agreed to not take certain actions without the prior approval of the holders of a majority of the then-outstanding shares of Series A Preferred Stock.

In addition, subject to the terms and conditions of the Series A Certificate of Designation and the closing of the transactions contemplated by the Preferred Private Placement, on or following the date on which Bain Capital, or Bain Capital and H.I.G., collectively, as applicable (the "Sponsor Entities"), cease to collectively hold fifty percent (50%) or more of the outstanding voting stock of the Company, but continue to hold 50 percent (50%) or more of the shares of Preferred Stock acquired pursuant to the Preferred Stock Purchase Agreement (the "Required Percentage"), the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock held by the Sponsor Entities, voting as a separate class, shall be entitled to elect two (2) directors to the Board; provided that, if the Sponsor Entities continue to own more than 50% of the Required Percentage but less than 100% of the Required Percentage, the holders of at least a majority of the then-outstanding shares of Series A Preferred Stock held by the Sponsor Entities, voting as a separate class, shall be entitled to elect one (1) director to the Board.

The foregoing summary of the Preferred Stock Purchase Agreement and the Series A Preferred Stock does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Preferred Stock Purchase Agreement (including the exhibits thereto), a copy of which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference herein, and the form of Series A Certificate of Designation filed as Exhibit E to the Preferred Stock Purchase Agreement.

The Preferred Stock Purchase Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the Preferred Stock Purchase Agreement were made only for purposes of the Preferred Stock Purchase Agreement as of the specific dates therein, were solely for the benefit of the parties to the Preferred Stock Purchase Agreement, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Preferred Stock Purchase Agreement instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the Preferred Stock Purchase Agreement and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the Preferred Stock Purchase Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Common Stock Purchase Agreement

On May 9, 2017, H.I.G., H.I.G. Bayside Debt & LBO Fund II L.P., Bain Capital and the Company entered a Stock Purchase Agreement (the "SPA"), pursuant to which Bain Capital agreed to purchase all of the 26,455,651 shares of Common Stock beneficially owned by H.I.G. at a purchase price per share of $19.00 for an aggregate purchase price of $502,657,369 in cash. As of May 10, 2017, the Purchased Shares represented approximately 54% of the outstanding Common Stock of the Company. Bain Capital will fund the Private Sale through an equity financing/equity commitment letter. Upon the closing of the Private Sale, H.I.G. will no longer own any equity interests in Surgery Partners. Upon the closing of the Private Sale and the Preferred Private Placement, assuming an issuance of 320,000 shares of Series A Preferred Stock and calculated based on the number of shares of Common Stock of the Company outstanding on May 10, 2017, the Series A Preferred Stock and the Common Stock acquired by Bain Capital and its affiliates in the Transactions will represent approximately 66% of the voting power of all classes of capital stock of Surgery Partners.

The SPA contains customary representations, warranties and covenants in respect of each of H.I.G., Bain Capital and the Company. The completion of the Private Sale is subject to the prior completion of the Merger and various other conditions, including, among others: (i) the approval by written consent of the stockholders of the Company; (ii) the expiration of the applicable waiting periods under the HSR Act; (iii) the receipt of certain regulatory approvals and consents; (iv) the satisfaction of all NASDAQ listing requirements; (v) no material adverse effect on the Company; (vi) execution of Amendment No. 1 to the Income Tax Receivable Agreement, by and between the Company and H.I.G. (in its capacity as the stockholders representative), dated May 9, 2017; and (vii) subject to certain materiality exceptions, the accuracy of the representations and warranties made by H.I.G., Bain Capital and the Company and the compliance by each of H.I.G., Bain Capital and the Company with their respective obligations under the SPA. Upon the satisfaction of all conditions to H.I.G.'s obligations to complete the Private Sale, H.I.G. has agreed to grant Bain Capital its proxy with respect to the Purchased Shares and appoint Bain Capital or its designee as its proxy, attorney-in-fact and agent to vote the Purchased Shares in any circumstances in which stockholder vote, consent or other approval is sought.

The foregoing summary of the SPA does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the SPA, a copy of which is filed as Exhibit 10.2 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference herein.

The SPA has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the Company. The representations, warranties and covenants contained in the SPA were made only for purposes of the SPA as of the specific dates therein, were solely for the benefit of the parties to the SPA, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the SPA instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. Investors are not third-party beneficiaries under the SPA and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties thereto or any of their respective subsidiaries or affiliates. Moreover, information concerning the subject matter of representations and warranties may change after the date of the SPA, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Registration Rights Agreement

The Company, upon the closing of the Preferred Private Placement, has agreed to enter into an amended and restated Registration Rights Agreement (the "Registration Rights Agreement") with certain stockholders of the Company and certain other parties thereto, including Bain Capital and certain of its affiliates. The Company will agree to file a registration statement (the "Registration Statement") for a public offering of shares, upon the request of Bain Capital and certain of its affiliates, and to use commercially reasonable efforts to effect the registration under the Securities Act of the registrable shares, subject to certain limitations as described in the Registration Rights Agreement, including a minimum net aggregate offering price and a limitation on the number of registrations the Company shall be required to effect. Surgery Partners will also agree to provide "piggy back," "short-form" and shelf registration rights with respect to the registrable shares, each as described in the Registration Rights Agreement.

The foregoing summary of the Registration Rights Agreement does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the form of Registration Rights Agreements filed as Exhibit C to the Preferred Stock Purchase Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference.

Amendment to Income Tax Receivable Agreement

In connection with the Private Sale, on May 9, 2017, the Company and H.I.G., in its capacity as the Stockholders Representative, entered into an agreement to amend that certain Income Tax Receivable Agreement, dated September 30, 2015, by and between the Company, H.I.G. (in its capacity as the Stockholders Representative) and the other parties referred to therein (the "TRA Amendment"), to provide for a fixed payment schedule pursuant thereto. The amounts payable are related to the projected tax savings to be realized by the Company over the next five years and are not dependent on actual tax savings. Further, the amounts payable pursuant to the Tax Receivable Agreement will be adjusted downward in the event that the maximum corporate federal income tax rate is reduced.

The foregoing summary of the TRA Amendment does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the TRA Amendment (including the exhibits thereto), a copy of which is filed as Exhibit 10.3 to this Current Report on Form 8-K and incorporated into this Item 1.01 by reference herein.

Item 3.02 Unregistered Sales of Equity Securities.

The disclosure set forth above under Item 1.01 – *Preferred Securities Purchase Agreement and Series A Preferred Stock*, is incorporated herein by reference. The Preferred Private Placement will be made in reliance on an exemption from the regulation requirements of the Securities Act pursuant to Section 4(a)(2) of the Securities Act and Rule 506 promulgated thereunder.

Item 5.01 Changes in Control of Registrant.

The disclosure set forth above under Item 1.01 – *Common Stock Purchase Agreement*, is incorporated herein by reference.

Item 5.07 Submission of Matters to a Vote of Security Holders.

On May 9, 2017, H.I.G., the holder of (i) at least a majority of the issued and outstanding shares of capital stock of Surgery Partners, and (ii) at least a majority of the issued and outstanding shares of Common Stock, by written consent in lieu of a meeting of the stockholders of Surgery Partners approved (x) (1) the Second Amended and Restated Certificate of Incorporation of Surgery Partners, (2) the Series A Certificate of Designation, (3) the Preferred Stock Purchase Agreement and the issuance of the Series A Preferred Stock pursuant to the Second Amended and Restated Certificate of Incorporation of Surgery Partners and the Series A Certificate of Designation, (4) the SPA, and (5) the Second Amended and Restated Bylaws of Surgery Partners, and (y) the Transactions for all purposes of applicable NASDAQ Marketplace Rules and all other purposes.

The form of the Second Amended and Restated Certificate of Incorporation of Surgery Partners is filed as Exhibit B to the Preferred Stock Purchase Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated into this Item 5.07 by reference. The form of the Second Amended and Restated Bylaws of Surgery Partners is filed as Exhibit A to the Preferred Stock Purchase Agreement, which is filed as Exhibit 10.1 to this Current Report on Form 8-K and incorporated into this Item 5.07 by reference. The foregoing summary of the Preferred Stock Purchase Agreement is qualified in its entirety by reference to Exhibit 10.1. The Company will file an Information Statement on Schedule 14C describing these matters and will deliver a copy of the Information Statement to all stockholders of record on May 9, 2017.

Forward-Looking Statements

This report may contain "forward-looking" statements as defined by the Private Securities Litigation Reform Act of 1995 or by the U.S. Securities and Exchange Commission (the "SEC") in its rules, regulations and releases. These statements include, but are not limited to, the Company's expectations regarding the Transactions, including statements regarding the benefits of the Transactions, the anticipated timing of the Transactions and the expected closing of the Transactions, and the performance of its business and the other non-historical statements. These

statements can be identified by the use of words such as “believes,” “anticipates,” “expects,” “intends,” “plans,” “continues,” “estimates,” “predicts,” “projects,” “forecasts,” and similar expressions. All forward looking statements are based on management’s current expectations and beliefs only as of the date of this report and are subject to risks, uncertainties and assumptions that could cause actual results to differ materially from those discussed in, or implied by, the forward-looking statements, including but not limited to, the risk that the parties are unable to obtain required regulatory approvals, the risk that the parties are unable to satisfy other conditions to the consummation of the Transactions, the occurrence of any event, change or other circumstance that could give rise to the termination of the Merger Agreement, the Preferred Stock Purchase Agreement or the SPA, the risk that the Transactions may involve unexpected costs, liabilities or delays, and such other the risks identified and discussed from time to time in the Company’s reports filed with the SEC, including the Company’s most recent Annual Report on Form 10-K. Readers are strongly encouraged to review carefully the full cautionary statements described in these reports. Except as required by law, the Company undertakes no obligation to revise or update publicly any forward-looking statements to reflect events or circumstances after the date of this report, or to reflect the occurrence of unanticipated events or circumstances.

Item 9.01 Financial Statements and Exhibits.

(d) Exhibits

Exhibit No.	Description
2.1	Agreement and Plan of Merger by and among Surgery Partners, Inc., SP Merger Sub, Inc., NSH Holdco, Inc. and IPC / NSH, L.P., dated as of May 9, 2017.*
10.1	Securities Purchase Agreement by and among Surgery Partners, Inc. and BCPE Seminole Holdings LP, dated May 9, 2017.*
10.2	Stock Purchase Agreement by and between H.I.G. Surgery Centers, LLC, H.I.G. Bayside Debt & LBO Fund II L.P. (for the specific purposes stated therein), BCPE Seminole Holdings LP and Surgery Partners, Inc., dated May 9, 2017.*
10.3	Amendment No. 1 to Income Tax Receivable Agreement, by and between Surgery Partners, Inc. and H.I.G. Surgery Centers, LLC (in its capacity as the Stockholders Representative), dated May 9, 2017.
99.1	Press release dated May 10, 2017.

* Schedules and/or Exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish a supplemental copy of any omitted schedule or exhibit to the SEC upon request.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Surgery Partners, Inc.

By: /s/ Michael T. Doyle
Michael T. Doyle
Chief Executive Officer

Date: May 11, 2017

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EXHIBIT INDEX

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99.1	Press release dated May 10, 2017.

*Schedules and/or Exhibits have been omitted pursuant to Item 601(b)(2) of Regulation S-K. The Company agrees to furnish a supplemental copy of any omitted schedule or exhibit to the SEC upon request.

Exhibit 2.1

EXECUTION VERSION

AGREEMENT AND PLAN OF MERGER

by and among

SURGERY PARTNERS, INC.,

SP MERGER SUB, INC.,

NSH HOLDCO, INC.

and

IPC / NSH, L.P.

(solely in its capacity as the Sellers' Representative)

Dated as of May 9, 2017

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AGREEMENT AND PLAN OF MERGER

THIS AGREEMENT AND PLAN OF MERGER (this "Agreement"), dated as of May 9, 2017, is made by and among Surgery Partners, Inc., a Delaware corporation ("Purchaser"), SP Merger Sub, Inc., a Delaware corporation and a wholly owned Subsidiary (as defined herein) of Purchaser ("Merger Sub"), NSH Holdco, Inc., a Delaware corporation (the "Company"), and IPC / NSH, L.P., a Delaware limited partnership, solely in its capacity as the Sellers' Representative (as defined herein).

RECITALS

WHEREAS, as of the date hereof, National Surgical Hospitals, Inc., a Delaware corporation and direct Wholly-Owned Subsidiary (as defined herein) of the Company ("NSH"), owns 100% of the issued and outstanding shares of common stock (the "Wyoming Stock") of NSH Wyoming, Inc. ("NSH Wyoming"), and, immediately prior to the Effective Time (as defined herein), NSH will declare and distribute a stock dividend of the Wyoming Stock to the Company (the "Wyoming Distribution"), such that, as a result of the Wyoming Distribution, NSH Wyoming will become a direct Wholly-Owned Subsidiary of the Company;

WHEREAS, immediately following the Wyoming Distribution, the Company, Purchaser and Merger Sub intend to effect a merger (the "Merger") of Merger Sub with and into the Company in accordance with this Agreement and the General Corporation Law of the State of Delaware (the "DGCL");

WHEREAS, concurrently with the consummation of the Merger, the Securityholders (as defined herein) will receive the Wyoming Stock, which Wyoming Stock shall be included in the Base Merger Consideration and delivered to the Securityholders at the Closing as part of the Closing Date Merger Consideration (as defined herein);

WHEREAS, following the completion of the Interim Restructuring (as defined herein) and upon the consummation of the Merger, (i) Merger Sub will cease to exist, and the Company will become a Wholly-Owned Subsidiary of Purchaser and (ii) NSH Wyoming will become a direct non-Wholly-Owned Subsidiary of the Sellers' Representative;

WHEREAS, the respective boards of directors of the Company, Purchaser and Merger Sub have each approved, adopted and declared advisable this Agreement, the other Transaction Documents and the transactions contemplated hereby and thereby, including the Merger, in accordance with the DGCL and upon the terms and subject to the conditions set forth herein;

WHEREAS, the board of directors of the Company has recommended that this Agreement and the other Transaction Documents be adopted, and the transactions contemplated hereby and thereby be approved, by the written consent of Stockholders (as defined herein) holding at least a majority of the outstanding voting stock of the Company in accordance with Section 228 of the DGCL (the "Written Consent") as promptly as practicable but not later than twenty-four (24) hours following the execution and delivery of this Agreement by all parties hereto; and

WHEREAS, concurrently with the execution of this Agreement (i) as a condition and inducement to the Company's willingness to enter into this Agreement, (A) Bain Capital Fund XI, L.P. (the "Equity Financing Source") has executed and delivered the Equity Financing Commitment (as defined herein) to Investor (as defined herein) and to the Company, as an express third party beneficiary thereof, pursuant to which the Equity Financing Source has committed to purchase equity securities of Investor in the amount set forth therein, subject to the terms and conditions thereof, and (B) Investor has

entered into a Securities Purchase Agreement with respect to the acquisition of preferred equity securities of Purchaser (the transactions contemplated by the foregoing, being the "Bain Preferred Investment"), and (ii) the Equity Financing Source has executed and delivered an equity financing commitment to Investor and to H.I.G. Surgery Centers, LLC, as an express third party beneficiary thereof, pursuant to which the Equity Financing Source has committed to purchase equity securities of Investor in the amount set forth therein, subject to the terms and conditions thereof, and Investor has entered into a Securities Purchase Agreement with respect to the acquisition of common stock of Purchaser (the transactions contemplated by the foregoing, being the "Bain Common Investment" and, together with the Bain Preferred Investment, the "Bain Investment").

NOW, THEREFORE, in consideration of the promises and the mutual representations, warranties, covenants, agreements and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINED TERMS

1.1 Defined Terms. The following terms shall have the following meanings in this Agreement:

"Accounting Policies" means GAAP, applied on a consistent basis with the Latest Balance Sheet and using consistent estimation methodologies and judgments and with consistent classifications as used in the Latest Balance Sheet and related statement of income; provided, however, that to the extent there is a conflict between the accounting principles, methods and practices used in preparing the Latest Balance Sheet and related statement of income and GAAP, GAAP shall prevail. For the avoidance of doubt, calculations made in accordance with the Accounting Policies shall be based exclusively on the facts and circumstances as they exist as of the Adjustment Time and excluding (i) the effects of any event, act, change in circumstances or similar development arising or occurring thereafter (including on the Closing Date) and any action of the Company Group or any of its Affiliates after Closing, (ii) any purchase accounting or other adjustment arising out of the consummation of the transactions contemplated by this Agreement or (iii) any adjustment made after the Closing to conform with the accounting principles, methods, practices, estimation methodologies and judgments used by Purchaser and its Subsidiaries.

"Adjusted Closing Date Merger Consideration" means the Closing Date Merger Consideration, minus the Adjustment Escrow Amount, minus the Indemnity Escrow Amount, minus the Sequoia Matter Escrow Amount, minus the Sellers' Representative Expense Amount.

"Adjustment Amount" means the net amount (which may be positive or negative) of all increases or decreases to the Closing Date Merger Consideration pursuant to Section 2.12(c).

"Adjustment Amount Per Share" means, if the Adjustment Amount is positive, an amount, not less than zero, equal to (a) the Adjustment Amount divided by (b) the Fully-Diluted Shares. For the avoidance of doubt, if the Adjustment Amount is negative, then the Adjustment Amount Per Share will equal zero.

"Adjustment Escrow Account" means the escrow account established pursuant to the Escrow Agreement for purposes of holding the Adjustment Escrow Fund.

"Adjustment Escrow Amount" means an amount equal to $2,000,000.

"Adjustment Escrow Fund" means the Adjustment Escrow Amount deposited with the Escrow Agent, as such amount may be increased or decreased as provided in this Agreement and the Escrow Agreement, including any remaining interest or other amounts earned thereon.

"Adjustment Time" means the close of business on the Business Day immediately prior to the Closing Date.

"Affiliate" means, with respect to any Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with, another Person. For purposes of this definition, the terms "control," "controlling," "controlled by" and "under common control with," as used with respect to any Person, mean the possession, directly or indirectly, of the power to direct the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise. For the avoidance of doubt, for purposes of this Agreement, neither NSH Wyoming nor Casper shall be deemed to be an Affiliate of any member of the Company Group.

"Aggregate Option Exercise Amount" means an amount equal to the aggregate exercise price of all In-the-Money Options outstanding immediately prior to the Effective Time.

"Amended Charter" means the Second Amended and Restated Certificate of Incorporation of the Company, as filed with the Secretary of State of the State of Delaware on July 1, 2014, as may be further amended, supplemented or restated from time to time.

"Applicable Law" means, with respect to any Person, any federal, state, local or foreign common or statutory law, code, ordinance, rule, regulation, order or other requirement or rule of law, including any Healthcare Law, that is binding upon such Person.

"Aspen" means Aspen Surgery Center, LLC.

"Aspen Divestiture Amount" shall mean (a) the product of (i) the percentage ownership of Aspen represented by the Equity Securities of Aspen required to be divested by the Company and its Subsidiaries, and (ii) $11,193,525, minus (b) any cash proceeds actually received by Purchaser and its Subsidiaries in respect of such divestiture (net of Taxes actually imposed with respect to such disposition in the taxable year of such disposition, computed on a "with and without" basis).

"Base Merger Consideration" means (i) $760,000,000 and (ii) the Wyoming Stock received by the Securityholders pursuant to the Interim Restructuring.

"Business Day" means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in New York, New York are authorized or required to be closed.

"Cash and Cash Equivalents" means, as of any date at any time, without duplication, the sum of (a) the aggregate amount of all cash and cash equivalents (including marketable securities, short-term investments and other liquid investments), plus (b) all checks and drafts deposited to the extent such checks or drafts have not been credited by the applicable bank prior to such time, minus (c) all checks and drafts issued to the extent such checks and drafts have not cleared prior to such time, in each case, of the Company, its Wholly-Owned Subsidiaries and the Joint Ventures, calculated in accordance with the Accounting Policies; provided, however, that with respect to the Joint Ventures, "Cash and Cash Equivalents" shall only include a portion of the Cash and Cash Equivalents at each Joint Venture equal to the product of (a) the total amount of Cash and Cash Equivalents at such Joint Venture and (b) the percentage ownership of such Joint Venture held directly or indirectly by the Company and its Wholly-Owned Subsidiaries.

"Casper" means Casper Medical Center, LLC, a Wyoming limited liability company.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act.

"Certificate" means, with respect to any Common Stockholder, each Common Certificate of such Common Stockholder, and, with respect to any Preferred Stockholder, each Preferred Certificate of such Preferred Stockholder.

"Closing Date Cash and Cash Equivalents" means, without duplication, all Cash and Cash Equivalents as of the Adjustment Time.

"Closing Date Company Indebtedness" means, without duplication, all Company Indebtedness as of the Adjustment Time.

"Closing Date Joint Venture Indebtedness" means all Joint Venture Indebtedness as of the Adjustment Time.

"Closing Date Merger Consideration" means an amount equal to (i) the Base Merger Consideration, plus (ii) Estimated Cash and Cash Equivalents, plus (iii) the Aggregate Option Exercise Amount, plus (iv) the amount, if any, by which Estimated Working Capital exceeds the Target Working Capital, minus (v) the amount, if any, by which Estimated Working Capital is less than the Target Working Capital, minus (vi) Estimated Closing Date Company Indebtedness, minus (vii) Estimated Joint Venture Indebtedness, minus (viii) Estimated Seller Expenses, minus (ix) the CMS Overpayment Liability, plus (x) the Mesa Receivable Amount.

"Closing Option Consideration" means, with respect to each In-the-Money Option, an amount equal to the product of (a) the number of shares of Common Stock subject to such In-the-Money Option, and (b) the excess of (i) the Closing Per Share Merger Consideration over (ii) the exercise price of such In-the-Money Option.

"Closing Per Share Merger Consideration" means an amount equal to (i) (A) the Adjusted Closing Date Merger Consideration, less (B) the Preferred Stock Consideration (assuming no dissenting shares of Preferred Stock), divided by (ii) the number of Fully-Diluted Shares.

"CMS" means the Centers for Medicare & Medicaid Services.

"CMS Overpayment Liability" means an amount equal to $856,089.50.

"Coastal Guaranty Agreement" means that certain Guaranty Agreement, effective as of August 28, 2008, by Coastal Bend Medical Park, LLC for the benefit of The Frost National Bank.

"Code" means the Internal Revenue Code of 1986, as amended, or any successor law, and regulations issued by the IRS pursuant thereto.

"Common Stock" means the Company's common stock, par value $0.01.

"Common Stockholder" means a holder of Common Stock.

"Company Disclosure Schedule" means the disclosure schedule dated the date hereof regarding this Agreement that has been provided by the Company to Purchaser and Merger Sub.

"Company Group" means, collectively, the Company and its Subsidiaries. For the avoidance of doubt, each Joint Venture is a member of the Company Group.

"Company Indebtedness" means, without duplication, any and all Indebtedness of the Company and its Wholly-Owned Subsidiaries (including the Credit Facilities but excluding the amount of any Indebtedness of any Joint Venture).

"Company Option Plan" means the NSH Holdco, Inc. 2011 Equity Incentive Plan, as the same may have been amended or otherwise modified.

"Company Options" means all outstanding options to purchase shares of Common Stock issued pursuant to the Company Option Plan.

"Compliant" means, with respect to the Required Information, that (a) such Required Information does not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make such Required Information, in light of the circumstances under which the statements contained in the Required Information are made, not misleading, (b) such Required Information is compliant in all material respects with all applicable requirements of Regulations S-K and S-X under the Securities Act of 1933, as amended, for offerings of non-convertible debt securities on a registration statement on Form S-1 (excluding consolidating and other financial statements and data that would be required by Regulation S-X Rule 3-09, Rule 3-10 and Rule 3-16 of Regulation S-X or "segment reporting" or any Compensation Discussion and Analysis required by Item 402 of Regulation S-K and information regarding executive compensation related to SEC Release Nos. 33-8732A, 34-54302A and IC-27444A and other customary exceptions for offerings of debt securities issued pursuant to Rule 144A), (c) any interim quarterly financial statements included in such Required Information have been reviewed by the Company's independent auditors as provided in the procedures specified by the American Institute of Certified Public Accountants in AU-C Section 930 or any successor provision and (d) the Company's auditors have delivered drafts of customary comfort letters, including customary negative assurance comfort with respect to periods following the end of the latest fiscal year or fiscal quarter for which historical financial statements are included in the applicable offering documents, and such auditors have confirmed that they are prepared upon completion of customary procedures to issue any such comfort letter throughout the Marketing Period and during and throughout the period ending on the third full Business Day following the end of the Marketing Period.

"Confidentiality Agreement" means, collectively, (i) that certain Non-Disclosure Letter Agreement, dated as of October 12, 2016, by and between the Company and Surgery Partners, Inc. and (ii) that certain Non-Disclosure Letter Agreement, dated as of October 6, 2016, by and between the Company and Bain Capital Private Equity, LP.

"Consolidated Subsidiary" means any Subsidiary of the Company that is consolidated in the Financial Statements or which is required by GAAP to be consolidated in the Financial Statements.

"Continuing Employees" means the employees of the Surviving Corporation and its Subsidiaries immediately following the Closing.

"Contract" means any legally binding contract, agreement, obligation, commitment, arrangement, understanding, instrument, permit, lease, license or use and occupancy agreement.

"Credit Facilities" means (i) that certain First Lien Credit Agreement dated June 1, 2015, by and among NSH, the Company, JPMorgan Chase Bank, N.A., the other lenders party thereto, J.P. Morgan Securities LLC, BMO Capital Markets Corp., Deutsche Bank Securities, Inc., CIT Finance LLC, Siemens Financial Services, Inc. and Sumitomo Mitsui Banking Corporation, and (ii) that certain Second Lien Notes Purchase Agreement dated June 1, 2015, by and among NSH, the Company, Newstar Financial, Inc. and each investor party thereto.

"Current Assets" means, without duplication, the total consolidated current assets of the Company and the Consolidated Subsidiaries (including, without limitation, any assets related to the settlement of open cost reports, and excluding (i) any Tax assets, (ii) any assets included in the calculation of Cash and Cash Equivalents and (iii) any assets that constitute meaningful use receivables).

"Current Liabilities" means, without duplication, the total consolidated current liabilities of the Company and the Consolidated Subsidiaries (including, without limitation, any liabilities related to the settlement of open cost reports and liabilities incurred in connection with the Interim Restructuring (regardless of when incurred), and excluding (i) any liabilities included in the calculation of Indebtedness, (ii) any liabilities included in the calculation of Seller Expenses, (iii) any Tax liabilities and (iv) any liabilities related to unclaimed property).

"Debt Financing Source Affiliates" means, with respect to any of the Debt Financing Sources, their respective Affiliates, and their Affiliates' officers, directors, employees, controlling Persons, agents and representatives involved in the Debt Financing.

"Debt Financing Sources" means the Persons that have committed to provide or arrange all or any part of the Debt Financing in connection with the Merger, including the parties to the Debt Financing Commitments and any joinder agreements entered into pursuant thereto or other Contracts (including any credit agreements) relating thereto, and their respective successors and assigns.

"Enforceability Exceptions" means the extent to which enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Applicable Laws affecting the enforcement of creditors' rights in general and by the general principles of equity and the discretion of courts in granting equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity).

"Environmental Laws" means all Applicable Laws relating to environmental, health or safety matters, including Applicable Laws governing the use, storage, handling, disposal, discharge, release or remediation of Hazardous Substances.

"Equity Securities" means, with respect to any Person, any of its capital stock, partnership interests (general or limited), limited liability company interests, trusts interests or other securities that entitle the holder thereof to participate in the earnings of such Person or to receive dividends or distributions on liquidation, winding up or dissolution of such Person, or to vote for the election of directors or other management of such Person or to exercise other rights generally afforded to stockholders of a corporation.

"ERISA Affiliates" means any Person that, together with the Company or any of its Subsidiaries, would be deemed a "single employer" within the meaning of Section 414(b), (c), (m) or (o) of the Code.

"Escrow Accounts" means the Adjustment Escrow Account, the Indemnity Escrow Account and the Sequoia Matter Escrow Account.

"Escrow Agent" means Citibank N.A.

"Escrow Agreement" means the escrow agreement to be entered into at Closing by Purchaser, the Sellers' Representative and the Escrow Agent in substantially the form attached hereto as Exhibit D.

"Example Working Capital Calculation" means the illustrative example of the calculation of Working Capital set forth on Exhibit A.

"Facilities" means all hospitals, ambulatory surgical centers or other healthcare provider facilities operated by the Company or any Subsidiary of the Company.

"Final Merger Consideration" means an amount equal to the Closing Date Merger Consideration, plus (x) any positive Adjustment Amount determined in accordance with Section 2.12, or minus (y) the absolute value of any negative Adjustment Amount determined in accordance with Section 2.12.

"Financing Sources" means the Debt Financing Sources and the Equity Financing Source.

"First Quarter Financial Statements" means an unaudited consolidated balance sheet of the Company as of March 31, 2017, and the related unaudited consolidated statements of operations, unaudited consolidated comprehensive income (loss), and unaudited consolidated cash flows for the three (3) month period then ended.

"Fraud" means each of (i) the existence of a false representation or warranty set forth in this Agreement; (ii) the Person making such representation had knowledge or belief that such representation or warranty was false, or made such representation or warranty with requisite indifference to the truth; (iii) the Person making such representation or warranty had the intent to induce a Party to act or refrain from acting; (iv) the aggrieved Party acted or did not act in justifiable reliance on the representation or warranty made; and (v) the aggrieved Party suffered damages as a result of such misrepresentation.

"Fully-Diluted Shares" means the sum, without duplication, of (i) the aggregate number of shares of Common Stock issued and outstanding immediately prior to the Effective Time (excluding Treasury Shares), plus (ii) the number of all shares of Common Stock issuable upon exercise of all In-the-Money Options outstanding immediately prior to the Effective Time.

"Fundamental Representations" means the representations and warranties of the Company contained in Section 3.1(a) (Organization; Corporate Power), Section 3.3(a) and (b) (Authority; No Violation), Section 3.4 (Capitalization; Subsidiaries) and Section 3.21 (Brokers).

"GAAP" means generally accepted accounting principles in the United States, as in effect as of the date of the applicable Financial Statement.

"Government Programs" means all state and federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), including the federal Medicare and all applicable state Medicaid and successor programs, as well as TRICARE and state workers' compensation programs.

"Governmental Body" means any international, federal, state, provincial, municipal, local, foreign or other governmental administrative or regulatory authority, department, commission, agency, board, bureau or instrumentality.

"Hazardous Substances" or "Hazardous Substance" means any substance regulated under any of the Environmental Laws, including any substance which is: (i) petroleum or petroleum products, pesticides, asbestos or asbestos containing material, or polychlorinated biphenyls (ii) defined, designated or listed as a "Hazardous Substance" pursuant to Sections 307 or 311 of the Clean Water Act, 33 U.S.C. §§1317, 1321, or Section 101(14) of CERCLA, 42 U.S.C. §9601; (iii) listed in the United States Department of Transportation Hazardous Material Tables, 49 C.F.R. §172.101; or (iv) defined, designated or listed as a "Hazardous Waste" under Section 1004(5) of the Resource and Conservation and Recovery Act, 42 U.S.C. 6903(5).

"Healthcare Laws" means any local, state or Federal Applicable Law relating to the provision and payment of healthcare services and items, including the following: (i) the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)) ("Federal Anti-Kickback Statute"), (ii) the Physician Self-Referral Law (42 U.S.C. §§ 1395nn) ("Stark Law"), (iii) the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), (iv) the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), (v) the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a; (vi) the Exclusion Laws, 42 U.S.C. § 1320a-7s; (vii) the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), (viii) the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. Section 1320a 7b), (ix) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) ("HIPAA") as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (42 U.S.C. § 17921 et seq.), (x) Medicare (Title XVIII of the Social Security Act); (xi) Medicaid (Title XIX of the Social Security Act); (xii) state corporate practice of medicine and professional fee-splitting laws and regulations, and (xiii) state certificate of need and licensing laws and regulations.

"HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

"In-the-Money Option" means a Company Option having an exercise price that is less than the Closing Per Share Merger Consideration that remains unexercised at the Effective Time following the acceleration of vesting of Company Options contemplated by Section 2.10; provided that, for purposes of this definition, the Wyoming Stock distributed pursuant to the Wyoming Distribution shall be deemed to have the fair market value set forth in Section 7.8(h).

"Indebtedness" means, with respect to any Person, the aggregate amount (including the current portions thereof), without duplication, of (i) indebtedness for borrowed money and all other obligations evidenced by notes, bonds, debentures or other similar instruments (other than trade payables to the extent included in Working Capital); (ii) all obligations relating to any interest rate hedging Contracts and any other hedging type instruments; (iii) all obligations of such Person or any of its Subsidiaries as lessee under leases that would be recorded as capital leases in such Person's financial statements under GAAP; (iv) any obligation of such Person to reimburse any bank or any other Person for any drawn letters of credit; and (v) indebtedness of the type described in clause (i)-(iv) above guaranteed directly or indirectly, in any manner by such Person or any of its Subsidiaries (excluding such indebtedness that is guaranteed by the Coastal Guaranty Agreement). The term "Indebtedness" shall (x) include the amount required to retire or repay such Indebtedness on the Closing Date and includes all principal, interest, fees, expenses, prepayment penalties, premiums, breakage costs and other similar obligations owed in respect of any outstanding Indebtedness, and (y) exclude (A) any intercompany obligations among such Person and its Wholly-Owned Subsidiaries or among any of such Person's Wholly-Owned Subsidiaries, (B) any obligations to pay rent under any operating lease, (C) undrawn portion of any letters of credit or (D) amounts included in Seller Expenses; provided, that Indebtedness shall exclude any amounts owed between or among the Company and any Wholly-Owned Subsidiaries that would otherwise constitute any of the foregoing items (i), (ii), (iii), (iv), and/or (v).

"Indemnity Escrow Account" means the escrow account established pursuant to the Escrow Agreement for purposes of holding the Indemnity Escrow Fund.

"Indemnity Escrow Amount" means an amount equal to $7,600,000.

"Indemnity Escrow Fund" means the Indemnity Escrow Amount deposited with the Escrow Agent, as such amount may be increased or decreased as provided in this Agreement and the Escrow Agreement, including any remaining interest or other amounts earned thereon.

"Intellectual Property" means all industrial and intellectual property, including patents, patent applications, patent rights, trademarks, trademark applications, trade names, fictitious business names (d/b/a's), service marks, service mark applications, copyrights, copyright applications, URLs, know-how, Trade Secrets, proprietary processes and formulae, confidential information, customer lists, inventions, instructions, marketing materials, trade dress, logos and designs and all documentation and media constituting, describing or relating to the foregoing, including manuals, memoranda and records.

"Interim Restructuring" means the Wyoming Distribution and the other related restructuring transactions (including, without limitation, the receipt by the Securityholders, as part of the Closing Date Merger Consideration, of the Wyoming Stock) set forth on Exhibit E.

"Investor" means BCPE Seminole Holdings, LP, a Delaware limited partnership.

"IPC Management" means Irving Place Capital Management, L.P., a Delaware limited partnership.

"IRS" means the United States Internal Revenue Service.

"Joint Venture" means any Person in which the Company directly or indirectly owns Equity Securities that is not a Wholly-Owned Subsidiary of the Company. For the avoidance of doubt, for purposes of this Agreement, neither NSH Wyoming nor Casper shall be deemed to be a Joint Venture.

"Joint Venture Indebtedness" means, with respect to each Joint Venture, an amount equal to (a) the total amount of Indebtedness of such Joint Venture, multiplied by (b) the direct or indirect percentage ownership of such Joint Venture held by the Company and its Wholly-Owned Subsidiaries; provided, however, that Joint Venture Indebtedness shall not include any Indebtedness of a Joint Venture owed to the Company or any of its Wholly-Owned Subsidiaries.

"Knowledge of the Company" means the actual knowledge of David Crane, Bryan Fisher, John Hart, Rob Guenthner and Benjamin Jacobs. The knowledge of any other Person shall not be imputed to the individuals named above.

"Legal Action" means any action, suit, litigation, proceeding, arbitration, investigation, claim, condemnation proceeding, or other similar legal proceeding, whether judicial, administrative or otherwise.

"Liability" means any actual liability or obligation (including as related to Taxes), whether absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

"Liens" means, with respect to any specified asset, any and all liens, encumbrances, charges, claims, equitable interests, mortgages, options, pledges, security interests, easements, encroachments, rights of first refusal or similar restrictions (other than those created under applicable securities laws).

"Liquidation Value" means, with respect to each Series A Preferred Share, as determined on the date of the Merger, an amount equal to the sum of $1,000 plus the aggregate amount of all unpaid dividends which have accrued and accumulated thereon pursuant to the Amended Charter (whether or not they have been declared and whether or not there are profits, surplus or other funds of the Company legally available for the payment of dividends), through and including the date of the Merger.

"Losses" means, without duplication, losses, damages, Taxes, Liabilities, deficiencies, Legal Actions, judgments, interest, awards, penalties, fines, costs or expenses of whatever kind, including reasonable attorneys' fees and the cost of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers; provided, however, that Losses shall not include punitive damages, except to the extent paid or payable by an Indemnified Party pursuant to a Third Party Claim.

"Marketing Period" means the first period of fifteen (15) consecutive Business Days commencing after the date hereof and ended prior to the termination date hereof (inclusive of each day starting with the first day and through and ending with the last day of such period) in which (a) the Purchaser, Merger Sub and the Debt Financing Sources shall have had access to the Required Information and such Required Information is Compliant, (b) the conditions set forth in Sections 8.1 and 8.2 shall be satisfied or waived (other than any conditions that by their nature are to be satisfied by actions to be taken at the Closing or determinations to be made immediately prior to the Effective Time) and (c) no event shall have occurred nor shall any condition exist that would cause any of the conditions set forth in Sections 8.1 and 8.2 to fail to be satisfied assuming that the Closing were to occur at any time during such fifteen (15) consecutive Business Day period; provided that (i) so long as the foregoing clause (a) is satisfied, then, notwithstanding that the foregoing clauses (b) and (c) are not satisfied, the Marketing Period shall commence on the first Business Day that is at least seventy-five (75) days after the date hereof and (ii) the Marketing Period shall end on any earlier date that is the date on which the Debt Financing is consummated; provided further that, (x) July 3, 2017 through July 7, 2017, (y) August 18, 2017 through September 5, 2017 and (z) December 15, 2017 through January 2, 2018 shall be disregarded for purposes of calculating the Marketing Period.

"Material Adverse Effect" means any event, change, effect, condition, circumstance or occurrence (whether or not constituting any breach of a representation, warranty, covenant or agreement set forth in this Agreement) (collectively, a "Change"), that has had or would reasonably be expected to (x) have a material adverse effect upon the condition (financial or otherwise), business, or results of operations of the Company Group, taken as a whole or (y) prevent, hinder or delay the ability of the Company to consummate the transactions contemplated by this Agreement; provided, however, that any adverse Change arising from or related to the following (by itself or when aggregated or take together with any and all other Changes) shall not be deemed to be or constitute a Material Adverse Effect and shall not be taken into account in determining whether a Material Adverse Effect has occurred: (i) Changes affecting the economy generally or affecting financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index, or changes in interest rates or exchange rates), (ii) Changes that are generally applicable to the industries or markets in which the Company Group operates (including increases in the cost of products, supplies and materials

purchased from third party suppliers), (iii) any Changes to national or international political conditions, including the engagement or escalation by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or escalation of any military or terrorist attack upon the United States or any other country, or any of their respective territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or any other country, (iv) Changes in weather, meteorological conditions or climate, pandemics, or natural disasters (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences) affecting the business of the Company Group, (v) Changes in GAAP, (vi) Changes in any Applicable Laws (including Healthcare Laws) issued by any Governmental Body (or Changes in the interpretation thereof) or any action required to be taken under any Applicable Law (actual or proposed), including any amendment or repeal of the Patient Protection and Affordable Care Act of 2010 (Pub. Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. Law 111-152), (vii) the entry into, announcement or pendency of this Agreement, or the transactions contemplated hereby, and including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners, employees, physicians, medical professionals or other clinical providers of the Company Group due to the announcement and performance of this Agreement (provided, that the exception in this clause (vii) shall not prevent or otherwise affect a determination that any Change in connection with a breach of any representation or warranty of the Company in ARTICLE 3 has resulted in or contributed to a Material Adverse Effect), (viii) any failure, in and of itself, by the Company Group to meet any internal or published projections, forecasts, predictions or guidance relating to revenues, income, cash position, cash-flow or other financial measure (provided, that the exception in this clause (viii) shall not prevent or otherwise affect a determination that any Change underlying such failure not otherwise excluded from the definition of "Material Adverse Effect" has resulted in or contributed to a Material Adverse Effect), (ix) seasonal fluctuations in the business of the Company Group consistent with prior fiscal years, (x) any Changes to requirements, reimbursement rates, policies or procedures of third party payors (including Government Programs) or accreditation commissions or organizations that are generally applicable to hospitals or health care facilities, (xi) the taking of any action or omission required by Section 5.1(b) or requested in writing or authorized in writing by Purchaser, including the completion of the transactions contemplated hereby and thereby (including the impact thereof on relations (contractual or otherwise) with, or actual, potential or threatened loss or impairment of, employees, customers, suppliers, distributors, physicians, medical professionals or other clinical providers, or others having relationships with the Company or any of its Subsidiaries) (provided, that the exception in this clause (xi) shall not prevent or otherwise affect a determination that any Change in connection with a breach of any representation or warranty of the Company in ARTICLE 3 has resulted in or contributed to a Material Adverse Effect), and (xii) any action taken by Purchaser, Merger Sub or any of their respective Affiliates that is not contemplated by this Agreement, except to the extent such Change arising from or related to the matters described in clauses (i) through (iv) disproportionately affects the Company Group, taken as a whole, as compared to other companies operating in the industries and markets in which the Company Group operates (but only to the extent of the incremental disproportionate effect on the Company Group, taken as a whole, compared to other companies operating in the industries and markets in which the Company Group operates).

"Material Contracts" means each Contract listed, or required to be listed, on Schedule 3.12(a).

"Material Healthcare Licenses" means all material registrations, certifications, certificates of need, accreditations, licenses, and permits issued or required by any Governmental Body necessary for the conduct of the business of the Company and each Subsidiary of the Company as presently conducted.

"Medicaid" means Title XIX of the Social Security Act.

"Medicare" means Title XVIII of the Social Security Act.

"Mesa Receivable Amount" means an amount equal to $2,252,814, plus accrued but unpaid interest after April 30, 2017 and less any amount received after the date hereof and prior to Closing, in respect of that certain Promissory Note, dated as of March 1, 2015, owing to NSH Mesa, Inc., an indirect wholly owned Subsidiary of the Company, by Arizona Spine and Joint Hospitals, LLC, an indirect Joint Venture.

"Non-NSH Party" means, with respect to a particular Joint Venture, (i) each member of such Joint Venture, other than the Company and its Wholly-Owned Subsidiaries, and (ii) each Affiliate of the Persons identified in clause (i), other than the Company and its Wholly-Owned Subsidiaries and the Securityholders.

"Non-NSH Party's Applicable Percentage" means, with respect to each Joint Venture, the percentage ownership of the applicable Non-NSH Party in such Joint Venture as of the Adjustment Time, which shall, together with all other applicable Non-NSH Parties, always be equal to 100% minus the percentage ownership of the Company and its Wholly-Owned Subsidiaries in such Joint Venture, in each case, as of the Adjustment Time.

"NSH Wyoming" means NSH Wyoming, Inc., a Wyoming corporation.

"Option Agreements" means the written option agreements of the Company pursuant to which any Company Options have been issued.

"Option Holders" means holders of Company Options as of immediately prior to the Effective Time.

"Organizational Documents" means: (i) the articles or certificate of incorporation, the bylaws and any stockholders agreement of a corporation; (ii) the partnership agreement and any statement of partnership of a general partnership; (iii) the limited partnership agreement and the certificate of limited partnership of a limited partnership; (iv) the certificate of formation and the limited liability company agreement or, if applicable, operating agreement of a limited liability company; (v) any similar charter or operating document adopted or filed in connection with the creation, formation or organization of any Person who is not an individual; and (vi) any amendment to any of the foregoing.

"Per Share Merger Consideration" means an amount equal to (i) the Closing Per Share Merger Consideration, plus (ii) the Adjustment Amount Per Share, plus (iii) (A) any amounts that become payable to the Common Stockholders and Option Holders from the Adjustment Escrow Fund, the Indemnity Escrow Fund, the Sequoia Matter Escrow Fund and the Sellers' Representative Expense Amount divided by (B) the number of Fully-Diluted Shares.

"Permitted Liens" means: (i) Liens for Taxes and other governmental charges and assessments that are not yet due and payable or that are being contested in good faith by appropriate proceedings for which adequate reserves are maintained on the Latest Balance Sheet, (ii) Liens of carriers, warehousemen, mechanics, workmen, materialmen and repairmen and other similar Liens arising in the ordinary course of business and consistent with past practice for sums not yet due and payable, (iii) purchase money security interests and other Liens relating to leases, (iv) with respect to Real Property, any and all matters of record in the jurisdiction where the Real Property is located, including utility, municipal and zoning easements and similar restrictions, if any, easements and rights of way, and any conditions that would be disclosed by a survey or physical inspection of the Real Property, (v) any Liens in favor of the Company or any of its Subsidiaries, (vi) pledges or deposits to secure obligations under

workers' compensation laws or similar legislation or to secure public or statutory obligations, (vii) good faith pledges and deposits to secure the performance of bids, trade Contracts, leases, surety and appeal bonds, performance bonds and other obligations of a similar nature, in each case in the ordinary course of business, (viii) Liens in the ordinary course of business to secure obligations to landlords, lessors or renters under leases or rental agreements or underlying leased property, (ix) Liens that, individually or in the aggregate, do not, and would not reasonably be expected to materially detract from the value or materially interfere with the present use of the property or asset subject thereto or affected thereby, and (x) Liens created by the applicable Organizational Documents of any Person.

"Person" shall be construed broadly and shall include any individual, corporation, partnership, limited liability company, firm, joint venture, association, trust, Governmental Body or other entity, whether or not a legal entity.

"Post-Closing Tax Period" means any Tax period ending after the Closing Date and the portion of any Straddle Period beginning after the Closing Date.

"Pre-Closing Tax Period" means any Tax period ending on or before the Closing Date and that portion of any Straddle Period ending on (and including) the Closing Date.

"Preferred Stock" means the Company's Series A Preferred Stock, par value $0.01.

"Preferred Stockholder" means a holder of Preferred Stock.

"Pro Rata Portion" means, with respect to each Securityholder, the amount, expressed as a percentage, equal to (a) the number of shares of Common Stock held by such Securityholder as of immediately prior to the Effective Time (assuming the exercise in full of any In-the-Money Options held by such Securityholder immediately prior to the Effective Time), divided by (b) the number of Fully-Diluted Shares.

"Professional Services Agreement" means that certain Professional Services Agreement dated February 3, 2011, by and between NSH (f/k/a National Specialty Hospitals Inc.) and IPC Management, as amended by that certain Amendment No.1 to Professional Services Agreement dated November 8, 2012, by and between NSH (f/k/a National Specialty Hospitals Inc.) and IPC Management.

"Purchaser Disclosure Schedule" means the disclosure schedule dated the date hereof regarding this Agreement that has been provided by Purchaser and Merger Sub to the Company.

"Purchaser Material Adverse Effect" means any Change that has had or would reasonably be expected to (i) have a material adverse effect on the ability of Purchaser or Merger Sub to perform its obligations under this Agreement or (ii) otherwise prevent, hinder or delay beyond the End Date the consummation of the transactions contemplated by this Agreement.

"R&W Insurance Policy" means any representations and warranties policy underwritten by R&W insurance providers and issued to Purchaser as the named insured at or prior to the Closing.

"Referral Source" means any physician, other licensed healthcare professional, or any other Person who is in a position to refer patients or other business to any Facility or member of the Company Group.

"Representatives" means, with respect to a Person, such Person's officers, directors, managers, employees, investment bankers, attorneys, accountants, consultants and other authorized agents, advisors or representatives.

"Required Information" means all financial and other information of the Company and its Subsidiaries (including with respect to any acquired entities) contemplated by Section 7.5(d)(iii).

"Securityholders" means, collectively, the Stockholders and the Option Holders.

"Seller Expenses" means all fees and expenses payable in connection with the preparation, execution and delivery of this Agreement and the other Transaction Documents, or the consummation of the transactions contemplated hereby or thereby, in each case by any member of the Company Group or the Securityholders or their Affiliates that have not been paid as of the Closing, including, without duplication, (a) any management or monitoring fees payable by the Company or any of its Subsidiaries under the Professional Services Agreement that have not been paid as of the Closing, (b) all fees and disbursements of attorneys, investment bankers, accountants and other professional advisors, which, in each case, have been incurred by the Company or any of its Subsidiaries in connection with the preparation, execution and consummation of this Agreement or any other Transaction Document and the transactions contemplated hereby and thereby but have not been paid as of the Closing, (c) any sale, retention, transaction, change of control, or similar bonuses or payments or other compensatory amounts (including severance obligations other than those triggered by terminations initiated by the Purchaser) that are payable to employees, consultants, officers, directors or other service providers of the Company Group as a result of the consummation of the transactions contemplated by the Transaction Documents (including any retention amounts that are related to the transactions contemplated by this Agreement even if such payments are also conditioned on continued employment or service for a period of time following the Closing), together with all employment, social and other Taxes payable by the Company Group in connection therewith, (d) all employment, social and other Taxes payable by the Company Group in connection with the payment of any amounts hereunder to holders of Company Options, including the Option Consideration, (e) all brokers and finders fees incurred by the Company Group in connection with the transactions contemplated by this Agreement or any other Transaction Document, including any such fees of J.P. Morgan Securities LLC, (f) all Transfer Taxes, in each case, to the extent unpaid as of the Adjustment Time, and (g) all severance obligations payable pursuant to the employment agreement set forth on Exhibit F. Notwithstanding the foregoing, "Seller Expenses" shall not include any amounts reflected in Indebtedness or Working Capital for purposes of the Pre-Closing Statement.

"Seller Related Party" means the Company, and each of its Stockholders, partners, members, Affiliates, directors, officers, employees, controlling Persons and agents.

"Sellers' Representative" means IPC / NSH, L.P., who will be appointed by each of the Securityholders pursuant to Section 11.2 hereof and the Letters of Transmittal or the Option Surrender Letters, as applicable, to act on their behalf for the purposes and on the terms specified therein.

"Sellers' Representative Expense Amount" means an amount equal to $500,000, to be held and distributed by the Sellers' Representative pursuant to Section 11.2 hereof.

"Sequoia" means Sequoia Surgical Pavilion LLC, a California limited liability company.

"Sequoia Divestiture Amount" shall mean (a) the product of (i) the percentage ownership of Sequoia represented by the Equity Securities of Sequoia required to be divested by the Company and its Subsidiaries, and (ii) $19,700,056, minus (b) any cash proceeds actually received by Purchaser and its Subsidiaries in respect of such divestiture (net of Taxes actually imposed with respect to such disposition in the taxable year of such disposition, computed on a "with and without" basis).

"Sequoia Losses" means any and all Losses incurred after the Closing by the Company Group in connection with the Sequoia Matter; provided, however, in the event that the Company or any of its Subsidiaries are required by the Order of a Governmental Body or any binding settlement agreement to (i) divest any or all of its Equity Securities in Sequoia, the amount of Losses in respect of such divestiture shall be the Sequoia Divestiture Amount, or (ii) divest any or all of its Equity Securities in Aspen, the amount of Losses in respect of such divestiture shall be the Aspen Divestiture Amount, plus, in each of clauses (i) and (ii), any other Losses incurred after the Closing by the Company Group in connection with the Sequoia Matter.

"Sequoia Matter" means the dispute and claims relating to the matters described in that certain complaint, filed March 2, 2017 in the Superior Court of the State of California for the county of Contra Costa, by Dr. Joseph Narloch, Dr. Louay Toma, and Dr. Tim Scott, as individual members and derivatively on behalf of Sequoia against NSH Management of California, Inc., a California corporation, and Sequoia (as a nominal defendant only).

"Sequoia Matter Escrow Account" means the segregated account of the Escrow Agent in which the Sequoia Matter Escrow Amount is deposited at Closing.

"Sequoia Matter Escrow Amount" means $10,000,000.

"Sequoia Matter Escrow Fund" means the amount contained from time to time in the Sequoia Matter Escrow Account.

"Series A Preferred Shares" means shares of Preferred Stock.

"Shareholder's Agreement" means that certain Stockholders' Agreement, dated as of February 3, 2011, by and among the Company and each of the Stockholders party thereto, as amended, modified or supplemented from time to time in accordance with its terms.

"Shares" means shares of Common Stock and the Series A Preferred Shares.

"Solvent" means, when used with respect to Purchaser and the Company Group, that, as of any date of determination (a) the amount of the "fair saleable value" of the assets of Purchaser and the Company Group will, as of such date, exceeds (i) the value of all "Liabilities of Purchaser and the Company Group, including contingent and other Liabilities," as of such date, as such quoted terms are generally determined in accordance with federal Applicable Laws governing determinations of the insolvency of debtors, and (ii) the amount that will be required to pay the probable Liabilities of Purchaser and the Company Group on their existing debts (including contingent and other Liabilities) as such debts become absolute and mature, (b) Purchaser and the Company Group will not have, as of such date, an unreasonably small amount of capital for the operation of the businesses in which they intend to engage or propose to be engaged following the Closing Date, and (c) Purchaser and the Company Group will be able to pay their Liabilities, including contingent and other Liabilities, as they mature. For purposes of this definition, "not have, as of such date, an unreasonably small amount of capital for the operation of the businesses in which it is engaged or proposed to be engaged" and "able to pay their Liabilities, including contingent and other Liabilities, as they mature" means that Purchaser and the Company Group will be able to generate enough cash from operations, asset dispositions or refinancing, or a combination thereof, to meet its obligations as they become due.

"Stockholder" means a Common Stockholder or a Preferred Stockholder.

"Straddle Period" means any Tax period beginning before or on and ending after the Closing Date.

"Sub-Advisory Agreement" means that certain Sub-Advisory Agreement to be entered into between NSH and NSH Wyoming concurrently with the consummation of the Interim Restructuring, in substantially the form attached hereto as Exhibit G.

"Subsidiary," or "Subsidiaries" where the context requires, means, with respect to any Person, any corporation, limited liability company, partnership, association, or other business entity of which (i) if a corporation, a majority of the total voting power of shares of stock entitled (without regard to the occurrence of any contingency) to vote in the election of directors is at the time owned, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or (ii) if a limited liability company, partnership, association, or other business entity (other than a corporation), a majority of the membership, partnership or other similar ownership interests thereof is at the time owned, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof and for this purpose, a Person or Persons own a majority ownership interest in such a business entity (other than a corporation) if such Person or Persons shall be allocated a majority of such business entity's gains or losses or shall be a, or control any, managing director, managing member, general partner or other managing Person of such business entity (other than a corporation). For the avoidance of doubt, for purposes of this Agreement (x) each Consolidated Subsidiary, each Wholly-Owned Subsidiary and each Joint Venture shall be a "Subsidiary" of the Company and (y) neither NSH Wyoming nor Casper shall be a "Subsidiary" of any member of the Company Group.

"Target Working Capital" means $41,646,000.

"Tax" or "Taxes" means: any and all taxes, charges, fees, imposts, levies or other assessments, including all net income, franchise, profits, gross receipts, capital, sales, use, ad valorem, value added, transfer, transfer gains, inventory, escheat, capital stock, license, withholding, payroll, employment, social security, unemployment, excise, severance, stamp, occupation, unclaimed property taxes, real or personal property, and estimated taxes, customs duties, fees, assessments and charges of any kind whatsoever, together with any interest and any penalties, fines, additions to tax or additional amounts thereon, imposed by any taxing authority (federal, state, local or foreign) and including any obligation to indemnify or otherwise assume or succeed to the Tax Liability of any other Person by Contract or by Applicable Law outside the ordinary course of business.

"Tax Returns" means all returns, declarations, reports, claims for refund, estimates, information returns and statements filed or required to be filed in respect of any Taxes, including any schedule or attachment thereto, and including any amendment thereof.

"Trade Secrets" means any information which (i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other Persons who can obtain economic value from its disclosure or use and (ii) is subject to reasonable efforts to maintain its secrecy or confidentiality; the term may include but is not limited to inventions, processes, know-how, formulas, computer software, and mask works which are not patented and are not protected by registration (e.g., under copyright or mask work laws); lists of customers, suppliers, employees, physicians, medical professionals and other clinical providers, and data related thereto; business plans and analyses; and financial data.

"Transaction Documents" means this Agreement and each other agreement, document, instrument or certificate contemplated by this Agreement or to be executed in connection with the consummation of the transactions contemplated hereby.

"Treasury Regulations" means the regulations promulgated under the Code, as such regulations may be amended from time to time.

"TRICARE" means the program administered pursuant to 10 U.S.C. Section 1071 et. seq, and the regulations promulgated pursuant to such statutes.

"Wholly-Owned Subsidiary" means any Subsidiary of the Company that is directly or indirectly 100% owned by the Company.

"Working Capital" means, with respect to the Company, an amount (which amount may be positive or negative) equal to (a) the Current Assets, minus (b) the Current Liabilities, calculated as of the Adjustment Time and in accordance with the Example Working Capital Calculation and the Accounting Principles; provided, however, that to the extent there is a conflict between the Accounting Principles and the Example Working Capital Calculation, the Example Working Capital Calculation shall prevail.

1.2 Terms Defined Elsewhere in this Agreement. For purposes of this Agreement, the following terms have meanings set forth at section indicated:

Term	Section
Accountant	2.12(c)
Agreement	Preamble
Alternative Financing	7.5(c)
Alternative Financing Commitments	7.5(c)
Antitrust Laws	7.2(b)
Bain Common Investment	Recitals
Bain Investment	Recitals
Bain Preferred Investment	Recitals
Benefit Plans	3.15(a)
Certificate of Merger	2.2
Change	1.1
Closing	2.3
Closing Date	2.3
Closing Statement	2.12(a)
Common Certificate	2.9(c)
Common Stock Consideration	2.9(c)
Company	Preamble
Company Intellectual Property	3.13(b)
Company IT	3.13(d)
Company Owned IP	3.13(b)
Company Related Parties	9.2
D&O Tail Insurance	6.2(b)
Debt Financing	4.4
Debt Financing Commitments	4.4
Debt Financing Documents	7.5(a)
DGCL	Recitals
Direct Claim	10.5(b)

Term	Section
Dissenting Shares	2.13(c)
DOJ	7.2(a)
Effective Time	2.2
End Date	9.1(b)
Equity Financing	4.4
Equity Financing Commitment	4.4
Equity Financing Source	Recitals
ERISA	3.15(a)
Estimated Cash and Cash Equivalents	2.11
Estimated Closing Date Company Indebtedness	2.11
Estimated Closing Date Joint Venture Indebtedness	2.11
Estimated Mesa Receivable Amount	2.11
Estimated Seller Expenses	2.11
Estimated Working Capital	2.11
Executive Agreements	3.12(a)
	(xi)
Final Cash and Cash Equivalents	2.12(d)
Final Company Indebtedness	2.12(d)
Final Joint Venture Indebtedness	2.12(d)
Final Mesa Receivable Amount	2.12(d)
Final Seller Expenses	2.12(d)
Final Working Capital	2.12(d)
Financial Statements	3.6(b)
Financing	4.4
Financing Commitments	4.4
FTC	7.2(a)
HIPAA	1.1
Historic Audited Financial Statements	3.6(a)
Indemnitees	6.2(a)
Indemnitors	6.2(b)
Indemnity Escrow Release Date	10.7(a)
Intercompany Account Balances	3.6(d)
Interim Financial Statements	3.6(b)
Latest Balance Sheet	3.6(b)
Latest Balance Sheet Date	3.6(b)
Leased Real Property	3.16(b)(i)
Leases	3.16(b)
	(ii)
Letter of Transmittal	2.6(b)
Merger	Recitals
Merger Sub	Preamble
NSH	Recitals
NSH Wyoming	Recitals
Objection Notice	2.12(c)
Option Consideration	2.10(b)
Option Surrender Letter	2.6(d)
Orders	3.10(b)
Owned Real Property	3.16(a)
Paying Agent	2.13(a)
Payment Spreadsheet	2.11
Payoff Letters	5.3

Term	Section
Permits	3.11
Physician Contracts	3.20(b)
Post-Closing Representation	11.16
Pre-Closing Statement	2.11
Preferred Certificate	2.9(b)
Preferred Stock Consideration	2.9(b)
Protected Period	6.3(a)
Purchaser	Preamble
Purchaser Plans	6.3(b)
Purchaser Related Parties	9.2
Real Property	3.16(b)(i)
Related Parties	9.2
Related Party	9.2
Released Parties	11.17
Releasing Parties	11.17
Restricted Commitment Amendments	7.5(a)
Section 280G	5.5
Sequoia Escrow Release Date	10.7(b)
Stark Law	1.1
Surviving Corporation	2.1
Tax Claim	7.8(c)
Tax Statement	7.8(b)(ii)
Termination Fee	9.2
Third-Party Payor	3.10(h)
Transfer Taxes	7.8(a)
Waived 280G Benefits	5.5
Waiving Parties	11.16
Written Consent	Recitals
Wyoming Distribution	Recitals
Wyoming Stock	Recitals

1.3 Other Definitional and Interpretive Matters. Unless otherwise expressly provided herein, for purposes of this Agreement, the following rules of interpretation shall apply:

(a) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded. If the last day of such period is a non-Business Day, the period in question shall end on the next succeeding Business Day.

(b) Any reference in this Agreement to $ shall mean U.S. dollars.

(c) The Exhibits and Schedules to this Agreement are hereby incorporated and made a part hereof and are an integral part of this Agreement. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(d) Any reference in this Agreement to gender shall include all genders, and words imparting the singular number only shall include the plural and vice versa.

(e) The provision of a Table of Contents, the division of this Agreement into Articles, Sections and other subdivisions and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement. All references in this Agreement to any "Article" or "Section" are to the corresponding Article or Section of this Agreement unless otherwise specified.

(f) The words such as "herein," "hereinafter," "hereof," and "hereunder" refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires.

(g) The word "including" or any variation thereof means "including, without limitation" and shall not be construed to limit any general statement that it follows to the specific or similar items or matters immediately following it.

(h) "Writing", "written" and comparable terms refer to printing, typing and other means of reproducing words (including electronic media) in a visible form.

(i) Except as the context may otherwise require, any statute defined or referred to herein or in any agreement or instrument that is referred to herein means such statute as from time to time amended, qualified or supplemented, including by succession of comparable successor statutes and all attachments thereto and instruments incorporated therein.

(j) References to any Person include the successors and permitted assigns of that Person.

(k) Any dollar threshold set forth herein shall not be used as a benchmark for determination of what is "material" or a "Material Adverse Effect" or any phrase of similar import under this Agreement.

(l) Except as the context may otherwise require, the word "or" shall not be exclusive and shall mean "and/or".

(m) The parties acknowledge that certain Persons are both Common Stockholders and Preferred Stockholders and, notwithstanding anything to the contrary contained herein, any provisions applicable to Preferred Stockholders will be applicable to such Persons in their capacity as Preferred Stockholders and only with respect to their shares of Preferred Stock, and any provisions of this Agreement applicable to Common Stockholders will be applicable to such Persons in their capacity as Common Stockholders and only with respect to their shares of Common Stock.

(n) The parties agree that the terms and language of this Agreement were the result of negotiations between the parties and their respective advisors and, as a result, there shall be no presumption that any ambiguities in this Agreement shall be resolved against any party. Any controversy over construction of this Agreement shall be decided without regard to events of authorship or negotiation.

ARTICLE 2
THE MERGER; CLOSING

2.1 Merger; Surviving Corporation. Upon the terms and subject to the conditions set forth in this Agreement, and in accordance with the terms of the DGCL, at the Effective Time, Merger Sub shall be merged with and into the Company. As a result of the Merger, the Company shall continue as the surviving company of the Merger (the "Surviving Corporation") and shall continue its corporate existence under the laws of the State of Delaware, and the separate corporate existence of Merger Sub shall cease.

2.2 Effective Time. At the Closing, the Company, Purchaser and Merger Sub shall cause a certificate of merger, in a form mutually agreeable to Purchaser and the Company (the "Certificate of Merger"), to be properly executed and filed with the Secretary of State of the State of Delaware in accordance with the terms and conditions of the DGCL and shall take all such other actions as may be required by Applicable Laws to make the Merger effective as promptly as practicable. The Merger shall become effective at the time that the Certificate of Merger is accepted for filing by the Secretary of State of the State of Delaware or at such later date and time as is specified in the Certificate of Merger (such time and date being referred to herein as the "Effective Time").

2.3 Closing. The closing of the Merger (the "Closing") will take place at 10:00 a.m., New York, New York time, on the last Business Day of the first month in which the conditions set forth in ARTICLE 8 are satisfied (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction of such conditions at the Closing); provided, however, that if the Marketing Period has not begun or ended at the time of the satisfaction or waiver of the conditions set forth in ARTICLE 8 (other than those conditions that are to be satisfied at the Closing), the Closing shall occur on the earlier to occur of (a) a date during the Marketing Period specified by Purchaser on no less than three (3) Business Days' notice to the Company, which date shall be the last Business Day of the month thereof, and (b) the last Business Day of the month during which the Marketing Period expires (subject in each case to the satisfaction or waiver of all the conditions set forth in ARTICLE 8), or on such other date as is mutually agreed to in writing by the parties hereto (the time and date of the Closing is herein called the "Closing Date"). The Closing shall be held by the remote exchange of documents, unless another method is agreed to in writing by the parties hereto.

2.4 Effects of the Merger. From and after the Effective Time, the Merger shall have the effects set forth in this Agreement, the Certificate of Merger and the applicable provisions of the DGCL. Without limiting the generality of the foregoing and subject thereto, by virtue of the Merger and without further act or deed, at the Effective Time all of the property, rights, privileges, immunities, powers and franchises of the Company and Merger Sub shall vest in the Surviving Corporation, and all debts, Liabilities, obligations and duties of the Company and Merger Sub shall become the debts, Liabilities, obligations and duties of the Surviving Corporation.

2.5 Closing Deliveries of the Parties. In addition to any other documents to be delivered under other provisions of this Agreement, at the Closing:

(a) The Company and Merger Sub shall cause the Certificate of Merger to be executed, acknowledged and filed with the Secretary of State of the State of Delaware.

(b) Purchaser, the Sellers' Representative and the Escrow Agent shall execute and deliver the Escrow Agreement;

(c) Purchaser shall deliver to the Company each of the following:

(i) a certificate executed by or on behalf of Purchaser and Merger Sub as to the satisfaction of the conditions set forth in Sections 8.3(a) and 8.3(b); and

(ii) evidence of the procurement of the D&O Tail Insurance.

(d) The Company shall deliver to Purchaser each of the following:

(i) a certificate executed by or on behalf of the Company as to the satisfaction of the conditions set forth in Sections 8.2(a), and 8.2(b);

(ii) a certificate prepared pursuant to Treasury Regulation Section 1.1445-2(c)(3)(i) and dated as of the Closing Date, signed under penalty of perjury and in form and substance as required under Treasury Regulation Section 1.897-2(h), stating that an interest in the Company is not a "United States real property interest" within the meaning of Code Section 897(c)(2) during the applicable period specified in Code Section 897(c)(1)(A)(ii)(II), together with a copy of the notice of such certificate to be sent by Purchaser to the IRS in accordance with the provisions of Treasury Regulation Section 1.897-2(h)(2), each in form and substance reasonably acceptable to Purchaser; provided, however, that Purchaser's sole remedy for the Company's failure to make such delivery shall be to withhold on any payments to the extent required by, and in accordance with, Applicable Law;

(iii) evidence of termination of the Shareholder's Agreement;

(iv) evidence of the termination of the Professional Services Agreement; and

(v) a copy of the resolutions of the board of directors of NSH authorizing the Interim Restructuring, together with evidence of the consummation of the Interim Restructuring as of immediately prior to the Closing.

(e) Purchaser, Merger Sub and the Company shall make such other deliveries as are required by ARTICLE 8.

2.6 Closing Payments. Subject to the terms and conditions set forth in this Agreement, and prior to adjustment pursuant to Section 2.12, at the Closing:

(a) Purchaser shall pay, on behalf of the Company, to such accounts designated in any Payoff Letters with respect to the Company Indebtedness delivered at least three (3) Business Days prior to Closing, the amount set forth therein;

(b) Purchaser shall cause the Paying Agent to pay, with respect to each Preferred Stockholder who shall have delivered to the Paying Agent, at least three (3) Business Days prior to the Closing Date, a properly completed letter of transmittal substantially in the form of Exhibit B hereto (each, a "Letter of Transmittal"), the Liquidation Value with respect to the Series A Preferred Shares held by such Preferred Stockholder, which such amount shall be payable by wire transfer of immediately available funds on the Closing Date to the account designated in such Preferred Stockholder's Letter of Transmittal;

(c) Purchaser shall cause the Paying Agent to pay, with respect to each Common Stockholder who shall have delivered to the Paying Agent, at least three (3) Business Days prior to the Closing Date, a properly completed Letter of Transmittal, an amount equal to the product of the number of shares of Common Stock held by such Stockholder and the Closing Per Share Merger Consideration (if any), in each case, which such amounts shall be payable by wire transfer of immediately available funds on the Closing Date to the account designated in such Common Stockholder's Letter of Transmittal;

(d) Purchaser shall pay to the Company, by wire transfer of immediately available funds, the Closing Option Consideration payable in respect of each In-the-Money Option, for the benefit of each Option Holder holding In-the-Money Options who shall have delivered to the Company, at least three (3) Business Days prior to the Closing Date, a duly executed and properly completed option surrender letter substantially the form attached as Exhibit C hereto (each, an "Option Surrender Letter");

(e) Purchaser shall pay, on behalf of the Company, by wire transfer of immediately available funds, the Estimated Seller Expenses to the applicable recipients thereof as set forth on the Pre-Closing Statement;

(f) Purchaser shall pay to the Escrow Agent, by wire transfer of immediately available funds, an amount equal to the Adjustment Escrow Amount, the Indemnity Escrow Amount and the Sequoia Matter Escrow Amount to be held in the applicable Escrow Accounts in accordance with the terms of this Agreement and the Escrow Agreement; and

(g) Purchaser shall pay to the Sellers' Representative, by wire transfer of immediately available funds to an account designated in writing by the Sellers' Representative at least three (3) Business Days prior to the Closing, the Sellers' Representative Expense Amount, which shall be used to pay costs, fees and expenses incurred by or for the benefit of the Securityholders on or after the Closing Date and shall be paid or distributed at the direction of the Sellers' Representative as provided in the Letters of Transmittal or the Option Surrender Letters, as applicable.

2.7 Organizational Documents of the Surviving Corporation.

(a) From and after the Effective Time, the certificate of incorporation of the Company as in effect immediately prior to the Effective Time, as amended pursuant to the Certificate of Merger, shall be the certificate of incorporation of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and Applicable Law.

(b) From and after the Effective Time, the bylaws of Merger Sub as in effect immediately prior to the Effective Time shall be adopted as the bylaws of the Surviving Corporation until thereafter amended in accordance with the provisions thereof and Applicable Law.

2.8 Directors and Officers of the Surviving Corporation. From and after the Effective Time, (i) the directors of Merger Sub immediately prior to the Effective Time shall be the initial directors of the Surviving Corporation and (ii) the officers of the Company immediately prior to the Effective Time shall be the initial officers of the Surviving Corporation, in each case, until their respective successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the certificate of incorporation and the bylaws of the Surviving Corporation and Applicable Law as in effect from time to time.

2.9 Effect of the Merger on Capital Stock of the Constituent Corporations. At the Effective Time, by virtue of the Merger and without any action on the part of any party:

(a) Conversion of Capital Stock of Merger Sub. Each issued and outstanding share of common stock, par value $0.001 per share, of Merger Sub issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid and nonassessable share of common stock, par value $0.001 per share, of the Surviving Corporation.

(b) Conversion of Company Series A Preferred Shares. Each Series A Preferred Share issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 2.9(d) and the Dissenting Shares) shall be converted into the right to receive, at such time and in the manner provided in Section 2.6, and subject to Section 2.13, the Liquidation Value with respect to such Series A Preferred Share. As of the Effective Time, all such Series A Preferred

Shares shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate (a "Preferred Certificate"), which immediately prior to the Effective Time represented any such Series A Preferred Shares, shall thereafter cease to have any rights with respect thereto, except the right to receive the consideration set forth in this Section 2.9(b) upon surrender of such Preferred Certificate in accordance with Section 2.13(b). The aggregate consideration to which Preferred Stockholders become entitled pursuant to this Section 2.9(b) is collectively referred to herein as the "Preferred Stock Consideration".

(c) Conversion of Company Common Stock. Each share of Common Stock issued and outstanding immediately prior to the Effective Time (other than shares to be canceled in accordance with Section 2.9(d) and the Dissenting Shares) shall be converted into the right to receive, at such time and in the manner provided in Section 2.6 and Section 2.12, and subject to Section 2.13, Section 7.8(d) and Section 10.7, the Per Share Merger Consideration (if any). As of the Effective Time, all such shares of Common Stock shall no longer be outstanding and shall automatically be canceled and shall cease to exist, and each holder of a certificate (a "Common Certificate"), which immediately prior to the Effective Time represented any such shares of Common Stock, shall thereafter cease to have any rights with respect thereto, except the right to receive the consideration set forth in this Section 2.9(c) upon surrender of such Common Certificate in accordance with Section 2.13(b). The aggregate consideration to which Common Stockholders become entitled pursuant to this Section 2.9(c) is collectively referred to herein as the "Common Stock Consideration".

(d) Cancellation of Company Treasury Stock. Each Share held in the treasury of the Company immediately prior to the Effective Time shall be canceled and extinguished without any conversion thereof and no payment shall be made or consideration delivered with respect thereto.

2.10 Treatment of Company Options.

(a) Prior to the Effective Time, the Company shall take such action as is necessary, in accordance with the terms of the Company Option Plan and the Option Agreements, to (A) cause all outstanding Company Options that would not otherwise be vested and exercisable immediately prior to the Effective Time to become fully vested and exercisable as of immediately prior to the Effective Time, and (B) give effect to the actions contemplated by this Agreement, including Section 2.10(b).

(b) By virtue of the transactions contemplated hereby, immediately prior to the Effective Time, (i) each Company Option that remains unexercised and is not an In-the-Money Option shall automatically be extinguished and cancelled without the right to receive any consideration therefor, and (ii) each In-the-Money Option that remains unexercised shall be cancelled and converted into the right to receive, with respect to each share of Common Stock underlying such In-the Money Option, an amount equal to the product of (A) the number of shares of Common Stock subject to such In-the-Money Option, and (B) the excess of (I) the Per Share Merger Consideration; over (II) the per share exercise price of such In-the-Money Option; less (III) any applicable withholding or other Taxes, upon delivery of a duly executed and properly completed Option Surrender Letter, as part of the Company's normal payroll in the first full payroll period ending at least two (2) Business Days following the Closing, without interest thereon, subject to the terms and conditions of this Agreement. The aggregate consideration to which Option Holders become entitled pursuant to this Section 2.10 is collectively referred to herein as the "Option Consideration".

(c) Prior to the Closing Date, the Company shall take, or cause to be taken, all such actions as may be required under the Company Option Plan to effectuate the foregoing provisions of this Section 2.10 and to ensure that, from and after the Closing, each outstanding Company Option is cancelled as provided in this Section 2.10 and each Option Holder shall have no rights with respect thereto except the right to receive, with respect to In-the-Money Options only, its applicable portion of the Option Consideration (without interest) and the right to receive any applicable amounts pursuant to Sections 2.6 and 2.12, subject to Section 7.8(d) and Section 10.7.

2.11 Pre-Closing Statement. At least four (4) Business Days prior to the Closing Date, the Company shall prepare and deliver (together with reasonable supporting details) to Purchaser a written statement (the "Pre-Closing Statement"), which shall set forth (A) the Company's good faith estimate of (i) Closing Date Cash and Cash Equivalents ("Estimated Cash and Cash Equivalents"), (ii) Working Capital (the "Estimated Working Capital"), (iii) the Closing Date Company Indebtedness (the "Estimated Closing Date Company Indebtedness"), (iv) the Closing Date Joint Venture Indebtedness ("Estimated Closing Date Joint Venture Indebtedness"), (v) the Seller Expenses ("Estimated Seller Expenses") and wire instructions for the payment thereof, (vi) the Mesa Receivable Amount (the "Estimated Mesa Receivable Amount"), and (vii) the resulting Closing Date Merger Consideration and the Closing Per Share Merger Consideration based upon such items, and (B) the Liquidation Value with respect to the Series A Preferred Shares as of immediately prior to the Effective Time. Except as otherwise provided herein, the Pre-Closing Statement shall be prepared without giving effect to the transactions contemplated by the Transaction Documents. Concurrently with the delivery of the Pre-Closing Statement, the Company shall deliver to Purchaser a payment spreadsheet (the "Payment Spreadsheet"), which shall contain (x) with respect to each Stockholder (A) the name and address of such Stockholder, if available, (B) the number and class of Shares held by such Stockholder, and (C) the consideration that such Stockholder is entitled to receive pursuant to Section 2.6, and (y) with respect to each Option Holder (A) the name of such Option Holder, (B) the exercise price per share and the number of shares of Common Stock underlying the Options held by such Option Holder, and (C) the consideration that such Option Holder is entitled to receive pursuant to Section 2.6. The Company shall make a good faith effort to resolve any reasonable objections or disputes of the Purchaser regarding the calculations in the Pre-Closing Statement or the information in the Payment Spreadsheet.

2.12 Post-Closing Merger Consideration Adjustment and Payments.

(a) Delivery of Closing Statement. As promptly as practicable, but in no event later than seventy-five (75) days following the Closing, Purchaser shall in good faith prepare and deliver to the Sellers' Representative a written statement (the "Closing Statement"), which shall set forth Purchaser's calculation of (i) Working Capital, (ii) the Closing Date Company Indebtedness, (iii) the Closing Date Joint Venture Indebtedness, (iv) Seller Expenses, (v) the Mesa Receivable Amount, (vi) Closing Date Cash and Cash Equivalents and (vii) the resulting Final Merger Consideration based upon such items.

(b) Release of Undisputed Adjustment Escrow Amount. Subject to Section 2.12(e), if the Final Merger Consideration as reflected in the Closing Statement delivered by Purchaser pursuant to Section 2.12(a) is greater than or equal to the Closing Date Merger Consideration, Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release to each Securityholder (other than the Preferred Stockholders or any Stockholder in respect of Dissenting Shares) that has delivered to the Paying Agent a properly completed Letter of Transmittal or that has delivered to the Company a properly completed Option Surrender Letter, as applicable, such Securityholder's Pro Rata Portion of the Adjustment Escrow Fund as if such amount were being distributed pursuant to Section 2.12(e)(i); provided, that with respect to amounts to be released to Option Holders, such amounts shall be released to the Surviving Corporation and shall promptly be paid by the Surviving Corporation, through the Surviving Corporation's payroll system, to each such Option Holder, less any required withholding Taxes. In addition, (i) with respect to each Common Stockholder who shall have delivered to the Paying Agent a properly completed Letter of Transmittal, Purchaser shall promptly deliver to the Paying Agent for payment to each such Common Stockholder, an amount equal to the product of (x) the number of Fully-Diluted Shares held by such Common Stockholder and (y) the amount as reflected on the Closing

Statement delivered by Purchaser that is greater than the Closing Date Merger Consideration, divided by the number of Fully Diluted Shares, which amount shall be payable by wire transfer of immediately available funds to the account designated in such Stockholder's Letter of Transmittal and (ii) with respect to each Option Holder holding In-the-Money Options who shall have delivered to the Company a duly executed and properly completed Option Surrender Letter, Purchaser shall cause the Surviving Corporation to pay, through the Surviving Corporation's payroll system, to each such Option Holder, an amount equal to the product of (x) the number of shares of Common Stock subject to the In-the-Money Options held by such Option Holder and (y) the amount as reflected on the Closing Statement delivered by Purchaser that is greater than the Closing Date Merger Consideration, divided by the number of Fully Diluted Shares, less any required withholding Taxes. Subject to Section 2.12(e), if the Final Merger Consideration as reflected in the Closing Statement delivered by Purchaser pursuant to Section 2.12(a) is less than the Closing Date Merger Consideration, Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release to each Securityholder (other than the Preferred Stockholders or any Stockholder in respect of Dissenting Shares) that has delivered to the Paying Agent a properly completed Letter of Transmittal or that has delivered to the Company a properly completed Option Surrender Letter, as applicable, such Securityholder's Pro Rata Portion of an amount equal to the excess, if any, of (i) the entire Adjustment Escrow Amount over (ii) (x) the Closing Date Merger Consideration less (y) the Final Merger Consideration as reflected in the Closing Statement delivered by Purchaser pursuant to Section 2.12(a), to be paid to the Securityholders as if such amount were being distributed pursuant to Section (e)(ii).

(c) Objection Notice; Dispute Resolution Procedure. After receipt of the Closing Statement, the Sellers' Representative and its Representatives shall have reasonable access to all relevant books and records (including accountant work papers), accountants and employees of the Surviving Corporation to the extent required to complete its review of the Closing Statement. If, within sixty (60) days following the delivery of the Closing Statement, the Sellers' Representative has not given Purchaser notice of its objection to any item in the Closing Statement, the nature of such objection and the proposed amount for the item in dispute (an "Objection Notice"), then the Closing Statement shall be deemed final and binding on Purchaser, the Surviving Corporation and the Sellers' Representative (on behalf of all Securityholders). If the Sellers' Representative delivers an Objection Notice, then Purchaser and the Sellers' Representative shall consult in good faith to resolve the disputed items set forth in the Objection Notice and, if any disputed items have not been resolved within thirty (30) days following delivery of such notice, from and after such time either the Sellers' Representative or Purchaser may submit the remaining disputed items to Grant Thornton, LLP or, if such firm is unable to serve in such capacity, to such other nationally recognized independent public accountant that is mutually agreeable to the Sellers' Representative and Purchaser (the "Accountant") or, if no such agreement can be reached, the Sellers' Representative and Purchaser each shall, within ten (10) days thereof, select a candidate for the Accountant and the two (2) candidates so selected shall promptly select a third nationally recognized independent accounting firm which shall be appointed as the Accountant. The scope of the disputes to be resolved by the Accountant shall be limited to fixing mathematical errors and determining whether the items in dispute were determined in accordance with this Agreement (including the definition of Working Capital) and the Accountant is not to make any other determination and shall act as an expert and not as an arbitrator. If any items in dispute are submitted to the Accountant for resolution, (x) Purchaser and the Sellers' Representative shall use their respective reasonable efforts to cause the Accountant to resolve all remaining disagreements with respect to the Closing Statement as soon as practicable but in any event shall direct the Accountant to render a determination within ninety (90) days after its retention; (y) Purchaser and the Sellers' Representative shall furnish to the Accountant and each other such work papers and other documents and information relating solely to the disputed issues as the Accountant may request and are available to that party (including, in the case of Purchaser, the Surviving Corporation or its accountants), and shall be afforded the opportunity to present to the Accountant any materials relating to the determination and to discuss the determination with the Accountant; provided, that copies of all such

materials are concurrently provided to the other party and that such discussions may only occur in the presence (including by telephone) of the other party; provided, further, that the Accountant shall consider only those items and amounts which are identified as being in dispute; and (z) the determination by the Accountant of the disputed items in the Closing Statement, as shall be set forth in a notice delivered to both parties by the Accountant, shall be final, binding and conclusive on the parties. In resolving any disputed item, the Accountant may not assign a value to any item greater than the greatest value for such item claimed by either party or less than the smallest value for such item claimed by either party. The fees of the Accountant for such determination shall be borne by Purchaser, on the one hand, and the Securityholders, on the other hand, in proportion to the portion of the aggregate amount in dispute that is finally resolved by the Accountant in a manner adverse to such party. For example, if Purchaser claims the appropriate adjustments are $1,000, and the Sellers' Representative contests only $500 of the amount claimed by Purchaser, and if the Accountant ultimately resolves the dispute by awarding Purchaser $300 of the $500 contested, then the costs and expenses of the Accountant will be allocated 60% (*i.e.*, 300/500) to the Securityholders and 40% (*i.e.*, 200/500) to Purchaser.

(d) Final Merger Consideration. The Closing Date Merger Consideration shall be adjusted as follows (without duplication, including any payments otherwise made pursuant to Section 2.12(b)): (i) (A) increased by the amount, if any, by which the Working Capital, as finally determined pursuant to Section 2.12(c) ("Final Working Capital"), is greater than the Estimated Working Capital, or (B) reduced by the amount, if any, by which the Final Working Capital is less than the Estimated Working Capital; (ii) (A) reduced by the amount, if any, by which the Closing Date Company Indebtedness, as finally determined pursuant to Section 2.12(c) ("Final Company Indebtedness"), is greater than the Estimated Closing Date Company Indebtedness or (B) increased by the amount, if any, by which the Final Company Indebtedness is less than the Estimated Closing Date Company Indebtedness; (iii) (A) reduced by the amount, if any, by which the Closing Date Joint Venture Indebtedness, as finally determined pursuant to Section 2.12(c) ("Final Joint Venture Indebtedness"), is greater than the Estimated Closing Date Joint Venture Indebtedness or (B) increased by the amount, if any, by which the Final Joint Venture Indebtedness is less than the Estimated Closing Date Joint Venture Indebtedness; (iv) (A) reduced by the amount, if any, by which the Seller Expenses, as finally determined pursuant to Section 2.12(c) ("Final Seller Expenses"), are greater than the Estimated Seller Expenses or (B) increased by the amount, if any, by which the Final Seller Expenses are less than the Estimated Seller Expenses; (v) (A) increased by the amount, if any, by which the Mesa Receivable Amount, as finally determined pursuant to Section 2.12(c) ("Final Mesa Receivable Amount") is greater than the Estimated Mesa Receivable Amount or (B) reduced by the amount, if any, by which the Final Mesa Receivable Amount is less than the Estimated Mesa Receivable Amount; or (vi) (A) increased by the amount, if any, by which the Closing Date Cash and Cash Equivalents, as finally determined pursuant to Section 2.12(c) ("Final Cash and Cash Equivalents"), are greater than the Estimated Cash and Cash Equivalents or (B) reduced by the amount, if any, by which the Final Cash and Cash Equivalents are less than the Estimated Cash and Cash Equivalents.

(e) Final Closing Adjustment Payment. No later than the third (3rd) Business Day following the final determination of the Adjustment Amount,

(i) if the Adjustment Amount is positive:

(1) with respect to each Common Stockholder who shall have delivered to the Paying Agent a properly completed Letter of Transmittal, Purchaser shall promptly deliver to the Paying Agent for payment to each such Common Stockholder, an amount equal to the product of the number of Fully-Diluted Shares held by such Common Stockholder and the Adjustment Amount Per Share (net of any payments previously received by such Common Stockholder pursuant to Section 2.12(b)), which amount shall be payable by wire transfer of immediately available funds to the account designated in such Stockholder's Letter of Transmittal;

(2) with respect to each Option Holder holding In-the-Money Options who shall have delivered to the Company a duly executed and properly completed Option Surrender Letter, Purchaser shall cause the Surviving Corporation to pay, through the Surviving Corporation's payroll system, to each such Option Holder, an amount equal to the product of the number of shares of Common Stock subject to the In-the-Money Options held by such Option Holder and the Adjustment Amount Per Share (net of any payments previously received by such Option Holder pursuant to Section 2.12(b)), less any required withholding Taxes; and

(3) Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release to each Securityholder (other than the Preferred Stockholders or any Stockholder in respect of Dissenting Shares) that has delivered to the Paying Agent a properly completed Letter of Transmittal or that has delivered to the Company a properly completed Option Surrender Letter, as applicable, such Securityholder's Pro Rata Portion of the Adjustment Escrow Fund; provided, that with respect to amounts to be released to Option Holders, such amounts shall be released to the Surviving Corporation and shall promptly be paid by the Surviving Corporation, through the Surviving Corporation's payroll system, to each such Option Holder, less any required withholding Taxes; or

(ii) if the Adjustment Amount is negative:

(1) Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release an amount equal to the Adjustment Amount to Purchaser from the Adjustment Escrow Account and if the Adjustment Escrow Fund is insufficient to cover the entire Adjustment Amount, Purchaser and Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release an amount equal to such deficiency to Purchaser from the Indemnity Escrow Fund; and

(2) Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release to each Securityholder (other than the Preferred Stockholders or any Stockholder in respect of Dissenting Shares) that has delivered to the Paying Agent a properly completed Letter of Transmittal or that has delivered to the Company a properly completed Option Surrender Letter, as applicable, such Securityholder's Pro Rata Portion of any portion of the Adjustment Escrow Fund remaining following any payment to Purchaser pursuant to Section 2.12(e)(ii)(1); provided, that with respect to amounts to be released to Option Holders, such amounts shall be released to the Surviving Corporation and shall promptly be paid by the Surviving Corporation, through the Surviving Corporation's payroll system, to each such Option Holder, less any required withholding Taxes; or

(iii) if the Adjustment Amount is zero, Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release to each Securityholder (other than the Preferred Stockholders or any Stockholder in respect of Dissenting Shares) that has delivered to the Paying Agent a properly completed Letter of Transmittal or that has delivered to the Company a properly completed Option Surrender Letter, as applicable, such Securityholder's Pro Rata Portion of the Adjustment Escrow Fund (net of any payments

previously received by such Securityholder pursuant to Section 2.12(b)); provided, that with respect to amounts to be released to Option Holders, such amounts shall be released to the Surviving Corporation and shall promptly be paid by the Surviving Corporation, through the Surviving Corporation's payroll system, to each such Option Holder, less any required withholding Taxes.

(f) Following the release of any funds to the Securityholders pursuant to Section 2.12(e)(i)(2), Section 2.12(e)(ii)(2) or Section 2.12(e)(iii), as applicable, Purchaser and the Sellers' Representative shall provide a joint written instruction to the Escrow Agent to release to the Paying Agent the remaining portion of the Adjustment Escrow Fund. Upon delivery of a properly completed Letter of Transmittal or Option Surrender Letter, as applicable, Purchaser shall cause the Paying Agent to pay to any such Securityholder, such Securityholder's applicable portion of such amount.

(g) For the avoidance of doubt, neither the Sellers' Representative nor any Securityholder, nor any of their respective Affiliates, shall have any Liability or obligation under this Section 2.12 for any portion of the Adjustment Amount in excess of the funds remaining in the Adjustment Escrow Account and the Indemnity Escrow Account (up to a maximum amount equal to the Adjustment Amount). Recovery from the Adjustment Escrow Account and the Indemnity Escrow Account (up to a maximum amount equal to the Adjustment Amount) shall be the sole and exclusive remedy available to Purchaser for any claims by Purchaser against the Securityholders, or otherwise, arising out of or relating to any negative Adjustment Amount and neither Purchaser nor the Surviving Corporation or any of their respective Affiliates shall have any claim against any Securityholder in respect thereof.

(h) The Adjustment Amount shall be treated as an adjustment to the Closing Date Merger Consideration for income Tax purposes.

(i) From and after the Closing Date, (x) with respect to each Stockholder who shall not have delivered to the Paying Agent, at least three (3) Business Days prior to the Closing Date, a properly completed Letter of Transmittal, Purchaser shall, promptly (but in no event later than five (5) Business Days) following such Stockholder's delivery to the Paying Agent of a properly completed Letter of Transmittal, cause the Paying Agent to pay such Stockholder, all amounts that would previously have been payable to such Stockholder pursuant to this ARTICLE 2 had such Letter of Transmittal been delivered at least three (3) Business Days prior to the Closing Date, and (y) with respect to each Option Holder holding In-The-Money Options who shall not have delivered to the Company, at least three (3) Business Days prior to the Closing Date, a duly executed and properly completed Option Surrender Letter, Purchaser shall, promptly (but in no event later than five (5) Business Days) following such Option Holder's delivery to the Company of a properly completed Option Surrender Letter, cause the Surviving Corporation to pay all amounts that would previously have been payable to such Option Holder pursuant to this ARTICLE 2 had such Option Surrender Letter been delivered at least three (3) Business Days prior to the Closing Date.

2.13 Notices to Stockholders; Dissenting Shares.

(a) Paying Agent. Prior to the Effective Time, Purchaser shall designate Acquiom Clearinghouse LLC to act as paying agent in connection with the Merger (the "Paying Agent") to receive, for the benefit of the Stockholders, the portion of the Closing Date Merger Consideration to which the Stockholders shall become entitled pursuant to Section 2.6(b) and Section 2.6(c). Purchaser shall deposit the portion of the Closing Date Merger Consideration to which the Stockholders shall become entitled pursuant to Section 2.6(b) and Section 2.6(c) with the Paying Agent for delivery to the Stockholders in accordance with this ARTICLE 2, at or immediately following the Effective Time. At any time following

the twelve (12) month anniversary of the Closing Date, Purchaser shall be entitled to require the Paying Agent to deliver to it any portion of the Preferred Stock Consideration or Common Stock Consideration then held by it (including any interest received with respect thereto) that has not been disbursed to Stockholders; provided, however, that notwithstanding the foregoing, in the event Purchaser is required to make any payments to any Stockholders in respect of Dissenting Shares, Purchaser shall be entitled to require the Paying Agent to deliver to it any portion of the Preferred Stock Consideration or Common Stock Consideration then held by the Paying Agent (including any interest received with respect thereto) in respect of Dissenting Shares.

(b) The Company shall, as promptly as reasonably practicable after the date hereof, mail or otherwise deliver to each Stockholder (i) a letter from the Company (A) providing such Stockholder with a brief information statement regarding the Company and the transactions contemplated hereby, and (B) with respect to each Stockholder, (I) providing the notification required by Section 228(e) of the DGCL with respect to the Written Consent and (II) providing notice in the manner contemplated in Section 262 of the DGCL of such Stockholder's right to dissent to the Merger pursuant to Section 262 of the DGCL, and (ii) a Letter of Transmittal for return to the Paying Agent and instructions for use in effecting the surrender of the Certificates and payments therefor. The Company shall afford Purchaser a reasonable opportunity to review and comment upon the documents described in this Section 2.13(b) and shall consider in good faith Purchaser's comments thereto. Upon surrender to the Paying Agent of any Certificates (other than Certificates representing Dissenting Shares), together with a duly completed and validly executed Letter of Transmittal, the holders of each Certificate shall be entitled to receive from Purchaser (or the Paying Agent on behalf of Purchaser), on or after the Closing Date (but following the Effective Time), pursuant to the terms and subject to the conditions in this Agreement, in exchange for each applicable Share formerly evidenced thereby, payment of such holder's applicable portion of the Preferred Stock Consideration or the Common Stock Consideration, as applicable, and each such Certificate so surrendered shall be forthwith canceled. Until surrendered in accordance with the provisions of this Section 2.13(b), each Certificate (other than Certificates canceled pursuant to Section 2.9(d) and Certificates representing Dissenting Shares) shall represent for all purposes only the right to receive the applicable portion of the Preferred Stock Consideration or the Common Stock Consideration, as applicable. No interest will be paid or will accrue for the benefit of the holders of the Certificates on the Preferred Stock Consideration or the Common Stock Consideration, as applicable, payable upon the surrender of the Certificates. Notwithstanding the foregoing, if any Certificate (other than any Certificate representing Dissenting Shares) shall have been lost, stolen or destroyed, Purchaser shall pay, or shall cause the Paying Agent to pay, the Preferred Stock Consideration or the Common Stock Consideration, as applicable, payable in exchange for such lost, stolen or destroyed Certificate upon the making of a customary affidavit of that fact by the registered holder of such lost, stolen or destroyed Certificate in form and substance reasonably acceptable to Purchaser or the Surviving Corporation, as the case may be, and, if required by the Purchaser or the Surviving Corporation, as the case may be, (x) the posting of a bond in such amount and form as Purchaser or the Surviving Corporation, as the case may be, may reasonably direct or (y) agreeing to indemnify Purchaser or the Surviving Corporation, as the case may be, against any claim that may be made against Purchaser or the Surviving Corporation with respect to such Certificate.

(c) Notwithstanding any other provision of this Agreement to the contrary, any shares of Common Stock or Preferred Stock issued and outstanding immediately prior to the Effective Time that are held by any Stockholder who has not voted in favor of the Merger or consented thereto in writing and who is entitled to demand and properly demands appraisal of such shares in accordance with Section 262 of the DGCL (collectively, the "Dissenting Shares") shall not be converted into the right to receive the applicable portion of the Preferred Stock Consideration or the Common Stock Consideration due in respect of such shares under this Agreement. Such Stockholder shall instead be entitled to receive payment of the appraised value of such Dissenting Shares in accordance with the provisions of Section

262 of the DGCL, except that any Dissenting Shares held by a Stockholder who shall have failed to perfect or who effectively shall have withdrawn or otherwise lost his, her or its rights to appraisal of such Dissenting Shares under such Section 262 of the DGCL shall thereupon be deemed to have been converted into and to have become exchangeable, as of the Effective Time, for the right to receive the applicable portion of the Preferred Stock Consideration or the Common Stock Consideration due in respect of such shares under this Agreement, in each case, without any interest thereon. The Company shall serve prompt notice to Purchaser of any demands for appraisal of any Dissenting Shares, and Purchaser shall have the right to participate in all negotiations and proceedings with respect to such demands. Prior to the Effective Time, the Company shall not, without the prior written consent of Purchaser, make any payment with respect to, or settle or offer to settle, any such demands, or agree to do any of the foregoing.

(d) At the Effective Time, any holder of Dissenting Shares shall cease to have any rights with respect thereto, except the rights provided in Section 262 of the DGCL.

2.14 No Further Ownership Rights in Shares; Closing of Transfer Books. At the Effective Time, the Share transfer books shall be closed and no transfer of Shares that were outstanding immediately prior to the Effective Time shall thereafter be made. At the Effective Time, by virtue of the Merger and without any further action on the part of the Stockholders, Purchaser, the Company or Merger Sub, the Shares that were outstanding immediately prior to the Effective Time shall be cancelled and extinguished, and each Certificate or instrument previously representing such Shares shall represent only the right to receive its respective portion of the Final Merger Consideration pursuant to this ARTICLE 2. No dividends or other distributions with respect to capital stock of the Surviving Corporation with a record date after the Effective Time shall be paid to the holder of any unsurrendered Shares, including Dissenting Shares.

2.15 Unclaimed Amounts. Any remaining cash unclaimed by the Securityholders as of a date which is immediately prior to such time as such amounts would otherwise escheat to or become property of any Governmental Body shall, to the extent permitted by Applicable Law, become the property of the Surviving Corporation free and clear of any claims or interest of any Person previously entitled thereto.

2.16 Withholding. Purchaser and its Affiliates and Representatives, the Paying Agent and the Escrow Agent shall be entitled to withhold any Tax that is required to be withheld pursuant to Applicable Law from any amount paid pursuant to the Transaction Documents, and any such amount withheld and remitted to the applicable Governmental Body as required by Applicable Law shall be treated for all purposes of the Transaction Documents as having been paid to the Person in respect of whom such withholding was made; provided, however, that if Purchaser becomes aware that any amount is required to be so withheld, it shall notify the Sellers' Representative of any such required withholding and the parties shall cooperate with each other in good faith to minimize or eliminate such withholding Taxes; and, provided, further, that (i) the notice requirement of the immediately preceding proviso shall not apply to withholdings in respect of compensatory payments made to Option Holders or any other present or former employee or other service provider with respect to the Company Group, and (ii) nothing in this paragraph shall limit the ability of Purchaser or its Affiliates or Representatives, the Paying Agent or the Escrow Agent to withhold any amount required to be withheld pursuant to Applicable Law, or subject such parties to any Liability with respect to such withholdings.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except as disclosed in the Company Disclosure Schedule, which Company Disclosure Schedule is arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this ARTICLE 3, the Company hereby represents and warrants to Purchaser and Merger Sub, as of the date hereof and as of the Closing Date, as follows:

3.1 Organization; Corporate Power.

(a) The Company is a corporation validly existing under the laws of the State of Delaware and is in good standing in such state. The Company has all requisite corporate power and authority to own, lease, operate or otherwise hold its properties and assets, to carry on its business as presently conducted, to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby. Each Subsidiary of the Company is a corporation, limited liability company or other business entity, as the case may be, duly organized, validly existing under the laws of its jurisdiction of formation, and in good standing in such jurisdiction. Each Subsidiary of the Company has all requisite corporate, limited liability company or other business entity power and authority to own, lease, operate or otherwise hold its properties and assets, to carry on its business as now being conducted.

(b) The Company has previously made available to Purchaser and Merger Sub true and correct copies of the Organizational Documents of the Company and its Subsidiaries.

3.2 Qualification. The Company is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its business makes such qualification and good standing necessary, except where the failure to be so qualified or in good standing would not have, individually or in the aggregate, a Material Adverse Effect. Each Wholly-Owned Subsidiary of the Company and, to the Knowledge of the Company, each Joint Venture is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its business makes such qualification and good standing necessary, except where the failure to be so qualified or in good standing would not have, individually or in the aggregate, a Material Adverse Effect.

3.3 Authority; No Violation; Consents.

(a) The execution and delivery by the Company of this Agreement and the other Transaction Documents to which it is a party and the performance by the Company of the transactions contemplated hereby and thereby have been duly authorized pursuant to and in accordance with Applicable Law and the Organizational Documents governing the Company and no other proceedings on the part of the Company are necessary to authorize such execution, delivery and performance. The Written Consent is the only vote of the Stockholders that is necessary pursuant to Applicable Law and the Organizational Documents of the Company to adopt this Agreement and consummate the transactions contemplated hereby.

(b) This Agreement and the other Transaction Documents to which the Company is a party have been duly and validly executed and delivered by the Company and constitute valid and binding obligations of the Company, enforceable against the Company in accordance with their terms, except to the extent that enforceability may be limited by the Enforceability Exceptions.

(c) The execution and delivery by the Company of this Agreement and each other Transaction Document to which it is a party and the performance by the Company of the transactions contemplated hereby and thereby does not conflict with, result in a violation or breach of, or constitute a default under, in each case, with or without the giving of notice or lapse of time or both, (i) any term of the Organizational Documents of the Company, (ii) any Material Contract or Permit or (iii) any Applicable Law to which the Company Group is subject, and except with respect to clauses (ii) and (iii) above, for such conflicts, violations, breaches or defaults that would not have, individually or in the aggregate, have a Material Adverse Effect.

(d) No consent, approval, Permit, order or authorization of, registration, declaration or filing with any Governmental Body, any third party or any counter-party to any Material Contract, is required in connection with the execution, delivery and performance by the Company of this Agreement or the other Transaction Documents to which the Company is a party or the transactions contemplated hereby and thereby, except (i) for the filing of the Certificate of Merger with the Secretary of State of the State of Delaware pursuant to the DGCL, (ii) compliance with and filings under any applicable Antitrust Laws, including under the HSR Act and (iii) as would not, individually or in the aggregate, reasonably be expected to be material to the Company or any of its Subsidiaries.

3.4 Capitalization; Subsidiaries.

(a) The authorized capital stock of the Company consists of 325,000 shares of Common Stock and 325,000 shares of Preferred Stock. The 325,000 authorized shares of Preferred Stock have been designated as Series A Preferred Stock. As of the date of this Agreement, the following Shares are issued and outstanding: (i) 117,287 Series A Preferred Shares and (ii) 138,482 shares of Common Stock. All of the issued and outstanding Shares are duly authorized, validly issued, fully paid and nonassessable, and are free and clear of any preemptive rights, restrictions on transfer (other than restrictions under applicable federal, state and other securities laws), or Liens (other than Permitted Liens). Schedule 3.4(a) sets forth, as of the date hereof, the names of all holders of Shares, including the number and class held by each such holder. None of the outstanding Shares are subject to a substantial risk of forfeiture (within the meaning of Code Section 83) unless a timely election under Section 83(b) of the Code was filed with respect to such Shares.

(b) Schedule 3.4(b) sets forth a complete and accurate list of (i) the Company Options that are issued and outstanding as of the date of this Agreement, (ii) the name of the Option Holder of each Company Option, (iii) the number of shares of Common Stock issuable upon exercise of each Company Option, and (iv) the exercise price with respect to each Company Option.

(c) Other than the Company Options set forth on Schedule 3.4(b), there are no outstanding or authorized options or rights to acquire options, warrants, rights, Contracts, calls, puts, rights to subscribe, conversion rights or other agreements or commitments to which the Company is a party or which are binding upon the Company providing for the issuance, disposition or acquisition of any of its Equity Securities. There are no outstanding or authorized stock appreciation, phantom stock or similar rights with respect to the Company to which the Company is a party or which are binding upon the Company. There are no voting trusts, proxies or any other Contracts with respect to the voting of the capital stock of the Company to which the Company is a party or which are binding upon the Company. Except as set forth on Schedule 3.4(c) and in respect of the Company's Subsidiaries, the Company does not own, directly or indirectly, any equity interest or Equity Securities in any Person and is not a party to any (i) joint venture, partnership or similar relationship, or (ii) buy-sell agreement, stockholders' agreement or similar Contract (other than the Shareholder's Agreement).

(d) Schedule 3.4(d) sets forth a complete and accurate list of (i) the issued and outstanding shares of capital stock (or other Equity Securities or percentage interests) of each Subsidiary of the Company, (ii) with respect to each such Subsidiary of the Company, the ownership percentage that the Company (or any other member of the Company Group) holds in each such Subsidiary and (iii) the Non-NSH Party's Applicable Percentage for such Joint Venture. The outstanding shares of capital stock (or other Equity Securities or percentage interests) of the Company's Subsidiaries have been duly authorized, validly issued and are fully paid and nonassessable and were not issued in violation of any

purchase or call option, right of first refusal, subscription right, preemptive right or any similar right. All such shares or other Equity Securities represented as being owned by the Company (or any other member of the Company Group) are owned by the Company (or any other member of the Company Group) free and clear of any and all Liens (other than Permitted Liens).

3.5 Assets of the Company. The Company and each of its Subsidiaries, as applicable, have good, valid and marketable title to all of the assets, properties and interests in properties (tangible and intangible) owned (or a valid leasehold interest with respect to assets that are leased) by the Company or its Subsidiaries and reflected on the Latest Balance Sheet, free and clear of all Liens, except for Permitted Liens.

3.6 Financial Statements; Books and Records.

(a) Historic Audited Financial Statements. The Company has previously made available to Purchaser and Merger Sub true and complete copies of the audited consolidated balance sheets of the Company as of December 31, 2014, December 31, 2015 and December 31, 2016 and the related audited consolidated statements of income, changes in equity and cash flows for the fiscal years ended December 31, 2014, December 31, 2015 and December 31, 2016 (collectively, the "Historic Audited Financial Statements"). The Historic Audited Financial Statements fairly present in all material respects (i) the financial position of the Company Group as of the dates thereof and (ii) the results of operations of the Company Group for the fiscal periods covered thereby. The Historic Audited Financial Statements have been prepared from the books and records of the Company and its Subsidiaries in accordance with GAAP applied on a consistent basis throughout the period indicated (except as otherwise disclosed therein).

(b) Interim Financial Statements. Attached hereto as Schedule 3.6(b) are true and complete copies of the consolidated unaudited balance sheet of the Company at March 31, 2017 (the "Latest Balance Sheet" and the date thereof, the "Latest Balance Sheet Date") and the related statement of income for the three (3) months then ended (collectively, the "Interim Financial Statements" and together with the Historic Audited Financial Statements, the "Financial Statements"). The Interim Financial Statements fairly present in all material respects (i) the financial position of the Company Group as of the date thereof and (ii) the results of operations of the Company Group for the fiscal period covered thereby. The Interim Financial Statements have been prepared from the books and records of the Company and its Subsidiaries in accordance with GAAP applied on a basis consistent throughout the periods indicated (except as otherwise disclosed therein) with the Historic Audited Financial Statements, except for the absence of certain footnotes (which, if presented, would not differ materially from those included in the Historic Audited Financial Statements) and changes resulting from ordinary course year-end adjustments (the effect of which are not expected to be material and adverse individually or in the aggregate to the financial condition of the Company Group, taken as a whole).

(c) Indebtedness. Schedule 3.6(c) contains a true, correct and complete list, as of the Latest Balance Sheet Date, of all Indebtedness of the Company and its Subsidiaries and, in each case, the outstanding amount thereof as of the Latest Balance Sheet Date.

(d) Intercompany Accounts. Schedule 3.6(d) contains a true, correct and complete list, as of the Latest Balance Sheet Date, of all intercompany accounts (including accounts receivable and accounts payable) between the Company and its Wholly-Owned Subsidiaries, on the one hand, and the Joint Ventures, on the other hand, and the outstanding balances thereof (the "Intercompany Account Balances").

3.7 Undisclosed Liabilities. Neither the Company nor any of its Subsidiaries has any Liabilities of the type required by GAAP to be reflected on the Latest Balance Sheet or the footnotes thereto and which would, individually or in the aggregate, materially and adversely affect the Company Group, taken as a whole, except for: (a) Liabilities specifically and adequately reserved for in the Latest Balance Sheet or the notes thereto or that have arisen since the Latest Balance Sheet Date in the ordinary course of business (none of which is a Liability resulting from a breach of contract, breach of warranty or violation of Applicable Law), (b) Liabilities incurred in connection with the transactions contemplated hereby or by the other Transaction Documents and (c) Liabilities of the Company Group that are less than $250,000, in the aggregate. Neither the Company nor any of its Subsidiaries is a party to, or has any commitment to become a party to any "off balance sheet arrangement" (as defined in Item 303(a) of Regulation S-K promulgated by the U.S. Securities and Exchange Commission).

3.8 Absence of Changes. Except as set forth on Schedule 3.8, since December 31, 2016 through the date hereof, the Company has operated in the ordinary course of business consistent with past practice, (a) there have not been any Changes that have had, individually or in the aggregate, a Material Adverse Effect and (b) neither the Company nor any of its Subsidiaries has:

(i) adopted any change to its Organizational Documents;

(ii) merged or consolidated with any other Person or adopted a plan of complete or partial liquidation, dissolution, or reorganization;

(iii) declared or paid any dividend or other distribution, payable in stock, property or otherwise, with respect to any of its capital stock, other than dividends or other distributions in the ordinary course of business by any Subsidiary of the Company;

(iv) entered into any agreement with respect to the voting of its capital stock;

(v) (A) issued, sold, purchased, redeemed, retired or granted registration rights with respect to any shares of its capital stock or any other Equity Securities, including any securities convertible into, or options, warrants or rights to purchase or subscribe for, its capital stock or other Equity Securities or (B) entered into any Contract with respect to the issuance, sale, purchase or redemption of any shares of its capital stock or other Equity Securities other than (x) the issuance, delivery or sale of, any securities to the Company or any other Company Subsidiary, (y) the issuance of shares of Common Stock upon the exercise of any Company Options or Joint Venture or (z) the issuance or redemption of any securities of any Company Subsidiary in the ordinary course of business to or from any physician, physician group, hospital or hospital system that holds or subscribes to an equity interest in any Joint Venture with a value, on an individual basis, of less than $250,000, in each case, in compliance with Applicable Laws and the Organizational Documents of such Joint Venture;

(vi) reclassified, split, combined or subdivided, directly or indirectly, any of its securities;

(vii) increased the compensation or benefits provided to, or made any new equity awards to any director, officer or employee of the Company (other than the payment of bonuses or increases in compensation and bonuses, in each case, in the ordinary course of business and consistent with past practice);

(viii) mortgaged, pledged or subjected to any Lien any of its properties or assets, except for Permitted Liens;

(ix) acquired, sold, leased, licensed, transferred, abandoned, permitted to lapse or otherwise disposed of any properties or assets outside the ordinary course of business, except for properties or assets (but not shares of capital stock) with an aggregate value equal to or less than $1,000,000;

(x) except as required by GAAP, changed an annual accounting period, changed any accounting method, (including any Tax accounting method), made any change in its accounting principles or the methods by which such principles are applied for financial reporting purposes;

(xi) except as required by Applicable Law or GAAP, made or changed any material Tax election, amended any material Tax Return, settled any audit, claim or assessment for a material amount of Taxes, entered into any Tax sharing, closing, or similar agreement in respect of any Taxes, or surrendered any right to claim a refund of a material amount of Taxes; or

(xii) authorized or entered into any Contract to do any of the foregoing.

3.9 Tax Matters.

(a) The Company and each of its Subsidiaries have properly and timely filed all U.S. federal income Tax Returns and other material Tax Returns required to be filed by or with respect to the Company and each of its Subsidiaries, and have paid all material amounts of Taxes due with respect to the Company and each of its Subsidiaries. All such Tax Returns are true, correct and complete in all material respects. No written claim has been made by a Governmental Body in a jurisdiction where the Company or any of its Subsidiaries does not file a Tax Return that such entity is or may be subject to taxation by that jurisdiction in respect of Taxes that would be covered by or the subject of such Tax Return. There are no Liens for material amounts of Taxes (other than Permitted Liens) upon any of the assets of the Company or any of its Subsidiaries.

(b) Neither the Company nor any of its Subsidiaries is a party to any material dispute, audit or Legal Action with respect to Taxes nor has any such dispute, audit or Legal Action been threatened by any Governmental Body, for the assessment or collection of any Taxes, and no claim for the assessment or collection of any material amounts of Taxes has been asserted in writing against the Company or any of its Subsidiaries that has not been settled with all amounts due having been paid.

(c) The Company and each of its Subsidiaries has withheld and paid all material amounts of Taxes required to be withheld with respect to payments to its employees, independent contractors, creditors, stockholders and other third parties.

(d) Neither the Company nor any of its Subsidiaries has waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to the payment or assessment of any Taxes or the filing of any Tax Return, which waiver or extension is still in effect.

(e) Neither the Company nor any of its Subsidiaries has ever been a member of an affiliated group of corporations (other than amongst the Company and its Subsidiaries) within the meaning of Section 1504(a) of the Code filing a combined federal income Tax Return (or any similar group for federal, state, local or foreign Tax purposes) nor does the Company or any of its Subsidiaries have any Liability for Taxes of any other Person under Treasury Regulation §1.1502-6 (or any similar provision of foreign, state or local Applicable Law), as a transferee or successor, by contract, or otherwise.

(f) Neither the Company nor any of its Subsidiaries is a party to any material Tax allocation, sharing, indemnity or similar agreement (other than any such agreement exclusively between or among the Company and its Subsidiaries or a commercial agreement the principal subject matter of which is not Taxes).

(g) Neither the Company nor any of its Subsidiaries has agreed to, and is not required to, make any adjustments or changes either on, before or after the Closing Date, to its accounting methods pursuant to Section 481 of the Code (or similar provisions of state, local, or foreign law), and neither the IRS nor any taxing authority has proposed in writing any such adjustments or changes in the accounting methods of the Company or any of its Subsidiaries.

(h) In the past two (2) years, neither the Company nor any of its Subsidiaries has distributed stock of another entity, and has not had its stock distributed by another entity, in a transaction that was purported or intended to be governed in whole or in part by Section 355 (or so much of Section 356 as relates to Section 355) or 361 of the Code.

(i) The Company is not and has not been a United States real property holding corporation within the meaning of Code section 897(c)(2) during the period specified in Code section 897(c)(1)(A)(ii).

(j) Neither the Company nor any of its Subsidiaries has been a party to a transaction that is or is substantially similar to a "listed transaction" (as defined in Treasury Regulations Section 1.6011-4(b)(2)).

(k) Notwithstanding anything to the contrary contained in this Agreement, any reference to "Subsidiaries" in this Section 3.9 shall not be interpreted to include any Joint Venture. The only representations and warranties made with respect to any and all matters relating to Taxes herein shall be the representations and warranties set forth in this Section 3.9, Section 3.6, Section 3.8 and Section 3.15 and such representations and warranties shall not be interpreted to include any Joint Venture. This Agreement shall not be interpreted in any manner that is contrary to this Section 3.9(j).

3.10 Compliance with Applicable Laws; Government Program Participation / Accreditation.

(a) Neither the Company nor any of its direct Wholly-Owned Subsidiaries is a licensed healthcare provider or supplier under any Applicable Law and, as such, does not participate in any Government Program or Contract with any third party payor.

(b) Except as set forth on Schedule 3.10(b), since January 1, 2014, each of the Company Group entities has been and is in compliance, in all material respects, with all orders, judgments, injunctions, awards, decrees, sanctions, compliance agreements or writs (collectively, "Orders"), and all Applicable Laws (including Healthcare Laws), in either case, of any Governmental Body applicable to the Company Group's respective businesses, assets, properties or employees. To the Knowledge of the Company, none of the Company Group entities has engaged in activities which are, as applicable, cause for civil penalties, or mandatory or permissive exclusion from any Governmental Program.

(c) Since January 1, 2014, none of the Company Group entities has received any written communication from a Governmental Body that alleges that any Company Group entity is not in compliance, in any material respect, with any Applicable Laws (including Healthcare Laws) that remains unresolved or for which there remains any outstanding Liability to the Company Group. Since January 1,

2014, no Facility's, nor any of the Company Group's, respective officers, directors, governing board members, agents or managing employees (as such term is defined in 42 U.S.C. §1320a-5(b)), has been excluded, suspended, debarred, or otherwise ineligible for participation in any Government Program or been subject to sanction pursuant to 42 U.S.C. §1320a-7a or 1320a-8 or been convicted of a crime described at 42 U.S.C. §1320a-7b. Except as would not be material to the Company Group, taken as a whole, all of the Company Group's employed or contracted physicians and providers are properly licensed and hold appropriate clinical privileges for the services that they provide for the Company Group, and, with respect to physicians and providers who perform services eligible for reimbursement, are not excluded, suspended, debarred or otherwise ineligible for participation in any Government Program.

(d) Each Referral Source, and the Company or any of its Subsidiaries, who has an ownership, investment, or financial interest in any Company Group entity or any Facility paid fair market value for such ownership, investment or financial interest; any ownership or investment returns distributed to any Referral Source have been and are in proportion to such Referral Source's ownership, investment or financial interest; and no preferential treatment or more favorable terms were or are offered to such Referral Source compared to investors or owners who are not in a position to refer patients or other business. No Company Group entity, directly or indirectly, has guaranteed any Indebtedness, made a payment toward any Indebtedness or otherwise subsidized any Indebtedness for any Referral Source including, without limitation, any Indebtedness related to financing the Referral Source's ownership, investment or financial interest in a Company Group entity.

(e) All financial relationships between or among any Company Group entity and any Referral Source: (i) comply in all material respects with all applicable Healthcare Laws including, without limitation, the Federal Anti-Kickback Statute, the Stark Law and applicable state anti-kickback and self-referral laws; (ii) reflect fair market value, have commercially reasonable terms and were negotiated at arm's length; and (iii) do not obligate the Referral Source to purchase, use, recommend or arrange for the use of any products or services of any Company Group entity.

(f) Since January 1, 2014, none of the Company Group entities has been, or is excluded, suspended or debarred or otherwise ineligible for participation in any Government Program or has been, or is a party to a corporate integrity agreement, monitoring agreement, deferred prosecution agreement or settlement agreement with a Governmental Body. There is no pending or, to the Knowledge of the Company, threatened Legal Action involving any Company Group entity that could adversely affect in any material respect its rights to participate in any Government Program or any third-party payor program.

(g) Each Facility is and has been, since January 1, 2014, duly accredited by The Joint Commission or other applicable accreditation body. The Company has made available to Purchaser copies of the most recent accreditation survey report and deficiency list for each Facility, if any, together with such Facility's most recent statement of deficiencies and plan of correction. To the Knowledge of the Company, there are no pending Legal Actions (other than in the ordinary course of maintaining accreditation or obtaining a new accreditation for a particular service area) involving any Facility.

(h) Each Company Group entity meets and has met, since January 1, 2014, all material requirements of participation of, claims submission to, and payment from the Government Programs and commercial insurance, health plans, and other third-party payors under which it receives payment (collectively and together with Government Programs, "Third-Party Payors") and is and has been, since January 1, 2014, a party to valid participation agreements for payment by such Government Programs and such Third-Party Payors, and there are no recoupments of any Third-Party Payor being sought, requested or claimed, or threatened against any Company Group entity and no basis for such

recoupments or claims exists. Without limiting the generality of the foregoing, the billing practices of each Company Group entity, as applicable, with respect to all patients and Third-Party Payor programs, are and have at all times been in compliance with all applicable agreements with such Third-Party Payors and Healthcare Laws.

(i) All reports, data, and information required to be filed by any Company Group entity in connection with any Government Program or any Third-Party Payor program have been timely filed and were true and complete in all material respects at the time filed (or were corrected in or supplemented by a subsequent filing).

(j) Except as set forth on Schedule 3.10(j) or as would not have, individually or in the aggregate, a material adverse effect on the ability of any Company Group entity to conduct its respective businesses in the ordinary course consistent with past practice, (i) each Company Group entity is and has been, since January 1, 2014, in compliance in all respects with its notice of privacy practices, which is provided to patients in accordance with the requirements of the HIPAA Rules at 45 C.F.R. § 164.520; and (ii) no Company Group entity has received any written complaint from any Governmental Authority regarding any breach of the privacy or security of individually identifiable health information held by the Company and its Subsidiaries, as the term breach is defined under the HIPAA Rules at 45 C.F.R. § 164.402.

3.11 Permits. Schedule 3.11 contains a true, correct and complete list of all material permits, material licenses and Material Healthcare Licenses (collectively, "Permits") of any Governmental Body held by any Company Group entity as of the date hereof. All such Permits are in full force and effect and each Company Group entity is in material compliance with all such Permits, and all such Permits are in full force and effect and no Legal Action is pending or, to the Knowledge of the Company, threatened to revoke or limit any such Permits. None of the Company Group entities has, since January 1, 2014, received written notice that any Governmental Body has taken, is taking or intends to take action to limit, suspend, modify or revoke any such Permit and, to the Knowledge of the Company, no Governmental Body is considering such action.

3.12 Material Contracts.

(a) Schedule 3.12(a) sets forth a true, correct and complete list of all of the following types of Contracts to which the Company or any of its Subsidiaries is a party as of the date hereof:

(i) Contracts that require future aggregate payments by the Company or any of its Subsidiaries of more than $500,000 in any year that are not terminable, without penalty, by the Company or one of its Subsidiaries, as applicable, on notice of one hundred eighty (180) days or less;

(ii) Contracts that require future aggregate payments to the Company or any of its Subsidiaries of more than $500,000 in any year that are not terminable, without penalty, by the Company or one of its Subsidiaries, as applicable, on notice of one hundred eighty (180) days or less;

(iii) Contracts relating to the incurrence, assumption or guarantee of Indebtedness in excess of $250,000, or the making of any loans (other than among the Company and its Wholly-Owned Subsidiaries);

(iv) any agreement under which the Company or any of its Subsidiaries has guaranteed or otherwise become obligated to satisfy the obligations of another Person, including any letters of credit;

(v) Contracts with any Governmental Body, other than Contracts that relate to payment for health services in the ordinary course (e.g., Medicare, Medicaid, TRICARE);

(vi) Contracts, other than the Organizational Documents of any Joint Venture, that limit or purport to limit the ability of the Company or any of its Subsidiaries to (A) compete in any line of business, (B) compete with any particular Person or (C) compete in any geographic area;

(vii) Contracts for the sale, licensing or use of any assets, properties, equity interests or rights in excess of $1,000,000, other than the sale of securities, services or products in the ordinary course of business and consistent with past practice consummated since January 1, 2014;

(viii) Contracts, other than the Organizational Documents of any Joint Venture, granting to any Person a right of first refusal or right of first offer on the sale of any part of the business, assets or properties of the Company or any of its Subsidiaries;

(ix) any collective bargaining agreement or other Contract with an employee union;

(x) any agreement for the employment of, or the provision of severance to, any individual providing such individual with annual compensation or severance in excess of $200,000 (excluding any agreements with physicians entered into in the ordinary course of business (collectively, the "Executive Agreements");

(xi) any Contract that would be terminable or require payment upon a change of control of the Company;

(xii) any partnership, joint venture or similar agreements pertaining to the Company or its Subsidiaries (other than any Organizational Documents);

(xiii) any Contract with any Stockholder or any Affiliate of any Stockholder (other than any member of the Company Group or Casper or NSH Wyoming); and

(xiv) any Contract relating to cleanup, abatement or other actions in connection with environmental Liabilities.

(b) The Material Contracts are in full force and effect, constitute legal, valid and binding obligations of the Company or one of its Subsidiaries, as applicable, and, to the Knowledge of the Company, the other parties thereto, and are enforceable in accordance with their respective terms, except to the extent that enforceability may be limited by the Enforceability Exceptions. Neither the Company nor any of its Subsidiaries (i) is in default or material breach under any Material Contract or (ii) has received any written notice of any default, material breach or event that with notice or lapse of time, or both, would constitute a default by the Company or any of its Subsidiaries under any of the Material Contracts. There is no pending dispute or disagreement involving the Company or any of its Subsidiaries under any Material Contract. The Company has made available to Purchaser true, accurate and correct copies of each Material Contract.

3.13 Intellectual Property.

(a) Schedule 3.13(a) sets forth a complete and accurate list as of the date hereof of all patents, trademarks, service marks, trade names, domain names and copyrights for which registrations have been obtained, and all applications for, or extensions or reissues of, any of the foregoing (in each case, in the United States or otherwise), that are owned by, or registered or applied for in the name of, the Company or one of its Subsidiaries, setting forth for each such item the applicable name, title, registration or application numbers and dates, and the current owner.

(b) The Company or one of its Subsidiaries owns all right, title and interest in and to, or has a valid license to use, all Intellectual Property used in the operation of the business of the Company Group (the "Company Intellectual Property"). Neither the Company nor any of its Subsidiaries has (i) transferred ownership of, or granted any exclusive licenses or rights of any kind in, any Intellectual Property that is owned by the Company or any of its Subsidiaries ("Company Owned IP") to any Person. The Company or one of its Subsidiaries is the owner of all right, title and interest in and to (free and clear of all Liens except for Permitted Liens) each item of Company Owned IP and has the rights to use, sell, license, assign, transfer, or otherwise exploit such Company Owned IP.

(c) To the Knowledge of the Company, the Company's use of the Company Owned IP does not violate, infringe or misappropriate any Intellectual Property or rights of privacy or publicity of any other Person. To the Knowledge of the Company, no Person has violated, infringed or misappropriated any Company Owned IP. To the Knowledge of the Company, no Trade Secret of the Company or any of its Subsidiaries (including any software source code) has been used or provided for the benefit of any Person (other than the Company Group) or otherwise misappropriated.

(d) The Company and each of its Subsidiaries have taken, in all material respects, all reasonable and appropriate steps to protect, maintain and safeguard the proprietary nature of the Company Intellectual Property (including any Trade Secrets comprising a part thereof). The computers, software, servers, workstations, routers, hubs, switches, circuits, networks, data communications lines and all other information technology equipment of the Company and its Subsidiaries (collectively, the "Company IT") operate and perform in all material respects as required for the operation of the business of the Company Group and have not materially malfunctioned or materially failed within the past three (3) years. The Company and each of its Subsidiaries have in place commercially reasonable measures to protect the integrity and security of the Company IT and commercially reasonable disaster recovery processes and solutions for all of the Company IT and pre-clinical, clinical and other proprietary data and information necessary for the use of the products and services of the Company and any of its Subsidiaries. Except as set forth on Schedule 3.13(d), to the Knowledge of the Company, there has been no unauthorized use, access, interruption, modification or corruption of the Company IT within the past three (3) years.

3.14 Legal Actions; Orders Except as set forth on Schedule 3.14, as of the date hereof, there are no (a) Legal Actions pending or, to the Knowledge of the Company, threatened by any Person against or affecting the Company or any of its Subsidiaries or any of their respective assets or properties, whether at law or in equity, or before or by any Governmental Body or arbitrator, in each case, that if adversely determined, would reasonably be expected to result in Liabilities to the Company Group in excess of $250,000 individually, or could result in injunctive relief against the Company or any of its Subsidiaries, or (b) Orders of any Governmental Body or arbitrator against the Company or any of its Subsidiaries, except for such Orders that would not reasonably be expected to be material to the Company and its Subsidiaries, taken as a whole.

3.15 Benefit Plans.

(a) Schedule 3.15(a) sets forth a true and complete list as of the date hereof of each (i) "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), and (ii) each other agreement, plan, practice, arrangement, program or policy providing compensation or other benefits to or for the benefit of current or former employees, directors officers or consultants (or to any beneficiary thereof) that (i) has been entered into, sponsored, contributed to (or required to be contributed to) or maintained by the Company or any of its Subsidiaries or (ii) with respect to which the Company Group has or could have any obligation or Liability, whether actual or contingent (collectively, the "Benefit Plans"), provided, however, that Schedule 3.15(a) need not list immaterial plans.

(b) The Company has delivered or made available the following documents to Purchaser and Merger Sub with respect to each material Benefit Plan: (i) correct and complete copies of all such Benefit Plans, including all subsequent amendments thereto, and the most recent related trust documents, (ii) the most recent summary plan description together with the summary or summaries of material modifications thereto, if any, (iii) the most recent IRS or Department of Labor determination letter, opinion, notification and advisory letter, if any, (iv) the most recent annual report (Form Series 5500 and all schedules and financial statements attached thereto), if any, (v) the most recent actuarial report or other financial statement, (vi) the most recent nondiscrimination tests performed under the Code and (vii) all non-routine filings made with any Governmental Body, including but not limited any filings under the Voluntary Compliance Resolution or Closing Agreement Program or the Department of Labor Delinquent Filer Program.

(c) Each Benefit Plan intended to qualify under Section 401 of the Code is so qualified and the trusts maintained pursuant thereto are exempt from federal income taxation under Section 501 of the Code, and nothing has occurred with respect to the operation of such Benefit Plan which could reasonably be expected to cause the loss of such qualification or exemption. The Benefit Plans have been established, maintained, funded and administered in all material respects in accordance with their terms and with the requirements of Applicable Law.

(d) No Benefit Plan is, and neither the Company nor any of its ERISA Affiliates has in the past six (6) years had any Liability with respect to, (i) a "multiemployer plan" as defined in Section 3(37) of ERISA, (ii) a plan otherwise subject to Title IV of ERISA, (iii) a plan otherwise subject to the minimum funding standards of Section 412 of the Code or Section 302 of ERISA, or (iv) a multiple employer plan (within the meaning of ERISA).

(e) All contributions, reserves or premium payments required to be made or accrued as of the date hereof to the Benefit Plans have been timely made or, if not yet due, properly reflected in the Financial Statements.

(f) No Benefit Plan provides post-employment or post-service life or health insurance, benefits or coverage for any participant or any beneficiary of a participant, except as may be required under the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended or other Applicable Law.

(g) None of the execution, delivery or performance of this Agreement nor the consummation of the transactions contemplated by this Agreement (whether alone or together with any other event) will (i) entitle any current or former employee or director to any material payment, forgiveness of Indebtedness, vesting, distribution, or material increase in benefits under or with respect to any Benefit Plan, (ii) otherwise trigger any acceleration (of vesting or payment of benefits or otherwise) or creation of any rights under or with respect to any Benefit Plan, (iii) trigger any material obligation to fund any Benefit Plan or (iv) give rise to any payments or benefits or increases or funding of any payments or benefits.

(h) No amount or benefit that could be, or has been, received (whether in cash or property or the vesting of property or the cancellation of Indebtedness) by any current or former employee, officer or director of any member of the Company Group who is a "disqualified individual" within the meaning of Section 280G of the Code could be characterized as an "excess parachute payment" (as defined in Section 280G(b)(1) of the Code) as a result of the consummation of the transactions contemplated by this Agreement. None of the Company or any of its Subsidiaries has any obligation to indemnify, reimburse, gross up or make whole any Person for any Tax imposed under Section 280G or 409A of the Code.

(i) Each Benefit Plan that is a "nonqualified deferred compensation plan" within the meaning of Section 409A of the Code has been documented and operated in all material respects in compliance with Section 409A of the Code.

(j) With respect to each Benefit Plan, (i) no Legal Actions (other than routine claims for benefits in the ordinary course) are pending or, to the Knowledge of the Company, threatened; (ii) to the Knowledge of the Company, no facts or circumstances exist that could give rise to any such Legal Actions; and (iii) no administrative investigation, audit or other administrative Legal Action by the Department of Labor, the IRS or other governmental agencies are pending, in progress or, to the Knowledge of the Company, threatened (including any routine requests for information from the Pension Benefit Guaranty Corporation).

(k) No Benefit Plan provides compensation or benefits to any employee or service provider of the Company or its Subsidiaries who resides or performs services primarily outside of the United States.

3.16 Real Property.

(a) Owned Real Property. All of the real property owned in fee by the Company or its Subsidiaries as of the date hereof (collectively, the "Owned Real Property") is listed or described on Schedule 3.16(a). Title to the Owned Real Property is good and marketable, fee simple absolute, held in the name of the Company or any of its Subsidiaries, free and clear of all Liens other than Permitted Liens. Other than the Company or any of its Subsidiaries, no Person is leasing, using or occupying any portion of the land, property, structures, fixtures and improvements covered by the Owned Real Property or any part thereof, except for leases and other agreements entered into in the ordinary course of business which do not interfere with the present use of the Owned Real Property (examples of such leases include medical offices, ground leases, gift shops, and foodservice). There are no outstanding options, rights of first refusal, rights of first offer, rights of reverter or other third party rights to purchase any Owned Real Property.

(b) Leased Real Property.

(i) Schedule 3.16(b)(i) sets forth each interest in real property leased by the Company or any of its Subsidiaries as of the date hereof (collectively, the "Leased Real Property" and together with the Owned Real Property, the "Real Property"), including the location thereof, and the lessor of any such Leased Real Property. True and complete copies of all Leases (as defined below), together with all amendments or modifications, have been provided to Purchaser and Merger Sub.

(ii) The Company or one of its Subsidiaries owns all right, title and interest in all leasehold estates and other rights purported to be granted to it by the leases and other agreements required to be listed on Schedule 3.16(b)(i) (the "Leases"), in each case free and clear of all Liens except for Permitted Liens. Neither the Company nor any of its Subsidiaries has subleased, licensed or otherwise granted any Person, other than the Company or any of its Subsidiaries, the right to use or occupy the Leased Real Property subject to such Lease, or any portion thereof, except for subleases and other agreements entered into in the ordinary course of business which do not interfere with the present use of the Leased Real Property (examples of such leases include medical offices, gift shops, and foodservice).

(iii) Each of the Leases is in full force and effect and is a legal, valid and binding obligation of the Company or its Subsidiaries, enforceable against them in accordance with its terms, except to the extent that enforceability may be limited by the Enforceability Exceptions. Neither the Company nor any of its Subsidiaries is in material default under any Lease or has received any written notice of any material default or event that with notice or lapse of time, or both, would constitute a material default by the Company or any of its Subsidiaries under any of the Leases and, to the Knowledge of the Company, no other party is in material default thereof, in each case.

(c) As of the date hereof, no condemnation proceeding is pending, or to the Knowledge of the Company, threatened, with respect to any Real Property.

(d) Together with the Owned Real Property, the Leased Real Property constitute all of the real estate properties necessary to operate the business of the Company and the Company Subsidiaries in all material respects as it is currently conducted.

3.17 Labor Matters.

(a) Neither the Company nor any of its Subsidiaries is a party to any labor or collective bargaining agreement and none of the Company or its Subsidiaries are represented by any union, works council or other bargaining representative. Since January 1, 2014, no union, works council, or other bargaining representative has attempted to organize any group of the Company's or any of its Subsidiaries' employees, and no group of the Company's or any of its Subsidiaries' employees has sought to organize themselves into a union, works council, or similar organization for the purpose of collective bargaining.

(b) There are no (i) strikes, work stoppages, work slowdowns or lockouts pending or, to the Knowledge of the Company, threatened against or involving the Company or any of its Subsidiaries, or (ii) unfair labor practice charges, grievances, complaints or other collective bargaining or labor disputes pending or, to the Knowledge of the Company, threatened by or on behalf of any employee or group of employees of the Company or any of its Subsidiaries , nor has any such event or circumstance occurred in the last five (5) years.

(c) The Company and its Subsidiaries are in material compliance with and, since January 1, 2014, have complied in all material respects with all Applicable Laws relating to employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar Taxes, occupational safety and health and layoffs, redundancies and plant closings. The Company Group has no material Liability, whether absolute or contingent, including any material obligations under the Benefit Plans or Applicable Law, with respect to any misclassification of a Person performing services for the Company Group (i) as an independent contractor vs. an employee or (ii) as an exempt vs. non-exempt employee under the Fair Labor Standards Act or any other Applicable Law.

3.18 Environmental Matters. Except as would not have, individually or in the aggregate, a Material Adverse Effect, (i) the operations of the Company and each of its Subsidiaries are and, for the previous three (3) years, have been in compliance with all applicable Environmental Laws, which compliance includes obtaining, maintaining and complying with all Permits required under applicable Environmental Laws to operate its business; (ii) neither the Company nor any of its Subsidiaries is subject to any pending or, to the Knowledge of the Company, threatened claims or Legal Actions alleging non-compliance with or potential Liability under Environmental Laws; (iii) there are no pending or, to the Knowledge of the Company, threatened investigations of the Company or any of its Subsidiaries relating to any of their currently or previously owned, operated or leased property, which would reasonably be expected to result in the Company or any of its Subsidiaries incurring any Liability pursuant to any Environmental Law; and (iv) neither the Company nor any of its Subsidiaries has released or discharged any Hazardous Substances or become responsible for remediation or cleanup of any such release or discharge at any location, that would reasonably be expected to result in the Company or any of its Subsidiaries incurring any Liability pursuant to any Environmental Law.

3.19 Insurance.

(a) Schedule 3.19 contains a true, correct and complete list as of the date hereof of all liability insurance policies held by the Company or any of its Subsidiaries for the benefit of the Company or any of its Subsidiaries, the Owned Real Property or any personal property owned by the Company or any of its Subsidiaries (specifying the insurer, amount of coverage, type of insurance, policy number, expiration date and any material pending claims thereunder).

(b) With respect to each policy of insurance listed on Schedule 3.19: (i) all premiums due with respect thereto have been, in all material respects, paid prior to the date hereof and are not subject to adjustment other than as a result of normal policy year audits, and neither the Company nor any of its Subsidiaries is in default in any material respect with respect to its obligations under any such policy, and, to the Knowledge of the Company, no insurer under any such policy has threatened to cancel or unilaterally reduce or limit the stated coverages contained in such policy; (ii) neither the Company nor any of its Subsidiaries has received any written notice that such policy has been or shall be canceled or terminated or will not be renewed on substantially the same terms as are now in effect or that the premium on such policy shall be materially increased on the renewal thereof; and (iii) none of the Company or any of its Subsidiaries or any other applicable policyholder has received any refusal, denial or dispute of coverage or any notice of cancellation, termination or nonrenewal.

3.20 Certain Relationships and Payments.

(a) Except as set forth in Schedule 3.20(a), and except for agreements related to employment, severance or indemnification obligations between any member of the Company Group and such Company Group member's current or former directors, managers, officers or employees, to the Knowledge of the Company, no equityholder who owns five percent (5%) or more of the capital stock of the Company or any Affiliate of such five percent (5%) equityholder or of Casper or NSH Wyoming (a) owns, directly or indirectly, in whole or in part, or maintains any direct or indirect interest in, any tangible or intangible property which the Company or any of its Subsidiaries is using or the use of which is material to the business of the Company Group, or (b) has received any loan, advance or investment from the Company or any of its Subsidiaries, that has not been repaid in full prior to the date hereof.

(b) Schedule 3.20(b) sets forth a list of all Contracts (including any Leases) which involve remuneration between the Company or any Subsidiary of the Company and any physician, family member of a physician, or an entity in which, to the Knowledge of the Company, a physician or family member of a physician has an ownership or investment interest (collectively, "Physician Contracts") as in effect as of the date hereof. Except as set forth on Schedule 3.20(b), since January 1, 2014, neither the Company nor any of its Subsidiaries has made any payments to any physician, family member of a physician, or an entity in which, to the Knowledge of the Company, a physician or family member of a physician has an ownership or investment interest outside of the Physician Contracts or other than pursuant to an exception to the Stark Law not requiring a written agreement.

3.21 Brokers. Except for J.P. Morgan Securities LLC, the fees and expenses of which will be paid by the Company and shall be included in Seller Expenses (to the extent unpaid as of the Adjustment Time), no broker, finder or investment banker is entitled to any brokerage commissions, finders' fees or similar compensation from the Company or any of its Subsidiaries in connection with the transactions contemplated by this Agreement or the other Transaction Documents.

3.22 Interim Restructuring. Except with respect to the Sub-Advisory Agreement, upon the consummation of the Interim Restructuring, no member of the Company Group shall have any Liability to or in respect of Casper or NSH Wyoming.

3.23 Disclaimer of Other Representations and Warranties.

(a) NONE OF THE COMPANY, ANY SECURITYHOLDER, THE SELLERS' REPRESENTATIVE, ANY AFFILIATE THEREOF, NOR ANY OF THEIR RESPECTIVE REPRESENTATIVES, MAKES OR HAS MADE ANY REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, OF ANY NATURE WHATSOEVER RELATING TO THE COMPANY OR ANY OF ITS SUBSIDIARIES OR THE BUSINESS OF THE COMPANY OR ANY OF ITS SUBSIDIARIES OR OTHERWISE IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY, OTHER THAN THOSE REPRESENTATIONS AND WARRANTIES MADE SOLELY BY THE COMPANY EXPRESSLY SET FORTH IN THIS ARTICLE 3 (AS MODIFIED BY THE COMPANY DISCLOSURE SCHEDULES HERETO). THE COMPANY, THE SECURITYHOLDERS AND THE SELLERS' REPRESENTATIVE EXPRESSLY DISCLAIM ANY OTHER EXPRESS OR IMPLIED REPRESENTATIONS OR WARRANTIES WITH RESPECT TO ANY MATTER WHATSOEVER.

(b) Without limiting the generality of the foregoing, none of the Company, the Sellers' Representative, any Securityholder nor any Affiliate thereof, nor any of their respective Representatives has made, and shall not be deemed to have made, any representations or warranties in the materials relating to the business of the Company Group made available to Purchaser and Merger Sub, including due diligence materials, or in any presentation of the business of the Company Group by management of the Company or others in connection with the transactions contemplated hereby, and no statement contained in any of such materials or made in any such presentation shall be deemed a representation or warranty hereunder or otherwise or deemed to be relied upon by Purchaser or Merger Sub in executing, delivering and performing this Agreement and the transactions contemplated hereby. It is understood that any cost estimates, projections or other predictions, any data, any financial information or any memoranda or offering materials or presentations, including any confidential information memorandum or similar materials made available by the Company, the Sellers' Representative, the Securityholders or their Affiliates, or any of their respective Representatives, are not and shall not be deemed to be or to include representations or warranties of the Company, and are not and shall not be deemed to be relied upon by Purchaser or Merger Sub in executing, delivering and performing this Agreement and the transactions contemplated hereby (in each case, except to the extent covered by any of the representations or warranties contained in this ARTICLE 3).

(c) Except for the representations and warranties contained in this ARTICLE 3 (as modified by the Schedules hereto) that are being made solely by the Company, each of the Company, each Securityholder, the Sellers' Representative and any Affiliate thereof, hereby disclaims all Liability and responsibility for any representation, warranty, covenant, projection, forecast, statement, or information made, communicated, or furnished (orally or in writing) to Purchaser or Merger Sub or their respective Affiliates or Representatives (including any opinion, information, projection or advice that may have been or may be provided to Purchaser by any Representative of any Securityholder, the Company or any of their Affiliates).

(d) Sections 3.23(a), (b) and (c) shall not apply to the representations and warranties of the Stockholders or the Option Holders set forth in the Written Consent, any Letter of Transmittal or any Option Surrender Letter.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF PURCHASER AND MERGER SUB

Except as disclosed in the Purchaser Disclosure Schedule, which Purchaser Disclosure Schedule is arranged in paragraphs corresponding to the numbered and lettered paragraphs contained in this ARTICLE 4 (and the disclosure in any such numbered and lettered section therein shall qualify the corresponding subsection in this ARTICLE 4 and any other section hereof where it is reasonably apparent that the disclosure applies to such other section), Purchaser and Merger Sub represent and warrant to the Company, as of the date hereof and as of the Closing Date, as follows:

4.1 Organization; Corporate Power. Each of Purchaser and Merger Sub is a corporation validly existing under the laws of the State of Delaware and is in good standing in such state. Each of Purchaser and Merger Sub has all requisite corporate power and authority to own, lease, operate or otherwise hold its properties and assets, to carry on its business as presently conducted, to execute and deliver this Agreement and the other Transaction Documents to which it is a party and to consummate the transactions contemplated hereby and thereby.

4.2 Qualification. Each of Purchaser and Merger Sub is duly qualified to transact business and is in good standing in each jurisdiction where the nature of its business makes such qualification and good standing necessary, except where the failure to be so qualified or in good standing would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

4.3 Authority; No Conflict; Consents.

(a) The execution and delivery by each of Purchaser and Merger Sub of this Agreement and the other Transaction Documents to which it is a party and the performance by each of Purchaser and Merger Sub of the transactions contemplated hereby and thereby have been duly authorized pursuant to and in accordance with Applicable Law and the Organizational Documents governing each of Purchaser and Merger Sub and no other proceedings on the part of either Purchaser and Merger Sub are necessary to authorize such execution, delivery and performance.

(b) This Agreement and the other Transaction Documents to which each of Purchaser and Merger Sub is a party have been duly and validly executed and delivered by each of Purchaser and Merger Sub and constitute valid and binding obligations of each of Purchaser and Merger Sub, enforceable against each of Purchaser and Merger Sub in accordance with their terms, except to the extent that enforceability may be limited by the Enforceability Exceptions.

(c) The execution and delivery by each of Purchaser and Merger Sub of this Agreement and each other Transaction Document to which it is a party and the performance by each of Purchaser and Merger Sub of the transactions contemplated hereby and thereby does not conflict with, result in a violation or breach of, or constitute a default under, in each case, with or without the giving of notice or lapse of time or both, (i) any term of the Organizational Documents of each of Purchaser and Merger Sub, (ii) any material Contract or permit to which either Purchaser or Merger Sub is a party or (iii) any Applicable Law to which either Purchaser or Merger Sub are subject, and except with respect to clauses (ii) and (iii) above, for such conflicts, violations, breaches or defaults that would not have, individually or in the aggregate, a material adverse effect on either Purchaser or Merger Sub.

(d) No consent, approval, permit, Order or authorization of, registration, declaration or filing with any Governmental Body, any third party or any counter-party to any material Contract to which Purchaser or Merger Sub is a party, is required in connection with the execution, delivery and performance by each of Purchaser and Merger Sub of this Agreement or the other Transaction Documents to which it is a party or the transactions contemplated hereby and thereby, except for (i) the filing of the Certificate of Merger with the Secretary of the State of Delaware pursuant to the DGCL, and (ii) compliance with and filings under any applicable Antitrust Laws, including under the HSR Act, and the rules and regulations promulgated thereunder and its foreign equivalents in each foreign jurisdiction where Purchaser and Merger Sub are subject to such compliance and filings.

(e) None of Purchaser or any of its Affiliates has ever (i) been denied the right to invest in, own, operate or obtain a license with respect to a hospital or other healthcare facility or (ii) withdrawn an application to invest in, own, operate or obtain a license with respect to a hospital or other healthcare facility. None of Purchaser or any of its Affiliates is aware of any facts or circumstances that would reasonably be expected to result in any Governmental Body objecting to the transactions contemplated hereby, denying or materially delaying its approval of the transactions contemplated hereby (if such Governmental Body's approval is required), or subjecting such approval to any material conditions precedent that are different from those conditions precedent generally imposed by such Governmental Body in transactions substantially similar to the transactions contemplated by this Agreement.

4.4 Financing. Purchaser has delivered to the Company true, complete and correct copies of (a) executed commitment letters (as the same may be amended or replaced in accordance with Section 7.5, the "Debt Financing Commitments"), pursuant to which the Debt Financing Sources have agreed, subject to the terms and conditions thereof, to provide or cause to be provided the debt amounts set forth therein (the "Debt Financing"), and (b) an executed Equity Financing Commitment from the Equity Financing Source to (x) Investor and (y) Company, as an express third party beneficiary thereof, pursuant to which the Equity Financing Source has committed to purchase equity securities of Investor in the amount set forth therein, subject to the terms and conditions thereof (the "Equity Financing Commitment," and together with the Debt Financing Commitments, the "Financing Commitments"), pursuant to which the Equity Financing Source has committed, subject to the terms and conditions thereof, to invest the amount set forth therein (the "Equity Financing," and together with the Debt Financing, the "Financing"). As of the date hereof, the Equity Financing Commitment is in full force and effect and is a legal, valid and binding obligation of the Equity Financing Source, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by the Enforceability Exceptions. As of the date hereof, the Debt Financing Commitments are in full force and effect and are the legal, valid and binding obligations of Purchaser and any Affiliates of Purchaser party thereto (and, to Purchaser's knowledge, the Debt Financing Sources) and enforceable against Purchaser and any Affiliates of Purchaser (and, to Purchaser's knowledge, the Debt Financing Sources) in accordance with their terms, except to the extent that enforceability may be limited by the Enforceability Exceptions. As of the date hereof, none of the Financing Commitments has been amended or modified and the respective

commitments contained in the Financing Commitments have not been withdrawn or rescinded in any respect nor to Purchaser's knowledge, will be amended, modified, withdrawn, rescinded or modified, except as consistent with Section 7.5(a). Assuming the accuracy of the Company's representations and warranties set forth in ARTICLE 3, the satisfaction of the conditions precedent to Purchaser's obligation to effect the Closing hereunder, the solvency of the Company and its Subsidiaries and the completion of the Marketing Period, as of the date hereof, no event has occurred which, with or without notice, lapse of time or both, would constitute a default or breach on the part of Purchaser or Merger Sub and to the knowledge of Purchaser, any other party thereto, under any Financing Commitment and neither Purchaser nor Merger Sub has any reason to believe that it will be unable to satisfy on a timely basis any term or condition of closing to be satisfied by it (and, to the knowledge of Purchaser, any other party thereto) in any of the Financing Commitments on or prior to the Closing Date (other than to the extent the issuance of debt securities may replace any bridge facilities included in the Debt Financing). There are no conditions precedent related to the funding or investing, as applicable, of the full amount of the Financing other than as set forth in or contemplated by the Financing Commitments. There are no side letters or other Contracts (except for customary fee letters and engagement letters, true and complete copies of which have been provided to the Company, except that financial and economic terms not affecting conditionality may be redacted) related to the funding or investing, as applicable, of the full amount of the Debt Financing other than as set forth in or contemplated by the Debt Financing Commitments. Subject to the terms and conditions of the Financing Commitments, and subject to the terms and conditions of this Agreement, the aggregate proceeds contemplated by the Financing Commitments, will be sufficient to pay (i) the full amount of any payments required to be paid by Purchaser pursuant to ARTICLE 2 and (ii) all of Purchaser's fees, costs and expenses relating to this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby. Each of Purchaser and Merger Sub has fully paid any and all commitment fees, if any, or other fees required by the Equity Financing Commitment and the Debt Financing Commitments that are due and payable on or prior to the date hereof. Each of Purchaser and Merger Sub is unaware of any fact or occurrence existing on the date hereof that would reasonably be expected to make any of the assumptions or any of the statements set forth in the Equity Financing Commitment or the Debt Financing Commitments inaccurate or that would reasonably be expected to cause the Equity Financing Commitment or the Debt Financing Commitments to be ineffective. The obligations of Purchaser and Merger Sub under this Agreement are not contingent on the availability of financing for, or related to, the transactions contemplated by this Agreement, subject to completion of the Marketing Period and the satisfaction of the applicable conditions set forth in Section 8.1 and Section 8.2. The Company is a third party beneficiary of the Equity Financing Commitment. The execution, delivery and performance by the Equity Financing Source of the Equity Financing Commitment has been duly and validly authorized by all necessary limited partnership, corporate or other similar action.

4.5 Ownership and Operations of Merger Sub. Purchaser owns beneficially and of record all of the outstanding capital stock of Merger Sub. Merger Sub was formed solely for the purpose of entering into this Agreement and consummating the transactions hereby and has not engaged in any activities or business, and has incurred no Liabilities or obligations whatsoever, in each case, other than in connection with the transactions contemplated hereby.

4.6 Solvency. Neither Purchaser nor Merger Sub is entering into this Agreement or the Debt Financing Commitments with the intent to hinder, delay or defraud either present or future creditors. Immediately after giving effect to all of the transactions contemplated by this Agreement and the Debt Financing Commitments, including the Debt Financing and the making of the payments contemplated by Sections 2.6 and 2.12, and assuming satisfaction of the conditions to Purchaser's obligation to consummate the Merger as set forth herein, the accuracy of the representations and warranties of the Company Group set forth herein and the performance by the Company of its obligations hereunder in all material respects, following the Closing the Company and each of its Subsidiaries will be Solvent.

4.7 Brokers. None of Purchaser or its Affiliates have, directly or indirectly, entered into any agreement with any Person that would obligate the Company to pay any commission, brokerage fee or "finder's fee" in connection with the transactions contemplated by this Agreement.

4.8 Litigation.

(a) As of the date hereof, there is no Legal Action pending or, to the knowledge of Purchaser, threatened against Purchaser or Merger Sub seeking to enjoin, challenge or prevent the transactions contemplated hereby. There is no Legal Action pending or, to knowledge of Purchaser, threatened against Purchaser or Merger Sub or involving any of their properties or assets that would have a Purchaser Material Adverse Effect.

(b) Neither Purchaser nor Merger Sub is (i) in default under or in breach of any Order or (ii) a party or subject to any Order, except, in each case, where such default or breach, or such Order, would have a Purchaser Material Adverse Effect.

4.9 Investigation and Agreement by Purchaser; No Other Representations or Warranties.

(a) Each of Purchaser and Merger Sub acknowledges that it and its Representatives have received access to such books and records, facilities, equipment, Contracts and other assets of the Company Group which it and its Representatives have desired or requested to review, and that it and its Representatives have had full opportunity to meet with the management of the Company and to discuss the business and assets of the Company Group.

(b) Each of Purchaser and Merger Sub acknowledges and agrees that it has made its own inquiry and investigation into, and, based thereon, has formed an independent judgment concerning, the Company and the other members of the Company Group and their respective business and operations, and that it has been provided with access to such information about the Company Group and their business and operations as it has requested.

(c) Except for the specific representations and warranties expressly made by the Company in ARTICLE 3 and the Company Disclosure Schedules, each of Purchaser and Merger Sub acknowledges and agrees that:

(i) no member of the Company Group nor any other Person is making or has made any representation or warranty, express or implied, at Applicable Law or in equity, in respect of the Company Group or any of the Company Group's businesses, assets, liabilities, operations, prospects, or condition (financial or otherwise), including with respect to merchantability or fitness for any particular purpose of any assets, the nature or extent of any liabilities, the prospects of the business of the Company Group, the effectiveness or the success of any operations, or the accuracy or completeness of any confidential information memoranda, documents, projections, material or other information (financial or otherwise) regarding the Company Group furnished to Purchaser, Merger Sub or their respective Representatives or made available to Purchaser, Merger Sub or their respective Representatives in any "data rooms," "virtual data rooms," management presentations or in any other form in expectation of, or in connection with, the transactions contemplated hereby, or in respect of any other matter or thing whatsoever; and

(ii) no Representative of the Company Group has any authority, express or implied, to make any representations, warranties or agreements not specifically set forth in this Agreement and subject to the limited remedies herein provided.

(d) Each of Purchaser and Merger Sub specifically disclaims that it is relying upon or has relied upon any such other representations, warranties or agreements that may have been made by any Person, and acknowledges and agrees that the Company Group has specifically disclaimed and does hereby specifically disclaim any such other representation, warranty or agreement made by any Person. Each of Purchaser and Merger Sub expressly acknowledge that they have not relied upon any item described in Section 3.23(b) or Section 3.23(c).

(e) Each of Purchaser and Merger Sub specifically disclaims any obligation or duty by the Company Group to make any disclosures of fact not required to be disclosed pursuant to the specific representations and warranties expressly set forth in ARTICLE 3.

(f) Sections 4.9(a) through (e) shall not apply with respect to the representations and warranties of the Stockholders or the Option Holders set forth in the Written Consent, any Letter of Transmittal or any Option Surrender Letter.

ARTICLE 5
COVENANTS OF THE COMPANY

5.1 Conduct of Business.

(a) Except as otherwise expressly contemplated herein or as set forth on Schedule 5.1(a), from the date hereof through the Closing, the Company shall, and shall cause each other member of the Company Group to, carry on its business in all material respects in the ordinary course of business and consistent with past practice.

(b) From and after the date hereof through the Closing, except as may be first approved in writing by Purchaser (which approval will not be unreasonably withheld, delayed or conditioned) or as is otherwise specifically contemplated or required by this Agreement or by Applicable Laws, or as set forth on Schedule 5.1(b), the Company shall not, and shall cause each other member of the Company Group not to:

(i) adopt any amendment or modification to its Organizational Documents;

(ii) merge or consolidate with any other Person or adopt a plan of complete or partial liquidation, dissolution, recapitalization, or reorganization;

(iii) engage in any business other than the business conducted as of the date hereof and activities in furtherance thereof;

(iv) declare or pay any dividend or other distribution, payable in stock, property or otherwise, with respect to any of its capital stock or enter into any agreement with respect to the voting of its capital stock; provided, that (A) the Company and its Subsidiaries shall be permitted to declare dividends or other distributions in cash so long as they are paid at least three (3) Business Days prior to the Adjustment Time and (B) the Company's Subsidiaries may declare or pay any dividend or distribution at any time to the extent required pursuant to their Organizational Documents;

(v) (A) issue, sell, purchase, redeem, retire or grant registration rights with respect to any shares of its capital stock or any other securities, including any securities convertible into, or options, warrants or rights to purchase or subscribe for, its capital stock or other securities other than (i) the issuance, delivery or sale of, any securities to the Company or any other Company Subsidiary, (ii) the issuance of shares of Common Stock upon the exercise of any Company Options or (iii) the issuance or redemption of any securities of any Company Subsidiary in the ordinary course of business to or from any physician, physician group, hospital or hospital system that holds or subscribes to an equity interest in any Joint Venture with a value, on an individual basis, of less than $250,000, in each case in accordance with Applicable Law and the Organizational Documents of such Joint Venture, or (B) enter into any Contract with respect to the issuance, sale, purchase or redemption of any shares of its capital stock or other securities (other than, in the case of each of the foregoing clauses (A) and (B), by the Company (x) in connection with the acceleration of vesting of Company Options in accordance with its terms, or (y) with respect to repurchases of shares of Common Stock from Stockholders under the Shareholder's Agreement);

(vi) reclassify, split, combine or subdivide, directly or indirectly, any of its securities;

(vii) (A) increase the compensation, bonus or pension, welfare, severance or other benefits of, pay any bonus to, or make any new equity awards to any director, officer or employee of the Company or any of its Subsidiaries (other than (x) the payment of bonuses or increases in compensation and bonuses, in each case, in the ordinary course of business and consistent with past practice (including annual increases in the ordinary course of business) or (y) as required by Applicable Law or the terms of a Benefit Plan), (B) adopt, amend or terminate any Benefit Plan (other than as required by Applicable Law), (C) take any action to accelerate the vesting or payment, or fund or in any other way secure the payment of, compensation or benefits under any Benefit Plan (other than the acceleration and vesting of Company Options), (D) make or forgive any loans to directors, officers or employees of the Company or any of its Subsidiaries, (E) grant to any employee or other service provider any new right to or increase in severance or termination payment, or (F) enter into or adopt any collective bargaining agreement or other Contract with any labor organization;

(viii) incur any Indebtedness (other than borrowings under the Credit Facilities in the ordinary course of business) or mortgage, pledge or subject to any Lien any of its properties or assets, except for Permitted Liens; provided, that a Joint Venture may incur Indebtedness in the ordinary course of business consistent with past practice;

(ix) make any capital expenditures in excess of $500,000 individually or $1,000,000 in the aggregate, in each case, other than capital expenditures that are (i) fully paid prior to the Closing or (ii) made in the ordinary course of business;

(x) fail to maintain and keep in full force and effect all material existing insurance policies for the benefit of the Company Group, other than such policies that expire by their terms (in which event the Company shall use reasonable efforts to renew or replace such policies) or changes to such policies made in the ordinary course of business;

(xi) settle, or consent to the settlement of, any material Legal Action that would result in the payment by the Company or its Subsidiaries of more than $500,000 individually or would result in the imposition of any injunctive relief against the Company or any of its Subsidiaries;

(xii) acquire, sell, lease, license, transfer, assign, abandon, permit to lapse, fail to maintain, or otherwise dispose of any properties or assets outside the ordinary course of business and consistent with past practice, except for properties or assets (but not shares of capital stock) with an aggregate value equal to or less than $1,000,000;

(xiii) except as required by GAAP, make any change in its accounting principles or the methods by which such principles are applied for financial reporting purposes;

(xiv) except as required by Applicable Law or GAAP, make or change any material Tax election, change an annual Tax accounting period, adopt or change any accounting method (including any Tax accounting method), amend any material Tax Return, enter into any closing agreement in respect of Taxes or Tax sharing agreement, extend the statute of limitations period applicable to any Tax claim, settle any claim or assessment for a material amount of Taxes, or surrender any right to claim a refund of a material amount of Taxes;

(xv) other than in the ordinary course of business and consistent with past practice, amend, modify or terminate any Material Contract;

(xvi) adjust any of the Intercompany Account Balances or incur any new Intercompany Account Balance, in each case, other than in the ordinary course, consistent with past practice; or

(xvii) authorize or enter into any Contract to do any of the foregoing.

5.2 Access to Information. From the date hereof until the earlier of the Closing Date or the termination of this Agreement in accordance with its terms, the Company shall, subject in all respects to the terms of, and the restrictions contained in, the Confidentiality Agreement: (i) afford to the Representatives of Purchaser, reasonable access during normal business hours to the properties, books and records of the Company upon reasonable advance notice and under reasonable circumstances; (ii) furnish Purchaser and its Representatives with copies of all such Contracts, books and records and other existing documents and data as Purchaser or its Representatives may reasonably request; and (iii) make available during normal business hours to Purchaser or its Representatives upon reasonable advance notice and under reasonable circumstances the appropriate individuals (including senior-level Company management, attorneys and accountants) for discussion of the Company's business, properties, prospects and personnel as Purchaser may reasonably request, it being understood and agreed that information received pursuant to the foregoing clauses (i) through (iii) may be shared by Purchaser and its Representatives with the Debt Financing Sources and/or actual or prospective providers of any portion of the Debt Financing in connection with the Debt Financing; provided, however, that nothing in this Section 5.2 or otherwise shall require the Company to furnish to Purchaser or its Representatives any materials prepared by the Company's financial, accounting, or legal Representatives or which is subject to an attorney/client or an attorney work product privilege or which may not be disclosed pursuant to Applicable Law, a protective order or confidentiality agreement. Notwithstanding anything to the contrary contained herein, prior to the Closing, without the prior written consent of the Sellers' Representative, which may not be unreasonably withheld, Purchaser shall have no right to perform invasive or subsurface investigations of the properties or Facilities of any member of the Company Group.

5.3 Payoff Letters. The Company shall use commercially reasonable efforts to cause the agent for the lenders or other counterparties with respect to the Company Indebtedness to prepare and deliver to the Company, or the Company shall prepare and deliver, one or more customary "payoff letters" or similar documents (collectively, the "Payoff Letters"), which include a release of all related Liens, prior to the Closing Date, specifying the aggregate amount of the Company Group's obligation (including principal, interest, fees, expenses and other amounts payable under the Company Indebtedness) that will be outstanding as of the Closing under the Company Indebtedness.

5.4 Exclusive Dealing. From and after the date hereof through the Closing, none of the Company Group or any of their respective Affiliates or Representatives shall take any action to encourage, initiate, continue or engage in discussions or negotiations with, enter into any agreement with or provide any information to, any Person (other than Purchaser, its Affiliates and their respective Representatives) concerning any purchase, transfer or other disposition of the Company's Shares to such Person, any merger or other business combination involving the Company, any sale of all or a material portion of the assets of the Company or any similar transaction involving the Company (other than assets sold in compliance with Section 5.1).

5.5 Section 280G Approval. Prior to the Closing, to the extent applicable, the Company shall (i) seek and use commercially reasonable efforts to obtain waivers from each Person who has a right to any payments or benefits as a result of or in connection with the transactions contemplated herein that could reasonably be expected to constitute "excess parachute payments" (within the meaning of Section 280G of the Code (hereafter, "Section 280G")) (the "Waived 280G Benefits"), and (ii) solicit the approval of the Stockholders in a manner intended to comply with Sections 280G(b)(5)(A)(ii) and 280G(b)(5)(B) of the Code of any Waived 280G Benefits; provided, that prior to taking any action pursuant to this Section 5.5, the Company shall provide drafts of all individual waivers, equityholder disclosures and equityholder consents to Purchaser for its review and approval (which shall not be unreasonably withheld or delayed).

5.6 Written Consent. The Company shall deliver to Purchaser, no later than twenty-four (24) hours following the execution of this Agreement, the Written Consent.

5.7 Interim Restructuring.

(a) The Company shall cause the Interim Restructuring to be consummated at or prior to the Closing. The Company shall afford Purchaser a reasonable opportunity to review and comment upon the documents related to the Interim Restructuring and shall consider in good faith Purchaser's comments thereto.

(b) At or prior to Closing, (i) NSH and NSH Wyoming shall enter into the Sub-Advisory Agreement effective upon the consummation of the Interim Restructuring and (ii) the Sellers' Representative (on behalf of the Securityholders) shall execute a release releasing the Company Group from any Liabilities related to or arising from Casper or NSH Wyoming (except for any Liabilities related to the Sub-Advisory Agreement) effective upon the consummation of the Interim Restructuring.

5.8 Intercompany Account Balances. Prior to or at the Closing, the Company shall deliver or cause to be delivered to Purchaser a true, correct and complete list of the Intercompany Account Balances as of the close of business on the Business Day immediately prior to the Closing Date.

ARTICLE 6
COVENANTS OF PURCHASER

6.1 Access to Information; Preservation of Records. From and after the Closing, Purchaser and the Surviving Corporation shall afford (and shall cause their respective Subsidiaries to afford) the Sellers' Representative and its Representatives reasonable access, at the Sellers' Representative's sole cost and expense, during normal business hours, to the books and records of Purchaser and the Company Group (and shall permit such Persons to examine and copy such books and records to the extent reasonably requested by such party) and shall cause their Representatives to furnish all information reasonably requested by the Sellers' Representative, or its Representatives, in each case, solely in connection with (i) any audit or other investigation by a Tax authority or any required returns responses to inquiries, reports or submissions to Governmental Bodies with respect to the ownership or operations of the Company Group prior to the Effective Time, (ii) any matters relating to insurance coverage, third-party Legal Actions pertaining to the ownership or operations of the Company Group prior to the Effective Time; provided, however, that nothing in this Section 6.1 shall require Purchaser or the Surviving Corporation to furnish to the Sellers' Representative or its Representatives any materials (x) prepared by the Surviving Corporation's financial or legal advisors which is subject to an attorney/client privilege or an attorney work product privilege or which may not be disclosed pursuant to Applicable Law or (y) in connection with any Legal Action in which the Purchaser and the Surviving Corporation are adverse to the Sellers' Representative or the Securityholders. For a period of six (6) years following the Closing, or such longer period as may be required by Applicable Law or necessitated by applicable statutes of limitations, Purchaser shall, and shall cause the Surviving Corporation and its Subsidiaries to, maintain all such books and records in the jurisdiction in which such books and records were located prior to the Closing Date and shall not destroy or dispose of any such books and records.

6.2 Indemnification of Directors and Officers.

(a) From and after the Closing Date, Purchaser and Merger Sub shall cause each member of the Company Group to honor and fulfill in all respects the obligations of such member of the Company Group under any and all indemnification agreements between any member of the Company Group and any of their respective current and former directors, officers or employees of any member of the Company Group (collectively, the "Indemnitees"). Purchaser and Merger Sub shall, from the Effective Time until the sixth (6th) anniversary of the Closing Date, cause the certificates of incorporation and bylaws (and other similar Organizational Documents) of the Company Group to contain provisions with respect to indemnification, exculpation and advancement of expenses provisions contained in the certificates of incorporation and bylaws (or other similar Organizational Documents) of the Company Group as of the date hereof, and during such six (6) year period, such provisions shall not be repealed, amended or otherwise modified in any manner that would violate the obligations set forth in this Section 6.2(a), except as required by Applicable Law.

(b) Purchaser hereby acknowledges that certain Indemnitees may have rights to indemnification, advancement of expenses and/or insurance provided by Persons other than the Company and the Subsidiaries, including certain of the Securityholders and their Affiliates (collectively, the "Indemnitors"). Purchaser hereby agrees (i) that Purchaser and the Company are the indemnitors of first resort (i.e., their obligations to the Indemnitees are primary and any obligation of the Indemnitors are secondary), (ii) Purchaser and the Company shall be required to advance the full amount of expenses incurred by any Indemnitee and shall be liable for the full amount of all expenses, judgments, penalties,

fines and amounts paid in settlement to the extent legally permitted and as required by the terms of this Agreement or the Company's or its Subsidiaries' respective Organizational Documents (or any other agreement between the Company or any of the Subsidiaries and any such Indemnitee), without regard to any rights the Indemnitee may have against the Indemnitors, and (iii) Purchaser and the Company irrevocably waive, relinquish and release the Indemnitors from any and all claims against the Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. Each of Purchaser and the Company further agrees that no advancement or payment by an Indemnitor on behalf of an Indemnitee with respect to any claim for which an Indemnitee has sought indemnification from the Company shall affect the foregoing and the applicable Indemnitor shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of the Indemnitee against the Company. Purchaser and the Indemnitees agree that the Indemnitors are express third party beneficiaries of the terms of this Section 6.2(b).

(c) On or immediately prior to the Closing Date, Purchaser shall cause to be purchased a six (6) year tail insurance policy with respect to officers' and directors' liability insurance and ERISA fiduciary duty insurance (the "D&O Tail Insurance") covering the Persons who are presently covered by the officers' and directors' liability and ERISA fiduciary duty insurance policies of the Company Group (copies of which have heretofore been delivered to Purchaser), with respect to actions and omissions occurring prior to the Closing, on terms which are at least as favorable as the terms of such insurance in effect for the Company Group on the date hereof and from an insurer or insurers having claims paying ratings no lower than the Company Group's current insurer; provided, that in no event shall Purchaser and its Subsidiaries be obligated to pay an amount for such D&O Tail Insurance in excess of 275% of the annual premiums paid as of the date of this Agreement by the Company and its Subsidiaries for such insurance.

(d) The obligations of Purchaser under this Section 6.2 shall not be terminated or modified in such a manner as to adversely affect any Indemnitee to whom this Section 6.2 applies without the consent of the affected Indemnitee (it being expressly agreed that the Indemnitees to whom this Section 6.2 applies shall be third party beneficiaries of this Section 6.2)

6.3 Employee Matters.

(a) For a period of twelve (12) months following the Closing Date (the "Protected Period"), Purchaser shall provide, or shall cause to be provided, to each Continuing Employee, (i) the same or greater annual base salary or base wages and the same or greater annual cash bonus opportunity as in effect immediately prior to the Closing Date, and (ii) employee benefits (excluding (i) equity-based and other long-term incentive compensation, (ii) defined benefit pension, supplemental retirement or retiree medical or life insurance benefits, and (iii) any retention, change of control, transaction or other special or one-time bonuses) that are no less favorable in the aggregate to those in effect immediately prior to the Closing Date. Without limiting the foregoing, Purchaser shall maintain in effect during the Protected Period, without amendment or modification, each Benefit Plan that provides for severance benefits.

(b) For purposes of eligibility and vesting (but not benefit accruals) under the employee benefit plans of Purchaser providing benefits to Continuing Employees (the "Purchaser Plans"), Purchaser shall credit each Continuing Employee with his or her years of services with the Company, its Subsidiaries and any predecessor entities to the same extent as such Continuing Employee was entitled immediately prior to the Closing to credit for such service under any similar Benefit Plan; provided, however, that nothing herein shall result in the duplication of any benefits for the same period of service.

(c) Purchaser shall, or shall cause the Company Group to, (i) use commercially reasonable efforts to waive all limitations as to preexisting conditions and waiting periods with respect to participation and coverage requirements applicable to each Continuing Employee and his or her covered dependents under any Purchaser Plans providing welfare benefits following the Closing, to the extent waived or previously satisfied by such Continuing Employee and his or her covered dependents under the relevant Benefit Plan, and (ii) use commercially reasonable efforts to provide each Continuing Employee and his or her covered dependents with credit for any co-payments and deductibles paid during the plan year prior to any such change in coverage in satisfying any applicable deductible or out-of-pocket requirements under such Purchaser Plans.

(d) The provisions of this Section 6.3 are solely for the benefit of the parties to this Agreement, and no Continuing Employee (including any beneficiary or dependent thereof) or any other Person shall be regarded for any purpose as a third-party beneficiary of this Agreement, and no provision of this Section 6.3 shall create such rights in any such Persons. Nothing herein shall (i) guarantee employment for any period of time or preclude the ability of Purchaser to terminate the employment of any Continuing Employee at any time and for any reason, (ii) except as otherwise expressly provided in this Agreement, require Purchaser to continue any Benefit Plans or other employee benefit plans or arrangements, or prevent the amendment, modification or termination thereof after the Closing Date or (iii) constitute, establish or amend any Benefit Plans, Purchaser Plans or other employee benefit plans or arrangements.

6.4 Contact with Suppliers, Clinical Providers and Non-NSH Parties. Notwithstanding anything to the contrary contained in this Agreement (including Section 5.2), from the date of this Agreement until the Closing Date, Purchaser and Merger Sub shall not, without the prior written consent of the Company (which consent will not be unreasonably withheld), have any contact or discussions concerning the Company or any of its Subsidiaries or their respective businesses, assets or Liabilities, with any Securityholders, Non-NSH Parties, directors, officers, employees, physicians, medical professionals and other clinical providers, suppliers, customers, labor unions, regulators, landlords, lessors, bank or creditors (or other lenders) of the Company or any of its Subsidiaries or the Facilities.

6.5 Merger Sub. Purchaser shall take all action necessary to cause Merger Sub to perform its obligations under this Agreement and to consummate the Merger on the terms and conditions set forth in this Agreement.

6.6 R&W Insurance Policy. For the avoidance of doubt, (a) if Purchaser does not obtain any R&W Insurance Policy as of the date hereof, the Company will cooperate with Purchaser to obtain such R&W Insurance Policy at or prior to the Closing, and (b) if Purchaser does not obtain any R&W Insurance Policy at or prior to the Closing, Purchaser's only recourse for breaches of the representations and warranties set forth in ARTICLE 3 (other than with respect to breaches of Fundamental Representations or in the event of Fraud) shall be, and shall not exceed, the Indemnity Escrow Amount, subject to and in accordance with Section 10.4.

ARTICLE 7
OTHER COVENANTS AND AGREEMENTS

7.1 Efforts to Consummate. Except as otherwise provided in this Agreement, each of the parties hereto agrees to use its commercially reasonable efforts to cause the Closing to occur as soon as possible after the date hereof, including satisfying the conditions precedent set forth in ARTICLE 8 within the control of such party, defending against any Legal Actions, judicial or administrative, challenging this Agreement or the consummation of the transactions contemplated hereby, seeking to have any preliminary injunction, temporary restraining order, stay or other legal restraint or prohibition

entered or imposed by any court or other Governmental Body that is not yet final and nonappealable vacated or reversed, and executing any additional instruments reasonably requested by another party hereto (without cost or expense to the executing party) necessary to carry out the transactions contemplated hereby and to fully carry out the purposes of this Agreement.

7.2 Regulatory Matters and Approvals.

(a) Each of Purchaser and the Company will give any notices to, make any filings with, and use its best efforts to obtain any authorizations, consents and approvals of, any Governmental Body which are necessary to consummate the transactions contemplated hereby. Without limiting the generality of the foregoing, the parties shall, no later than ten (10) Business Days after the date hereof, prepare and file with the United States Federal Trade Commission (the "FTC") and the United States Department of Justice (the "DOJ") the notification and report form required under the HSR Act for the transactions contemplated hereby and the transactions contemplated by the Bain Investment and, to the extent applicable, seek to obtain early termination of the waiting period thereunder. Each of the parties shall file as soon as practicable and advisable any supplemental or additional information which may reasonably be requested by the FTC and the DOJ in connection with such filings and shall comply in all material respects with all Applicable Laws relating thereto. Purchaser shall be responsible for the payment of all HSR filing fees payable to a Governmental Body.

(b) Without limiting the generality of the foregoing: (i) Purchaser shall and, shall cause its Subsidiaries and Affiliates to, promptly take any and all steps necessary to avoid, eliminate or resolve each and every impediment and obtain all clearances, consents, approvals and waivers under the HSR Act, the Sherman Antitrust Act, as amended, the Clayton Act, as amended, the Federal Trade Commission Act, as amended (collectively "Antitrust Laws"), that may be required by any Governmental Body, so as to enable the parties to cause the Closing to occur as soon as practicable and in any event prior to the End Date, including (A) proposing, negotiating, offering to commit and effect (and if such offer is accepted, committing to and effecting), by order, consent decree, hold separate order, trust, or otherwise, the sale, divestiture, license, disposition or hold separate of such assets or businesses of Purchaser or the Company or their respective Subsidiaries (or, in the case of Purchaser, its Affiliates), or otherwise offering to take or offering to commit to take any action (including any action that limits its freedom of action, ownership or control with respect to, or its ability to retain or hold, any of the businesses, assets, product lines, properties or services of Purchaser or the Company or their respective Subsidiaries (or, in the case of Purchaser, its Affiliates)) to the extent legally permissible, and if the offer is accepted, taking or committing to take such action; (B) terminating, relinquishing, modifying or waiving existing relationships, ventures, contractual rights, obligations or other arrangements of Purchaser or the Company or their respective Subsidiaries or Affiliates; (C) creating any relationships, ventures, contractual rights, obligations or other arrangements of Purchaser or the Company or their respective Subsidiaries or Affiliates; and (D) entering or offering to enter into agreements and stipulating to the entry of an order or decree or filing appropriate applications with any Governmental Body in connection with any of the actions contemplated by the foregoing clauses (A) through (C) (provided that neither the Sellers' Representative nor the Company shall be obligated to take any such action unless the taking of such action is conditioned upon the consummation of the Merger and the other transactions contemplated by this Agreement), in each case, as may be necessary, required or advisable in order to obtain clearance under the HSR Act or other Antitrust Laws, to avoid the entry of, or to effect the dissolution of or to vacate or lift, any decree, judgment, injunction or other order (whether temporary, preliminary or permanent) that would otherwise have the effect of restraining, preventing or delaying the consummation of the Merger, the other transactions contemplated hereby or the transactions contemplated by the Bain Investment, or to avoid the commencement of any Legal Action that seeks to prohibit the Merger, any other transaction contemplated by this Agreement or any transaction contemplated by the Bain Investment; and (ii) if any objections are asserted with respect to the Merger, the other transactions

contemplated hereby or the transactions contemplated by the Bain Investment under the HSR Act or other Antitrust Laws or if any Legal Action, whether judicial or administrative, is instituted by any Governmental Body challenging the Merger, any of the other transactions contemplated hereby or any of the transactions contemplated by the Bain Investment as violative of the HSR Act or other Antitrust Laws, each of the parties hereto shall cooperate with one another and Purchaser shall use its commercially reasonable efforts to: (x) oppose or defend against any such Legal Action to prevent or enjoin consummation of the Merger, the other transactions contemplated hereby and the transactions contemplated by the Bain Investment and/or (y) take such action as necessary to overturn any such action by any Governmental Body to block consummation of the Merger, any of the other transactions contemplated hereby and any of the transactions contemplated by the Bain Investment, including by defending any such Legal Action brought by any Governmental Body in order to avoid entry of, or to have vacated, overturned or terminated, including by appeal if necessary, any Order (whether temporary, preliminary or permanent) that would restrain, prevent or delay the Merger, the other transactions contemplated hereby or the transactions contemplated by the Bain Investment, or in order to resolve any such objections or challenge as such Governmental Body may have to such transactions under such Antitrust Laws so as to permit consummation of the Merger, the other transactions contemplated by this Agreement and the transactions contemplated by the Bain Investment. Except as may be prohibited by any Governmental Body or by any Applicable Law, Purchaser, on the one hand, and the Company on the other, will reasonably consult and cooperate with one another, and consider in good faith the views of one another, in connection with any analysis, appearance, presentation, memorandum, brief, argument, opinion or proposal made or submitted in connection with any Legal Action under or relating to the HSR Act or other Antitrust Laws. In addition, except as may be prohibited by any Governmental Body or by any Applicable Law, in connection with any Legal Action under or relating to the HSR Act or other Antitrust Laws, each of Purchaser, on the one hand, and the Company, on the other, will permit outside counsel of the other party to be present at each meeting or conference relating to any such Legal Action and to be consulted in connection with any document, opinion or proposal made or submitted to any Governmental Body in connection with any such Legal Action.

(c) The parties shall promptly notify the other parties of any correspondence or contact with the DOJ or the FTC and except as may be prohibited by any Governmental Body or by any Applicable Law, or as necessary to preserve any applicable legal privilege, shall furnish to the other parties (if necessary or advisable, on an outside counsel basis) all such information in its possession as may be necessary for the completion of any required reports or notifications. Neither Purchaser nor the Company shall agree to participate in any meeting with any Governmental Body in respect of any such filings, investigation or other inquiry unless it consults with the other party in advance and, to the extent permitted by such Governmental Body and Applicable Law, gives the other party the opportunity to attend and participate at such meeting.

7.3 Public Announcements. Between the date of this Agreement and the Closing Date, except to the extent required by Applicable Laws, none of the parties hereto shall, directly or indirectly, issue any press release or public announcement of any kind concerning the transactions contemplated by this Agreement without the prior written consent of the other parties hereto. In the event any such public announcement, release or disclosure is required by Applicable Laws, Purchaser and the Company will, to the extent consultation would not, in the reasonable opinion of the disclosing party's counsel, cause such party to violate any Applicable Law or order of any court or other Governmental Body, consult prior to the making thereof and use their reasonable best efforts to agree upon a mutually satisfactory text.

7.4 Resignations. The Company shall use commercially reasonable efforts to obtain and deliver to Purchaser at the Closing evidence reasonably satisfactory to Purchaser of the resignation, effective as of the Effective Time, of all directors of the Company designated by Purchaser in writing to the Company not less than five (5) Business Days prior to the Closing.

7.5 Financing.

(a) Each of Purchaser and Merger Sub shall use its reasonable best efforts to take, or cause to be taken, all actions necessary to arrange, obtain and consummate the Debt Financing on the terms and conditions described in the Debt Financing Commitments on or prior to the Closing Date. Such actions shall include: (i) to maintain in full force and effect the Debt Financing Commitments in the form provided to the Company on or prior to the date hereof, (ii) subject to the modifications permitted hereunder, to satisfy, on a timely basis all of the conditions precedent and covenants to the Debt Financing in the control of Purchaser and Merger Sub that are to be satisfied by Purchaser and Merger Sub, (iii) to negotiate, execute and deliver definitive documents, including one or more credit agreements, indentures, purchase agreements, pledge and security documents and other definitive financing documents as may be reasonably requested by Purchaser ("Debt Financing Documents") that reflect the terms contained in the Debt Financing Commitments (including, as necessary, agreeing to any requested changes to the commitments thereunder in accordance with any "flex" provisions contained in the Debt Financing Commitments or any related fee letter), in each case which terms shall not in any respect expand on the conditions to the funding of the Debt Financing at Closing or reduce the aggregate amount of the Debt Financing available to be funded on the Closing Date (unless the Equity Financing is increased by a corresponding amount (or Purchaser or Merger Sub may draw upon an available revolving credit facility to fund an amount equal to such reduction)) and (iv) assuming all conditions contained in such Debt Financing Commitments have been satisfied, to enforce its rights under the Debt Financing Commitments and the Debt Financing Documents in order to consummate the Financing at or prior to Closing. Each of Purchaser and Merger Sub shall use reasonable best efforts, assuming all conditions contained in the Equity Financing Commitment have been satisfied, to obtain the Equity Financing contemplated by the Equity Financing Commitment upon satisfaction or waiver of the conditions to the Closing set forth in Section 8.1 and Section 8.2. Each of Purchaser and Merger Sub shall not permit or consent to, without the prior consent of the Company, (w) any amendment, supplement or modification to be made to the Equity Financing Commitment (other than to increase the amount of Equity Financing), (x) any amendment, supplement or modification to be made to the Debt Financing Commitments (without the prior written consent of the Company) if such amendment, supplement or modification would (A) expand or impose new conditions precedent to the funding of the Debt Financing from those set forth therein on the date hereof, (B) reasonably be expected to materially impair, materially delay or prevent the availability of all or a portion of the Debt Financing or the consummation of the transactions contemplated by this Agreement, or (C) reduce the aggregate cash amount of the Debt Financing (including by changing the amount of fees to be paid or original issue discount of the Debt Financing (except as set forth in any "flex" provisions existing on the date hereof) (unless any such reduction is matched with an equal increase of the Equity Financing under the Equity Financing Commitment (or Purchaser or Merger Sub may draw upon an available revolving credit facility to fund an amount equal to such reduction)) to an amount such that the Financing is insufficient to consummate the Closing (collectively, the "Restricted Commitment Amendments"); provided, that subject to the limitations set forth in this Section 7.5, each of Purchaser and Merger Sub may amend, restate, amend and restate, or otherwise modify the Debt Financing Commitments (1) to add lenders, lead arrangers, bookrunners, syndication agents or similar entities that have not executed the Debt Financing Commitments as of the date hereof, (2) to implement any "flex" provisions applicable thereto and (3) amend or agree to other amendments or waivers, (y) any waiver of any remedy against the Financing Sources under the Equity Financing Commitment or Debt Financing Commitments (other than a condition to funding in favor of the lenders thereunder), or (z) early termination of the Equity Financing Commitment or Debt Financing Commitments prior to the termination of this Agreement, in each case of the foregoing, in a manner that could reasonably be expected to materially impair or prevent the consummation of the Closing. For purposes of this Agreement, references to the "Debt Financing Commitments" shall include such document(s) as permitted or required by this Section 7.5 to be amended, modified or waived, in each case from and after such amendment, modification or waiver. Each of Purchaser and Merger Sub

acknowledges and agrees that its obligations to consummate the transactions contemplated by this Agreement are not conditioned or contingent upon receipt of the Financing and reaffirms its obligation to consummate the transactions contemplated by this Agreement irrespective and independently of the availability of Financing or any alternative financing, subject only to completion of the Marketing Period and the satisfaction of the applicable conditions set forth in Section 8.1 and Section 8.2. Upon the written request of the Company, each of Purchaser and Merger Sub shall keep the Company informed in reasonable detail of the status of its efforts to arrange the Debt Financing (subject to any applicable restrictions in the Debt Financing and to the extent such disclosure would not result in a breach of any third party confidentiality obligations or attorney-client privilege).

(b) Each of Purchaser and Merger Sub shall promptly notify the Company in writing (i) of any material breach or default by Purchaser (or, to Purchaser's knowledge, the Debt Financing Sources) of the Debt Financing Commitments, (ii) of the receipt by Purchaser or Merger Sub or any of their respective Affiliates or Representatives of any written notice from the Debt Financing Sources, any lender or any other Person with respect to any actual breach, default or termination of the Debt Financing Commitments or any Debt Financing Document or any material portion of the Financing contemplated pursuant to the Debt Financing Commitments or Debt Financing Documents that could reasonably be expected to materially impair or prevent the consummation of the Debt Financing contemplated by the Debt Financing Commitments at Closing, (iii) if for any reason Purchaser or Merger Sub believes in good faith that it will not be able to obtain all or any portion of the Financing on the terms, in the manner or from the sources contemplated by the Debt Financing Commitments or the Debt Financing Documents (other than to the extent the issuance of debt securities may replace any bridge facilities included in the Debt Financing) that could reasonably be expected to materially impair or prevent the consummation of the Debt Financing contemplated by the Debt Financing Commitments at Closing and (iv) of the termination or expiration of the Debt Financing Commitments or Debt Financing Documents prior to the termination of this Agreement. As soon as reasonably practicable after the Company delivers to Purchaser a written request, each of Purchaser and Merger Sub shall provide any information reasonably requested by the Company relating to any of the circumstances referred to in this Section 7.5(b).

(c) In the event that any portion of the Debt Financing becomes unavailable in the manner or from the sources contemplated in the Debt Financing Commitments (other than, in the case of any bridge facilities included in the Financing, as may occur due to the issuance of other debt securities), each of Purchaser and Merger Sub shall use its reasonable best efforts to take, or cause to be taken, all actions necessary to arrange for and obtain as promptly as practicable following the occurrence of any such event, alternative debt financing (the "Alternative Financing"), including from alternative sources on terms and conditions that are not less favorable to Purchaser (including the "flex" conditions) than those set forth in the Debt Financing Commitments and in an amount sufficient to consummate the transactions contemplated hereby and perform all of its obligations hereunder, it being understood and agreed that if Purchaser and Merger Sub proceed with any Alternative Financing, each of Purchaser and Merger Sub shall be subject to the same obligations with respect to such Alternative Financing as set forth in this Agreement with respect to the Debt Financing. In the event that Alternative Financing is obtained, each of Purchaser and Merger Sub shall promptly provide the Company with a copy of the new financing commitment that provides for such Alternative Financing (the "Alternative Financing Commitments"). If applicable, any reference in this Agreement to "Debt Financing" shall include "Alternative Financing", any reference to "Debt Financing Commitments" shall include the "Alternative Financing Commitments" and any references to "Debt Financing Documents" shall include the definitive documentation relating to any such Alternative Financing.

(d) From the date hereof until the Closing Date, the Company shall, and shall cause its Subsidiaries to, cause the respective officers, employees and advisors, including legal and accounting, of the Company Group to use reasonable best efforts to, provide to Purchaser and Merger Sub, at the sole expense of Purchaser and Merger Sub, such reasonable cooperation in connection with the arrangement of the Debt Financing (solely for purposes of this Section 7.5(d), the term "Debt Financing" shall be deemed to include any financing to be issued or incurred in lieu of any bridge facilities contemplated by the Debt Financing or pursuant to any "flex" or "securities demand" applicable to the Debt Financing) as may be reasonably requested by Purchaser and Merger Sub, including using reasonable best efforts to: (i) upon reasonable notice, have appropriate officers or members of the management team (with appropriate seniority and expertise) participate in a reasonable number of meetings and presentations with prospective lenders and investors and rating agencies, including lender and investor presentations, rating agency sessions and sessions with actual or prospective lenders or investors or other actual or prospective lenders or investors, due diligence sessions, road shows and drafting sessions, including direct contact between senior management and the other representatives of the Company and its Subsidiaries, on the one hand, and the actual or prospective lenders or investors and other actual or prospective lenders or investors, on the other hand (ii) assist with the preparation of materials for bank information memoranda (including a bank information memorandum that does not include material non-public information), rating agency presentations, offering memoranda, prospectuses and other similar documents reasonably required and customarily used in connection with transactions similar to the Debt Financing, (iii) furnish Purchaser and Merger Sub and their financing sources (including the Financing Sources) reasonably promptly with (1) the financial statements of the Company and its Subsidiaries identified in clauses (c), (d) and (e) of Exhibit D of the Debt Financing Commitments and clauses (a), (b) and (c) of Exhibit E of the Debt Financing Commitments or the analogous provision in any amendment, modification, supplement, restatement or replacement thereof permitted or required hereunder and (2) such other financial and other pertinent information (including projections) regarding the Company and its Subsidiaries as may be reasonably requested by Purchaser or Merger Sub and that is customarily needed for financings of the type contemplated by the Debt Financing Commitments (including the information contemplated by clause (e) of Exhibit D of the Debt Financing Commitments and clause (c) of Exhibit E of the Debt Financing Commitments or the analogous provision in any amendment, modification, supplement, restatement or replacement thereof permitted or required hereunder, but in the case of the foregoing clauses (1) and (2) only to the extent (A) applicable to the Company and its Subsidiaries in their capacity as a significant subsidiary of Purchaser and (B) reasonably requested and customarily included in offering memoranda for debt securities issued pursuant to Rule 144A), and identifying any portion of the information that constitutes material, non-public information; provided that, in no event, shall the Required Information be deemed to include or shall the Company otherwise be required to provide (x) pro forma financial statements or pro forma adjustments related to the Debt Financing or (y) accountants' comfort letters, (iv) assistance in the preparation and negotiation and execute and deliver as of the Closing any Debt Financing Documents (including any schedules and exhibits thereto) as may be reasonably requested by Purchaser, Merger Sub or any Debt Financing Source including, certificates and a solvency certificate (which shall be executed by the chief financial officer of the Company in the form required by the Debt Financing Commitments and using reasonable best efforts to provide supporting information and data in connection therewith; provided that, such solvency certificate shall be executed and delivered by either (1) Merger Sub (including by any then current officer of the Company and/or its Subsidiaries who is appointed an officer of Merger Sub) or (2) the Company as of or following the Closing), (v) facilitate the pledging of collateral in connection with the Debt Financing, including executing and delivering as of Closing any pledge and security documents or other definitive financing documents, and documents as may be reasonably requested by Purchaser, including obtaining customary releases of existing Liens (to the extent required in the Debt Financing Commitments); provided, that any obligations and releases of Liens contained in all such agreements and documents shall be subject to the occurrence of the Closing and become effective no earlier than immediately following the Closing, (vi) obtain customary authorization letters a with respect to the bank information memoranda from a senior officer of the Company and consents of accountants for use of their reports in any materials relating to the Debt Financing, (vii) reasonably cooperating with the marketing efforts of Purchaser and Merger Sub for any

portion of the Debt Financing, (viii) obtain and deliver executed Payoff Letters reasonably satisfactory to Purchaser and the Debt Financing Sources, (ix) cause the taking of corporate and other actions by the Company Group reasonably necessary to permit the consummation of the Debt Financing on the Closing Date and to permit the proceeds thereof to be made available to Purchaser as of the Closing, it being understood that no such corporate or other action will take effect prior to the Closing, (x) taking all reasonable actions necessary to (A) permit the Debt Financing Sources to evaluate the Company Group's current assets, cash management and accounting systems, policies and procedures relating thereto for the purposes of establishing collateral arrangements and (B) establish bank and other accounts and blocked account agreements and lock box arrangements in connection with the foregoing, (xi) cooperate in satisfying the conditions precedent set forth in the Debt Financing Commitments or any definitive document relating to the Debt Financing to the extent satisfaction of such condition requires the cooperation of, or is within the control of, the Company and its Subsidiaries, (xii) ensure that the Debt Financing Sources benefit materially from existing lending relationships of the Company and its Subsidiaries, (xiii) obtain accountants' comfort letters and consent letters and insurance certificates and endorsements at the expense of and as reasonably requested by Purchaser on behalf of the Debt Financing Sources, in the case of insurance certificates and endorsements, to the extent required to be delivered at Closing and (xiv) at least two (2) Business Days prior to the Closing Date, provide all documentation and other information about the Company as is reasonably requested by the Debt Financing Sources with respect to applicable "know your customer" and anti-money laundering rules and regulations, including the U.S. Patriot Act; provided that, the Company shall not be required to provide, or cause its Subsidiaries to provide, cooperation under this Section 7.5(d) that: (A) unreasonably interferes with the ongoing business of the Company or any of its Subsidiaries; or (B) (other than in the case of authorization letters contemplated by clause (vi)) requires the Company, its Subsidiaries or their respective officers, managers or employees (other than those directors, officers, managers or employees that shall continue in the same or similar capacity after Closing) to execute, deliver or enter into, or perform any agreement, document or instrument, including any Debt Financing Document, with respect to the Debt Financing that is not contingent upon the Closing or that would be effective prior to the Closing and the directors and managers of the Company Group (other than those directors and managers that shall continue in the same or similar capacity after Closing) shall not be required to adopt resolutions approving the agreements, documents and instruments pursuant to which the Debt Financing is obtained, in each case which are effective prior to the Closing. The Company hereby consents to the use of its and its Subsidiaries' logos in connection with the Debt Financing contemplated by the Debt Financing Commitments; provided, that such logos are used solely in a manner that is not intended to, nor reasonably likely to, harm or disparage the Company or its Subsidiaries. Notwithstanding anything to the contrary in this Agreement, none of the Company, its Subsidiaries, the Securityholders and their respective officers, directors, employees, accountants, legal counsel and other Representatives shall be required to take any action that would subject such Person to bear any costs, fees or expenses that will not be reimbursed in accordance with the immediately following sentence or to pay any commitment or other similar fee or make any other payment, or incur any other Liability (other than in the case of authorization letters contemplated by clause (d)(vi)), or provide or agree to provide any indemnity in connection with the Debt Financing or their performance of their respective obligations under this Section 7.5 and any information utilized in connection therewith, in each case, with respect to the Company Group, that is not conditioned on, or is effective prior to, the Closing. Each of Purchaser and Merger Sub shall (i) promptly upon request by the Company reimburse the Company for all reasonable and documented out-of-pocket costs incurred by the Company Group in connection with such cooperation (including those of their accountants, consultants, legal counsel, agents and other Representatives) and (ii) indemnify and hold harmless the Company, its Subsidiaries and their respective Affiliates and Representatives from and against any and all Liabilities suffered or incurred by them in connection with the arrangement of the Debt Financing or providing any of the information utilized in connection therewith; in each case, other than to the extent such costs, expenses, Liabilities or other items arise from (i) historical information furnished in writing by or on

behalf of the Company and its Subsidiaries, including financial statements or (ii) occurred as a result of the gross negligence, willful misconduct or breach of this Agreement. For the avoidance of doubt, the parties hereto acknowledge and agree that the provisions contained in this Section 7.5, represent the sole obligation of the Company, its Subsidiaries and their respective Affiliates and Representatives with respect to cooperation in connection with the arrangement of the Debt Financing.

7.6 Further Assurances. At and after the Effective Time, the officers and directors of the Surviving Corporation shall be authorized to execute and deliver, in the name and on behalf of the Company or Merger Sub, any deeds, bills of sale, assignments or assurances and to take and do, in the name and on behalf of the Company or Merger Sub, any other actions and things to vest, perfect or confirm of record or otherwise in the Surviving Corporation any and all right, title and interest in, to and under any of the rights, properties or assets of the Company acquired or to be acquired by the Surviving Corporation as a result of, or in connection with, the Merger.

7.7 Notices of Certain Events. Each of the Company and Purchaser shall promptly notify the other of:

(a) any notice or other communication from any Governmental Body in connection with the transactions contemplated by this Agreement;

(b) any Legal Action commenced or, to the knowledge of the parties, threatened against any party in connection with this Agreement and the transactions contemplated hereunder; and

(c) any failure of that party to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by it hereunder that could reasonably be expected to give rise to a right of termination set forth in Section 9.1(c) or Section 9.1(d), as the case may be;

provided, however, that the delivery of any notice pursuant to this Section 7.7 shall not limit or otherwise affect the remedies available hereunder to the party receiving that notice.

7.8 Tax Matters.

(a) All federal, state, local, foreign and other transfer, sales, use or similar Taxes applicable to, imposed upon or arising out of the transactions contemplated by the Transaction Documents ("Transfer Taxes") shall be borne by the Securityholders and constitute Seller Expenses. Purchaser shall file all necessary Tax Returns and other documentation with respect to all such Taxes, fees and charges, and the parties hereto shall (and shall cause their Affiliates to) reasonably cooperate with respect to such Tax Returns and other documentation.

(b) Filing of Tax Returns; Payment of Taxes.

(i) Following the Closing, the Company shall prepare and file or cause to be prepared and filed all Tax Returns that are required to be filed by or with respect to the Company Group for all Pre-Closing Tax Periods that are due after the Closing Date (taking into account any applicable extensions). Such Tax Returns shall be prepared in a manner consistent with past practice, except as otherwise required by Applicable Law. The Company shall furnish a complete copy of such Tax Returns to Sellers' Representative for review and approval (not to be unreasonably withheld or delayed) not later than thirty (30) days before the due date for filing such Tax Returns (including extensions thereof).

(ii) For purposes of determining the amount of any Tax relating to a Straddle Period that is allocable to a Pre-Closing Tax Period: (i) in the case of property Taxes, the amount attributable to the Pre-Closing Tax Period shall equal the amount of such Taxes for the entire Straddle Period multiplied by a faction, the numerator of which is the number of calendar days of such Straddle Period in the Pre-Closing Tax Period and the denominator of which is the number of calendar days in the entire Straddle Period, and (ii) in the case of all other Taxes, the amount attributable to the Pre-Closing Tax Period shall be determined as though the relevant taxable period terminated at the close of business on the Closing Date.

(c) Tax Contests.

(i) If a written notice of deficiency, audit, examination, Legal Action, or other administrative or court proceeding or dispute with respect to Taxes of the Company Group is received by Purchaser, any member of the Company Group or any of their respective Affiliates for which Sellers' Representative would be expected to be liable pursuant to Section 10.2 (a "Tax Claim"), Purchaser shall give Sellers' Representative prompt written notice of such Tax Claim. The failure to give such prompt written notice shall not release, waive or otherwise affect Sellers' Representative's obligations with respect thereto except to the extent that Sellers' Representative is actually and materially prejudiced as a result of such failure.

(ii) Sellers' Representative shall have the right to assume control of any Tax Claim, relating solely to a Pre-Closing Tax Period if within fifteen (15) days of receiving notice of the Tax Claim Sellers' Representative notifies Purchaser of its intent to take control of such Tax Claim, provided that (A) Purchaser shall have the right to participate in such Tax Claim along with counsel of its choice, (B) Sellers' Representative shall keep Purchaser reasonably informed and consult with Purchaser with respect to any issue relating to such Tax Claim, (C) Sellers' Representative shall provide Purchaser copies of all correspondence, notices and other written material received from any Governmental Body with respect to such Tax Claim, (D) Sellers' Representative shall provide Purchaser with a copy of, and an opportunity to review and comment on, all material submissions made to a Governmental Body in connection with such Tax Claim, and (E) Sellers' Representative shall not agree to a settlement or compromise thereof without the prior written consent of Purchaser, which consent shall not be unreasonably withheld or delayed. Purchaser shall have the right to represent the interests of the Company Group in any Tax Claim with respect to which Seller Representative does not elect to control, and any Tax Claim that does not relate solely to a Pre-Closing Tax Period; provided that (V) Sellers' Representative shall have the right to participate in such Tax Claim along with counsel of its choice, (W) Purchaser shall keep Sellers' Representative reasonably informed and consult with Sellers' Representative with respect to any issue relating to such Tax Claim, (X) Purchaser shall provide Sellers' Representative copies of all correspondence, notices and other written material received from any Governmental Body with respect to such Tax Claim, (Y) Purchaser shall provide Sellers' Representative with a copy of, and an opportunity to review and comment on, all material submissions made to a Governmental Body in connection with such Tax Claim, and (Z) neither Purchaser nor the Company Group shall agree to a settlement or compromise thereof without the prior written consent of Sellers' Representative, which consent shall not be unreasonably withheld or delayed. Each Party will bear its own costs incurred in participating in any proceeding relating to any Tax Claim.

(d) If any member of the Company Group or any of their respective Affiliates receives any refund of Taxes of any member of the Company Group paid for any Pre-Closing Tax Period or the portion of any Straddle Period allocable to the Pre-Closing Tax Period (as determined in accordance with the principles of Section 7.8(b)(ii)) (in each case, whether in the form of cash received

from the applicable Governmental Body or a direct offset of Taxes otherwise payable) other than any such Tax refund or Tax credit, or portion thereof, (i) taken into account in the computation of Working Capital, or (ii) arising from the carryback of losses, credits or other Tax attributes from a Post-Closing Tax Period, then, in any such case, the Company shall promptly, and in any event within ten (10) Business Days of receipt thereof, pay, or cause to be paid, to the Sellers' Representative (as agent for, on behalf of, and for payment to, the Securityholders), the amount of such Tax refund (net of any Tax and other costs) and the Sellers' Representative shall pay each Securityholder such Securityholder's Pro Rata Portion of such payment; provided, that amounts to be paid to Option Holders pursuant to the foregoing shall be retained by the Company and be promptly paid through the Company's payroll system to each Option Holder, less any required withholding Taxes. Any payments so made to the Securityholders pursuant to this Section 7.8(d) shall be treated as an increase to each Securityholders' Per Share Merger Consideration. Where permitted by Applicable Law, the Company Group shall, and shall cause each of its Affiliates, to request a cash refund (rather than a credit in lieu of refund) if such refund would be payable to the Sellers' Representative pursuant to this Section 7.8(d). The Company shall file IRS Form 4466 (Corporation Application for Quick Refund of Overpayment of Estimated Tax) and any analogous state and local forms (if applicable) within thirty (30) days of the Closing Date. Additionally, with respect to any net operating loss of the Company Group relating to the Company's 2016 tax year and any taxable period ending on the Closing Date, the Company shall (x) cause such net operating loss to be carried back to the preceding taxable years of the Company Group (to the extent permitted by Applicable Law) in a manner consistent with the requirements set forth on Schedule 7.8(d), (y) file IRS Form 1139 (Corporation Application for Tentative Refund) and any analogous state and local forms (if applicable) to claim a refund with respect to the carryback of such net operating loss within six (6) months of the Closing Date, and (z) not waive or cause to be waived the carryback period for such net operating loss. The Company shall pay, or cause to be paid, any refund amount received (net of Tax and other costs) pursuant to the foregoing in accordance with the refund payment provisions set forth in this Section 7.8(d). The Company shall provide any Tax Return or IRS Form required to be prepared and filed pursuant to Section 7.8(d) to the Sellers' Representative for review and approval (not to be unreasonably withheld or delayed) not later than fifteen (15) days before the due date for filing any such Tax Return or IRS Form.

(e) The parties hereto agree to furnish or cause to be furnished to the other, upon request, as promptly as practicable, such information and assistance relating to Taxes as is reasonably requested by any other party.

(f) Unless required by Applicable Law, following the Closing, neither the Company Group nor any of their respective Affiliates shall (i) amend, re-file or otherwise modify any Tax Return relating in whole or in part to any member Company Group with respect to all or any portion of a Pre-Closing Tax Period, (ii) make or change any Tax election or accounting method with respect to, or that has a retroactive effect on, any Pre-Closing Tax Period or (iii) enter into any voluntary disclosure agreement with any Governmental Body with respect to any Taxes for any Pre-Closing Tax Period, in each case, if such action could give rise to a claim for indemnification under this Agreement without Sellers' Representative's prior written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

(g) All Tax sharing or similar agreements with respect to the Company and any Person in which the Company owns an equity interest, other than any such agreements (i) between or among the Company and any of its Subsidiaries as of the Closing or (ii) made pursuant to commercial contracts entered into in the ordinary course of business that do not primarily relate to Taxes, shall be terminated prior to the Closing, and, after the Closing, neither the Company nor any Person in which the Company owns a direct or indirect equity interest shall be bound thereby or have any Liability thereunder.

(h) The parties hereto acknowledge and agree that for purposes of reporting any U.S. federal, state or local tax consequences arising in connection with the transactions contemplated by this Agreement, the fair market value of the Wyoming Stock shall be reported as an amount to be agreed by the parties following the date hereof.

ARTICLE 8
CONDITIONS PRECEDENT

8.1 Conditions to Each Party's Obligations. The respective obligations of the parties hereto to effect the transactions contemplated hereby are subject to the satisfaction, at or prior to the Closing, of the following conditions, unless waived (to the extent permitted by Applicable Law), in whole or in part, by Purchaser and the Company:

(a) The Company shall have obtained the Written Consent.

(b) The waiting periods applicable to the transactions contemplated hereby and the transactions contemplated by the Bain Investment, in each case together with any extensions thereof, under the HSR Act shall have expired or been terminated.

(c) The Certificate of Merger shall have been duly filed with the Secretary of State of the State of Delaware.

(d) No Order (whether permanent, preliminary or temporary) shall be in effect by a Governmental Body of competent jurisdiction that restrains, enjoins or otherwise prevents the consummation of the Merger.

(e) The parties shall have obtained the governmental and regulatory consents and third party approvals and made the filings (if any) set forth on Schedule 8.1(e).

8.2 Conditions to Obligation of Purchaser and Merger Sub. The obligation of Purchaser and Merger Sub to effect the transactions contemplated hereby is subject to the satisfaction, at or prior to the Closing, of the following conditions, unless waived, in whole or in part, by Purchaser to the extent permitted by Applicable Law:

(a) Representations and Warranties. Each of the (i) Fundamental Representations (other than the representations and warranties in Sections 3.4(a), (b) and (c)) shall be true and correct in all material respects, in each case, at and as of the Closing Date (other than such Fundamental Representations (other than the representations and warranties in Sections 3.4(a), (b) and (c)) that are specifically made as of an earlier date, which shall be so true and correct as of such date), (ii) representations and warranties in Sections 3.4(a), (b) and (c) shall be true and correct in all respects, except for inaccuracies that are de minimis, at and as of the Closing Date as if made at and as of such time (other than such representations and warranties that are specifically made as of an earlier date, which shall be so true and correct as of such date), and (iii) remaining representations and warranties of the Company set forth in ARTICLE 3 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality", "Material Adverse Effect" or words of similar import set forth therein (other than in Section 3.8(a)), in each case, at and as of the Closing Date (other than such representations and warranties that are specifically made as of an earlier date, which shall be so true and correct as of such date (without giving effect to any qualifications or limitations as to "materiality", "Material Adverse Effect" or words of similar import set forth therein)), except where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Material Adverse Effect.

(b) Performance of Covenants and Obligations. The Company shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing.

(c) No Material Adverse Effect. There shall not have been a Material Adverse Effect since the date hereof.

(d) Payoff Letters. Purchaser shall have received the Payoff Letters with respect to each of the Credit Facilities, in each case at least two (2) Business Days prior to Closing and in a form reasonably satisfactory to Purchaser.

(e) Interim Restructuring. The Interim Restructuring shall have been consummated in accordance with the step plan set forth on Exhibit E.

(f) Regulatory Consents. The governmental and regulatory consents and approvals, and the filings (if any), in each case set forth on Schedule 8.2(f), shall have been obtained or made, as applicable, in connection with the Bain Investment.

8.3 Conditions to Obligations of the Company. The obligation of the Company to effect the transactions contemplated hereby, including the Merger, is subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived, in whole or in part, by the Company to the extent permitted by Applicable Law:

(a) Representations and Warranties. Each of the representations and warranties of Purchaser and Merger Sub set forth in ARTICLE 4 shall be true and correct in all respects (without giving effect to any qualifications or limitations as to "materiality", "Purchaser Material Adverse Effect" or words of similar import set forth therein), in each case, at and as of the Closing Date (other than such representations and warranties as are made as of an earlier date, which shall be so true and correct as of such date (without giving effect to any qualifications or limitations as to "materiality", "Purchaser Material Adverse Effect" or words of similar import set forth therein)), except where the failure of such representations and warranties to be so true and correct would not have, individually or in the aggregate, a Purchaser Material Adverse Effect.

(b) Performance of Covenants and Obligations of Purchaser and Merger Sub. Each of Purchaser and Merger Sub shall have performed or complied in all material respects with all obligations and covenants required to have been performed or complied with by it under this Agreement at or prior to the Closing.

8.4 Frustration of Closing Conditions. None of the Company, Purchaser or Merger Sub may rely on the failure of any condition set forth in this ARTICLE 8 if such failure was caused by such party's failure to comply with any provision of this Agreement.

ARTICLE 9
TERMINATION

9.1 Termination. This Agreement may be terminated and the Merger may be abandoned at any time prior to the Effective Time (notwithstanding any approval of this Agreement by the Securityholders):

(a) by mutual written agreement of the Company and Purchaser;

(b) by either the Company or Purchaser, if:

(i) the Merger has not been consummated on or before November 9, 2017 (the "End Date"); or

(ii) any Governmental Body shall have enacted, issued or promulgated any Applicable Law, or shall have issued or granted any Order, in each case, that restrains, enjoins or otherwise prevents the consummation of the Merger and such enjoinment shall have become final and nonappealable; provided, however, that the party seeking to terminate this Agreement pursuant to this Section 9.1(b)(ii) shall have used all reasonable best efforts as may be required by Section 7.1 or Section 7.2 to prevent, oppose and remove such Order.

(c) by Purchaser, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred (A) that would cause any of the conditions set forth in Section 8.2 not to be satisfied, and (B) if such breach or failure is curable, such breach or failure is not cured by the Company by the earlier of (x) the End Date or (y) thirty (30) calendar days following receipt by the Company of written notice of such breach or failure, provided, that at the time of the delivery of such written notice, neither Purchaser nor Merger Sub shall be in material breach of its obligations under this Agreement and such breach would give rise to the failure of a condition set forth in Section 8.2;

(d) by the Company, if:

(i) a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Purchaser or Merger Sub set forth in this Agreement shall have occurred (A) that would cause any of the conditions set forth in Section 8.3 not to be satisfied, and (B) if such breach or failure is curable, such breach or failure is not cured by the earlier of (x) the End Date or (y) thirty (30) calendar days following receipt by Purchaser of written notice of such breach or failure, provided, that at the time of the delivery of such written notice, the Company shall not be in material breach of its obligations under this Agreement and such breach would give rise to the failure of a condition set forth in Section 8.3; or

(ii) the Marketing Period has ended and the conditions to Closing set forth in Section 8.1 and Section 8.2 have been satisfied or waived (other than those to be satisfied at Closing) and the Purchaser fails to consummate the transactions contemplated hereby on the date the Closing should have occurred pursuant to Section 2.2; or

(e) by Purchaser, at any time after twenty-four (24) hours following the execution of this Agreement and prior to receiving a copy of the Written Consent (it being understood that Purchaser cannot terminate this Agreement pursuant to this subsection if it receives a copy of the Written Consent within twenty-four (24) hours following the execution of this Agreement).

For the avoidance of doubt, nothing herein shall permit Purchaser to terminate this Agreement pursuant to this Section 9.1 for any reason relating to the Sequoia Matter.

The party desiring to terminate this Agreement pursuant to this Section 9.1 (other than pursuant to Section 9.1(a)) shall give notice of such termination to the other party, including a description in reasonable detail of the reasons for such termination, in accordance with Section 11.7, specifying the provision or provisions hereof pursuant to which such termination is effected.

9.2 Effect of Termination. In the event of the termination of this Agreement pursuant to Section 9.1, this Agreement shall become void and there shall be no Liability on the part of any party hereto except (a) the obligations provided for in this Section 9.2 and Section 7.3 (Public Announcements) and ARTICLE 11 (General Provisions) (other than Section 11.13 (Specific Enforcement)) hereof shall survive any such termination of this Agreement; provided, that the term of the Confidentiality Agreement shall not be affected by the termination of this Agreement, shall survive any such termination and be automatically extended until such date that is two (2) years following the date of termination of this Agreement, and (b) subject to the remainder of this Section 9.2, nothing herein shall relieve any party from Liability for any willful breach of this Agreement prior to such termination. In the event of the termination of this Agreement by (i) the Company pursuant to Section 9.1(d), (ii) Purchaser pursuant to Section 9.1(b) at a time when the Company could have terminated this Agreement pursuant to Section 9.1(d) or (iii) the Company or Purchaser pursuant to Section 9.1(b)(i) at a time when all the conditions to Closing set forth in ARTICLE 8 have been satisfied or waived (other than Section 8.2(f) and those conditions to be satisfied at Closing, all of which would be satisfied if the Closing were to occur as of such date of termination), Purchaser shall promptly, but in no event later than three (3) Business Days after the date of such termination, pay or cause to be paid to the Company by wire transfer of same day funds an amount equal to $45,600,000 (the "Termination Fee") (it being understood that in no event shall Purchaser be required to pay the Termination Fee on more than one occasion). Notwithstanding anything to the contrary contained herein, in the event that Purchaser is obligated to pay the Termination Fee, and without limiting the last sentence of this Section 9.2, the actual receipt by the Company of the Termination Fee shall be deemed to be liquidated damages and, without limiting the rights of the Company pursuant to Section 11.13, the sole and exclusive remedy of the Company and any other Person against (A) Purchaser, the Equity Financing Source and any of their respective Affiliates, and any of their respective shareholders, members, general or limited partners, directors, officers, employees, controlling Persons, agents and representatives, and any successors or assigns of any of the foregoing (the "Purchaser Related Parties"), and (B) any Debt Financing Source and any Debt Financing Source Affiliate (the Debt Financing Sources and Debt Financing Source Affiliates, together with the Purchaser Related Parties, the "Related Parties" and each a "Related Party"), and no Related Party shall have any other Liability or obligation (including for consequential, special, multiple, punitive or exemplary damages including damages arising from loss of profits, business opportunities or goodwill in respect of any breach or failure to comply with this Agreement or in respect of any of the transactions contemplated by this Agreement) for any or all losses suffered or incurred by the Company, its Subsidiaries, the Sellers' Representative and any of their respective Affiliates, or any of their respective former, current or future Representatives, shareholders, members, general or limited partners, or equityholders (including the Securityholders), or any successors or assigns of any of the foregoing (collectively, the "Company Related Parties") or any other Person in connection with this Agreement (and the termination hereof), the Merger (and the abandonment thereof), the Debt Financing, the Equity Financing or any matter forming the basis for such termination, and none of the Company Related Parties nor any other Person shall be entitled to bring or maintain any other Legal Action against Purchaser or any other Related Party arising out of this Agreement, the Merger, the Debt Financing, the Equity Financing or any matters forming the basis for such termination, and the Company agrees to use commercially reasonable efforts to cause any such Legal Action by the Company against Purchaser or any Related Party to be dismissed with prejudice promptly, and in any event within five (5) Business Days after receipt of the Termination Fee. Each of the parties hereto acknowledges and agrees that in light of the difficulty of accurately determining actual damages with respect to the foregoing, upon any such termination of this Agreement by (i) the Company pursuant to Section 9.1(d), (ii) Purchaser pursuant to Section 9.1(b) at a time when the Company could have terminated this Agreement pursuant to Section 9.1(d) or (iii) the Company or Purchaser pursuant to Section 9.1(b)(i) at a time when all the conditions to Closing set forth in ARTICLE 8 have been satisfied or waived (other than Section 8.2(f) and those conditions to be satisfied at Closing, all of which would be satisfied if the Closing were to occur as of such date of termination), the right to the Termination Fee

constitutes a reasonable estimate of the losses that will be suffered by reason of any such termination of this Agreement and constitutes liquidated damages (and not a penalty). Purchaser acknowledges that the agreements contained in this Section 9.2 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the Company would not enter into this Agreement. Accordingly, if Purchaser fails to promptly pay the amounts due pursuant to this Section 9.2 and, in order to obtain such payment, the Company commences a Legal Action that results in a judgment against Purchaser for the Termination Fee or portion thereof or any other damages, Purchaser shall pay to the Company its costs and expenses thereof (including attorneys' fees) in connection with such Legal Action, together with interest on the amount of the Termination Fee or portion thereof ordered to be paid by a court at the prime rate published in the Wall Street Journal, Eastern Edition, on the date such payment was required to be made through the date of the payment. Notwithstanding anything to contrary in this ARTICLE 9, for the avoidance of doubt, Purchaser and its Affiliates shall have recourse against the Debt Financing Sources pursuant to the terms of the Debt Financing Commitments. For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement or otherwise, while the Company may pursue both a grant of specific performance and the payment of the Termination Fee, under no circumstances shall the Company be permitted or entitled to receive both a grant of specific performance and any money damages, including all or any portion of the Termination Fee.

ARTICLE 10
SURVIVAL; INDEMNIFICATION

10.1 Survival. The representations, warranties, covenants and other agreements, in each case, contained in this Agreement, or in any instrument or certificate delivered pursuant hereto, shall survive the Closing and shall terminate and expire on the one (1) year anniversary of the Closing Date; provided, however, that (i) the Fundamental Representations shall survive the Closing until the earlier of (x) the expiration of the applicable statute of limitations and (y) the six (6) year anniversary of the Closing Date, (ii) any covenant contained in this Agreement that, by its terms, provides for performance on or prior to the Closing shall terminate and expire upon the Closing, and (iii) any covenant contained in this Agreement that, by its terms, provides for performance following the Closing shall survive until such covenant is performed in accordance with its terms; provided, further, that notwithstanding any survival period of any representation, warranty, covenant or agreement set forth in this Section 10.1, claims for indemnification under this ARTICLE 10 as to which the Indemnifying Party has received valid notice in accordance with this ARTICLE 10 prior to the expiration of the applicable survival period shall survive until resolved by either the agreement of the parties or the final non-appealable judgment of a court of competent jurisdiction. For the avoidance of doubt, the foregoing survival periods shall not apply to Losses arising under the representations and warranties of any Stockholder contained in the Written Consent or any Letter of Transmittal.

10.2 Indemnification By Securityholders. Subject to the other terms and conditions of this ARTICLE 10, after and subject to the occurrence of the Closing, the Common Stockholders and the Option Holders (the "Indemnifying Securityholders"), severally and not jointly (in accordance with their Pro Rata Portion), shall indemnify and defend each of Purchaser and its Affiliates (including the Company) and their respective Representatives (collectively, the "Purchaser Indemnitees") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses (which, in the case of Section 10.2(f) shall include all Sequoia Losses) incurred or sustained by, or imposed upon, the Purchaser Indemnitees based upon or arising from:

(a) any inaccuracy in or breach of any of the representations or warranties of the Company contained in this Agreement or in any certificate or instrument delivered by or on behalf of the Company pursuant to this Agreement (in each case, as such representation or warranty would read if all qualifications or limitations as to "materiality", "Material Adverse Effect" and words of similar import set forth therein were deleted therefrom);

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by the Company prior to Closing pursuant to this Agreement;

(c) any amounts paid to the holders of Dissenting Shares, including any interest required to be paid thereon, that are in excess of the Per Share Merger Consideration (with respect to dissenting Common Stock) or the Liquidation Value (with respect to dissenting Preferred Stock);

(d) any Taxes with respect to any Pre-Closing Tax Period for which the Company or any of its Subsidiaries is liable;

(e) any Taxes (i) attributable to any restructuring or reorganization undertaken prior to the Closing (including, for the avoidance of doubt, the Interim Restructuring), (ii) for which the Company or any of its Subsidiaries is liable pursuant to Treasury Regulations Section 1.1502-6 (or any similar provisions of state, local or foreign Applicable Law) by reason of such entity being included in a consolidated or affiliated group at any time prior to the Closing, and (iii) that are withholding Taxes imposed with respect to payments made pursuant to the Transaction Documents that were not withheld pursuant to Section 2.16; and

(f) the Sequoia Matter.

Purchaser and, after the Closing, the Surviving Corporation, acknowledges and agrees that the Indemnifying Securityholders shall not have any Liability under any provision of this Agreement to the extent that the applicable Loss relates to action taken by or on behalf of any Purchaser Indemnitee after the Closing.

10.3 Indemnification by Purchaser and Surviving Corporation. Subject to the other terms and conditions of this ARTICLE 10, after and subject to the occurrence of the Closing, Purchaser and the Surviving Corporation shall jointly and severally indemnify and defend each of the Securityholders and each of their respective Affiliates and Representatives (but for the avoidance of doubt, shall not include the Surviving Corporation and its applicable Affiliates and Representatives) (collectively, the "Stockholder Indemnitees") against, and shall hold each of them harmless from and against, and shall pay and reimburse each of them for, any and all Losses incurred or sustained by, or imposed upon, the Stockholder Indemnitees based upon or arising from:

(a) any inaccuracy in or breach of any of the representations or warranties of Purchaser and Merger Sub contained in this Agreement or in any certificate or instrument delivered by or on behalf of Purchaser or Merger Sub pursuant to this Agreement (in each case, as such representation or warranty would read if all qualifications or limitations as to "materiality", "Material Adverse Effect" and words of similar import set forth therein were deleted therefrom); or

(b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Purchaser or Merger Sub, or, after the Closing Date, by the Surviving Corporation, pursuant to this Agreement.

10.4 Certain Limitations. The indemnification provided for in Section 10.2 and Section 10.3 shall be subject to the following limitations:

(a) The Indemnifying Securityholders shall not be liable to the Purchaser Indemnitees with respect to any claim for indemnification under Section 10.2(a) (i) until the aggregate amount of all Losses in respect of indemnification under Section 10.2(a) exceeds $7,600,000 (the "Deductible"), in which event the Indemnifying Securityholders shall be required to pay or be liable for all such Losses in excess of the Deductible and (ii) unless such claim is for Losses in an amount in excess of $50,000; provided, however, that the foregoing limitations shall not apply (x) to Losses based upon or arising from any inaccuracy in or breach of the Fundamental Representations or (y) in the event of Fraud. The aggregate amount of all Losses for which the Indemnifying Securityholders shall be liable pursuant to Section 10.2(a)-(e) shall not exceed the Indemnity Escrow Amount; provided, that with respect to Losses based upon or arising from any inaccuracy in or breach of the Fundamental Representations, the maximum aggregate Liability of the Indemnifying Securityholders shall not exceed the cash portion of the Base Merger Consideration and shall include only those Losses not covered under any R&W Insurance Policy. The aggregate amount of all Losses for which the Indemnifying Securityholders shall be liable pursuant to Section 10.2(f) shall not exceed the Sequoia Matter Escrow Amount. For the avoidance of doubt, the limitations set forth in this Section 10.4 shall not apply to Losses arising under the representations and warranties of any Stockholder contained in the Written Consent or any Letter of Transmittal or any Option Holder in any Option Surrender Letter.

(b) Purchaser and the Surviving Corporation shall not be liable to the Stockholder Indemnitees for indemnification under Section 10.3(a) (i) until the aggregate amount of all Losses in respect of indemnification under Section 10.3(a) exceeds the Deductible, in which event Purchaser shall only be required to pay or be liable for all such Losses in excess of the Deductible and (ii) unless such claim is for Losses in an amount in excess of $50,000; provided, however, that the foregoing limitations shall not apply to Losses based upon or arising from any inaccuracy in or breach of any representation or warranty in Section 4.1, Section 4.3(a), Section 4.3(b), Section 4.5 and Section 4.7 or in the event of Fraud. The aggregate amount of all Losses for which Purchaser and the Surviving Corporation shall be liable pursuant to Section 10.3 shall not exceed the Indemnity Escrow Amount.

(c) In calculating the amounts payable to any Indemnified Party pursuant to Section 10.2 or Section 10.3, the amount of the indemnified Losses shall not be duplicative of any other Loss for which an indemnification claim has been made, and shall be computed net of any reduction in such Indemnified Party's income Tax liability actually realized (or to be realized) as a decrease in cash Taxes payable by the Indemnified Party (or any Affiliate thereof) in any taxable period ending prior to or that includes the date of such indemnification payment, calculated on a with and without basis, and (ii) any amounts recovered by the Indemnified Party under insurance policies (including, without limitation, any R&W Insurance Policy) or from other collateral sources (such as contractual indemnities of any Person which are contained outside of this Agreement) or otherwise with respect to such Losses. The Purchaser Indemnitees shall use their best efforts to pursue any available insurance policies or collateral sources, and in the event the Purchaser Indemnitees receive any recovery, the amount of such recovery shall be applied first, to refund any payments made by the Indemnifying Parties in respect of indemnification claims pursuant to this ARTICLE 10 which would not have been so paid had such recovery been obtained prior to such payment, and second, any excess to the Purchaser Indemnitees.

(d) The Indemnifying Securityholders' obligation to indemnify the Purchaser Indemnitees for Losses pursuant to Sections 10.2(a)-10.2(e) shall, and with respect to Section 10.2(a), after the Deductible has been fully utilized, be satisfied solely and exclusively from the then remaining the Indemnity Escrow Fund, and in no event shall the Purchaser Indemnitees be entitled to recover more than the amount of funds available in the Indemnity Escrow Account

pursuant to Sections 10.2(a)-10.2(e) in the aggregate. Notwithstanding anything to the contrary contained in this Agreement, in respect of any and all claims for indemnification resulting from the Sequoia Matter, (i) the Purchaser Indemnitees may recover solely from the Sequoia Matter Escrow Account, and in no event shall a Purchaser Indemnitee be entitled to recover any amounts directly from any Indemnifying Securityholder, and (ii) under no circumstances will the Purchaser Indemnitees be entitled to recover, individually or in the aggregate, any amounts in excess of the balance of the Sequoia Matter Escrow Account.

(e) Purchaser acknowledges and agrees that it is entitled to seek indemnification for the same Loss only once under this ARTICLE 10 even if a claim for indemnification in respect of such Loss has been made as a result of a breach of more than one representation, warranty, covenant or agreement contained in this Agreement; and

(f) In no event shall a Purchaser Indemnitee be entitled to indemnification pursuant to this ARTICLE 10 with respect to a specific Loss to the extent such Loss is (i) clearly and separately reserved for on the face of the Latest Balance Sheet (it being understood and agreed, however, that the Purchaser Indemnitees shall receive indemnification for any Losses in excess of such specific reserve, subject to the other limitations set forth herein) or (ii) is included in the calculation of the Final Merger Consideration, as finally determined in accordance with Section 2.12 including any such Loss that is related to any reserve or other similar item included in such calculation.

(g) Notwithstanding anything herein to the contrary, the Indemnifying Securityholders shall not be liable for any Taxes with respect to any Post-Closing Tax Period for which the Company or any of its Subsidiaries is liable.

Notwithstanding anything contained herein to the contrary, after the Closing, on the date that the Indemnity Escrow Fund or the Sequoia Matter Escrow Fund is reduced to zero, the Purchaser Indemnitees shall have no further rights to indemnification under Sections 10.2(a)-10.2(e) or Section 10.2(f), respectively.

10.5 Indemnification Procedures. The party making a claim under this ARTICLE 10 is referred to as the "Indemnified Party", and the party against whom such claims are asserted under this ARTICLE 10 is referred to as the "Indemnifying Party". For purposes of this ARTICLE 10, (i) if Purchaser (or any other Purchaser Indemnitee) comprises the Indemnified Party, any references to Indemnifying Party (except provisions relating to an obligation to make payments) shall be deemed to refer to Sellers' Representative, and (ii) if Purchaser comprises the Indemnifying Party, any references to the Indemnified Party shall be deemed to refer to Sellers' Representative. Any payment received by Sellers' Representative as the Indemnified Party shall be distributed to the Securityholders in accordance with this Agreement.

(a) Third Party Claims. Subject to Section 10.5(d), if any Indemnified Party (A) receives notice of the assertion or commencement of any Legal Action made or brought by any Person who is not a party to this Agreement or an Affiliate of a party to this Agreement or a Representative of the foregoing (a "Third Party Claim") against such Indemnified Party with respect to which the Indemnifying Party is obligated to provide indemnification under this Agreement or (B) becomes aware of a Third Party Claim which such Indemnified Party reasonably believes may result in any Losses (without giving effect to the limitations in Section 10.4), the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) calendar days after receipt of such notice of such Third Party Claim. The delay or failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent

that the Indemnifying Party is prejudiced by reason of such delay or failure. Such notice by the Indemnified Party shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party, to defend against, negotiate, settle (subject to Section 10.5(b)) or otherwise deal with any Third Party Claim (other than any Third Party Claim relating to the Sequoia Matter) at the Indemnifying Party's expense and by the Indemnifying Party's own counsel, and the Indemnified Party shall cooperate in good faith in such defense, negotiation or settlement. Subject to Section 10.5(d), the Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it subject to the Indemnifying Party's right to control the defense thereof, provided that the fees and disbursements of such counsel shall be at the expense of the Indemnified Party. If the Indemnifying Party elects not to defend against, negotiate, settle (subject to Section 10.5(b)) or otherwise deal with any Third Party Claim, the Indemnified Party may defend against, negotiate, settle (subject to Section 10.5(b)) or otherwise deal with such Third Party Claim using counsel reasonably acceptable to the Indemnifying Party. The Indemnifying Party and the Indemnified Party shall cooperate with each other and their respective counsel in all reasonable respects in connection with the defense, negotiation or settlement of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim. Notwithstanding anything herein to the contrary, any Third Party Claim relating to Taxes shall be governed exclusively by Section 7.8.

(b) Settlement of Third Party Claims. Notwithstanding any other provision of this Agreement, the Indemnifying Party shall not settle or compromise any Third Party Claim or permit a default or consent to entry of any judgment with respect thereto without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed) unless such settlement, compromise, or judgment contains a release of the Indemnified Party from all Liability in respect of such Third Party Claim; provided, that if a settlement offer solely for money damages is made by the applicable third-party claimant, and the Indemnifying Party notifies the Indemnified Party in writing of the Indemnifying Party's willingness to accept the settlement offer and, subject to the applicable limitations of this ARTICLE 10, pay the amount called for by such settlement offer, and the Indemnified Party declines to accept such offer, the Indemnified Party may continue to contest such Third Party Claim, free of any participation by the Indemnifying Party, and the amount of any ultimate Liability with respect to such Third Party Claim that the Indemnifying Party has an obligation to pay hereunder shall be limited to the lesser of (A) the amount of the settlement offer that the Indemnified Party declined to accept or (B) the aggregate Losses of the Indemnified Party with respect to such Third Party Claim. Notwithstanding any other provision of this Agreement, if the Indemnified Party has assumed the defense of any Third Party Claim pursuant to Section 10.5(a), it shall not settle or compromise any Third Party Claim or permit a default or consent to entry of any judgment with respect thereto without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed).

(c) Direct Claims. Subject to Section 10.5(d), any Legal Action by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof, but in any event not later than thirty (30) days after the Indemnified Party becomes aware of such Direct Claim. The delay or failure to give such prompt written notice shall not, however, relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party is prejudiced by reason of such delay or failure. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and

shall indicate the estimated amount, if reasonably practicable, of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. The Indemnified Party shall allow the Indemnifying Party and its professional advisors to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall assist the Indemnifying Party's investigation by giving such information and assistance (including access to the Company's premises and personnel and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its professional advisors may reasonably request.

(d) Sequoia Matter Claims. Notwithstanding anything herein to the contrary, Sellers' Representative shall assume control of any Legal Action (including with respect to any Third Party Claim) relating to the Sequoia Matter after the Closing until the Sequoia Escrow Release Date; provided, that the attorneys' fees and other costs and expenses of Sellers' Representative shall be paid from the Sequoia Matter Escrow Account and reduce the amount of the Sequoia Matter Escrow Amount. Sellers' Representative and Purchaser shall cooperate with each other in all reasonable respects in connection with the defense of any Legal Action relating to the Sequoia Matter, including making available records relating to such Legal Action and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to Sellers' Representative, management employees of the Purchaser as may be reasonably necessary for the preparation of the defense of such Legal Action.

10.6 Mitigation. Each of the Indemnified Parties agrees to take all commercially reasonable actions to mitigate its respective indemnified Losses upon the occurrence of any event or condition that would reasonably be expected to result in Losses that are indemnifiable hereunder. The parties shall cooperate with each other with respect to resolving any claim or Liability underlying any Loss with respect to which one party is obligated to indemnify any Person hereunder, including by making commercially reasonable efforts to mitigate or resolve any such claim or Liability

10.7 Release of Escrow Funds.

(a) Release of Indemnity Escrow Fund. In accordance with the terms set forth in the Escrow Agreement, the Indemnity Escrow Fund shall be held by the Escrow Agent until the one (1) year anniversary of the Closing Date (the "Indemnity Escrow Release Date"). Within five (5) Business Days following the Indemnity Escrow Release Date, Purchaser and Sellers' Representative shall deliver a joint written instruction to the Escrow Agent directing it to release to Sellers' Representative (on behalf of the Securityholders) from the Indemnity Escrow Fund an amount equal to the then-remaining balance of the Indemnity Escrow Amount less a reserve equal to the amount of any then pending or disputed Losses for which any Purchaser Indemnitee claims in good faith to be entitled to indemnification, which reserve shall be held and maintained by the Escrow Agent in accordance with the Escrow Agreement.

(b) Release of Sequoia Matter Escrow Fund. In accordance with the terms set forth in the Escrow Agreement, the Sequoia Matter Escrow Fund shall be held by the Escrow Agent until the earlier of (x) notice to the Escrow Agent that the Sequoia Matter has been finally resolved by (A) a binding settlement agreement or (B) final non-appealable order of a court of competent jurisdiction and (y) delivery of a joint written instruction to the Escrow Agent by the Purchaser and Sellers' Representative to release the then-remaining balance of the Sequoia Matter Escrow Amount from the Sequoia Matter Escrow Fund in accordance with the following sentence (the "Sequoia Escrow Release Date"). Within five (5) Business Days following the Sequoia Escrow Release Date, the Purchaser and Sellers' Representative shall deliver a joint written instruction to the Escrow Agent directing it to release to Sellers' Representative (on behalf of the Securityholders) from the Sequoia Matter Escrow Fund an amount equal to the then-remaining balance of the Sequoia Matter Escrow Amount less a reserve equal to the amount of any then pending or disputed Sequoia Losses for which any Purchaser Indemnitee claims in good faith to be entitled to indemnification, which reserve shall be held and maintained by the Escrow Agent in accordance with the Escrow Agreement.

10.8 Tax Treatment of Indemnification Payments. All indemnification payments made under this Agreement shall be treated by the parties as an adjustment to the Base Merger Consideration for Tax purposes, unless otherwise required by Applicable Law.

10.9 Exclusive Remedies. If the Closing occurs, subject to Section 11.13, the parties acknowledge and agree that their sole and exclusive remedy with respect to any and all claims (other than claims arising from Fraud, criminal activity or willful misconduct on the part of a party hereto in connection with the transactions contemplated by this Agreement) for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this ARTICLE 10. Nothing in this Section 10.9 shall limit (i) any Person's right to seek and obtain any equitable relief to which any Person shall be entitled or to seek any remedy on account of any party's fraudulent, criminal or intentional misconduct or (ii) Purchaser's right to seek any remedy with respect to any breach of representations and warranties of any Stockholder contained in the Written Consent or any Letter of transmittal or any Option Holder in any Option Surrender Letter. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, PURCHASER ACKNOWLEDGES AND AGREES THAT, OTHER THAN IN THE CASE OF FRAUD, THE SOLE AND EXCLUSIVE REMEDY OF THE PURCHASER INDEMNITEES FOR ANY CLAIM RELATED TO, ARISING UNDER OR IN CONNECTION WITH A BREACH OF ANY REPRESENTATION, WARRANTY, COVENANT OR AGREEMENT CONTAINED IN THIS AGREEMENT SHALL BE AGAINST THE INDEMNITY ESCROW AMOUNT, THE SEQUOIA MATTER ESCROW AMOUNT OR ANY R&W INSURANCE POLICY, AS APPLICABLE.

10.10 Remedies Not Affected by Investigation or Knowledge. If the Closing occurs, Purchaser expressly reserves the right to seek indemnity or other remedy for any Losses arising out of or relating to any breach of any representation, warranty or covenant of the Company contained herein, notwithstanding any investigation by, disclosure to, knowledge or imputed knowledge of Purchaser or any of its Representatives in respect of any fact or circumstances that reveals the occurrence of any such breach, whether before or after the execution and delivery hereof. In furtherance of the foregoing, (i) the Company and the Sellers' Representative agree that knowledge or lack of reliance shall not be a defense in law or equity to any claim of breach of representation, warranty or covenant of the Company herein, (ii) the Company and the Sellers' Representative shall not in any Legal Action concerning a breach or alleged breach of any representation, warranty or covenant of the Company herein, or any indemnity thereof, seek information concerning knowledge or reliance of Purchaser or any of its Representatives, through deposition, discovery or otherwise or seek to introduce evidence or argument in any Legal Action regarding the knowledge or lack of reliance of Purchaser or any of its Representatives on or with respect to any such representations, warranties or covenants.

ARTICLE 11
GENERAL PROVISIONS

11.1 Company Disclosure Schedules. If and to the extent any information required to be furnished in any Section of the Company Disclosure Schedule is contained in this Agreement or in any other Section of the Company Disclosure Schedule, such information shall be deemed to be included in all Sections of the Company Disclosure Schedule in which the information would otherwise be required to be included to the extent that it is reasonably apparent on its face that such disclosure is applicable to such other Section. Disclosure of any fact or item in any Section of the Company Disclosure Schedule

shall not be considered an admission by the disclosing party that such item or fact (or any non-disclosed item or information of comparable or greater significance) represents a material exception or fact, event or circumstance or that such item has had or would reasonably be expected to have a Material Adverse Effect, or that such item or fact will in fact exceed any applicable threshold limitation set forth in this Agreement and shall not be construed as an admission by the disclosing party of any non-compliance with, or violation of, any third party rights (including but not limited to any Intellectual Property rights) or any Applicable Law of any Governmental Body, such disclosures having been made solely for the purposes of creating exceptions to the representations made herein or of disclosing any information required to be disclosed under this Agreement. The Company Disclosure Schedule and the information and disclosures contained therein are intended only to qualify and limit the representations, warranties or covenants contained in this Agreement, and do not, except as expressly set forth in the representations and warranties which they qualify, constitute representations and warranties as to the matters described therein. The Company shall not be prejudiced in any manner whatsoever, and no presumptions shall be created, by virtue of the disclosure of any matter in the Company Disclosure Schedule which otherwise is not required to be disclosed by this Agreement.

11.2 The Sellers' Representative.

(a) The Sellers' Representative is hereby appointed, authorized and empowered to act as a Representative by and for the benefit of the Securityholders, as the exclusive agent and attorney in fact to act on behalf of each Securityholder in connection with, and to facilitate the consummation of the transactions contemplated hereby, which shall include the power and authority:

(i) to execute and deliver this Agreement and the Escrow Agreement (with such modifications or changes therein as to which the Sellers' Representative, in its sole discretion, shall have consented) on behalf of the Securityholders and to agree to such amendments or modifications thereto as the Sellers' Representative, in its sole discretion, determines to be desirable;

(ii) to execute and deliver such waivers and consents in connection with this Agreement, the Escrow Agreement and the consummation of the transactions contemplated hereby and thereby as the Sellers' Representative, in its sole discretion, may deem necessary or desirable, including any amendments or modifications to this Agreement;

(iii) to collect and receive all moneys and other proceeds and property payable to the Securityholders from the Escrow Account as described herein or otherwise payable to the Securityholders pursuant to this Agreement, including the funds in the Escrow Account and any portion of or earnings accrued thereon which may be distributable to the Securityholders, in accordance with the Escrow Agreement, and, subject to any applicable withholding retention laws, to disburse and pay the same to each Securityholder in accordance with the terms of this Agreement;

(iv) as the Sellers' Representative, to enforce and protect the rights and interests of the Securityholders and to enforce and protect the rights and interests of the Sellers' Representative arising out of or under or in any manner relating to this Agreement, the Escrow Agreement and each other agreement, document, instrument or certificate referred to herein or the transactions provided for herein, and to take any and all actions which the Sellers' Representative believes are necessary or appropriate under this Agreement and the Escrow Agreement for and on behalf of the Securityholders, including asserting or pursuing any claim against Purchaser or the Company, defending any Third Party Claims or claims by Purchaser, consenting to, compromising or settling any such claims, conducting negotiations with Purchaser or the

Company and their respective Representatives regarding such claims, and, in connection therewith, to (A) assert any claim or institute any Legal Action, (B) investigate, defend, contest or litigate any claim or Legal Action initiated by Purchaser or the Company or any other Person, or by any Governmental Body against the Sellers' Representative, any or all of the Securityholders, the Adjustment Escrow Amount or the Sellers' Representative Expense Amount and receive process on behalf of any or all of the Securityholders in any such claim or Legal Action and compromise or settle on such terms as the Sellers' Representative shall determine to be appropriate, and give receipts, releases and discharges with respect to any such claim or Legal Action, (C) file any proofs of debt, claims and petitions as the Sellers' Representative may deem advisable or necessary, and (D) file and prosecute appeals from any decision, judgment or award rendered in any such Legal Action (it being understood that the Sellers' Representative shall not have any obligation to take any such actions, and shall not have any Liability for any failure to take any such actions);

(v) to refrain from enforcing any right of the Securityholders or any of them or the Sellers' Representative arising out of or under or in any manner relating to this Agreement and the Escrow Agreement, or any other agreement, instrument or document in connection with the foregoing; provided, however, that no such failure to act on the part of the Sellers' Representative, except as otherwise provided in this Agreement or in the Escrow Agreement, shall be deemed a waiver of any such right or interest by the Sellers' Representative or by such Securityholders unless such waiver is in writing signed by the waiving party or by the Sellers' Representative;

(vi) to make, execute, acknowledge and deliver all such other agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, stock powers, letters and other writings, and, in general, to do any and all things and to take any and all action that the Sellers' Representative, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the transactions contemplated by this Agreement, the Escrow Agreement and all other agreements, documents or instruments referred to herein or therein or executed in connection herewith and therewith;

(vii) to provide notice and instructions to the Escrow Agent and to authorize disbursement of funds from the Escrow Account in accordance with this Agreement; and

(viii) to make any payments or pay any expenses under or in connection with this Agreement or on behalf of the Securityholders.

(b) The Sellers' Representative shall not be entitled to any fee, commission or other compensation for the performance of its services hereunder, but shall be entitled to the payment of all of its third party expenses incurred as the Sellers' Representative. In connection with this Agreement, and any instrument, agreement or document relating hereto or thereto, and in exercising or failing to exercise all or any of the powers conferred upon the Sellers' Representative hereunder (i) the Sellers' Representative shall incur no responsibility whatsoever to any Securityholder by reason of any error in judgment or other act or omission performed or omitted hereunder or in connection with the Escrow Agreement or any such other agreement, instrument or document, excepting only responsibility for any act or failure to act which represents willful misconduct and (ii) the Sellers' Representative shall be entitled to rely on the advice of counsel, public accountants or other independent experts experienced in the matter at issue, and any error in judgment or other act or omission of the Sellers' Representative pursuant to such advice shall in no event subject the Sellers' Representative to Liability to any Securityholder.

(c) In the event that any amount is owed to the Sellers' Representative, whether for expense reimbursement or indemnification, that is in excess of the Sellers' Representative Expense Amount, the Sellers' Representative shall be entitled to be reimbursed by the Securityholders (other than the Preferred Stockholders), and the Securityholders (other than the Preferred Stockholders) agree to so reimburse the Sellers' Representative, and make the Sellers' Representative whole for such shortfall. Upon written notice from the Sellers' Representative to the Securityholders (other than the Preferred Stockholders) to the existence of a shortfall, including a reasonably detailed description as to such shortfall, each Securityholder (other than the Preferred Stockholders) shall promptly deliver to the Sellers' Representative full payment of his or her ratable share of the amount of such shortfall based upon such Securityholder's Pro Rata Portion of the Final Merger Consideration. The Sellers' Representative shall, when it determines that it is no longer necessary for it to retain the Sellers' Representative Expense Amount, distribute any portion thereof to the Securityholders (other than the Preferred Stockholders) in accordance with their respective Pro Rata Portion.

(d) Purchaser and the Surviving Corporation shall have the right to rely upon all actions taken or omitted to be taken by the Sellers' Representative pursuant to this Agreement (including the Escrow Agreement) all of which actions or omissions shall be legally binding upon the Securityholders.

(e) The grant of authority provided for herein (i) is coupled with an interest and shall be irrevocable and survive the death, incompetency, bankruptcy or liquidation of any Securityholder and (ii) shall survive the consummation of the transactions contemplated hereby.

11.3 Entire Agreement; Amendment. This Agreement, including the Company Disclosure Schedules and Purchaser Disclosure Schedules and the other documents referred to herein which form a part hereof, and the Confidentiality Agreement, contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (whether written or oral) between the parties with respect to such subject matter, other than the Confidentiality Agreement. This Agreement may be amended, supplemented or changed, and any provision hereof can be waived, only by a written instrument making specific reference to this Agreement executed by the party against whom enforcement of any such amendment, supplement, modification or waiver is sought. Notwithstanding the foregoing, Sections 9.2, 11.3, 11.9, 11.10 and 11.14 and the definitions related thereto (solely as used in such sections) may not be amended in a manner materially adverse to the interests of the Debt Financing Sources without the written consent of the Debt Financing Sources party to the Debt Financing Commitments. Upon the Closing, the Confidentiality Agreement shall automatically terminate and none of the parties thereto shall have any further Liability or obligation thereunder. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege. The rights and remedies herein provided shall be cumulative and not exclusive of any rights or remedies provided by Applicable Law.

11.4 No Waiver. The failure of a party to insist upon strict adherence to any term or provision of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement.

11.5 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any Applicable Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of

the transactions contemplated hereby is not affected in any manner materially adverse to any party. Any such term or provision held invalid, illegal, or incapable of being enforced only in part or degree will remain in full force and effect to the extent not held invalid, illegal, or incapable of being enforced. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, such term or provision is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under Applicable Law.

11.6 Expenses and Obligations. Unless otherwise expressly provided herein, all costs and expenses incurred by the parties hereto in connection with the transactions contemplated by this Agreement shall be borne solely and entirely by the party that has incurred such expenses. For the avoidance of doubt, Purchaser shall be responsible for the costs of obtaining any R&W Insurance Policy (including the premium, commission, surplus lines tax and underwriting fee).

11.7 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and (a) delivered by hand, (b) sent by facsimile transmission (with written confirmation of delivery), or (c) sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

If to Purchaser or Merger Sub, or to the Surviving Corporation:

Surgery Partners, Inc.
40 Burton Hills Blvd.
Nashville, TN 37215
Attention: General Counsel

with a copy to (which will not constitute notice to Purchaser or Merger Sub):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Carl Marcellino and William M. Shields
Fax: (646) 728-1523 and (617) 235-0509

If to the Company prior to the Closing:

NSH Holdco, Inc.
c/o National Surgical Hospitals, Inc. d/b/a National Surgical Healthcare
250 South Wacker Drive, Suite 500
Chicago, IL 60606
Attention: Rob Guenthner
Fax: (312) 474-1950

NSH Holdco, Inc.
c/o Irving Place Capital Management, L.P.
745 Fifth Avenue, 7th Floor
New York, NY 10151
Attention: Robert Juneja
Fax: (212) 551-4526

with a copy to (which will not constitute notice to the Company):

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Christopher Machera
Fax: (212) 310-8007

If to the Sellers' Representative:

IPC / NSH, L.P.
c/o Irving Place Capital
745 Fifth Avenue, 7th Floor
New York, NY 10151
Attention: Robert Juneja
Facsimile: (212) 551-4526

with a copy to (which will not constitute notice to the Sellers' Representative):

Weil, Gotshal & Manges LLP
767 Fifth Avenue
New York, NY 10153
Attention: Christopher Machera
Fax: (212) 310-8007

Any of the above addresses may be changed at any time by notice given as provided above; provided, however, that any such notice of change of address shall be effective only upon receipt. All notices, requests or instructions given in accordance herewith shall be deemed received on the date of delivery, if by hand delivery, on the date of transmission, if sent by facsimile, and one (1) Business Day after the date of sending, if mailed by nationally recognized overnight delivery service.

11.8 Counterparts. This Agreement may be executed in two (2) or more counterparts (including by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one instrument. Delivery of a signed counterpart of a signature page of this Agreement by facsimile or by .PDF file (portable document format file) shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication).

11.9 Governing Law.

(a) This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter this Agreement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice of law principles that would require or permit the application of the laws of another jurisdiction.

(b) Each of the parties agrees (i) that any Legal Action, whether at law or in equity, whether in contract or in tort or otherwise, with respect to this Agreement shall be brought in the Court of Chancery of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) and, by execution and delivery of this Agreement, each party hereto hereby irrevocably submits itself in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid court in any Legal Action arising out of this Agreement, (ii) not to bring or permit any of their Affiliates to bring or support any other Person in bringing any such Legal Action in any other court, (iii) that service of process, summons, notice or document by registered mail addressed to them at their respective addresses provided in Section 11.7 shall be effective service of process against it for any such Legal Action brought in any such court, (iv) to waive and hereby waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such Legal Action in any such court, and (v) that, notwithstanding the foregoing, a final judgment in any such Legal Action shall be conclusive and may be enforced in any court in any other jurisdictions (where the party against which enforcement is sought has operations or owns assets) by Legal Action on the judgment or in any other manner provided by Applicable Law. Nothing in this paragraph shall affect or eliminate any right to serve process in any other manner permitted by Applicable Laws.

(c) No Seller Related Party shall have any rights or claims against any Debt Financing Source or Debt Financing Source Affiliate in connection with this Agreement, the Debt Financing or the transactions contemplated hereby or thereby, whether at law or equity, in contract, in tort or otherwise; provided, that notwithstanding the foregoing, nothing in this Section 11.9(c) shall in any way limit or modify the rights and obligations of Purchaser under this Agreement or any Debt Financing Source's obligations to Purchaser under the Debt Financing Commitments.

(d) Notwithstanding anything herein to the contrary, each party hereto agrees that any Legal Action of any kind or nature, whether at law or equity, in contract, in tort or otherwise, involving a Debt Financing Source or its respective Debt Financing Source Affiliate in connection with this Agreement, the Debt Financing or the transactions contemplated hereby or thereby shall be brought exclusively in New York State court or Federal court of the United States of America sitting in New York County in the State of New York, and any appellate court from any thereof, and each Seller Related Party submits for itself and its property with respect to any such Legal Action to the exclusive jurisdiction of such courts, (b) not to bring or permit any of its Affiliates or Representatives to bring or support any other Person in bringing any such Legal Action in any other court, (c) to waive and hereby irrevocably waives, to the fullest extent permitted by Applicable Law, any objection which it may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such Legal Action in any such court, (d) that a final judgment in any such Legal Action shall be conclusive and may be enforced in other jurisdictions by Legal Action on the judgment or in any other manner provided by law, (e) that any such Legal Action shall be governed by, and construed in accordance with, the laws of the State of New York, and (f) to irrevocably waive and hereby waives any right to a trial by jury in any such Legal Action to the same extent such rights are waived pursuant to Section 11.10.

11.10 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF ANY PARTY HERETO OR THERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

11.11 Rights Cumulative. Except as expressly limited by this Agreement, all rights and remedies of each of the parties under this Agreement will be cumulative, and the exercise of one or more rights or remedies not preclude the exercise of any other right or remedy available under this Agreement or Applicable Law.

11.12 Assignment. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without the other parties' prior written consent; provided that, Purchaser may assign this Agreement (a) to an Affiliate at any time without the other parties' consent, provided that Purchaser shall remain liable for its obligations hereunder or (b) effective at and after the Effective Time, to the Debt Financing Sources and any parties providing the Debt Financing pursuant to the terms thereof for purposes of creating a security interest herein or otherwise assign as collateral in respect of such Debt Financing, but no such assignment shall relieve Purchaser or Merger Sub of their respective obligations under this Agreement.

11.13 Specific Enforcement.

(a) The parties hereto agree that irreparable damage would occur in the event that any of the obligations, undertakings, covenants or agreements of the parties hereto were not performed in accordance with their specific terms or were otherwise breached and that monetary damages, even if available, would not be an adequate remedy. It is accordingly agreed that the Company, on the one hand, and Purchaser, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party, and to enforce specifically the terms and provisions of this Agreement (including Section 7.1 and Section 7.2, and including to cause Purchaser and Merger Sub to consummate the Merger and the Closing and to make the payments contemplated by this Agreement, including ARTICLE 2) by a decree of specific performance, without the necessity of proving actual harm or posting a bond or other security therefor, this being in addition to, subject to the last sentence of Section 9.2, any other remedy to which such party is entitled at law or in equity, and each party hereto agrees, subject to the last sentence of Section 9.2, that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that any other party hereto has an adequate remedy at law or that any award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law or in equity. Without limitation of the foregoing, but subject to the last sentence of Section 9.2, the parties hereto hereby further acknowledge and agree that prior to the Closing, the Company shall be entitled to seek specific performance to enforce specifically the terms and provisions of, and to prevent or cure breaches of the covenants required to be performed by Purchaser and Merger Sub under this Agreement (including Section 7.1 and Section 7.2, and including to cause Purchaser and Merger Sub to consummate the Merger and the Closing and to make the payments contemplated by this Agreement, including ARTICLE 2) in addition to any other remedy to which the Company is entitled at law or in equity, including the Company's right to terminate this Agreement pursuant to ARTICLE 9 and seek payment of the Termination Fee. In the event that the Company, on the one hand, or Purchaser, on the other hand, brings a Legal Action for specific performance against the other party pursuant to this Section 11.13, and a court makes an order for specific performance against that other party, then the other party shall also pay the first party's costs and expenses (including attorneys' fees and expenses) in connection with all such Legal Actions to seek specific performance of such other party's obligations under this Agreement and all Legal Actions to collect such costs and expenses. Each of the parties hereto further agrees that it shall not take any position in any Legal Action concerning this Agreement that is contrary to the terms of this Section 11.13. In addition, the Company agrees to use commercially reasonable efforts cause any Legal Action commenced by Company and pending in connection with this Agreement against Purchaser or any Related Party to be dismissed with prejudice promptly, and in any event within five (5) Business Days, after such time as Purchaser consummates the Closing pursuant to this Section 11.13.

(b) Notwithstanding Section 11.13(a), it is explicitly agreed that the Company shall be entitled to seek specific performance of Purchaser's obligation to consummate the Closing and to make the payments contemplated by this Agreement only in the event that (a) the Marketing Period has ended and all conditions in Section 8.1 and Section 8.2 have been satisfied or waived (other than those to be satisfied at the Closing) and Purchaser fails to consummate the Merger on the date the Closing should have occurred pursuant to Section 2.3, (b) the Financing provided by the Financing Commitments (or, in the case of the Debt Financing, if Alternative Financing is being used in accordance with Section 7.5, pursuant to the Alternative Financing Commitments with respect thereto) has been funded or will be funded at the Closing, and (c) the Company has confirmed that it is ready, willing and able to consummate the Closing, and will take such actions as are within its control to so consummate the Closing, if specific performance is granted and the Equity Financing and Debt Financing are funded.

(c) Subject to the last sentence of Section 9.2, until such time as Purchaser pays the Company the Termination Fee following a valid termination of this Agreement, in no event shall the exercise of the Company Group's right to seek specific performance pursuant to this Section 11.13 reduce, restrict or otherwise limit the Company Group's right to terminate this Agreement pursuant to Section 9.1 and/or pursue all applicable remedies at law, including seeking payment of the Termination Fee.

11.14 Third-Party Beneficiaries. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person not a party to this Agreement, nor confer any rights, benefits or remedies hereunder upon any Person other than the parties hereto and their respective successors and assigns, except (a) as contemplated by Section 6.2, Section 10.2, Section 11.15, Section 11.16 and Section 11.17, (b) to the extent the Effective Time occurs, for the rights of the Securityholders under ARTICLE 2 on and after the Effective Time to receive payment therefor, and (c) the Debt Financing Sources and their respective Debt Financing Source Affiliates are express third party beneficiaries of, and are entitled to rely on and enforce as such the provisions of, Sections 9.2, 11.3, 11.9, 11.10 and 11.14.

11.15 Non-Recourse. Except and only to the extent set forth in the Equity Financing Commitment, this Agreement may only be enforced against, and a claim or cause of action based upon, arising out of, or related to this Agreement may only be brought by the expressly named party hereto and then only with respect to the specific obligations set forth herein with respect to such party. Except to the extent a named party and to the extent a named party to the Equity Financing Commitment (and then only to the extent of the specific obligations undertaken by such named party in this Agreement or by such named parties under the Equity Financing Commitment), no present, former or future Affiliate, officer, director, employee, incorporator, member, partner, stockholder, agent, attorney or other Representative of any party or their Affiliates shall have any Liability (whether in contract, in tort or otherwise) for any obligations or Liabilities of any party which is not otherwise expressly identified as a party, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties, agreements or covenants of any party under this Agreement for any claim based upon, in respect of, or by reason of, the Merger or in respect of any representations made or alleged to have been made in connection herewith or therewith. The provisions of this Section 11.15 are intended to be for the benefit of, and enforceable by the Affiliates, officers, directors, employees, incorporators, members, partners, stockholders, agents, attorneys and other Representatives referenced in this Section 11.15 and each such Person shall be a third-party beneficiary of this Section 11.15.

11.16 Legal Representation. Purchaser and the Company hereby agree, on their own behalf and on behalf of their Affiliates, and each of their and their Affiliates' directors, members, partners, officers, employees and Affiliates, and each of their successors and assigns (all such parties, the "Waiving

Parties"), that Weil, Gotshal & Manges LLP (or any successor) may represent (a) any or all of the Securityholders or any of their respective Affiliates, and each of their and their Affiliates' directors, members, partners, officers, employees or Affiliates or (b) the Sellers' Representative, in each case in connection with any dispute, Legal Action or obligation arising out of or relating to this Agreement, including under any agreements contemplated by this Agreement or the transactions contemplated hereby or thereby (any such representation, the "Post-Closing Representation") notwithstanding its representation (or any continued representation) of the Company or any of its Subsidiaries, and each of Purchaser and the Company on behalf of itself and the Waiving Parties hereby consents thereto and irrevocably waives (and will not assert) any conflict of interest or any objection arising therefrom or relating thereto. Purchaser and the Company acknowledge that the foregoing provision applies whether or not Weil, Gotshal & Manges LLP provides legal services to Purchaser, the Company or any of its Subsidiaries after the Closing Date. Each of Purchaser and the Company, for itself and the Waiving Parties, hereby irrevocably acknowledges and agrees that all communications among the Company Group or the Securityholders and their counsel, including Weil, Gotshal & Manges LLP, made in connection with the negotiation, preparation, execution, delivery and performance under, or any dispute or Legal Action arising out of or relating to, this Agreement, any agreements contemplated by this Agreement or the transactions contemplated hereby or thereby, or any matter relating to any of the foregoing, are privileged communications between the Securityholders and such counsel (notwithstanding that a member of the Company Group participated or was provided such communications nor that the Company Group is also a client of such counsel) and from and after the Closing neither Purchaser, the Company, nor any Person purporting to act on behalf of or through Purchaser or the Company or any of the Waiving Parties, will seek to obtain the same by any process. From and after the Closing, each of Purchaser and the Company, on behalf of itself and the Waiving Parties, waives and will not assert any attorney-client privilege with respect to any communication between Weil, Gotshal & Manges LLP and the Company, its Subsidiaries or any Securityholder occurring prior to the Closing in connection with this Agreement, any other Transaction Document, any of the transactions contemplated herein or therein, or any Post-Closing Representation.

11.17 Release. Effective as of the Closing Date (but only if the Closing actually occurs), except for any rights or obligations under this Agreement or the other Transaction Documents, each of Purchaser and the Surviving Corporation, each on behalf of itself and each of its Subsidiaries and Affiliates and each of its current and former officers, directors, employees, partners, members, advisors, successors and assigns (collectively, the "Releasing Parties"), hereby irrevocably and unconditionally releases and forever discharges the Securityholders, their respective Affiliates and each of their respective current and former officers, directors, employees, partners, managers, members, advisors, successors and assigns (collectively, the "Released Parties") of and from any and all Legal Actions, causes of action, executions, judgments, duties, debts, dues, accounts, bonds, contracts and covenants (whether express or implied), and claims and demands whatsoever whether in law or in equity (whether based upon contract, tort or otherwise) that the Releasing Parties may have against any of the Released Parties, now or in the future, in each case in respect of any cause, matter or thing relating to the Company or any of its current or former Subsidiaries that may arise against the Released Parties solely as a result of the Securityholders' ownership of Equity Securities of the Company, but only to the extent that such cause, matter or thing does not otherwise constitute Fraud. The provisions of this Section 11.17 are intended to be for the benefit of, and enforceable by the Released Parties referenced in this Section 11.17 and each such Person shall be a third-party beneficiary of this Section 11.17.

[*signature page follows*]

IN WITNESS WHEREOF, the Company, Purchaser, Merger Sub and the Sellers' Representative have caused this Agreement to be signed, all as of the date first written above.

NSH HOLDCO, INC.

By: /s/ Robert Juneja
Name: Robert Juneja
Title: President

[SIGNATURE PAGE TO MERGER AGREEMENT]

SURGERY PARTNERS INC.

By: /s/ Michael T. Doyle
Name: Michael T. Doyle
Title: Chief Executive Officer

SP MERGER SUB, INC.

By: /s/ Michael T. Doyle
Name: Michael T. Doyle
Title: Chief Executive Officer

[SIGNATURE PAGE TO MERGER AGREEMENT]

IPC / NSH, L.P. (solely in its capacity as the Sellers' Representative)

By: IPC III GP, LLC, its General Partner

By: IPC Partners III SPV, L.P., its Sole Member

By: IPC Advisors III SPV, L.P., its General Partner

By: IPCM GP, LLC, its General Partner

By: /s/ Robert Juneja
Name: Robert Juneja
Title: Authorized Officer

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT is entered into as of May 9, 2017, by and among Surgery Partners, Inc., a Delaware corporation (the "Company"), and BCPE Seminole Holdings LP, a Delaware limited partnership (the "Investor").

WHEREAS, on the terms and conditions set forth in this Agreement, the Company desires to sell, and the Investor desires to purchase, shares of the Company's 10.00% Series A Convertible Perpetual Participating Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock") having the voting powers, preferences and relative, participating, optional and other special rights, and qualifications, limitations or restrictions set forth in the Series A Certificate (as defined below);

WHEREAS, in connection with such purchase and sale, the Company and the Investor desire to make certain representations and warranties and enter into certain agreements;

WHEREAS, concurrently with the execution and delivery of this Agreement and in connection with the transactions contemplated hereby, the Company has received a written consent delivered by H.I.G. Surgery Centers, LLC and H.I.G. Bayside Debt & LBO Fund II L.P. (collectively, "HIG"), as holders of a majority of the common stock, par value $0.01 per share, of the Company (the "Common Stock"), irrevocably approving the transactions contemplated by this Agreement and the other Transaction Documents, including the conversion of the Series A Preferred Stock into Common Stock (the "Stockholder Approval");

WHEREAS, in connection with such purchase and sale, the Company shall, at the Closing (as such term is defined below), adopt the Amended and Restated Bylaws of the Company in the form attached as Exhibit A (the "A&R Bylaws") as the bylaws of the Company;

WHEREAS, in connection with such purchase and sale, the Company shall, at the Closing, adopt the Amended and Restated Certificate of Incorporation of the Company in the form attached as Exhibit B (the "A&R Certificate of Incorporation") as the certificate of incorporation of the Company;

WHEREAS, in connection with such purchase and sale, the Company shall, at the Closing, enter into the Amended and Restated Registration Rights Agreement, by and among the Company, certain stockholders of the Company and certain other parties thereto, in the form attached as Exhibit C (the "Reg Rights Agreement");

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company, the Investor and HIG have entered into that certain Stock Purchase Agreement (the "HIG Purchase Agreement"), dated as of the date hereof, pursuant to which HIG has agreed to sell to the Investor and the Investor has agreed to purchase from HIG, all Common Stock owned by HIG; and

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of the Company to enter into this Agreement, the Company, Merger Sub, NSH Holdco, Inc. ("NSH") and IPC/NSH, L.P., solely in its capacity as sellers' representative, have entered into that certain Agreement and Plan of Merger (the "Merger

Agreement" and together with this Agreement, the A&R Bylaws, the A&R Certificate of Incorporation, the Reg Rights Agreement, the Confidentiality Agreement dated as of October 2, 2016, by and between Bain Capital Private Equity, LP and the Company and any other agreement, disclosure letter, certificate or other document to be entered into or delivered pursuant to the terms hereof or in connection herewith, the "Transaction Documents"), dated as of the date hereof, pursuant to which the Company has agreed to acquire all of the outstanding equity of NSH (the "NSH Merger").

NOW THEREFORE, in consideration of the foregoing and the representations, warranties and agreements set forth in this Agreement, and intending to be legally bound by this Agreement, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Company and the Investor agree as follows:

1. Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 1:

"A&R Bylaws" shall have the meaning set forth in the recitals of this Agreement.

"A&R Certificate of Incorporation" shall have the meaning set forth in the recitals of this Agreement.

"Affiliate" shall mean, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person, including, with respect to the Investor, any Affiliated Fund of the Investor. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act (including SEC and judicial interpretations thereof), and the terms "controlling" and "controlled" shall have the meanings correlative to the foregoing.

"Affiliated Fund" shall mean, in the case of the Investor, each corporation, trust, limited liability company, general or limited partnership, or other Person with whom the Investor is under common control or to which the Investor or an Affiliate of the Investor is the investment adviser.

"Agreement" shall mean this Securities Purchase Agreement, as it may be amended, restated, or otherwise modified from time to time, together with all exhibits, schedules, and other attachments thereto.

"Antitrust Authority" shall mean any Governmental Authority charged with enforcing, applying, administering or investigating any Antitrust Laws, including the U.S. Federal Trade Commission, the U.S. Department of Justice, any attorney general of any state of the United States, the European Commission or any other competition authority of any jurisdiction.

"Antitrust Laws" shall mean the HSR Act and any Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition, through merger or acquisition or otherwise.

"Board" shall mean the Board of Directors of the Company.

"Business Day" means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in New York, New York are authorized or required to be closed.

"Bylaws" shall have the meaning set forth in Section 4.1.

"Certificate of Incorporation" shall have the meaning set forth in Section 4.1.

"Closing" shall have the meaning set forth in Section 3.

"Closing Date" shall have the meaning set forth in Section 3.

"Code" shall mean the Internal Revenue Code of 1986, together with all regulations, rulings and interpretations thereof or thereunder by the Internal Revenue Service.

"Common Stock" shall have the meaning set forth in the recitals of this Agreement.

"Company" shall have the meaning set forth in the preamble of this Agreement.

"Company Intellectual Property" shall mean (i) all Intellectual Property that is used in connection with, and is material to the business of the Company and its Subsidiaries and (ii) all Intellectual Property owned by the Company and its Subsidiaries.

"Company Related Parties" shall have the meaning set forth in Section 8.7(b).

"Company Stock Plan" means the 2015 Omnibus Incentive Plan and each other plan, program policy and arrangement that provides for the award of rights of any kind to receive shares of Common Stock or benefits measured in whole or in part by reference to shares of Common Stock.

"DGCL" shall have the meaning set forth in Section 4.2(b).

"Draft Q1 2017 Financial Statements" shall have the meaning set forth in Section 4.

"End Date" shall have the meaning set forth in Section 9.12(a)(1).

"Environmental Law" shall mean any federal, state or local Law, statute, ordinance, rule or regulation relating to the (i) pollution or protection of the environment, (ii) preservation, protection, conversation, pollution, contamination of, or releases or threatened releases of Hazardous Substances into the air, surface water, ground water or land or the clean up, abatement, removal, remediation or monitoring of such pollution, contamination or Hazardous Substances; (iii) generation, recycling, reclamation, handling, treatment, storage, disposal or transportation of Hazardous Substances or solid waste and (iii) the safety or health of employees or other Persons.

"Environmental Permit" shall mean any permit, license, approval or other authorization under any Environmental Law.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, and all rules, regulations, rulings and interpretations adopted by the Internal Revenue Service or the Department of Labor thereunder.

"Equity Commitment Letter" shall have the meaning set forth in Section 5.1.

"Equity Financing" shall have the meaning set forth in Section 5.1.

"Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, and the rules and regulations promulgated by the SEC thereunder.

"Fundamental Representations" shall mean the representations and warranties of the Company contained in Sections 4.1 (Organization), 4.2 (Authorization), 4.3 (Applicable Takeover Protections), 4.5 (Capitalization), 4.6 (Valid Issuance of Preferred Stock), 4.21 (Brokers' Fees and Expenses), and 4.22 (Listing and Maintenance Requirements).

"Generally Accepted Accounting Principles" shall mean United States generally accepted accounting principles, as in effect as of the date of the applicable financial statement, applied on a consistent basis.

"Governmental Authority" shall mean any foreign governmental authority, the United States of America, any state of the United States and any political subdivision of any of the foregoing, and any agency, instrumentality, department, commission, board, bureau, central bank, authority, court or other tribunal, in each case whether executive, legislative, judicial, regulatory or administrative.

"Government Programs" means all state and federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), including the federal Medicare and all applicable state Medicaid and successor programs, as well as TRICARE and state workers' compensation programs.

"Hazardous Substance" shall mean any waste, substance or product or material defined or regulated by any applicable Environmental Law, including petroleum and any radioactive materials and waste.

"Healthcare Laws" means any local, state or Federal Law relating to the provision and payment of healthcare services and items, including the following: (i) the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), (ii) the Physician Self-Referral Law (42 U.S.C. §§ 1395nn), (iii) the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), (iv) the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), (v) the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a; (vi) the Exclusion Laws, 42 U.S.C. § 1320a-7s; (vii) the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), (viii) the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. Section 1320a 7b), (ix) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (42 U.S.C. § 17921 et seq.), (x) Medicare (Title XVIII of the Social Security Act); (xi) Medicaid (Title XIX of the Social Security Act); (xii) state corporate practice of medicine and professional fee-splitting laws and regulations, and (xiii) state certificate of need and licensing laws and regulations.

"Healthcare Professionals" shall have the meaning set forth in Section 4.15.

"HIG" shall have the meaning set forth in the recitals of this Agreement.

"HIG Purchase Agreement" shall have the meaning set forth in the recitals of this Agreement.

"HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

"Incidental Liens" shall mean (i) Liens for taxes, assessments, levies or other similar governmental charges (but not Liens for clean up expenses arising pursuant to Environmental Law) not yet due (subject to applicable grace periods) or that are being contested in good faith and by appropriate proceedings if, in each case, adequate reserves with respect to such Liens are maintained on the books of the Company in accordance with Generally Accepted Accounting Principles; (ii) carriers', warehousemen's, mechanics', landlords', vendors', materialmen's, repairmen's, sureties' or other like Liens arising in the ordinary course of business (or deposits to obtain the release of any such Lien) and securing amounts not yet due or that are being contested in good faith and by appropriate proceedings if, in the case of such contested Liens, adequate reserves with respect to such Liens are maintained on the books of the Company in accordance with Generally Accepted Accounting Principles; (iii) pledges or deposits in connection with workers' compensation, unemployment insurance and other social security legislation; (iv) easements, rights-of-way, covenants, reservations, exceptions, encroachments, zoning and similar restrictions and other similar encumbrances or title defects, in each case incurred in the ordinary course of business that are not substantial in amount, and that do not in any case singly or in the aggregate materially detract from the value or usefulness of the Real Property subject to such Liens or materially interfere with the ordinary conduct of the business of the Company and its Subsidiaries, taken as a whole; (v) Liens arising pursuant to any order of attachment, distraint or similar legal process arising in connection with any court proceeding the payment of which is covered in full (subject to customary deductibles) by insurance; (vi) inchoate Liens arising under ERISA to secure contingent liabilities of the Company; and (vii) rights of lessees and sublessees in Properties leased by the Company or any Subsidiary not prohibited elsewhere in this Agreement.

"Indebtedness" shall mean, as to any Person, without duplication: (i) all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money or for the deferred purchase price of Property or services; (ii) any other indebtedness that is evidenced by a promissory note, bond, debenture or similar instrument; (iii) any obligation under or in respect of outstanding letters of credit, acceptances and similar obligations created for the account of such Person; (iv) all capital lease obligations of such Person; (v) all indebtedness, liabilities, and obligations secured by any Lien on any Property owned by such Person even though such Person has not assumed or has not otherwise become liable for the payment of any such indebtedness, liabilities or obligations secured by such Lien; (vi) any obligation under or in respect of any hedging, swap, option, forward or other similar agreements and (vii) any guarantees of the foregoing liabilities and synthetic liabilities of such Person.

"Information Statement" shall have the meaning set forth in Section 8.3.

"Intellectual Property" shall mean any and all of the following arising under the Laws of the United States, any other jurisdiction or any treaty regime: (i) all inventions (whether patentable or unpatentable and whether or not reduced to practice), all improvements thereon, and all patents, patent applications and patent disclosures and all reissuances, continuations, continuations-in-part, divisionals, revisions, extensions and reexaminations thereof, (ii) all trademarks, service marks, trade dress, logos, trade names and corporate names and all translations, adaptations, derivations and combinations thereof and including all goodwill associated therewith, and all applications, registrations and renewals in connection therewith, (iii) all copyrightable works, mask works or moral rights, all copyrights and all applications, registrations and renewals in connection therewith, (iv) all trade secrets and confidential business information (including, without limitation, ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, customer and supplier lists, pricing and cost information and business and marketing plans and proposals), (v) all computer software (including, without limitation, data and related documentation) and source codes, (vi) all other proprietary rights, (vii) all copies and tangible embodiments of the foregoing (in whatever form or medium), (viii) all licenses or agreements in connection with the foregoing and (ix) all actions (including suits, litigation, claims, proceedings) or rights to actions, in 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.

"Investor" shall have the meaning set forth in the preamble of this Agreement.

"Investor Related Parties" shall have the meaning set forth in Section 8.7(b).

"IRS" means the Internal Revenue Service.

"Knowledge of the Company" means the actual knowledge of one or more of Michael T. Doyle, Teresa F. Sparks, Jennifer B. Baldock, John Crysel and Dennis Dean.

"Law" means, with respect to any Person, any federal, state, local or foreign common or statutory law, code, ordinance, rule, regulation, order or other requirement or rule of law including any Healthcare Law, Antitrust Law or Environmental Law, that is binding upon such Person.

"Legal Action" means any action, suit, litigation, proceeding, arbitration, investigation, claim, condemnation proceeding, or other similar legal proceeding, whether judicial, administrative or otherwise.

"Liability" means any actual liability or obligation (including as related to Taxes), whether absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due, regardless of when asserted.

"Lien" shall mean any mortgage, pledge, charge, encumbrance, security interest, collateral assignment or other lien or restriction of any kind, whether based on common law, constitutional provision, statute or contract.

"Material Adverse Effect" means any event, change, effect, condition, circumstance or occurrence (whether or not constituting any breach of a representation, warranty, covenant or agreement set forth in this Agreement) (collectively, a "Change"), that has had or would reasonably be expected to (x) have a material adverse effect upon the condition (financial or otherwise), business, or results of operations of the Company and its Subsidiaries, taken as a whole or (y) prevent, hinder or delay the ability of the Company to consummate the transactions contemplated by this Agreement; provided, however, that any adverse Change arising from or related to the following (by itself or when aggregated or take together with any and all other Changes) shall not be deemed to be or constitute a Material Adverse Effect and shall not be taken into account in determining whether a Material Adverse Effect has occurred: (i) Changes affecting the economy generally or affecting financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index, or changes in interest rates or exchange rates), (ii) Changes that are generally applicable to the industries or markets in which the Company and its Subsidiaries operate (including increases in the cost of products, supplies and materials purchased from third party suppliers), (iii) any Changes to national or international political conditions, including the engagement or escalation by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or escalation of any military or terrorist attack upon the United States or any other country, or any of their respective territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or any other country, (iv) Changes in weather, meteorological conditions or climate, pandemics, or natural disasters (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences) affecting the business of the Company and its Subsidiaries, (v) Changes in Generally Accepted Accounting Principles, (vi) Changes in any Laws (including Healthcare Laws) issued by any Governmental Authority (or Changes in the interpretation thereof) or any action required to be taken under any applicable Law (actual or proposed), including any amendment or repeal of the Patient Protection and Affordable Care Act of 2010 (Pub. Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. Law 111-152), (vii) the entry into, announcement or pendency of this Agreement, or the transactions contemplated hereby, and including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners, employees, physicians, medical professionals or other clinical providers of the Company and its Subsidiaries due to the announcement and performance of this Agreement (provided, that the exception in this clause (vii) shall not prevent or otherwise affect a determination that any Change in connection with a breach of any representation or warranty of the Company in Section 4 has resulted in or contributed to a Material Adverse Effect), (viii) any failure, in and of itself, by the Company and its Subsidiaries to meet any internal or published projections, forecasts, predictions or guidance relating to revenues, income, cash position, cash-flow or other financial measure (provided, that the exception in this clause (viii) shall not prevent or otherwise affect a determination that any Change underlying such failure not otherwise excluded from the definition of "Material Adverse Effect" has resulted in or contributed to a Material Adverse Effect), (ix) seasonal fluctuations in the business of the Company and its Subsidiaries consistent with prior fiscal years, (x) any Changes to requirements, reimbursement rates, policies or procedures of third party payors (including Government Programs) or accreditation commissions or organizations that are generally applicable to hospitals or health care facilities, (xi) the taking of any action or omission

requested in writing or authorized in writing by the Investor, including the completion of the transactions contemplated hereby and thereby (including the impact thereof on relations (contractual or otherwise) with, or actual, potential or threatened loss or impairment of, employees, customers, suppliers, distributors, physicians, medical professionals or other clinical providers, or others having relationships with the Company or any of its Subsidiaries) (provided, that the exception in this clause (xi) shall not prevent or otherwise affect a determination that any Change in connection with a breach of any representation or warranty of the Company in Section 4 has resulted in or contributed to a Material Adverse Effect), and (xii) any action taken by the Investor or any of its Affiliates that is not contemplated by this Agreement, except to the extent such Change arising from or related to the matters described in clauses (i) through (iv) disproportionately affects the Company and its Subsidiaries, taken as a whole, as compared to other companies operating in the industries and markets in which the Company and its Subsidiaries operate (but only to the extent of the incremental disproportionate effect on the Company and its Subsidiaries, taken as a whole, compared to other companies operating in the industries and markets in which the Company and its Subsidiaries operate).

"Merger Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Merger Sub" shall have the meaning set forth in the Merger Agreement.

"Material Indebtedness" means Indebtedness having an outstanding aggregate principal amount of not less than $40,000,000.

"NASDAQ" means the securities trading exchange operating under that name operated by NASDAQ OMX Group, Inc., including its Global Select Market, its Global Market and its Capital Market, as applicable to any specific securities.

"NSH" shall have the meaning set forth in the recitals of this Agreement.

"NSH Closing" shall have the meaning set forth in Section 6.6.

"NSH Merger" shall have the meaning set forth in the recitals of this Agreement.

"NSH Termination Fee Collection Costs" shall have the meaning set forth in Section 8.7(g).

"Order" means any order, judgment, injunction, award, decree, sanction, compliance agreement or writ of any Governmental Authority.

"Person" shall mean any individual, association, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, Governmental Authority or any other form of entity.

"Plan" shall mean any employee benefit plan (as defined in Section 3(3) of ERISA, whether or not subject to ERISA) or any material compensation or benefit plan, policy, agreement or arrangement, including without limitation, any employment, consulting, severance, termination, change in control, bonus, incentive, equity-based compensation, retention or other similar agreement, that the Company or any of its Subsidiaries, maintains, sponsors, is a party to, or with respect to which the Company or its Subsidiaries otherwise has or may have any liability.

"Preferred Stock" shall mean the preferred stock, par value $0.01 per share, of the Company.

"Property" shall mean any interest in any kind of property or asset, whether real, personal or mixed, tangible or intangible.

"Purchase Price" shall have the meaning set forth in Section 2.

"PSUs" shall mean all performance stock units subject to performance and time-based vesting criteria (which shall exclude, for the avoidance of doubt, all PSUs that have become "earned shares" (as defined in the applicable PSU award agreement)), whether granted pursuant to the Company Stock Plan or otherwise.

"Qualifying Shared Termination Event" shall have the meaning set forth in Section 8.7(c).

"Real Property" shall mean any real property owned, leased, sub-leased, licensed, or otherwise occupied or used by the Company or any of its Subsidiaries.

"Reg Rights Agreement" shall have the meaning set forth in the recitals of this Agreement.

"Reimbursed NSH Termination Fee" shall have the meaning set forth in Section 8.7(b).

"Regulatory Agency" means (a) any state or federal regulatory authority, (b) the SEC or (c) NASDAQ.

"Representatives" means, with respect to a Person, such Person's officers, directors, managers, employees, investment bankers, attorneys, accountants, consultants and other authorized agents, advisors or representatives.

"Restricted Shares" shall mean all shares of Common Stock subject to time-based vesting restrictions and/or forfeiture back to the Company, whether granted pursuant to the Company Stock Plan or otherwise (which, for the avoidance of doubt, shall include PSUs that have become "earned shares" (as defined in the applicable PSU award agreement)).

"RSUs" shall mean all restricted share units payable in shares of Common Stock or whose value is determined with reference to the value of shares of Common Stock, whether granted pursuant to the Company Stock Plan or otherwise (which, for the avoidance of doubt, shall exclude all PSUs).

"SEC" shall mean the U.S. Securities and Exchange Commission or any other U.S. federal agency then administering the Securities Act or Exchange Act.

"SEC Reports" shall have the meaning set forth in Section 4.

"Securities" shall have the meaning set forth in Section 5.5(a).

"Securities Act" shall mean the U.S. Securities Act of 1933, and the rules and regulations of the SEC thereunder.

"Series A Certificate" shall have the meaning set forth in Section 6.1.

"Series A Preferred Stock" shall have the meaning set forth in the recitals of this Agreement.

"Shared NSH Termination Fee" shall have the meaning set forth in Section 8.8(c).

"Sponsor" shall have the meaning set forth in Section 5.1.

"Stock Options" means all stock options to acquire shares of Common Stock from the Company, whether granted pursuant to the Company Stock Plan or otherwise.

"Stockholder Approval" shall have the meaning set forth in the recitals to this Agreement.

"Subsidiary" of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity of which (or in which) more than 50% of (i) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (ii) the interest in the capital or profits of such partnership, joint venture or limited liability company or (iii) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries.

"Systems" shall have the meaning set forth in Section 4.19(b).

"Tax" or "Taxes" shall mean any taxes of any kind whatsoever, including but not limited to any and all federal, state, local and foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, recapture, capital stock, franchise, branch, profits, license, withholding, payroll, social security, unemployment, disability, workers' compensation, ad valorem, real property, personal property, abandoned property, sales, use, transfer, unclaimed property or escheatment, registration, production, value added, alternative or add-on minimum, estimated, or other similar taxes (together with any and all interest, penalties and additions to tax imposed with respect thereto) imposed by any governmental or Tax authority, in each case whether or not disputed.

"Tax Returns" mean any and all returns, declarations, claims for refund, tax shelter disclosure statements or information returns or statements, reports and forms relating to Taxes filed or required to be filed with any Tax authority (including any schedule or attachment thereto), including any amendment thereof.

"Trading Market" means the following markets or exchanges on which the Common Stock is listed or quoted for trading on the date in question: the NASDAQ.

"Transaction Documents" shall have the meaning set forth in the recitals of this Agreement.

2. Purchase and Sale of the Series A Preferred Stock. On the terms and conditions set forth in this Agreement, at the Closing, the Investor will purchase from the Company, and the Company will issue, sell and deliver to the Investor, free and clear of all Liens, a number of shares of Series A Preferred Stock equal to (x) the Purchase Price (as defined below) divided by (y) 1,000, for an aggregate purchase price equal to the Purchase Price, such amount to be paid in full, in cash, to the Company at the Closing. "Purchase Price" means an amount equal to $310,000,000.00; provided that the Investor and the Company may, on or before the third Business Day prior to the Closing Date, agree in writing to increase or decrease the Purchase Price; provided, however, that in no event shall the Purchase Price be (a) more than $320,000,000.00 or (b) less than an amount equal to (i) the sum of (A) the Closing Date Merger Consideration (as defined in the Merger Agreement) *plus* (B) all transaction costs, fees and expenses incurred or payable by the Company or on its behalf, together with transaction any costs, fees and expenses incurred by another Person that the Company has agreed to reimburse, in each case, in connection with the preparation, execution, and delivery of the Transaction Documents and the transactions contemplated thereby, *minus* (ii) the aggregate amount of Debt Financing Commitments and Alternative Financing Commitments (as each such term is defined in the Merger Agreement) funded at the Closing.

3. Closing. The consummation of the purchase and sale of the Series A Preferred Stock and the other transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Ropes & Gray LLP at 10:00 a.m. New York City time substantially simultaneously with the NSH Closing and on the date on which each of the conditions set forth in Sections 6 or 7 have previously been fulfilled or waived (other than those conditions that can be fulfilled only at the Closing, but subject to their being fulfilled), or at such other time and place as the Company and the Investor shall mutually agree (such date, the "Closing Date"). At the Closing, the Company shall deliver to the Investor certificates or book-entry shares (at the Investor's election) representing the number of shares of Series A Preferred Stock being purchased by the Investor against payment of the Purchase Price by wire transfer of immediately available funds to an account designated by the Company in advance of the Closing Date.

4. Representations and Warranties of the Company. The Company represents and warrants to the Investor, as of the date hereof and as of the Closing Date, that, except (i) as otherwise disclosed or incorporated by reference in the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 or its other reports and forms filed with or furnished to the SEC under Sections 12, 13, 14 or 15(d) of the Exchange Act after December 31, 2016 (other than any forward looking disclosures set forth in any risk factor section or forward looking statement disclaimer and any other disclosure that is similarly nonspecific and predictive or forward looking in nature) and on or before the date of this Agreement (all such reports covered by this clause (i) collectively, the "SEC Reports"), (ii) as otherwise disclosed in the Company's draft unaudited interim financial statements prepared in respect of the fiscal quarter ended March 31, 2017 (the "Draft Q1 2017 Financial Statements") attached to this Agreement as Exhibit D, and (iii) as set forth in the disclosure letter dated as of the date of this Agreement provided to the Investor separately:

4.1. Organization, Good Standing and Qualification. Each of the Company and its Subsidiaries is duly organized, validly existing and in good standing under the Laws of the state of its formation; has all requisite power and authority to own its properties and conduct its business as presently conducted; and is duly qualified to do business and in good standing in each jurisdiction where its business requires such qualification, except where failure to be so duly qualified and in good standing would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. True and accurate copies of the Company's Certificate of Incorporation, as in effect as of the date hereof (the "Certificate of Incorporation") and bylaws, as in effect as of the date hereof (the "Bylaws"), have been made available to the Investor prior to the date of this Agreement.

4.2. Authorization; Enforceable Agreement.

(a) All corporate action on the part of the Company, its Subsidiaries, its officers, directors, and stockholders necessary for the authorization, execution, and delivery of each of the Transaction Documents, the performance of all obligations of the Company and its Subsidiaries under each of the Transaction Documents, and the authorization, issuance (or reservation for issuance), sale, and delivery of (i) the Series A Preferred Stock being sold hereunder, and (ii) the Common Stock issuable upon conversion of the Series A Preferred Stock in accordance with the terms of the Series A Certificate has been taken, and each of the Transaction Documents, when executed and delivered, assuming due authorization, execution and delivery by the Investor or the other parties thereto, constitutes and will constitute valid and legally binding obligations of the Company and its Subsidiaries, enforceable in accordance with their respective terms, subject to (A) the filing of the Series A Certificate with the Delaware Secretary of State pursuant to Section 6.1; and (B) as to enforcement, to applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar Laws affecting the enforcement of creditors' rights generally and to general equitable principles (whether considered in a proceeding in equity or at law).

(b) On or prior to the date of this Agreement, the Board has duly adopted resolutions (i) authorizing and approving each of the Transaction Documents and the transactions contemplated thereby, (ii) adopting the Series A Certificate, and (iii) excluding the Investor and its Affiliates from any applicable restrictions on transactions with interested stockholders under the Delaware General Corporation Law (the "DGCL").

4.3. Application of Takeover Protections. The Company and the Board have taken all necessary action, if any, in order to render inapplicable (to the maximum extent permitted by Law) any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation, the Bylaws, the A&R Certificate of Incorporation, the A&R Bylaws and the Laws of its state of incorporation that is or could become applicable to the Investor as a result of the consummation of the transactions contemplated by the Transaction Documents, including without limitation as a result of the Company's issuance of the Series A Preferred Stock to the Investor, the conversion of the Series A Preferred Stock, and the exercise of the Investor's rights under the Series A Certificate.

4.4. Governmental Consents. No consent, approval, order, or authorization of or registration, qualification, declaration, or filing with, or notice to, any federal, state, or local Governmental Authority on the part of the Company is required (a) in connection with the Transaction Documents or (b) in connection with the offer, sale, or issuance of the Series A Preferred Stock or the Common Stock issuable upon conversion of the Series A Preferred Stock or the consummation of any other transaction contemplated by the Transaction Documents, in each case, except for the following: (i) the filing of the Series A Certificate with the Delaware Secretary of State pursuant to Section 6.1; (ii) the compliance with applicable state securities Laws, which compliance will have occurred within the appropriate time periods; (iii) the approval of, and the filings required to be made, prior to or following the Closing under the published rules of NASDAQ in connection with the issuance and sale of the Series A Preferred Stock hereunder, and the Common Stock issuable upon conversion of the Series A Preferred Stock; (iv) the filing with the SEC of such reports under the Exchange Act or the Securities Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement; (v) the expiration or termination of any applicable waiting periods (together with any extensions thereof) under the HSR Act; (vi) the consents, approvals and filings (if any) set forth on Schedule 6.13 and (vii) such consents, approvals, orders, authorizations, registrations, qualifications, declarations, filings and notices the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.5. Capitalization. As of May 8, 2017, the authorized capital stock of the Company consists of (a) 300,000,000 shares of Common Stock, of which 48,818,241 were issued and outstanding, including 668,829 Restricted Shares, and (b) 20,000,000 shares of Preferred Stock, none of which are issued or outstanding. As of May 8, 2017, (i) 16,267 Stock Options at a weighted average exercise price of $19.05 were outstanding, (ii) no RSUs were outstanding and (iii) PSUs that may be settled into a maximum of 348,341 shares of Common Stock (assuming maximum performance of all applicable performance conditions of all unearned PSUs) were outstanding. All issued and outstanding shares have been duly authorized and validly issued and are fully paid and nonassessable. The Company will reserve that number of shares of Common Stock sufficient for issuance upon conversion of the Series A Preferred Stock being issued and sold pursuant to this Agreement. There are no other outstanding rights, options, warrants, preemptive rights, rights of first offer, or similar rights for the purchase or acquisition from the Company of any securities of the Company, nor are there any commitments or binding arrangements to issue or execute any such rights, options, warrants, preemptive rights or rights of first offer. Except as otherwise provided in the Series A Certificate, there are no outstanding rights or obligations of the Company to repurchase or redeem any of its equity securities. The respective rights, preferences, privileges, and restrictions of the Series A Preferred Stock are as stated in the Certificate of Incorporation (including the Series A Certificate). The Company does not have outstanding any shareholder purchase rights or “poison pill” or any similar arrangement in effect giving any Person the right to purchase any equity interest in the Company upon the occurrence of certain events.

4.6. Valid Issuance of Preferred Stock. The Series A Preferred Stock being purchased by the Investor hereunder, when issued, sold, and delivered in accordance with the terms of this Agreement for the consideration expressed in this Agreement, will be duly and validly issued, fully paid, and nonassessable, and will be free of any Liens or restrictions on transfer other than restrictions under the Transaction Documents, the Certificate of Incorporation and the Series A Certificate and under applicable state and federal securities Laws. The Common Stock issuable upon conversion of the Series A Preferred Stock purchased under this Agreement has been duly and validly reserved for issuance and, upon issuance in accordance with the terms of the Series A Certificate, will be duly and validly issued, fully paid, and nonassessable and will be free of any Liens or restrictions on transfer other than restrictions on transfer under the Transaction Documents, the Certificate of Incorporation and under applicable state and federal securities Laws. The sale of the Series A Preferred Stock hereunder is not, and the subsequent conversion of the Series A Preferred Stock into Common Stock will not be, subject to any preemptive rights, rights of first offer or any anti-dilution provisions contained in the Company's Certificate of Incorporation, the Bylaws, the A&R Certificate of Incorporation, the A&R Bylaws or any other agreement.

4.7. Financial Statements.

(a) The financial statements of the Company and its Subsidiaries on a consolidated basis for each of the periods (i) included or incorporated by reference in the SEC Reports and (ii) included in the Draft Q1 2017 Financial Statements, fairly present in all material respects, in accordance with Generally Accepted Accounting Principles, as in effect on the date of the applicable SEC Report or, in the case of the Draft Q1 2017 Financial Statements, as in effect on March 31, 2017, the financial condition and the results of operations of the Company and its Subsidiaries on a consolidated basis as of the dates and for the periods indicated in such SEC Reports or in the Draft Q1 2017 Financial Statements, as applicable (except, in the case of unaudited statements, for the effect of normal year-end audit adjustments).

(b) The Company and its Subsidiaries do not have any liabilities or obligations (accrued, absolute, contingent or otherwise) that would be required under Generally Accepted Accounting Principles, as in effect on the date of this Agreement, to be reflected on a consolidated balance sheet of the Company, other than liabilities or obligations (i) reflected on, reserved against, or disclosed in the notes to, the Company's unaudited consolidated balance sheet included in the Draft Q1 2017 Financial Statements for the fiscal quarter ended March 31, 2017, (ii) that were incurred in the ordinary course of business since March 31, 2017 or (iii) that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.8. Reports.

(a) The Company has timely filed all reports required to be filed with the SEC pursuant to Sections 13(a) or 15(d) of the Exchange Act.

(b) The SEC Reports, when they became effective or were filed with the SEC, as the case may be, complied as to form in all material respects with the requirements of the Securities Act or the Exchange Act, as applicable, and the rules and regulations of the SEC thereunder, in each case as in effect at such time, and none of such documents contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make such statements, in the light of the circumstances in which they were made, not misleading.

(c) Each director of the Company that is designated as "Independent" in the SEC Reports satisfies the requirements for independence under the Sarbanes-Oxley Act and the rules of the NASDAQ and a majority of the Company's directors are so "Independent."

(d) There is no transaction, arrangement or other relationship between the Company and/or any of its Subsidiaries and an unconsolidated or other off-balance sheet entity that is required to be disclosed by the Company in its SEC Reports and is not so disclosed or that has or otherwise would reasonably be expected to have a Material Adverse Effect.

(e) The Company (i) has implemented and maintains disclosure controls and procedures (as defined in Rule 13a-15(e) under the Exchange Act) that are reasonably designed to ensure that material information relating to the Company and its consolidated Subsidiaries, is made known to the individuals responsible for the preparation of the Company's filings with the SEC and (ii) has disclosed, based on its most recent evaluation prior to the date of this Agreement, to the Company's outside auditors and the Board's Audit Committee (A) any significant deficiencies and material weaknesses in the design or operation of internal controls over financial reporting (as defined in Rule 13a-15(f) under the Exchange Act) that are reasonably likely to adversely affect the Company's ability to record, process, summarize and report financial information and (B) any fraud, whether or not material, that involves management or other employees who have a significant role in the Company's internal controls over financial reporting. As of the date of this Agreement, to the Knowledge of the Company, there is no reason that its outside auditors and its chief executive officer and chief financial officer will not be able to give the certifications and attestations required pursuant to the rules and regulations adopted pursuant to Section 404 of the Sarbanes-Oxley Act of 2002, without qualification, when next due.

4.9. Title. Except as would not reasonably be expected to have a Material Adverse Effect, each of the Company and its Subsidiaries has good and marketable title, whether fee, leasehold or otherwise, to its Property reflected as owned by it in the SEC Reports and that it otherwise purports to own, and such Property is not subject to any Lien except Incidental Liens, and each of the Company and its Subsidiaries holds its leased Properties under valid, binding and enforceable leases, except in each case as would not reasonably be expected to have a Material Adverse Effect. Except as would not reasonably be expected to have a Material Adverse Effect, with respect to each lease for the Real Property leased by the Company or any of its Subsidiaries, the Company and its Subsidiaries are not in breach or default under such lease, and to the Knowledge of the Company, no event has occurred or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a breach or default.

4.10. Indebtedness. Neither the Company nor any of its Subsidiaries is, immediately prior to this Agreement, or will be, at the time of the Closing after giving effect to the Closing, in default in the payment (after any grace period with respect thereto) of any Material Indebtedness or in default under any agreement relating to its Material Indebtedness the effect of which default is to cause such Material Indebtedness to become due prior to its stated maturity.

4.11. Litigation. There is no Legal Action pending or, to the Knowledge of the Company, overtly threatened against, nor any outstanding judgment, order or decree against, the Company or any of its Subsidiaries before or by any Governmental Authority or arbitral body which in the aggregate have, or if adversely determined, would reasonably be expected to have, a Material Adverse Effect. Neither the Company nor any of its Subsidiaries is in default with respect to any judgment, order or decree of any Governmental Authority which default would reasonably be expected to have a Material Adverse Effect.

4.12. Taxes. The Company and each of its Subsidiaries has properly and timely filed (taking into account any extension of time within which to file) all income and other material federal, foreign, state, and local Tax Returns that are required to be filed by it. All material Taxes due and owing by any of the Company or its Subsidiaries (whether or not shown on any Tax Return) have been timely paid. All material Taxes required to be withheld and paid over by the Company and its Subsidiaries have been withheld and paid over to the appropriate Tax authority. There are no outstanding waivers or extensions of time with respect to the period for assessing or auditing any material Tax or material Tax Return of the Company or any Subsidiary, except to the extent any such waiver is a result of an extension to file a Tax Return made or requested in the ordinary course of business. There is no unresolved audit or proceeding relating to any material Tax or material Tax Return of the Company or any Subsidiary raised in writing or, to the Knowledge of the Company, being conducted by any Tax Authority and, to the Knowledge of the Company, no such audit or proceeding is pending. Neither the Company nor any of its Subsidiaries has entered into any transaction defined under Section 1.6011-4(b)(2), -4(b)(3) or -4(b)(4) of the Treasury Regulations. No claim that is reasonably likely to result in a material liability to the Company and its Subsidiaries taken as a whole has been made by a Tax authority in a jurisdiction where the Company or any of its Subsidiaries does not file Tax Returns that it is or may be subject to taxation by that jurisdiction. There are no material Liens for Taxes (other than Taxes not yet due and payable) upon any of the assets of the Company or its Subsidiaries. Neither the Company nor any of its Subsidiaries (i) has been a member of an “affiliated group” (as defined in Section 1504 of the Code) filing a combined, consolidated, or unitary Tax Return (other than a group the common parent of which was the Company or one of its Subsidiaries) or (ii) has any material liability for the Taxes of any Person (other than the Company or any of its Subsidiaries) under Section 1.1502-6 of the Treasury Regulations (or any similar provision of state, local, or non-U.S. Law), as a transferee or successor or by contract (other than contracts the primary purpose of which does not relate to Taxes). No deficiency for any Taxes has been proposed or assessed in writing against or with respect to any Taxes due by or Tax Returns of the Company or any of its Subsidiaries. Neither the Company nor any of its Subsidiaries has distributed stock of another Person, or has had its stock distributed by another Person, in a transaction that was purported or intended to be governed in whole or in part by Section 355 or Section 361 of the Code.

4.13. Permits and Licenses. The Company and its Subsidiaries possess all material certificates, authorizations and permits issued by Governmental Authorities necessary to conduct their respective businesses, except where the failure to possess such certificates, authorizations and permits would not reasonably be expected to result in a Material Adverse Effect, and neither the Company nor any Subsidiary has received any written notice of any Legal Actions relating to the revocation or adverse modification of any such permit, in each case except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Company, except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, no officer, director, manager or employee of the Company or any Subsidiary: (i) has been convicted of any criminal offense primarily relating to the delivery of an item or service under any federal healthcare program or state health care program; or (ii) is debarred, excluded or suspended from or otherwise rendered ineligible for participation in any federal healthcare program or state health care program (as those terms are defined in 42 U.S.C. § 1320a-7b(f)), nor has any such debarment, exclusion or suspension been threatened in writing.

4.14. Compliance with Laws. Neither the Company nor any of its Subsidiaries is in material violation of any applicable Laws of any Governmental Authority, except where such violation would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. To the Knowledge of the Company, neither the Company nor any of its Subsidiaries is being investigated with respect to, or has been threatened in writing to be charged with or given written notice of any violation of any applicable Law, except for such of the foregoing as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.15. Healthcare Compliance. The Company and each of its Subsidiaries (a) are in compliance with all Healthcare Laws applicable to the Company or any of its Subsidiaries, and (b) neither the Company nor any of its Subsidiaries has received any written communication since January 1, 2015 from a Governmental Authority alleging that the Company or any of its Subsidiaries is or was not, or may not be, in compliance with any Healthcare Law, except in the case of clauses (a) and (b) where any actual or alleged non-compliance, individually or in the aggregate, has not had and would not reasonably be expected to have, a Material Adverse Effect. To the Knowledge of the Company and except as would not, individually or in the aggregate, reasonably be expected to have, a Material Adverse Effect, each of the physicians, mid-level providers and other licensed persons employed to provide professional healthcare services on behalf of the Company or its Subsidiaries (each, a "Healthcare Professional" and collectively, the "Healthcare Professionals"): (i) has maintained and currently holds, in good standing, all licenses and permits required by any applicable Law or Governmental Authority to perform the services in the states that such Healthcare Professional is practicing or performing professional services on behalf of the Company or any of its Subsidiaries; and (ii) to the extent required, has been granted and continues to hold requisite staff privileges at each of the hospitals and other healthcare facilities at or for which such Healthcare Professional performs medical services on behalf of the Company or its Subsidiaries. To the Knowledge of the Company and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (x) the Company and each of its Subsidiaries are in material compliance with all contractual obligations applicable to billing third party payors and (y) each has not billed or received any payment or reimbursement from such third party payors in excess of amounts allowed by applicable Healthcare Laws and contractual obligations (subject to contractual allowances and adjustments in the ordinary course of business). To the Knowledge of the Company and except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, neither the Company nor any of its Subsidiaries has, since January 1, 2015, experienced an information security breach reportable under federal or state law.

4.16. Environmental Compliance. Neither the Company nor any of its Subsidiaries is in violation of, or has received notice of any violation or liability with respect to, any Environmental Law applicable to the Company or any of its Subsidiaries or the business of the Company or any of its Subsidiaries, except in each case as would not reasonably be expected to have a Material Adverse Effect. Since January 1, 2011, neither the Company nor any of its Subsidiaries has received any written notice of, nor, to the Knowledge of the Company, has there been any occurrence or circumstance that, with notice or passage of time, or both, would reasonably be expected to give rise to a claim against the Company or any of its Subsidiaries under or pursuant to any Environmental Law with respect to any properties currently or previously owned, leased or operated by the Company or any of its Subsidiaries, or the assets of the Company or any of its Subsidiaries, or arising out of the conduct of the business of the Company or any of its Subsidiaries, except in each case as would not reasonably be expected to have a Material Adverse Effect. There has been no release or disposal of, contamination by, or exposure of any Person to, any Hazardous Substances, including on, under, or from any of the Real Property or, to the Knowledge of the Company, any real property formerly owned, leased or operated by the Company or any of its Subsidiaries, in each case that would reasonably be expected to form the basis of any claim against or material liabilities of the Company or any of its Subsidiaries relating to or arising under any Environmental Law. Neither the Company nor any of its Subsidiaries is subject to any ongoing obligations pursuant to any consent order or other agreement settling or resolving alleged violations of or liability under Environmental Law, except in each case as would not reasonably be expected to have a Material Adverse Effect. The Company and its Subsidiaries have received all Environmental Permits required to conduct their respective businesses, and each of the Company and its Subsidiaries is in compliance with all terms and conditions of any such Environmental Permit applicable to it, except in each case as would not reasonably be expected to have a Material Adverse Effect. The Company has delivered or made available to the Investor accurate and complete copies of all material environmental assessments, audits and reports within the possession or control of the Company and its Subsidiaries related to the environmental condition of the Real Property, or to the compliance of liabilities of the Company or its Subsidiaries under Environmental Law.

4.17. No Default or Violation. The Company is not in violation or default of any provision of the Certificate of Incorporation or the Bylaws. The execution, delivery, and performance of and compliance with each of the Transaction Documents and the issuance and sale of the Series A Preferred Stock hereunder and the conversion of the Series A Preferred Stock will not (i) result in any default or violation of the Certificate of Incorporation, the Bylaws the A&R Certificate of Incorporation or the A&R Bylaws or any similar document of any Subsidiary, (ii) result in any default or violation by the Company of any Law or agreement or under any material contract, mortgage, deed of trust, security agreement, indenture or lease to which it is a party or in any default or violation of any material judgment, order or decree of any Governmental Authority or (iii) be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any such provision, including any provision under any indenture, require any consent or waiver under any such provision, affect the rights or obligations of any Person under any such provision, or result in the creation of any Lien upon any of the Properties of the Company or its Subsidiaries pursuant to any such provision, or the

suspension, revocation, impairment or forfeiture of any permit, license, authorization, or approval applicable to the Company or its Subsidiaries, their respective business or operations, or any of their respective Properties pursuant to any such provision, except in the case of clauses (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.18. Benefit Plans.

(a) Neither the Company, any of its Affiliates, nor any other entity which, together with the Company or any of its Affiliates, would be treated as a single employer under Section 4001 of ERISA or Section 414 of the Code, has at any time maintained, sponsored or contributed to, or has, had or may have any liability with respect to, any employee benefit plan that is subject to Title IV of ERISA or Section 412 or 430 of the Code, including, without limitation, any "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA), as to which there remains any unsatisfied liability on the part of the Company, any of its Affiliates or any other such entity. Each Plan has been established, maintained, funded and administered in all material respects in compliance with its terms and all applicable Laws (including, without limitation ERISA and the Code), and the Company and each of its Affiliates have filed all reports, returns, notices, and other documentation required by ERISA or the Code to be filed with any Governmental Authority with respect to each Plan except as would not, individually or in the aggregate, reasonably be expected to result in material liability to the Company or any of its Affiliates. No Plan has any unfunded liabilities that would reasonably be expected to have a Material Adverse Effect. Each Plan that is intended to meet the requirements of a "qualified plan" under Section 401(a) of the Code has received a favorable determination letter from the IRS or is in the form of a prototype plan that is the subject of a favorable opinion letter from the IRS, and to the Knowledge of the Company, nothing has happened since the date of such letter that could reasonably be expected to adversely affect the qualified status of such Plan. With respect to each Plan, (i) no actions, lawsuits, audits or investigations by a Governmental Authority, Liens, claims or complaints (other than routine claims for benefits) are pending or, to the Knowledge of the Company, threatened, and (ii) to the Knowledge of the Company, no facts or circumstances exist that are reasonably likely to give rise to any such actions, Liens, lawsuits, audits or investigations by a Governmental Authority, claims or complaints. No event has occurred with respect to a Plan which would reasonably be expected to result in a material liability of the Company or any of its Subsidiaries or Affiliates. No Plan provides, and neither the Company nor any of its Subsidiaries has any obligation to provide, post-employment or retiree health or other welfare benefits, except as required by section 601 et seq. of ERISA.

(b) None of the execution of, or the completion of any of the transactions contemplated by any of the Transaction Documents, including the conversion of Series A Preferred Stock, would reasonably be expected to result in (i) severance pay or an increase in severance pay upon a termination of employment, (ii) any payment, compensation or benefit becoming due, or increase in the amount of any payment, compensation or benefit due, to any current or former employee, director or consultant of the Company or its Affiliates, (iii) the acceleration of the time of payment or vesting or

result in the funding of compensation or benefits, (iv) any new material obligation under any Plan, (v) any limitation or restriction on the right of the Company to merge, amend, or terminate any Plan or (vi) any amount that could be received as a result of the consummation of the transactions contemplated hereby by any current or former director, officer employee or consultant employee of the Companies or its Affiliates being non-deductible by reason of Section 280G of the Code.

(c) Each Plan that constitutes a "nonqualified deferred compensation plan" (as defined in Section 409A(d)(1) of the Code and applicable regulations) with respect to any service provider to the Company or any of its Subsidiaries has been administered in compliance with its terms and the operation and documentary requirements of Section 409A of the Code and regulations promulgated thereunder except as would not reasonably be expected to result in a material liability to the Company. Neither the Company nor any of its Affiliates is a party to, or is otherwise obligated under, any contract, plan or arrangement with any Person that provides for such Company or any of its Affiliates to provide a gross-up, indemnification, or reimbursement of or other payment for any Taxes, interest or penalties imposed by Section 409A or 4999 of the Code (or any corresponding provisions of state or local Law relating to Tax).

4.19. Intellectual Property.

(a) With respect to each item of Company Intellectual Property, except as would not reasonably be expected to have a Material Adverse Effect, (i) the Company or one or more of its Subsidiaries possesses all rights, titles and interests in and to each such item owned or purported to be owned by the Company or its Subsidiary, free and clear of any Lien, license or other material restriction (other than (x) licenses granted to third parties in the ordinary course of business, (y) Liens, licenses or other restrictions contained in any agreement disclosed by the Company in any SEC Report or other publicly-available filing, and (z) Incidental Liens), or has a valid license to use all Intellectual Property used in and necessary for the operation of the Company; (ii) no action, suit, proceeding, hearing, investigation, charge, complaint, claim or demand is pending against the Company or any of its Subsidiaries or, to the Knowledge of the Company, has been or is being threatened in writing against the Company or any of its Subsidiaries which challenges the legality, validity, enforceability, use or ownership of the Company Intellectual Property; (iii) to the Knowledge of the Company, the operation of the business of the Company and its Subsidiaries has not, since January 1, 2015, infringed, misappropriated, or otherwise conflicted with, and as currently conducted, does not infringe, misappropriate or otherwise conflict with, any Intellectual Property of any third party; (iv) to the Knowledge of the Company, no third party has, since January 1, 2015, infringed, misappropriated, or otherwise conflicted with, or is currently infringing, misappropriating, or otherwise conflicting with the Company Intellectual Property that is owned by the Company or its Subsidiaries; (v) there is no pending or, to the Knowledge of the Company, threatened claim or litigation against the Company or any Subsidiary contesting the right to use any third party's Intellectual Property rights, asserting the misuse of any thereof, or asserting the infringement or other violation thereof; and (vi) the Company and its Subsidiaries have taken commercially reasonable steps to protect the secrecy, confidentiality and value of all Company Intellectual Property (including any trade secrets).

(b) Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries own or lease all computer systems, networks, equipment, and other technology necessary for the operations of the business (its "Systems"). Except as would not reasonably be expected to have a Material Adverse Effect, the Company and its Subsidiaries maintain policies and procedures regarding data security, privacy and data use that are commercially reasonable and, in any event, materially comply with the Company's obligations to its customers and/or tenants and applicable Laws, rules and regulations. Since January 1, 2015, to the Knowledge of the Company, there have been no (i) breaches of the Systems nor any unauthorized use, access, interruption, modifications or corruption of the Systems; (ii) material violations of the Company's security policies or applicable Law regarding, or (iii) any unauthorized access or loss of, any data used, handled, stored, or processed by or for, the Company or its Subsidiaries. Except as would not reasonably be expected to have a Material Adverse Effect, there have not been, and the transaction contemplated under this Agreement will not result in, any security breaches of any security policy, data use restriction or privacy breach under any such policies or any applicable Laws, rules or regulations.

4.20. Investment Company Act. Neither the Company nor any of its Subsidiaries is registered or required to register as an investment company within the meaning of the Investment Company Act of 1940, or, directly or indirectly, controlled by or acting on behalf of any Person which is registered or required to be registered as an investment company, within the meaning of said Act.

4.21. Brokers' Fees and Expenses. Except as disclosed on Section 4.21 of the disclosure letter, the fees and expenses of which will be paid by the Company, no broker, investment banker, or financial advisor or other Person, is entitled to any broker's, finder's, financial advisor's or other similar fee or commission in connection with Transaction Documents or the transactions contemplated thereby.

4.22. Listing and Maintenance Requirements. The Common Stock is registered pursuant to Section 12(b) or 12(g) of the Exchange Act, and the Company has taken no action having the effect of, terminating the registration of the Common Stock under the Exchange Act nor has the Company received any notification from the SEC that the SEC is contemplating terminating such registration. The Company has not, in the twelve (12) months preceding the date hereof, received written notice from any trading market on which the Common Stock is or has been listed or quoted to the effect that the Company is not in compliance with the listing or maintenance requirements of such trading market, nor, to the Knowledge of the Company, is such notice pending.

4.23. General Solicitation. Neither the Company, nor any Affiliate of the Company, nor any other Person acting on its or their behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offer or sales of the Securities. The Company has offered the Securities for sale only to the Investor.

4.24. Offering; Exemption. Assuming the accuracy of the Investor's representations and warranties set forth in Section 5 of this Agreement, no registration under the Securities Act or any applicable state securities law is required for the offer and sale of the Securities by the Company to the Investor as contemplated hereby or for the conversion of the Series A Preferred Stock.

4.25. No Integrated Offering. Neither the Company, nor any Affiliate of the Company, nor, to the Knowledge of the Company, any Person acting on its behalf or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of the Securities to be integrated with prior offerings by the Company for purposes of the Securities Act that would cause Regulation D or any other applicable exemption from registration under the Securities Act to be unavailable, or would cause any applicable state securities Law exemptions or any applicable stockholder approval provisions exemptions, including, without limitation, under the rules and regulations of any national securities exchange or automated quotation system on which any of the securities of the Company are listed or designated to be unavailable, nor will the Company take any action or steps that would cause the offering or issuance of the Securities to be integrated with other offerings.

4.26. No Material Adverse Effect. Since December 31, 2016, there has not been any Company Effect that has had or would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

4.27. Company Information. The information relating to the Company, its Subsidiaries and its or their respective officers, directors, and Affiliates that is or will be provided by the Company or its Affiliates for inclusion in the Information Statement (or any supplement thereto), and in any other document filed with the SEC in connection with the transactions contemplated hereby, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Information Statement (or any supplement thereto), except for such portions thereof that relate solely to information supplied in writing by the Investor or its Affiliates, will comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder.

5. Representations and Warranties of the Investor. As of the date hereof and as of the Closing Date, the Investor represents and warrants to the Company that:

5.1. Organization. The Investor is duly organized, validly existing and in good standing under the Laws of its jurisdiction of formation as the form of business entity set forth on Schedule 1; has all requisite power and authority to enter into the Transaction Documents to which it is a party and to performance its obligations thereunder. The Investor's principal place of business is at the address or addresses of the Investor set forth on Schedule 1.

5.2. Authorization; Enforceability. The Investor has full right, power, authority and capacity to enter into each of the Transaction Documents to which it is a party and to consummate the transactions contemplated by each such Transaction Document. The execution, delivery and performance of each of the Transaction Documents to which it is a party have been

duly authorized by all necessary action on the part of the Investor, and each of the Transaction Documents to which it is a party has been duly executed and delivered by the Investor and, assuming due authorization, execution and delivery of each of the Transaction Documents by the Company and the other parties thereto, will constitute valid and binding obligations of the Investor, enforceable against it in accordance with its terms, subject, as to enforcement, to applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar Laws affecting the enforcement of creditors' rights generally and to general equitable principles (whether considered in a proceeding in equity or at law).

5.3. Governmental Consents. No consent, approval, order, or authorization of, or registration, qualification, declaration, or filing with or notice to, any federal, state, or local Governmental Authority on the part of the Investor is required (a) in connection with the Transaction Documents or (b) in connection with the purchase of the Series A Preferred Stock or the Common Stock issuable upon conversion of the Series A Preferred Stock or the consummation of any other transaction contemplated by the Transaction Documents, except, in each case, for the following: (i) the compliance with applicable state securities Laws, which compliance will have occurred within the appropriate time periods, (ii) the filing with the SEC of such reports under the Exchange Act or the Securities Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement, (iii) the expiration or termination of any applicable waiting periods (together with any extension thereof) under the HSR Act, (iv) the consents, approvals and filings (if any) set forth on Schedule 6.13; and (v) such consents, approvals, orders, authorizations, registrations, qualifications, declarations and filings the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or materially impair the ability of the Investor to consummate the transactions contemplated by this Agreement and to perform its obligations under the Transaction Documents.

5.4. No Default or Violation. The execution, delivery, and performance of and compliance with each of the Transaction Documents, the issuance and sale of the Series A Preferred Stock hereunder, and the conversion of the Series A Preferred Stock will not (i) result in any default or violation of the certificate of incorporation, bylaws, limited partnership agreement, limited liability company operating agreement or other applicable organizational documents of the Investor, (ii) result in any default or violation of any Law or agreement relating to its material Indebtedness or under any material contract, mortgage, deed of trust, security agreement or lease to which it is a party or in any default or violation of any material judgment, order or decree of any Governmental Authority or (iii) be in conflict with or constitute, with or without the passage of time or giving of notice, a default under any such provision, require any consent or waiver under any such provision, or result in the creation of any Lien upon any of the Properties of the Investor pursuant to any such provision, or the suspension, revocation, impairment or forfeiture of any material permit, license, authorization, or approval applicable to the Investor, its business or operations, or any of its Properties pursuant to any such provision, except in the case of clauses (ii) and (iii) as would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or materially impair the ability of the Investor to consummate the transactions contemplated by this Agreement and to perform its obligations under the Transaction Documents.

5.5. Private Placement.

(a) The Investor is (i) an "accredited investor" within the meaning of Rule 501 of Regulation D promulgated under the Securities Act by virtue of paragraph (a)(8) thereof; (ii) aware that the sale of the Series A Preferred Stock and the Common Stock issuable upon conversion of the Series A Preferred Stock being issued and sold pursuant to this Agreement (collectively, the "Securities") is being made in reliance on a private placement exemption from registration under the Securities Act and applicable state securities Laws and (iii) acquiring the Securities for its own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Investor has no present intention of selling, granting any participation in or otherwise distributing the same in any manner that violates the Securities Act.

(b) The Investor understands and agrees that the Securities are being offered in a transaction not involving any public offering within the meaning of the Securities Act, that such Securities have not been and will not be registered under the Securities Act and that such Securities may be offered, resold, pledged or otherwise transferred only (i) in a transaction not involving a public offering, (ii) pursuant to an exemption from registration under the Securities Act provided by Rule 144 thereunder (if available), (iii) pursuant to an effective registration statement under the Securities Act or (iv) to the Company or one of its Subsidiaries, in each of cases (i) through (iv) in accordance with any applicable state and federal securities Laws, and that it will notify any subsequent purchaser of Securities from it of the resale restrictions referred to above, as applicable.

(c) The Investor understands that, unless sold pursuant to a registration statement that has been declared effective under the Securities Act or in compliance with Rule 144 thereunder, the Company may require that the Securities will bear a legend or other restriction substantially to the following effect (it being agreed that if the Securities are not certificated, other appropriate restrictions shall be implemented to give effect to the following):

"THIS SECURITY WAS ORIGINALLY ISSUED IN A TRANSACTION EXEMPT FROM REGISTRATION UNDER THE UNITED STATES SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), AND THIS SECURITY MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED IN THE ABSENCE OF SUCH REGISTRATION OR AN APPLICABLE EXEMPTION THEREFROM. THE HOLDER OF THIS SECURITY AGREES FOR THE BENEFIT OF THE COMPANY THAT (A) THIS SECURITY MAY BE OFFERED, RESOLD, PLEDGED OR OTHERWISE TRANSFERRED, ONLY (I) IN A TRANSACTION NOT INVOLVING A PUBLIC OFFERING, (II) PURSUANT TO ANY OTHER EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT, INCLUDING RULE 144 UNDER THE SECURITIES ACT (IF AVAILABLE), (III) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR (IV) TO THE COMPANY OR ANY OF ITS SUBSIDIARIES, IN EACH OF CASES (I) THROUGH (IV) IN ACCORDANCE WITH ANY APPLICABLE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES, AND (B) THE HOLDER WILL NOTIFY ANY SUBSEQUENT PURCHASER OF THIS SECURITY FROM IT OF THE RESALE RESTRICTIONS REFERRED TO IN (A) ABOVE."

(d) The Investor: (i) has such knowledge and experience in financial and business matters as to be capable of evaluating the merits and risks of its prospective investment in the Securities and (ii) has the ability to bear the economic risks of its prospective investment and can afford the complete loss of such investment. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 4 of this Agreement or the right of the Investor to rely on such representations and warranties, provided that the Investor acknowledges and agrees that, other than the representations and warranties in Section 4 of this Agreement, there are no other representations and warranties of the Company either express or implied.

(e) The Investor acknowledges that (i) it has conducted its own investigation of the Company and the terms of the Securities, (ii) it has had access to the Company's public filings with the SEC and to such financial and other information as it deems necessary to make its decision to purchase the Securities, (iii) it has been offered the opportunity to conduct such review and analysis of the business, assets, condition, operations and prospects of the Company and its Subsidiaries and to ask questions of the Company and received answers thereto, each as it deemed necessary in connection with the decision to purchase the Securities and (iv) any projections, estimates or forecasts of future results or events provided by or on behalf of the Company are subject to uncertainty and to the assumptions used in their preparation. The Investor further acknowledges that it has had such opportunity to consult with its own counsel, financial and tax advisors and other professional advisers as it believes is sufficient for purposes of the purchase of the Securities. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 4 of this Agreement or the right of the Investor to rely on such representations and warranties, provided that the Investor acknowledges and agrees that, other than the representations and warranties in Section 4 of this Agreement, there are no other representations and warranties of the Company either express or implied.

(f) The Investor understands that the Company will rely upon the truth and accuracy of the foregoing representations, acknowledgements and agreements.

5.6. Financial Capability. Bain Capital Fund XI, L.P., a Cayman Islands limited partnership ("Sponsor") has delivered to the Company a true, complete and correct copy of an executed equity commitment letter dated as of the date hereof (the "Equity Commitment Letter") from Sponsor pursuant to which Sponsor has agreed, subject to the terms and conditions thereof, to invest in the Investor the amounts set forth therein. The Equity Commitment Letter is in full force and effect and is a legal, valid and binding obligation of the Sponsor, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar Applicable Laws affecting the enforcement of creditors' rights in general and by the general principles of equity and the discretion of courts in granting equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity). The Equity Commitment Letter provides that each of the Company and NSH is a third-party beneficiary thereof and is entitled to enforce such agreement, in each case, to the extent and subject to the terms and conditions thereof. The cash equity committed pursuant to the Equity Commitment Letter is collectively referred to in this Agreement as the "Equity Financing." There are no conditions precedent related to the funding

or investing, as applicable of the full amount of the Equity Financing other than as set forth in or contemplated by the Equity Commitment Letter. The proceeds of the Equity Financing, if funded in accordance with the Equity Commitment Letter at the Closing, shall provide the Investor with the funds necessary at the Closing to (i) purchase the Series A Preferred Stock on the terms and conditions contemplated by this Agreement or (ii) pay the NSH Reimbursed Termination Fee, if due. The execution, delivery and performance by the Sponsor of the Equity Financing has been duly and validly authorized by all necessary limited partnership, corporate or other similar action.

5.7. Ownership of Company Securities. Neither the Investor nor any of its Affiliates beneficially owns any shares of Common Stock as of the date hereof, and, except with respect to the Common Stock to be purchased by the Investor pursuant to the HIG Purchase Agreement, at the Closing.

5.8. Investor Information. The information relating to the Investor and its Affiliates that is or will be supplied in writing by the Investor or its Affiliates for inclusion in the Information Statement (or any supplement thereto), and in any other document filed with the SEC in connection with the transactions contemplated hereby, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

6. Conditions to the Investor's Obligations at Closing. The obligation of the Investor to purchase the Series A Preferred Stock at the Closing is subject to the fulfillment or waiver by the Investor (if permitted by Law) on or before the Closing of each of the following conditions:

6.1. Certificate of Designation. Contemporaneously with the Closing, (i) the Company shall adopt and file with the Secretary of State of the State of Delaware the Certificate of Designations, Preferences, Rights and Limitations of 10.00% Series A Convertible Perpetual Participating Preferred Stock of the Company substantially in the form attached as Exhibit E, (the "Series A Certificate"), and (ii) thereafter deliver to the Investor confirmation from the Secretary of State of the State of Delaware that such filing occurred.

6.2. Qualification Under State Securities Laws. All material registrations, qualifications, permits and approvals, if any, required to be obtained prior to the Closing under applicable state securities Laws shall have been obtained for the lawful execution, delivery and performance of each of the Transaction Documents including, without limitation, the offer and sale of the Securities.

6.3. NASDAQ Requirements. (i) All NASDAQ listing requirements applicable to the transactions contemplated by each of the Transaction Documents shall have been satisfied and (ii) the Investor shall have been provided evidence thereof: (A) the approval of NASDAQ of the Company's issuance and sale of the Series A Preferred Stock and the shares of Common Stock issuable upon conversion of the Series A Preferred Stock in accordance with the terms of the Series A Certificate on the terms and conditions contemplated herein; and (B) the acceptance by NASDAQ of its notice of the listing of the shares of Common Stock issuable upon conversion of the Series A Preferred Stock in accordance with the Series A Certificate.

6.4. Representations and Warranties. Each of (i) the Fundamental Representations shall be true and correct in all material respects (without giving effect to any limitation as to "materiality" or "Material Adverse Effect"), in each case, at and as of the Closing Date (except for such Fundamental Representations and representations and warranties made as of a specific date, which shall be true and correct only as of such date), (ii) each of the other representations and warranties of the Company in this Agreement (except for Section 4.26 (No Material Adverse Effect) shall be true and correct at and as of the Closing (except for such representations and warranties made as of a specific date, which shall be true and correct only as of such date), in each case in this clause (ii) except where the failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect") does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (iii) the representation and warranty set forth in Section 4.26 (No Material Adverse Effect) shall be true and correct at and as of the Closing Date.

6.5. Performance. The Company shall have performed and complied in all material respects with the agreements, obligations and conditions required to be performed or complied with by the Company in this Agreement on or prior to the Closing.

6.6. NSH Merger. (i) The Merger Agreement shall be in full force and effect, (ii) each of the conditions to obligations of the Company and the Merger Sub to consummate the transactions contemplated by the Merger Agreement set forth in Section 8.1 and Section 8.2 of the Merger Agreement shall be satisfied or waived (other than any conditions that by their nature are to be satisfied at the Closing (as defined in the Merger Agreement), but subject to the prior or substantially concurrent satisfaction or waiver of such conditions, and (iii) the financing provided for by the Debt Financing Commitments (as defined in the Merger Agreement), or, if Alternative Financing (as defined in the Merger Agreement) is being used in accordance with Section 7.5 of the Merger Agreement and Section 8.8 of this Agreement, pursuant to the Alternative Financing Commitments with respect thereto) shall be funded at the Closing if the Equity Financing is funded at the Closing and (iv) the Closing, as defined in the Merger Agreement, on the terms set forth in the Merger Agreement (the "NSH Closing") will occur substantially concurrently with the Closing of this Agreement. The Company shall thereafter deliver to the Investor evidence of the filing of the certificate of merger from the Secretary of State of the State of Delaware that such filing occurred.

6.7. A&R Certificate of Incorporation. Contemporaneously with the Closing, (i) the Company shall adopt and file with the Secretary of State of the State of Delaware the A&R Certificate of Incorporation, and (ii) thereafter deliver to the Investor evidence of confirmation from the Secretary of State of the State of Delaware that such filing occurred

6.8. A&R Bylaws. The A&R Bylaws shall have been adopted as the bylaws of the Company.

6.9. No Legal Bar. No Order (whether permanent, preliminary or temporary) shall be in effect by a Governmental Authority of competent jurisdiction that restrains, enjoins or otherwise prevents the consummation of the Closing.

6.10. No Material Adverse Effect. No Material Adverse Effect will have occurred after the date of this Agreement that is continuing.

6.11. Stockholder Approval. The Stockholder Approval shall be in full force and effect as of the Closing.

6.12. HSR Act. The applicable waiting period, together with any extensions thereof, under the HSR Act shall have expired or been terminated.

6.13. Regulatory Consents. The parties shall have obtained the governmental and regulatory consents and third party approvals and made the filings (if any) set forth on Schedule 6.13 and the Investor shall have received evidence of the same.

6.14. Information Statement. Twenty (20) days or more shall have elapsed since the Company filed with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act.

6.15. Company Deliveries. The Company shall have delivered to the Investor:

(a) certificates duly executed by the Company or evidence of book-entry notation (as applicable) representing the purchased shares of Series A Preferred Stock registered in the name of the Investor;

(b) the Registration Rights Agreement, duly executed by the Company, in effect as of the Closing;

(c) a copy of the Stockholder Approval, certified by the secretary of the Company;

(d) copies of the resolutions or written consent duly adopted by the Board and the Merger Sub authorizing the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby, certified by the secretary of the Company;

(e) an affidavit from the Company dated as of the Closing date and duly executed under penalties of perjury, stating that the Company is not, and has not been, a “United States real property holding corporation” within the meaning of Section 897(c)(2) of the Code at any time during the five-year period ending on the Closing Date together with a notice from the Company, prepared in accordance with Section 1.897-2(h)(2) of the Treasury Regulations and duly executed under penalties of perjury by the Company to be mailed promptly to the IRS in accordance with Section 1.897-2(h)(2) of the Treasury Regulations; and

(f) a certificate, signed by an officer of the Company, certifying as to the matters set forth in Section 6.4, Section 6.5, and Section 6.10.

7. Conditions to the Company's Obligations at Closing. The obligations of the Company to issue, sell and deliver to the Investor the Series A Preferred Stock and consummate the other transactions contemplated by the Transaction Documents are subject to the fulfillment or waiver by the Company (if permitted by Law) on or before the Closing of each of the following conditions:

7.1. Qualification Under State Securities Laws. All material registrations, qualifications, permits and approvals, if any, required to be obtained prior to the Closing under applicable state securities Laws shall have been obtained for the lawful execution, delivery and performance of each of the Transaction Documents including, without limitation, the offer and sale of the Securities.

7.2. NASDAQ Requirements. All NASDAQ listing requirements applicable to the transactions contemplated by each of the Transaction Documents shall have been satisfied.

7.3. Representations and Warranties. Each of the representations and warranties of the Investor contained in each of the Transaction Documents shall be true and correct as of the Closing except for such representations and warranties made as of a specific date, which shall be true and correct only as of such date, in each case except where the failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or which would materially and adversely affect the ability of the Investor to perform its obligations under the Transaction Documents.

7.4. Performance. The Investor shall have performed and complied in all material respects with the agreements, obligations and conditions required to be performed or complied with by the Investor in this Agreement on or prior to the Closing.

7.5. NSH Merger. (i) The Merger Agreement shall be in full force and effect, and (ii) each of the conditions to obligations of the Company and the Merger Sub to consummate the transactions contemplated by the Merger Agreement set forth in Section 8.1 and Section 8.2 of the Merger Agreement shall be satisfied or waived (other than any conditions that by their nature are to be satisfied at the Closing (as defined in the Merger Agreement), but subject to the prior or substantially concurrent satisfaction or waiver of such conditions, and (iii) the NSH Closing, on the terms set forth in the Merger Agreement will occur substantially concurrently with the Closing of this Agreement.

7.6. No Legal Bar. No Order (whether permanent, preliminary or temporary) shall be in effect by a Governmental Authority of competent jurisdiction that restrains, enjoins or otherwise prevents the consummation of the Closing.

7.7. Stockholder Approval. The Stockholder Approval shall have been obtained and be in full force and effect as of the Closing.

7.8. HSR Act. The applicable waiting period, together with any extensions thereof, under the HSR Act shall have expired or been terminated.

7.9. Regulatory Consents. The parties shall have obtained the governmental and regulatory consents and third party approvals and made the filings (if any) set forth on Schedule 6.13.

7.10. Information Statement. Twenty (20) days or more shall have elapsed since the Company filed with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act.

7.11. Investor Deliveries. The Investor shall have delivered to the Company:

(a) the Registration Rights Agreement, duly executed by the Investor;

(b) copies of the resolutions or written consent duly adopted by the governing body of the Investor authorizing the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby; and

(c) a certificate, signed by an officer of the Investor, certifying as to the matters set forth in Section 7.3 and Section 7.4.

8. Covenants. The Company and the Investor hereby covenant and agree, for the benefit of the other parties to this Agreement and their respective assigns, as follows:

8.1. Reasonable Best Efforts; Notices and Consents. Subject to the terms and conditions of this Agreement, from the date of this Agreement to the Closing, (a) the Investor shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to cause the conditions specified in Section 7 to be satisfied as soon as reasonably practicable and (b) the Company shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to cause the conditions specified in Section 6 to be satisfied as soon as reasonably practicable.

8.2. HSR. Each of the Company and the Investor shall use their reasonable best efforts to make, as promptly as reasonably practicable following the date hereof and, in any event, within ten Business Days, or shall cause each of their respective ultimate parent entities (as that term is defined in the HSR Act) to make, all pre-transaction notification filings required under the HSR Act, if any, and required under any other applicable Antitrust Laws, if any. The Company, on the one hand, and the Investor, on the other hand, shall (a) cooperate fully with each other and shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any required filings under the HSR Act or any applicable Antitrust Laws and (b) keep the other party reasonably informed of any communication received by such party from, or given by such party to any Antitrust Authority and of any communication received or given in connection with any proceeding by a private party, in each case regarding the transactions contemplated hereby and in a manner that protects attorney-client or attorney work product privilege. Further, without limiting the obligations stated in this Section 8.2, the Company and the Investor shall each use their reasonable best efforts to respond to any request for information regarding the transactions

contemplated hereby or filings under the HSR Act or any applicable Antitrust Laws from any Antitrust Authority. Notwithstanding anything to the contrary contained in this Agreement, neither the Company nor any of its Subsidiaries shall be obligated to agree to divest, hold separate or otherwise restrict its operations in connection with obtaining any applicable approvals under the HSR Act or any other applicable Antitrust Laws.

8.3. Stockholder Approvals; Information Statement. As promptly as practicable following the date hereof, the Company will prepare and file with the SEC an information statement on Schedule 14C, complying as to form in all material respects with the requirements of the Exchange Act (the "Information Statement"), to be sent in definitive form to the Company's stockholders providing the Company's stockholders with notice of the Stockholder Approval, the notice contemplated by Section 228(e) of the DGCL of the taking of corporate action without a meeting by less than a unanimous written consent, and any other rights of the Investor that are subject to stockholder approval by the rules of NASDAQ and such other information as may be required under the DGCL to be included therein. The Investor agrees to furnish to the Company in writing all information concerning the Investor and its Affiliates as the Company may reasonably request in connection with the Information Statement. The Company shall respond as promptly as practicable to any comments received from the SEC with respect to the Information Statement and the Company shall cause the Information Statement to be transmitted to the Company's stockholders at the earliest reasonably practicable date. The Company shall provide to the Investor, as promptly as reasonably practicable after receipt thereof, any written comments from the SEC or any written request from the SEC or its staff for amendments or supplements to the Information Statement and shall provide the Investor with copies of all correspondence between the Company, on the one hand, and the SEC and its staff, on the other hand, relating to the Information Statement. Notwithstanding anything to the contrary stated above, prior to filing or mailing the Information Statement or, in each case, any amendment or supplement thereto, or responding to any comments of the SEC or its staff with respect thereto, the Company shall provide the Investor with a reasonable opportunity to review and comment on such document or response. Any communications by the Company to the Investor pursuant to this Section 8.3 may made by email to an account designated by the Investor upon request by the Company.

8.4. NASDAQ Listing of Shares. The Company shall promptly apply to cause the shares of Common Stock to be issued upon conversion of the Series A Preferred Stock to be approved for listing on the NASDAQ, subject to official notice of issuance.

8.5. Public Disclosure. On the date of this Agreement, or within 24 hours thereafter the Company shall issue a press release in a form mutually agreed to by the Company and the Investor. Notwithstanding the preceding sentence, the Investor, or an Affiliate of the Investor, may issue a press release at any time on the date of this Agreement, or within 24 hours thereafter in a form mutually agreed to by the Company and the Investor. No other written release, announcement or filing concerning the purchase of the Series A Preferred Stock or the transactions contemplated by any of the Transaction Documents shall be issued, filed or furnished, as the case may be, by any party without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as may be required by Law or the rules or regulations of any securities exchange, in which case the party required to make the release or announcement shall, to the extent reasonably practicable, allow

the other party reasonable time to comment on such release or announcement in advance of such issuance. The provisions of this Section shall not restrict the ability of (a) a party to summarize or describe the transactions contemplated by this Agreement in any prospectus or similar offering document so long as the other party is provided a reasonable opportunity to review such disclosure in advance, (b) representatives of the Company to orally summarize or describe the transactions contemplated by this Agreement on any telephone conference or in-person meeting with any investor in or analyst following the Company or (c) a party to make any such release, announcement or filing which contains only information which has previously been publicly disclosed in a manner consistent with this Section 8.5.

8.6. Tax Related Covenants Absent a change in Law after the date hereof or a contrary determination (as defined in Section 1313(a) of the Code) the Investor and the Company agree (a) not to treat the Series A Preferred Stock as "preferred stock" within the meaning of Section 305 of the Code and Treasury Regulation Section 1.305-5 for United States federal income tax reporting and withholding tax purposes, and (b) not take any tax position inconsistent with this Section 8.6 (including on any IRS Forms 1099 to the extent required).

8.7. Expense Reimbursement.

(a) In the event the Termination Fee (as defined in the Merger Agreement) or NSH Termination Fee Collection Costs (as defined below) are payable pursuant to the terms and conditions of the Merger Agreement, the Company shall pay such Termination Fee or NSH Termination Fee Collection Costs as contemplated in the Merger Agreement.

(b) In the event that (i) the Merger Agreement is terminated by NSH pursuant to Section 9.1(d) of the Merger Agreement, (ii) the Company pays the Termination Fee to NSH as required by the Merger Agreement, and (iii) either (A) a material breach of this Agreement by the Investor is the principal factor causing the Company to have to pay the Termination Fee as a result of a termination by NSH pursuant to Section 9.1(d)(i) of the Merger Agreement or (B) (1) all conditions to Closing under Section 6 have been satisfied (excluding conditions precedent that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction of such conditions precedent at the Closing), (2) the Investor fails to pay the Purchase Price as required by Section 2 on the date the Closing should have occurred pursuant to Section 3, and in each case of (1) and (2), (3) NSH terminates the Merger Agreement pursuant to Section 9.1(d)(ii) of the Merger Agreement solely as a result of such failure by the Investor, the Investor shall promptly, but in no event later than three (3) Business Days after the date of the notice by the Company of the Company's payment of the Termination Fee to NSH, pay or cause to be paid to the Company by wire transfer of same day funds an amount equal to the sum of (x) sum of (i) the amount of such Termination Fee actually paid by the Company and (ii) the amount of any NSH Termination Fee Collection Costs actually paid by the Company and (y) the amount of out-of out-of-pocket costs and expenses (including attorneys' fees) incurred by the Company and its Subsidiaries in connection with the Transaction Documents and the HIG Purchase Agreement and the transactions contemplated thereby, provided, however, that in no event shall such costs and expenses pursuant to this clause (y) exceed $3,000,000, in the aggregate (collectively, (the "Reimbursed NSH Termination Fee") (it being understood that in no event shall the Investor be required to

pay the Reimbursed NSH Termination Fee on more than one occasion). For the avoidance of doubt, and notwithstanding anything to the contrary in this Agreement or otherwise, while the Company may pursue both a grant of specific performance pursuant to Section 9.3 and the payment of the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee, under no circumstances shall the Company be permitted or entitled to receive both a grant of specific performance and any money damages, including all or any portion of the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee.

(c) In the event that (i) the Merger Agreement is terminated by NSH pursuant to Section 9.1(d)(ii) of the Merger Agreement, (ii) the Company pays the Termination Fee to NSH as required by the Merger Agreement, and (iii) there is no material breach by the Company of the Merger Agreement (a "Qualifying Shared Termination Event") and the circumstances in clause (b) above do not apply, then the Investor shall promptly, but in no event later than three (3) Business Days after the date of the notice by the Company of the Company's payment of the Termination Fee to NSH, pay or cause to be paid to the Company by wire transfer of same day funds an amount equal to fifty percent (50%) of the sum of (i) the amount of such Termination Fee actually paid by the Company and (ii) the amount of any NSH Termination Fee Collection Costs actually paid by the Company (collectively, the "Shared NSH Termination Fee") (it being understood that in no event shall the Investor be required to pay the Shared NSH Termination Fee on more than one occasion or both the Shared NSH Termination Fee and the Reimbursed Termination Fee or any amounts under both this clause (c) and clause (b) above).

(d) In the event the Investor is obligated to pay the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee (as applicable), and without limiting the last sentence of Section 8.7(b), (i) the actual receipt by the Company of the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee (as applicable) (x) shall be deemed to be liquidated damages and (y) shall be the sole and exclusive remedy of the Company, its Subsidiaries, and any of their respective Affiliates, or any of their respective former, current or future Representatives, shareholders, members, general or limited partners, or equityholders (including HIG), or any successors or assigns of any of the foregoing (collectively, the "Company Related Parties") and any other Person against the Investor and any of its Affiliates, Sponsor and any of its Affiliates, and any of their respective shareholders, members, general or limited partners, directors, officers and Affiliates, employees, controlling Persons, agents and Representatives, and any successors or assigns of any of the foregoing (the "Investor Related Parties" and together with the Company Related Parties, the "Related Parties"), (ii) no Investor Related Party shall have any other Liability or obligation (including for consequential, special, multiple, punitive or exemplary damages including damages arising from loss of profits, business opportunities or goodwill in respect of any breach or failure to comply with the Transaction Documents or in respect of any of the transactions contemplated by the Transaction Documents) for any or all losses suffered or incurred by the Company Related Parties or any other Person in connection with this Agreement (and the termination hereof), the Closing (and the abandonment thereof), the Equity Financing or any matter forming the basis for such termination, (iii) none of the Company Related Parties nor any other Person shall be entitled to bring or maintain any other Legal Action

against the Investor or any other Investor Related Party arising out of this Agreement, the NSH Merger, the Equity Financing or any matters forming the basis for such termination, and (iv) the Company agrees to use reasonable best efforts to cause any such Legal Action by the Company against the Investor or any Investor Related Party to be dismissed with prejudice promptly, and in any event within five (5) Business Days after receipt of the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee (as applicable).

(e) In the event of a Qualifying Shared Termination Event, (i) the actual payment of the Termination Fee by the Company and the Shared NSH Termination Fee by the Investor shall, in each case, be the sole and exclusive remedy of the Related Parties and any other Person against the other Related Parties, (ii) no Related Party shall have any other Liability or obligation (including for consequential, special, multiple, punitive or exemplary damages including damages arising from loss of profits, business opportunities or goodwill in respect of any breach or failure to comply with the Transaction Documents or in respect of any of the transactions contemplated by the Transaction Documents) for any or all losses suffered or incurred by the other Related Parties or any other Person in connection with this Agreement (and the termination hereof), the Closing (and the abandonment thereof), the Equity Financing or any matter forming the basis for such termination, (iii) none of the Related Parties nor any other Person shall be entitled to bring or maintain any other Legal Action against the Company or any other Company Related Party, or the Investor or any of the other Investor Related Parties, as the case may be, in each case, arising out of this Agreement, the NSH Merger, the Equity Financing or any matters forming the basis for such termination, and (iv) the Investor and the Company agree to use their respective reasonable best efforts to cause any such Legal Action by the Investor or the Company against the Company or any Company Related Party or the Investor or any Investor Related Parties, as the case may be, to be dismissed with prejudice promptly, and in any event within five (5) Business Days after payment in full of the Termination Fee by the Company and the Shared NSH Termination Fee by the Investor.

(f) Each of the parties hereto acknowledges and agrees that in light of the difficulty of accurately determining actual damages with respect to the foregoing, upon any termination of this Agreement in connection with any Qualifying Shared Termination Event, the payment by each party as contemplated in this Section 8.7 (as applicable) constitutes a reasonable estimate of the losses that will be suffered by reason of any such termination of this Agreement and constitutes liquidated damages (and not a penalty).

(g) "NSH Termination Fee Collection Costs" shall mean the amount, if any, of NSH's costs and expenses (including attorneys' fees) in connection with a Legal Action (together with interest actually paid pursuant to Section 9.2 of the Merger Agreement) on the amount of the Termination Fee or portion thereof ordered to be paid by a court that are required to be paid by the Company to NSH pursuant to Section 9.2 of the Merger Agreement if (i) the Company fails to promptly pay the amounts due to NSH pursuant to Section 9.2 of the Merger Agreement and (ii) in order to obtain such payment, NSH commences a Legal Action that results in a judgment against the Company for the Termination Fee or portion thereof or any other damages.

(h) The Company shall reimburse the Investor in full in cash for all out-of-pocket costs and expenses (including attorneys' fees) incurred by the Investor and its Affiliates in connection with the Transaction Documents and the HIG Purchase Agreement and the transactions contemplated thereby (other than, for the avoidance of doubt, the Reimbursed NSH Termination Fee or Reimbursed Shared Termination Fee (as applicable) if paid pursuant to this Section 8.7).

(i) The parties acknowledge that the agreements contained in this Section 8.7 are an integral part of the transactions contemplated by this Agreement, and that, without these agreements, the parties would not enter into this Agreement.

8.8. Amendment to the Merger Agreement or Debt Financing Commitments. The Company shall not, nor shall it agree to (and shall cause Merger Sub not to and not to agree to), without the prior written consent of the Investor: (i) amend, modify or waive any provision of, or any of the Company's or Merger Sub's rights under the Merger Agreement or the Debt Financing Commitments (as defined in the Merger Agreement) or (ii) enter into or amend, modify or waive any provision of, or any of the Company's or Merger Sub's rights under any Alternative Financing Commitments (as defined in the Merger Agreement).

8.9. Delivery of Stockholder Approval. Concurrently with the execution of this Agreement, the Company shall deliver or cause to be delivered the Stockholder Approval.

9. Miscellaneous.

9.1. Governing Law.

(a) This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter this Agreement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice of law principles that would require or permit the application of the laws of another jurisdiction.

(b) Each of the parties agrees (i) that any Legal Action, whether at law or in equity, whether in contract or in tort or otherwise, with respect to this Agreement shall be brought in the Court of Chancery of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) and, by execution and delivery of this Agreement, each party hereto hereby irrevocably submits itself in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid court in any Legal Action arising out of this Agreement, (ii) not to bring or permit any of their Affiliates to bring or support any other Person in bringing any such Legal Action in any other court, (iii) that service of process, summons, notice or document by registered mail addressed to them at their respective addresses provided in Section 9.10 shall be effective service of process against it for any such Legal Action brought in any such court, (iv) to

waive and hereby waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such Legal Action in any such court, and (v) that, notwithstanding the foregoing, a final judgment in any such Legal Action shall be conclusive and may be enforced in any court in any other jurisdictions (where the party against which enforcement is sought has operations or owns assets) by Legal Action on the judgment or in any other manner provided by Law. Nothing in this paragraph shall affect or eliminate any right to serve process in any other manner permitted by applicable Law.

9.2. WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF ANY PARTY HERETO OR THERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

9.3. Specific Enforcement.

(a) The parties hereto agree that irreparable damage would occur in the event that any of the obligations, undertakings, covenants or agreements of the parties hereto were not performed in accordance with their specific terms or were otherwise breached and that monetary damages, even if available, would not be an adequate remedy (other than the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee (as applicable), to the extent paid to the Company). It is accordingly agreed that the Company, on the one hand, and the Investor, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party, and to enforce specifically the terms and provisions of this Agreement (including to cause the Investor to consummate the Closing and pay the Purchase Price as required by Section 2) by a decree of specific performance, without the necessity of proving actual harm or posting a bond or other security therefor, this being in addition to, any other remedy to which such party is entitled at law or in equity, and each party hereto agrees, subject to the last sentence of Section 8.7(b), that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that any other party hereto has an adequate remedy at law or that any award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law or in equity. Without limitation of the foregoing, but subject to the last sentence of Section 8.7(b), the parties hereto hereby further acknowledge and agree that prior to the Closing, the Company shall be entitled to seek specific performance to enforce specifically the terms and provisions of, and to prevent or cure breaches of the covenants required to be performed by the Investor under this Agreement (including to cause the Investor to consummate the Closing and pay the Purchase Price as required by Section 2) in addition to any other remedy to which the Company is entitled at law or in equity, including the Company's right to terminate this Agreement pursuant to Section 9.12 and seek reimbursement of the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee (as applicable).

Subject, in each case to Section 8.7, in the event that the Company, on the one hand, or the Investor, on the other hand, brings a Legal Action for specific performance against the other party pursuant to this Section 9.3, and a court makes an order for specific performance against that other party, then the other party shall also pay the first party's costs and expenses (including attorneys' fees and expenses) in connection with all such Legal Actions to seek specific performance of such other party's obligations under this Agreement and all Legal Actions to collect such costs and expenses. Each of the parties hereto further agrees that it shall not take any position in any Legal Action concerning this Agreement that is contrary to the terms of this Section 9.3 (it being understood that in no event shall the Investor be required to pay more than the amount of the Reimbursed NSH Termination Fee or the Shared NSH Termination Fee (as applicable), if due). In addition, the Company agrees to use reasonable best efforts cause any Legal Action commenced by Company and pending in connection with this Agreement against the Investor or any Investor Related Party to be dismissed with prejudice promptly, and in any event within five (5) Business Days, after such time as the Investor consummates the Closing pursuant to this Section 9.3.

(b) Notwithstanding Section 9.3(a), it is explicitly agreed that the Company shall be entitled to seek specific performance of the Investor's obligation to consummate the Closing and to make the payments contemplated by Section 2 only in the event that: (i) all conditions to Closing under Section 6 have been satisfied (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction of such conditions at the Closing), and (ii) the Company has irrevocably confirmed in writing that it is ready, willing and able to consummate the Closing and the NSH Closing, and if specific performance is granted and the Equity Financing and Debt Financing are funded, the Closing and the NSH Closing will occur substantially concurrently.

(c) Subject to the last sentence of Section 8.7(b), until such time as the Investor pays the Company the Reimbursed NSH Termination Fee or Shared NSH Termination Fee (as applicable) or the Merger Agreement is terminated or the End Date hereunder expires, in no event shall the exercise of the Company's right to seek specific performance pursuant to this this Section 9.3 reduce, restrict or otherwise limit the Company's right to terminate this Agreement pursuant to Section 9.12 and/or pursue all applicable remedies at law, including seeking payment of the Reimbursed NSH Termination Fee or Shared NSH Termination Fee (as applicable).

9.4. Survival. Each of the other covenants, representations and warranties in this Agreement shall survive the Closing and shall terminate and expire on the first (1st) anniversary of the Closing Date; provided, that (i) each of the Fundamental Representations and the Company's representations in Sections 4.20 (Investment Company Act), 4.23 (General Solicitation), 4.24 (Offering; Exemption), and 4.25 (No Integrated Offering) shall survive until the date that is two (2) years following the Closing and (ii) any covenant contained in this Agreement that, by its terms, provides for performance following the Closing shall survive the Closing and shall terminate and expire on the first (1st) anniversary of the date on which such covenants are due to be performed in full. Any claim by a party under this Agreement with respect to a breach of such covenants, representations and warranties shall be brought no later than the applicable survival date.

9.5. Assignment. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without the other parties' prior written consent; provided that, the Investor may assign this Agreement to an Affiliate at any time without the Company's consent; provided, that the Investor shall remain liable for its obligations hereunder in the event the assignee fails to perform them.

9.6. Third-Party Beneficiaries. Nothing in this Agreement shall create or be deemed to create any third party beneficiary rights in any Person not a party to this Agreement, nor confer any rights, benefits or remedies hereunder upon any Person other than the parties hereto and their respective successors and assigns, except, in each case, as contemplated by Section 8.7 (Expense Reimbursement), Section 9.1 (Governing Law), Section 9.2 (Waiver of Jury Trial), this Section 9.6 (Third-Party Beneficiaries), Section 9.7 (Non-Recourse), Section 9.12 (Termination), Section 9.14 (Severability), and Section 9.17 (Certain Disclaimers).

9.7. Non-Recourse. Except and only to the extent set forth in the Equity Commitment Letter and the HIG Purchase Agreement, this Agreement may only be enforced against, and a claim or cause of action based upon, arising out of, or related to this Agreement may only be brought by the expressly named party hereto and then only with respect to the specific obligations set forth herein with respect to such party. Except to the extent a named party and to the extent a named party to the Equity Commitment Letter (and then only to the extent of the specific obligations undertaken by such named party in this Agreement or by such named parties under the Equity Commitment Letter), no present, former or future Affiliate, officer, director, employee, incorporator, member, partner, stockholder, agent, attorney or other Representative of any party or their Affiliates shall have any Liability (whether in contract, in tort or otherwise) for any obligations or Liabilities of any party which is not otherwise expressly identified as a party, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the representations, warranties, agreements or covenants of any party under this Agreement for any claim based upon, in respect of, or by reason of, the transactions contemplated by the Transaction Documents or in respect of any representations made or alleged to have been made in connection therewith. The provisions of this Section 9.7 are intended to be for the benefit of, and enforceable by the Affiliates, officers, directors, employees, incorporators, members, partners, stockholders, agents, attorneys and other Representatives referenced in this Section 9.7 and each such Person shall be a third-party beneficiary of this Section 9.7.

9.8. Entire Agreement; Amendment. This Agreement, including the disclosure letter and the other documents referred to herein which form a part hereof, and the Transaction Documents, contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement, together with the other Transaction Documents, supersede all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (whether written or oral) between the parties with respect to such subject matter. This Agreement may be amended, supplemented or changed only if such amendment, supplement or change is in writing and signed by the Company and the Investor, and any provision hereof can be waived only by a written instrument making specific reference to this Agreement executed by the party against whom enforcement of any

such waiver is sought. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

9.9. No Waiver. The failure of a party to insist upon strict adherence to any term or provision of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement.

9.10. Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and (a) delivered by hand, (b) sent by facsimile transmission (with written confirmation of delivery), or (c) sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

if to the Company:
Surgery Partners, Inc.
40 Burton Hills Blvd.
Nashville, TN 37215
Attention: General Counsel
Facsimile: (615) 694-5209

with a copy to (which will not constitute notice to the Company):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Carl Marcellino
Facsimile: (646) 728-1523

if to the Investor:
BCPE Seminole Holdings LP
c/o Bain Capital Private Equity, LP
200 Clarendon Street
Boston, MA 02116
Attention: Devin O’Reilly, Andrew Kaplan and David Hutchins
Facsimile: (617) 516-2010

with a copy to (which will not constitute notice to the Investor):

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attention: Neal J. Reenan, P.C. and Ian N. Bushner
Facsimile: (312) 862-2200

Any of the above addresses may be changed at any time by notice given as provided above; provided, however, that any such notice of change of address shall be effective only upon receipt. All notices, requests or instructions given in accordance herewith shall be deemed received on the date of delivery, if by hand delivery, on the date of transmission, if sent by facsimile, and one (1) Business Day after the date of sending, if mailed by nationally recognized overnight delivery service.

9.11. Rights Cumulative. Except as expressly limited by this Agreement, all rights and remedies of each of the parties under this Agreement will be cumulative, and the exercise of one or more rights or remedies not preclude the exercise of any other right or remedy available under this Agreement or applicable Law.

9.12. Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing (notwithstanding any approval of this Agreement by the Company's stockholders):

(a) by either the Company or the Investor, if:

(1) the NSH Merger has not been consummated on or before November 9, 2017 (the "End Date");

(2) any Governmental Authority shall have enacted, issued or promulgated any Law, or shall have issued or granted any Order, in each case, that restrains, enjoins or otherwise prevents the consummation of the Closing or the consummation of the other transactions contemplated herein; and

(3) the Merger Agreement has been terminated;

(b) by the Investor, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Company set forth in this Agreement shall have occurred (A) that would cause any of the conditions set forth in Section 6 not to be satisfied, and (B) if such breach or failure is curable, such breach or failure is not cured by the Company by the earlier of (x) the End Date or (y) thirty (30) calendar days following receipt by the Company of written notice of such breach or failure, provided, that at the time of the delivery of such written notice, the Investor shall not be in material breach of its obligations under this Agreement that would give rise to the failure of a condition set forth in Section 6; or

(c) by the Company, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of the Investor set forth in this Agreement shall have occurred (A) that would cause any of the conditions set forth in Section 7 not to be satisfied, and (B) if such breach or failure is curable, such breach or failure is not cured by the earlier of (x) the End Date or (y) thirty (30) calendar days following receipt by the Investor of written notice of such breach or failure, provided, that at the time of the delivery of such written notice, the Company shall not be in material breach of its obligations under this Agreement that would give rise to the failure of a condition set forth in Section 7.

The party desiring to terminate this Agreement pursuant to this Section 9.12 shall give notice of such termination to the other party, including a description in reasonable detail of the reasons for such termination, in accordance with Section 9.10, specifying the provision or provisions hereof pursuant to which such termination is effected.

Notwithstanding any provision of this Agreement to the contrary, in the event of termination of this Agreement pursuant to this Section 9.12, this Agreement shall become null and void, except Section 8.7 (Expense Reimbursement), Section 9.1 (Governing Law), Section 9.2 (Waiver of Jury Trial), Section 9.6 (Third-Party Beneficiaries), Section 9.7 (Non-Recourse), this Section 9.12 (Termination), Section 9.14 (Severability), and Section 9.17 (Certain Disclaimers); provided, that, subject to Section 8.7, no termination of this Agreement will relieve any party of any liability arising out of a breach of this Agreement.

9.13. Counterparts. This Agreement may be executed in two (2) or more counterparts (including by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one instrument. Delivery of a signed counterpart of a signature page of this Agreement by facsimile or by .PDF file (portable document format file) shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining a party's intent or the effectiveness of such signature.

9.14. Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any applicable Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Any such term or provision held invalid, illegal, or incapable of being enforced only in part or degree will remain in full force and effect to the extent not held invalid, illegal, or incapable of being enforced. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, such term or provision is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under applicable Law.

9.15. Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The terms "hereof", "herein", "hereby" and derivative or similar words refer to this Agreement as a

whole and not to any particular provision of this Agreement. Except when used together with the word "either" or otherwise for the purpose of identifying mutually exclusive alternatives, the term "or" has the inclusive meaning represented by the phrase "and/or." The terms "shall" and "will" mean "must," and shall and will have equal force and effect and express an obligation. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and also all rules and regulations promulgated thereunder. The term "party" or "parties" shall mean a party to or the parties to this Agreement unless the context requires otherwise. Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement. All references in this Agreement to "dollars" or "$" shall mean United States dollars. Any period of time hereunder ending on a day that is not a Business Day shall be extended to the next Business Day. The word "day", unless otherwise indicated, shall be deemed to refer to a calendar day.

9.16. Disclosure Letter. Certain information is contained in the disclosure letter solely for informational purposes, may not be required to be disclosed pursuant hereto and will not imply that such information or any other information is required to be disclosed. Inclusion of such information will not establish any level of materiality or similar threshold or be an admission that any of such information is material to the business, assets, liabilities, financial position, operations or results of operations of any Person or otherwise material regarding such Person. Each matter disclosed in any section of the disclosure letter or in any representation or warranty in a manner that makes its relevance to one or more other sections of the disclosure letter or representations or warranties reasonably apparent on its face will be deemed to have been appropriately included in each such other section of the disclosure letter or representation or warranty (notwithstanding the presence or absence of any reference in or to any section of the disclosure letter or representation or warranty).

9.17. Certain Disclaimers.

(a) Notwithstanding any other term herein, no party will be obligated to any other Person for any punitive damages or losses based thereon relating to the breach of any representation, warranty, covenant or agreement herein, unless such damages or losses are incurred in a third party claim related to such breach.

(b) Notwithstanding any other term herein, other than as expressly made by the Company in Section 4, any other Transaction Document or the HIG Purchase Agreement, the Company has not made (and no Person on behalf of the Company has made), nor will the Company (or any other Person) have or be subject to any liability arising out of, relating to or resulting from, any representation or warranty or similar assurance (whether direct or indirect, written or oral, or statutory, express or implied), including in each case regarding (a) any information or document given or made

available (or not given or made available) to the Investor or any Person on Investor's behalf regarding the Company, (b) the effect of any of the transactions contemplated herein or the reaction thereto of any Person or (c) any forward-looking statement relating to the Company (including any underlying assumption). The Investor hereby expressly assumes all risks arising out of, relating to or resulting from, and the Investor hereby disclaims all reliance upon, the matters in the preceding sentence (other than as expressly made by the Company in Section 4, any other Transaction Document or the HIG Purchase Agreement). The Company disclaims any express or implied warranty relating to the Securities or the Company, except as expressly set forth in Section 4, any other Transaction Document or the HIG Purchase Agreement. Notwithstanding anything herein to the contrary, nothing in this Agreement shall limit or otherwise restrict a fraud claim brought by the Investor.

(c) Notwithstanding any other term herein, other than as expressly made by the Investor in Section 5, any other Transaction Document or the HIG Purchase Agreement, the Investor has not made (and no Person on behalf of the Investor has made), nor will the Investor (or any other Person) have or be subject to any liability arising out of, relating to or resulting from, any representation or warranty or similar assurance (whether direct or indirect, written or oral, or statutory, express or implied), including in each case regarding (a) any information or document given or made available (or not given or made available) to the Company or any Person on the Company's behalf regarding the Investor, (b) the effect of any of the transactions contemplated herein or the reaction thereto of any Person or (c) any forward-looking statement relating to the Company (including any underlying assumption). The Company hereby expressly assumes all risks arising out of, relating to or resulting from, and the Company hereby disclaims all reliance upon, the matters in the preceding sentence (other than as expressly made by the Investor in Section 5, any other Transaction Document or the HIG Purchase Agreement). The Investor disclaims any express or implied warranty relating to the Investor, except as expressly set forth in Section 5, any other Transaction Document or the HIG Purchase Agreement. Notwithstanding anything herein to the contrary, nothing in this Agreement shall limit or otherwise restrict a fraud claim brought by the Company.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

COMPANY:

SURGERY PARTNERS, INC.

By: /s/ Michael T. Doyle
Name: Michael T. Doyle
Title: Chief Executive Officer

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first above written.

INVESTOR:

BCPE SEMINOLE HOLDINGS LP

By: Bain Capital Investors, LLC
Its: General Partner

By: /s/ Devin O'Reilly
Name: Devin O'Reilly
Title: Managing Director

Exhibit A

FORM OF
AMENDED AND RESTATED BYLAWS
OF
SURGERY PARTNERS, INC.

As of [●], 2017

SECTION 1-STOCKHOLDERS

Section 1.1. Annual Meeting.

An annual meeting of the stockholders of Surgery Partners, Inc., a Delaware corporation (the "Corporation"), for the election of directors to succeed those whose term expire and for the transaction of such other business as may properly come before the meeting shall be held at the place, if any, within or without the State of Delaware, on the date and at the time that the Board of Directors of the Corporation (the "Board of Directors") shall each year fix. Unless stated otherwise in the notice of the annual meeting of the stockholders of the Corporation, such annual meeting shall be at the principal office of the Corporation.

Section 1.2. Advance Notice of Nominations and Proposals of Business.

(a) Nominations of persons for election to the Board of Directors and proposals for other business to be transacted by the stockholders at an annual meeting of stockholders may be made (i) pursuant to the Corporation's notice with respect to such meeting (or any supplement thereto), (ii) by or at the direction of the Board of Directors or any committee thereof or (iii) by any stockholder of record of the Corporation who (A) was a stockholder of record at the time of the giving of the notice contemplated in Section 1.2(b), (B) is entitled to vote at such meeting and (C) has complied with the notice procedures set forth in this Section 1.2. Subject to Section 1.2(i) and except as otherwise required by law, clause (iii) of this Section 1.2(a) shall be the exclusive means for a stockholder to make nominations or propose other business (other than nominations and proposals properly brought pursuant to applicable provisions of federal law, including the Securities Exchange Act of 1934 (as amended from time to time, the "Act") and the rules and regulations of the Securities and Exchange Commission thereunder) before an annual meeting of stockholders.

(b) Except as otherwise required by law, for nominations or proposals to be properly brought before an annual meeting by a stockholder pursuant to clause (iii) of Section 1.2(a), (i) the stockholder must have given timely notice thereof in writing to the Secretary of the Corporation with the information contemplated by Section 1.2(c) including, where applicable, delivery to the Corporation of timely and completed questionnaires as contemplated by Section 1.2(c), and (ii) the business must be a proper matter for stockholder action under the General Corporation Law of the State of Delaware (the "DGCL"). The notice requirements of this Section 1.2 shall be deemed satisfied by a stockholder with respect to business other than a nomination if the stockholder has notified the Corporation of his, her or its intention to present a proposal at an annual meeting in compliance with applicable rules and regulations promulgated under the Act and such stockholder's proposal has been included in a proxy statement prepared by the Corporation to solicit proxies for such annual meeting.

(c) To be timely for purposes of Section 1.2(b), a stockholder's notice must be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation on a date (i) not later than the close of business on the 90th day nor earlier than the close of business on the 120th day prior to the anniversary date of the prior year's annual meeting or (ii) if there was no annual meeting in the prior year or if the date of the current year's annual meeting is more than 30 days before or after the anniversary date of the prior year's annual meeting, on or before 10 days after the day on which the date of the current year's annual meeting is first disclosed in a public announcement. In no event shall any adjournment or postponement of an annual meeting or the announcement thereof commence a new time period for the delivery of such notice. Such notice from a stockholder must state (i) as to each nominee that the stockholder proposes for election or reelection as a director, (A) all information relating to such nominee that would be required to be disclosed in solicitations of proxies for the election of such nominee as a director

pursuant to Regulation 14A under the Act and such nominee's written consent to serve as a director if elected, and (B) a description of all direct and indirect compensation and other material monetary arrangements, agreements or understandings during the past three years, and any other material relationship, if any, between or concerning such stockholder, any Stockholder Associated Person (as defined below) or any of their respective affiliates or associates, on the one hand, and the proposed nominee or any of his or her affiliates or associates, on the other hand; (ii) as to each proposal that the stockholder seeks to bring before the meeting, a brief description of such proposal, the reasons for making the proposal at the meeting, the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend the bylaws of the Corporation, the language of the proposed amendment) and any material interest that the stockholder has in the proposal; and (iii) (A) the name and address of the stockholder giving the notice and the Stockholder Associated Persons, if any, on whose behalf the nomination or proposal is made, (B) the class (and, if applicable, series) and number of shares of stock of the Corporation that are, directly or indirectly, owned beneficially or of record by the stockholder or any Stockholder Associated Person, (C) any option, warrant, convertible security, stock appreciation right or similar right with an exercise or conversion privilege or a settlement payment or mechanism at a price related to any class (or, if applicable, series) of shares of stock of the Corporation or with a value derived in whole or in part from the value of any class (or, if applicable, series) of shares of stock of the Corporation, whether or not such instrument or right shall be subject to settlement in the underlying class or series of capital stock of the Corporation or otherwise (each, a "Derivative Instrument") directly or indirectly owned beneficially or of record by such stockholder or any Stockholder Associated Person and any other direct or indirect opportunity to profit or share in any profit derived from any increase or decrease in the value of shares of stock of the Corporation of the stockholder or any Stockholder Associated Person, (D) any proxy, contract, arrangement, understanding or relationship pursuant to which such stockholder or any Stockholder Associated Person has a right to vote any securities of the Corporation, (E) any proportionate interest in shares of the Corporation or Derivative Instruments held, directly or indirectly, by a general or limited partnership in which such stockholder or any Stockholder Associated Person is a general partner or beneficially owns, directly or indirectly, an interest in a general partner, (F) any performance-related fees (other than an asset-based fee) that such stockholder or any Stockholder Associated Person is entitled to based on any increase or decrease in the value of the shares of stock of the Corporation or Derivative Instruments, (G) any other information relating to such stockholder or any Stockholder Associated Person, if any, required to be disclosed in a proxy statement or other filing required to be made in connection with solicitations of proxies for, as applicable, the proposal and/or for the election of directors in an election contest pursuant to and in accordance with Section 14(a) of the Act and the rules and regulations of the Securities and Exchange Commission thereunder, (H) a representation that the stockholder is a holder of record of the Corporation entitled to vote at such meeting and intends to appear in person or by proxy at the meeting to propose such business or nomination, (I) a certification as to whether or not the stockholder and all Stockholder Associated Persons, have complied with all applicable federal, state and other legal requirements in connection with the stockholder's and each Stockholder Associated Person's acquisition of shares of capital stock or other securities of the Corporation and the stockholder's and each Stockholder Associated Person's acts or omissions as a stockholder (or beneficial owner of securities) of the Corporation, and (J) whether either the stockholder intends to deliver a proxy statement and form of proxy to holders of, in the case of a proposal, at least the percentage of the Corporation's voting shares required under applicable law to carry the proposal or, in the case of a nomination or nominations, a sufficient number of holders of the Corporation's voting shares reasonably believed by such stockholder to be sufficient to elect such nominee or nominees or otherwise to solicit proxies or votes from stockholders in support of such proposal or nomination. For purposes of these bylaws, a "Stockholder Associated Person" of any stockholder means (i) any "affiliate" or "associate" (as those terms are defined in Rule 12b-2 under the Act) of such stockholder, (ii) any beneficial owner of any capital stock or other securities of the Corporation owned of record or beneficially by such stockholder, (iii) any person directly or indirectly controlling, controlled by or under common control with any such Stockholder Associated Person referred to in clause (i) or (ii) above, and (iv) any person acting in concert in respect of any matter involving the Corporation or its securities with either such stockholder or any beneficial owner of any capital stock or other securities of the Corporation owned of record or beneficially by such stockholder. In addition, in order for a nomination to be properly brought before an annual or special meeting by a stockholder pursuant to clause (iii) of Section 1.2(a), any nominee proposed by a stockholder shall complete a questionnaire, in a form provided by the Corporation, and deliver a signed copy of such completed questionnaire to the Corporation within 10 days of the date that the Corporation makes available to the stockholder

seeking to make such nomination or such nominee the form of such questionnaire. The Corporation may require any proposed nominee to furnish such other information as may be reasonably requested by the Corporation to determine the eligibility of the proposed nominee to serve as an independent director of the Corporation or that could be material to a reasonable stockholder's understanding of the independence, or lack thereof, of the nominee. The information required to be included in a notice pursuant to this Section 1.2(c) shall be provided as of the date of such notice and shall be supplemented by the stockholder not later than 10 days after the record date for the determination of stockholders entitled to notice of the meeting to disclose any changes to such information as of the record date. The information required to be included in a notice pursuant to this Section 1.2(c) shall not include any ordinary course business activities of any broker, dealer, commercial bank, trust company or other nominee who is directed to prepare and submit the notice required by this Section 1.2(c) on behalf of a beneficial owner of the shares held of record by such broker, dealer, commercial bank, trust company or other nominee and who is not otherwise affiliated or associated with such beneficial owner.

(d) Subject to the amended and restated certificate of incorporation of the Corporation (the "Certificate of Incorporation"), Section 1.2(i) and applicable law, only persons nominated in accordance with procedures stated in this Section 1.2 shall be eligible for election as and to serve as members of the Board of Directors and the only business that shall be conducted at an annual meeting of stockholders is the business that has been brought before the meeting in accordance with the procedures set forth in this Section 1.2. The chairman of the meeting shall have the power and the duty to determine whether a nomination or any proposal has been made according to the procedures stated in this Section 1.2 and, if any nomination or proposal does not comply with this Section 1.2, unless otherwise required by law, the nomination or proposal shall be disregarded.

(e) For purposes of this Section 1.2, "public announcement" means disclosure in a press release reported by the Dow Jones News Service, Associated Press or a comparable news service or in a document publicly filed or furnished by the Corporation with the Securities and Exchange Commission pursuant to Section 13, 14 or 15(d) of the Act.

(f) Notwithstanding the foregoing provisions of this Section 1.2, a stockholder shall also comply with applicable requirements of the Act and the rules and regulations thereunder with respect to matters set forth in this Section 1.2. Nothing in this Section 1.2 shall affect any rights, if any, of stockholders to request inclusion of nominations or proposals in the Corporation's proxy statement pursuant to applicable provisions of federal law, including the Act.

(g) Notwithstanding the foregoing provisions of this Section 1.2, unless otherwise required by law, if the stockholder (or a qualified representative of the stockholder) does not appear at the annual or special meeting of stockholders of the Corporation to present a nomination or proposed business or does not provide the information required by Section 1.2(c), including any required supplement thereto, such nomination shall be disregarded and such proposed business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation. For purposes of this Section 1.2, to be considered a qualified representative of the stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or must be authorized by a writing executed by such stockholder or an electronic transmission delivered by such stockholder to act for such stockholder as proxy at the meeting of stockholders and such person must produce such writing or electronic transmission, or a reliable reproduction of the writing or electronic transmission, at the meeting of stockholders.

(h) Only such business shall be conducted at a special meeting of stockholders as shall have been brought before the meeting pursuant to the Corporation's notice of meeting. Nominations of persons for election to the Board of Directors may be made at a special meeting of stockholders at which directors are to be elected pursuant to the Corporation's notice of meeting (1) by or at the direction of the Board of Directors or any committee thereof or (2) provided that the Board of Directors has determined that directors shall be elected at such meeting, by any stockholder of the Corporation who is a stockholder of record at the time the notice provided for in this Section 1.2 is delivered to the Secretary of the Corporation, who is entitled to vote at the meeting upon such election and who complies with the notice procedures set forth in this Section 1.2. In the event the Corporation calls a special meeting

of stockholders for the purpose of electing one or more directors to the Board of Directors, any such stockholder entitled to vote in such election of directors may nominate a person or persons (as the case may be) for election to such position(s) as specified in the Corporation's notice of meeting, if the stockholder's notice required by paragraph (b) of this Section 1.2 shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation not earlier than the close of business on the 120th day prior to such special meeting and not later than the close of business on the later of the 90th day prior to such special meeting or the 10th day following the day on which public announcement is first made of the date of the special meeting and of the nominees proposed by the Board of Directors to be elected at such meeting. In no event shall the public announcement of an adjournment or postponement of a special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above.

(i) All provisions of this Section 1.2 are subject to, and nothing in this Section 1.2 shall in any way limit the exercise, or the method or timing of the exercise of, the rights of any person granted by the Corporation to nominate directors, which rights may be exercised without compliance with the provisions of this Section 1.2.

Section 1.3. Special Meetings; Notice.

Special meetings of the stockholders of the Corporation may be called only in the manner set forth in the Certificate of Incorporation. Notice of every special meeting of the stockholders of the Corporation shall state the purpose or purposes of such meeting. Except as otherwise required by law, the business conducted at a special meeting of stockholders of the Corporation shall be limited exclusively to the business set forth in the Corporation's notice of meeting, and the individual or group calling such meeting shall have exclusive authority to determine the business included in such notice.

Section 1.4. Notice of Meetings.

Notice of the place, if any, date and time of all meetings of stockholders of the Corporation, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present and vote at such meeting, and, in the case of all special meetings of stockholders, the purpose or purposes of the meeting, shall be given, not less than 10 nor more than 60 days before the date on which such meeting is to be held, to each stockholder entitled to notice of the meeting.

The Corporation may postpone or cancel any previously called annual or special meeting of stockholders of the Corporation by making a public announcement (as defined in Section 1.2(e)) of such postponement or cancellation prior to the meeting. When a previously called annual or special meeting is postponed to another time, date or place, if any, notice of the place (if any), date and time of the postponed meeting, the record date for determining the stockholders entitled to vote at the meeting (if such date is different from the record date for stockholders entitled to notice of the meeting) and the means of remote communications, if any, by which stockholders and proxy holders may be deemed present and vote at such postponed meeting, shall be given in conformity with this Section 1.4 unless such meeting is postponed to a date that is not more than 60 days after the date that the initial notice of the meeting was provided in conformity with this Section 1.4.

When a meeting is adjourned to another time or place, notice need not be given of the adjourned meeting if the time and place, if any, thereof and the means of remote communication, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken; provided, however, that if the adjournment is for more than 30 days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting, or if after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting the Board of Directors shall fix a new record date for notice of such adjourned meeting in conformity herewith and such notice shall be given to each stockholder of record entitled to vote at such adjourned meeting as of the record date for notice of such adjourned meeting. At any adjourned meeting, any business may be transacted that may have been transacted at the original meeting.

Section 1.5. Quorum.

At any meeting of the stockholders, the holders of shares of stock of the Corporation entitled to cast a majority of the total votes entitled to be cast by the holders of all outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors ("Voting Stock"), present in person or by proxy, shall constitute a quorum for all purposes, unless or except to the extent that the presence of a larger number is required by applicable law or the Certificate of Incorporation. If a separate vote by one or more classes or series is required, the holders of shares entitled to cast a majority of the total votes entitled to be cast by the holders of the shares of the class or classes or series, present in person or represented by proxy, shall constitute a quorum entitled to take action with respect to that vote on that matter.

If a quorum shall fail to attend any meeting, the chairman of the meeting may adjourn the meeting to another place, if any, date and time.

Section 1.6. Organization.

The Chairman of the Board of Directors or, in his or her absence, the person whom the Board of Directors designates or, in the absence of that person or the failure of the Board of Directors to designate a person, the Chief Executive Officer of the Corporation or, in his or her absence, the person chosen by the holders of a majority of the shares of capital stock entitled to vote who are present, in person or by proxy, shall call to order any meeting of the stockholders of the Corporation and act as chairman of the meeting. In the absence of the Secretary or any Assistant Secretary of the Corporation, the secretary of the meeting shall be the person the chairman of the meeting appoints.

Section 1.7. Conduct of Business.

The chairman of any meeting of stockholders of the Corporation shall determine the order of business and the rules of procedure for the conduct of such meeting, including the manner of voting and the conduct of discussion as he or she determines to be in order. The chairman shall have the power to adjourn the meeting to another place, if any, date and time. The date and time of the opening and closing of the polls for each matter upon which the stockholders will vote at the meeting shall be announced at the meeting. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of the meeting shall have the right and authority to convene and (for any or no reason) to adjourn the meeting, to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) rules and procedures for maintaining order at the meeting and the safety of those present; (iii) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (iv) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (v) limitations on the time allotted to questions or comments by participants. The chairman of the meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall, if the facts warrant, determine and declare to the meeting that a nomination or matter of business was not properly brought before the meeting and if such chairman should so determine, such chairman shall so declare to the meeting and any such matter or business not properly brought before the meeting shall not be transacted or considered. Unless and to the extent determined by the Board of Directors or the chairman of the meeting, meetings of stockholders shall not be required to be held in accordance with the rules of parliamentary procedure.

Section 1.8. Proxies; Inspectors.

(a) At any meeting of the stockholders, every stockholder entitled to vote may vote in person or by proxy authorized by an instrument in writing or by a transmission permitted by applicable law.

(b) Prior to a meeting of the stockholders of the Corporation, the Corporation shall appoint one or more inspectors to act at a meeting of stockholders of the Corporation and make a written report thereof. The Corporation

may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting may, and to the extent required by applicable law, shall, appoint one or more inspectors to act at the meeting. Each inspector, before beginning the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability. The inspectors may appoint or retain other persons or entities to assist the inspectors in the performance of the duties of inspectors. The inspectors shall have the duties prescribed by applicable law.

Section 1.9. Voting.

Except as otherwise required by the rules or regulations of any stock exchange applicable to the Corporation or pursuant to any law or regulation applicable to the Corporation or its securities or by the Certificate of Incorporation or these bylaws, all matters other than the election of directors shall be determined by a majority of the votes cast on the matter affirmatively or negatively. All elections of directors shall be determined by a plurality of the votes cast.

Section 1.10. Action by Written Consent.

Except as otherwise provided in the Certificate of Incorporation, stockholders may not take any action by written consent in lieu of a meeting of stockholders.

Section 1.11. Stock Ledger.

A complete list of stockholders of the Corporation entitled to vote at any meeting of stockholders of the Corporation, arranged in alphabetical order for each class of stock and showing the address of each such stockholder and the number of shares registered in the name of such stockholder, shall be open to the examination of any such stockholder, for any purpose germane to a meeting of the stockholders of the Corporation, for a period of at least 10 days before the meeting (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting or (ii) during ordinary business hours at the principal place of business of the Corporation; provided, however, if the record date for determining the stockholders entitled to vote is less than 10 days before the meeting date, the list shall reflect the stockholders entitled to vote as of the 10th day before such meeting date. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then the list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Except as otherwise provided by law, the stock ledger shall be the sole evidence of the identity of the stockholders entitled to vote at a meeting and the number of shares held by each stockholder.

SECTION 2-BOARD OF DIRECTORS

Section 2.1. General Powers and Qualifications of Directors.

The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors. In addition to the powers and authorities these bylaws expressly confer upon them, the Board of Directors may exercise all such powers of the Corporation and do all such lawful acts and things as are not by the DGCL or by the Certificate of Incorporation or by these bylaws required to be exercised or done by the stockholders. Directors need not be stockholders of the Corporation to be qualified for election or service as a director of the Corporation.

Section 2.2. Removal; Resignation.

The directors of the Corporation may be removed in accordance with the Certificate of Incorporation. Any director may resign at any time upon notice given in writing, including by electronic transmission, to the Corporation.

Section 2.3. Regular Meetings.

Regular meetings of the Board of Directors shall be held at the place (if any), on the date and at the time as shall have been established by the Board of Directors and publicized among all directors. A notice of a regular meeting, the date of which has been so publicized, shall not be required.

Section 2.4. Special Meetings.

Special meetings of the Board of Directors may be called by the Chief Executive Officer, the President or by two or more directors then in office or, if the Board of Directors then includes a director affiliated with investment funds affiliated with Bain Capital Private Equity, LP and its respective successors, Transferees (as defined in the Certificate of Incorporation) and affiliates (collectively, the "Sponsor Holders"), by such director, and shall be held at the place, if any, on the date and at the time as he, she or they shall fix. Notice of the place, if any, date and time of each special meeting shall be given to each director either (a) by mailing written notice thereof not less than five days before the meeting, or (b) by telephone, facsimile or other means of electronic transmission providing notice thereof not less than twenty-four hours before the meeting. Any and all business may be transacted at a special meeting of the Board of Directors.

Section 2.5. Quorum.

At any meeting of the Board of Directors, a majority of the total number of directors then in office shall constitute a quorum for all purposes, provided that so long as the Sponsor Holders beneficially own (directly or indirectly) a majority of the voting power of the Voting Stock, it shall be necessary to constitute a quorum, in addition to a majority of the total number of directors then in office, that a director affiliated with the Sponsor Holders be present (other than attendance for the sole purpose of objecting to the transaction of any business because the meeting is not lawfully called or convened). For an action of the Board of Directors taken at a meeting to be valid, directors that constitute a quorum (including a director affiliated with the Sponsor Holders) must be present (as described in Section 2.6 below) at the time that the vote on such action is taken. For the avoidance of doubt, so long as the Sponsor Holders collectively beneficially own (directly or indirectly) a majority of the voting power of the Voting Stock, if directors that constitute a quorum (including a director affiliated with the Sponsor Holders) are not present (as described in Section 2.6 below) at the time that the vote on any action is taken, a quorum shall not be constituted with respect to such action, and any vote taken with respect to such action shall not be a valid action of the Board of Directors, notwithstanding that a quorum of the Board of Directors may have been present at the commencement of such meeting. If a quorum shall fail to attend any meeting, a majority of those present may adjourn the meeting to another place, if applicable, date or time, without further notice or waiver thereof.

Section 2.6. Participation in Meetings By Conference Telephone or Other Communications Equipment.

Members of the Board of Directors, or of any committee thereof, may participate in a meeting of the Board of Directors or committee thereof by means of conference telephone or other communications equipment by means of which all directors participating in the meeting can hear each other director, and such participation shall constitute presence in person at the meeting.

Section 2.7. Conduct of Business.

At any meeting of the Board of Directors, business shall be transacted in the order and manner that the Board of Directors may from time to time determine, and all matters shall be determined by the vote of a majority of the directors present, provided a quorum is present at the time such matter is acted upon, except as otherwise provided in the Certificate of Incorporation or these bylaws or required by applicable law. The Board of Directors or any committee thereof may take action without a meeting if all members thereof consent thereto in writing or by

electronic transmission, and the writing or writings, or electronic transmission or electronic transmissions, are filed with the minutes of proceedings of the Board of Directors or any committee thereof. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.8. Compensation of Directors.

The Board of Directors shall be authorized to fix the compensation of directors. The directors of the Corporation shall be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be reimbursed a fixed sum for attendance at each meeting of the Board of Directors, paid an annual retainer or paid other compensation, including equity compensation, as the Board of Directors determines. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of committees shall have their expenses, if any, of attendance of each meeting of such committee reimbursed and may be paid compensation for attending committee meetings or being a member of a committee.

SECTION 3-COMMITTEES

Section 3.1. Committees of the Board of Directors.

The Board of Directors may designate a chairman of the Board of Directors (or co-chairmen) (the "Chairman"). Additionally, the Board of Directors may designate committees of the Board of Directors, with such lawfully delegable powers and duties as it thereby confers, to serve at the pleasure of the Board of Directors and shall, for those committees, appoint a director or directors to serve as the member or members, designating, if it desires, other directors as alternate members who may replace any absent or disqualified member at any meeting of such committee. In the absence or disqualification of any member of any committee and any alternate member in his or her place, the member or members of the committee present at the meeting and not disqualified from voting, whether or not he or she or they constitute a quorum, may by unanimous vote appoint another member of the Board of Directors to act at the meeting in the place of the absent or disqualified member. All provisions of this Section 3.1 are subject to, and nothing in this Section 3.1 shall in any way limit the exercise, or method or timing of the exercise of, the rights of any person granted by the Corporation with respect to the existence, duties, composition or conduct of any committee of the Board of Directors.

SECTION 4-OFFICERS

Section 4.1. Generally.

The officers of the Corporation shall be elected by the Board of Directors and may consist of a Chief Executive Officer, a President, one or more Vice Presidents, a Secretary, one or more Assistant Secretaries, a Chief Financial Officer, Treasurer, one or more Assistant Treasurers and such other officers and assistant officers as may be deemed necessary or desirable by the Board of Directors. At the discretion of the Board of Directors, the Chairman of the Board of Directors may have authority as an officer of the Corporation. In its discretion, the Board of Directors may choose not to fill any office for any period as it may deem advisable. Each officer shall hold office until his or her successor is elected and qualified or until his or her earlier resignation or removal. Any number of offices may be held by the same person. The compensation of officers appointed by the Board of Directors shall be determined from time to time by the Board of Directors or a committee thereof or by the officers as may be designated by resolution of the Board of Directors.

Section 4.2. Chief Executive Officer.

Unless otherwise determined by the Board of Directors, the Chief Executive Officer shall have the powers and perform the duties incident to that position. Subject to the powers of the Board of Directors and the Chairman of the Board of Directors (if applicable), the Chief Executive Officer shall be in general and active charge of the entire business and affairs of the Corporation, and shall be its chief policy making officer. The Chief Executive Officer shall have such other powers and perform such other duties as may be prescribed by the Board of Directors or

provided in these bylaws. The Chief Executive Officer is authorized to execute bonds, mortgages and other contracts requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except where the signing and execution thereof shall be expressly delegated by the Board of Directors to some other officer or agent of the Corporation. The Chief Executive Officer shall have general supervision and direction of all of the other officers, employees and agents of the Corporation, subject in all cases to the orders and resolutions of the Board of Directors.

Section 4.3. President.

The President shall have the powers and duties delegated to him or her by the Board of Directors or the Chief Executive Officer.

Section 4.3. Vice Presidents.

Each Vice President shall have the powers and duties delegated to him or her by the Board of Directors, the Chief Executive Officer or the President. One Vice President may be designated by the Board of Directors to perform the duties and exercise the powers of the President in the event of the President's absence or disability.

Section 4.3. Secretary and Assistant Secretaries.

The Secretary shall issue all authorized notices for, and shall keep minutes of, all meetings of the stockholders and the Board of Directors. He or she shall have charge of the corporate books and shall perform other duties as the Board of Directors may from time to time prescribe.

Any Assistant Secretary shall perform such duties and possess such powers as the Board of Directors, the Chief Executive Officer, the President or the Secretary may from time to time prescribe. In the event of the absence, inability or refusal to act of the Secretary, the Assistant Secretary (or if there shall be more than one, the Assistant Secretaries in the order determined by the Board of Directors) shall perform the duties and exercise the powers of the Secretary.

Section 4.4. Chief Financial Officer, Treasurer and Assistant Treasurers.

The Chief Financial Officer shall keep or cause to be kept the books of account of the Corporation in a thorough and proper manner and shall render statements of the financial affairs of the Corporation in such form and as often as required by the Board of Directors or the Chief Executive Officer or the President. The Chief Financial Officer, subject to the order of the Board of Directors, shall have the custody of all funds and securities of the Corporation. The Chief Financial Officer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the President shall designate from time to time. The Chief Executive Officer or the President may direct the Treasurer or any Assistant Treasurer to assume and perform the duties of the Chief Financial Officer in the absence or disability of the Chief Financial Officer, and each Treasurer and Assistant Treasurer shall perform other duties commonly incident to his office and shall also perform such other duties and have such other powers as the Board of Directors, the Chief Executive Officer or the President shall designate from time to time.

Section 4.5. Delegation of Authority.

The Board of Directors may from time to time delegate the powers or duties of any officer to any other officer or agent, notwithstanding any provision hereof.

Section 4.6. Removal.

The Board of Directors may remove any officer of the Corporation at any time, with or without cause.

Section 4.7. Action with Respect to Securities of Other Companies.

Unless otherwise directed by the Board of Directors, the Chief Executive Officer, the President or any officer of the Corporation authorized by the Chief Executive Officer or the President, shall have power to vote and otherwise act on behalf of the Corporation, in person or by proxy, at any meeting of stockholders or equityholders of, or with respect to any action of, stockholders or equityholders of any other entity in which the Corporation may hold securities and otherwise to exercise any and all rights and powers which the Corporation may possess by reason of its ownership of securities in such other entity.

SECTION 5-STOCK

Section 5.1. Certificates of Stock.

Shares of the capital stock of the Corporation may be certificated or uncertificated, as provided in the DGCL. Stock certificates shall be signed by, or in the name of the Corporation by, (i) the Chairman of the Board of Directors (if any) or the vice-Chairman of the Board of Directors (if any), or the President or a Vice President, and (ii) the Secretary or an Assistant Secretary, or the Treasurer or an Assistant Treasurer, certifying the number of shares owned by such stockholder. Any signatures on a certificate may be by facsimile.

Section 5.2. Transfers of Stock.

Transfers of stock shall be made only upon the transfer books of the Corporation kept at an office of the Corporation (within or without the State of Delaware) or by transfer agents designated to transfer shares of the stock of the Corporation.

Section 5.3. Lost, Stolen or Destroyed Certificates.

In the event of the loss, theft or destruction of any certificate of stock, another may be issued in its place pursuant to regulations as the Board of Directors may establish concerning proof of the loss, theft or destruction and concerning the giving of a satisfactory bond or indemnity, if deemed appropriate.

Section 5.4. Regulations.

The issue, transfer, conversion and registration of certificates of stock of the Corporation shall be governed by other regulations as the Board of Directors may establish.

Section 5.5. Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall, unless otherwise required by law, not be more than 60 nor less than 10 days before the date of such meeting. If the Board of Directors so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board of Directors determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business on the day preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix as the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote in accordance herewith at the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights, or entitled to exercise any rights in respect of any change,

conversion or exchange of stock or for the purpose of any other lawful action, the Board of Directors may fix a record date, which shall not be more than 60 days prior to such other action. If no such record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

SECTION 6-INDEMNIFICATION AND ADVANCEMENT OF EXPENSES

Section 6.1. Indemnification.

The Corporation shall indemnify, defend and hold harmless, to the fullest extent permitted by applicable law as it presently exists or may hereafter be amended, any person (an "Indemnitee") who was or is made, or is threatened to be made, a party or is otherwise involved in any action, suit or proceeding, whether civil, criminal, administrative or investigative (a "Proceeding"), by reason of the fact that he or she, or a person for whom he or she is the legal representative, is or was a director or an officer of the Corporation or, while a director or an officer of the Corporation, is or was serving at the request of the Corporation as a director, officer, employee, member, trustee or agent of another corporation or of a partnership, joint venture, trust, nonprofit entity or other enterprise (including, but not limited to, service with respect to employee benefit plans) (any such entity, an "Other Entity"), against all liability and loss suffered (including, but not limited to, expenses (including, but not limited to, attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding). Notwithstanding the preceding sentence, the Corporation shall be required to indemnify an Indemnitee in connection with a Proceeding (or part thereof) commenced by such Indemnitee only if the commencement of such Proceeding (or part thereof) by the Indemnitee was authorized by the Board of Directors or the Proceeding (or part thereof) relates to the enforcement of the Corporation's obligations under this Section 6.1.

Section 6.2. Advancement of Expenses.

The Corporation shall to the fullest extent not prohibited by applicable law pay, on an as-incurred basis, all expenses (including, but not limited to attorneys' fees and expenses) incurred by an Indemnitee in defending any proceeding in advance of its final disposition. Such advancement shall be unconditional, unsecured and interest free and shall be made without regard to Indemnitee's ability to repay any expenses advanced; provided, however, that, to the extent required by law, such payment of expenses in advance of the final disposition of the Proceeding shall be made only upon receipt of an unsecured undertaking by the Indemnitee to repay all amounts advanced if it should be ultimately determined that the Indemnitee is not entitled to be indemnified under this Section 6 or otherwise.

Section 6.3. Claims.

If a claim for indemnification (following the final disposition of such proceeding) or advancement of expenses under this Section 6 is not paid in full within 60 days after a written claim therefor by the Indemnitee has been received by the Corporation, the Indemnitee may file suit to recover the unpaid amount of such claim and, if successful in whole or in part, shall be entitled to be paid the expense of prosecuting such claim to the fullest extent permitted by law. In any such action the Corporation shall have the burden of proving that the Indemnitee is not entitled to the requested indemnification or advancement of expenses under applicable law.

Section 6.4. Insurance.

The Corporation shall have the power to purchase and maintain insurance on behalf of any person who is or was a director, officer, trustee, employee, member, trustee or agent of the Corporation, or was serving at the request of the Corporation as a director, officer, trustee, employee or agent of an Other Entity, against any liability asserted against the person and incurred by the person in any such capacity, or arising out of his or her status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Section 6 or the DGCL.

Section 6.5. Non-Exclusivity of Rights.

The rights conferred on any Indemnitee by this Section 6 are not exclusive of other rights arising under any bylaw, agreement, vote of directors or stockholders or otherwise, and shall inure to the benefit of the heirs and legal representatives of such Indemnitee.

Section 6.6. Amounts Received from an Other Entity.

Subject to Section 6.7, the Corporation's obligation, if any, to indemnify or to advance expenses to any Indemnitee who was or is serving at the Corporation's request as a director, officer, employee or agent of an Other Entity shall be reduced by any amount such Indemnitee may collect as indemnification or advancement of expenses from such Other Entity.

Section 6.7. Indemnification Priority.

As between the Corporation and any other person (other than an entity directly or indirectly controlled by the Corporation) who provides indemnification to the Indemnitees for their service to, or on behalf of, the Corporation (collectively, the "Secondary Indemnitors") (i) the Corporation shall be the full indemnitor of first resort in respect of indemnification or advancement of expenses in connection with any Jointly Indemnifiable Claims (as defined below), pursuant to and in accordance with the terms of this Section 6, irrespective of any right of indemnification, advancement of expenses or other right of recovery any Indemnitee may have from any Secondary Indemnitor or any right to insurance coverage that Indemnitee may have under any insurance policy issued to any Secondary Indemnitor (i.e., the Corporation's obligations to such Indemnitees are primary and any obligation of any Secondary Indemnitor, or any insurer of any Secondary Indemnitor, to advance expenses or to provide indemnification or insurance coverage for the same loss or liability incurred by such Indemnitees is secondary to the Corporation's obligations), (ii) the Corporation shall be required to advance the full amount of expenses incurred by any such Indemnitee and shall be liable for the full amount of all liability and loss suffered by such Indemnitee (including, but not limited to, expenses (including, but not limited to, attorneys' fees and expenses), judgments, fines and amounts paid in settlement actually and reasonably incurred by such Indemnitee in connection with such Proceeding), without regard to any rights any such Indemnitee may have against any Secondary Indemnitor or against any insurance carrier providing insurance coverage to Indemnitee under any insurance policy issued to a Secondary Indemnitor, and (iii) the Corporation irrevocably waives, relinquishes and releases each Secondary Indemnitor from any and all claims against such Secondary Indemnitor for contribution, subrogation or any other recovery of any kind in respect thereof. The Corporation shall indemnify each Secondary Indemnitor directly for any amounts that such Secondary Indemnitor pays as indemnification or advancement on behalf of any such Indemnitee and for which such Indemnitee may be entitled to indemnification from the Corporation in connection with Jointly Indemnifiable Claims. No right of indemnification, advancement of expenses or other right of recovery that an Indemnitee may have from any Secondary Indemnitor shall reduce or otherwise alter the rights of the Indemnitee or the obligations of the Corporation hereunder. No advancement or payment by any Secondary Indemnitor on behalf of any such Indemnitee with respect to any claim for which such Indemnitee has sought indemnification from the Corporation shall affect the foregoing and the Secondary Indemnitors shall be subrogated to the extent of such advancement or payment to all of the rights of recovery of such Indemnitee against the Corporation. Each Indemnitee shall execute all papers reasonably required and shall do all things that may be reasonably necessary to secure the rights of such Indemnitee's Secondary Indemnitors under this Section 6.7, including the execution of such documents as may be necessary to enable the Secondary Indemnitors effectively to bring suit to enforce such rights, including in the right of the Corporation. Each of the Secondary Indemnitors shall be third-party beneficiaries with respect to this Section 6.7, entitled to enforce this Section 6.7. As used in this Section 6.7, the term "Jointly Indemnifiable Claims" shall be broadly construed and shall include, without limitation, any action, suit, proceeding or other matter for which an Indemnitee shall be entitled to indemnification, reimbursement, advancement of expenses or insurance coverage from both a Secondary Indemnitor (or an insurance carrier providing insurance coverage to any Secondary Indemnitor) and the Corporation, whether pursuant to Delaware law (or other applicable law in the case of any Secondary Indemnitor), any agreement or certificate of incorporation, bylaws, partnership agreement, operating agreement, certificate of formation, certificate of limited partnership or other organizational or governing documents of the Corporation or the Secondary Indemnitors or any insurance policy providing insurance coverage to any Secondary Indemnitor, as applicable.

Section 6.8. Amendment or Repeal.

Any right to indemnification or to advancement of expenses of any Indemnitee arising hereunder shall not be eliminated or impaired by an amendment to or repeal of this Section 6 after the occurrence of the act or omission that is the subject of the civil, criminal, administrative or investigative action, suit, proceeding or other matter for which indemnification or advancement of expenses is sought.

Section 6.9. Other Indemnification and Advancement of Expenses.

This Section 6 shall not limit the right of the Corporation, to the extent and in the manner permitted by law, to indemnify and to advance expenses to persons other than Indemnitees when and as authorized by appropriate corporate action.

Section 6.10. Reliance.

Indemnitees who after the date of the adoption of this Section 6 become or remain an Indemnitee described in Section 6.1 will be conclusively presumed to have relied on the rights to indemnity, advancement of expenses and other rights contained in this Section 6 in entering into or continuing the service. The rights to indemnification and to the advancement of expenses conferred in this Section 6 will apply to claims made against any Indemnitee described in Section 6.1 arising out of acts or omissions that occurred or occur either before or after the adoption of this Section 6 in respect of service as a director or officer of the corporation or other service described in Section 6.1.

Section 6.11. Successful Defense.

In the event that any proceeding to which an Indemnitee is a party is resolved in any manner other than by adverse judgment against the Indemnitee (including, without limitation, settlement of such proceeding with or without payment of money or other consideration) it shall be presumed that the Indemnitee has been successful on the merits or otherwise in such proceeding for purposes of Section 145(c) of the DGCL. Anyone seeking to overcome this presumption shall have the burden of proof and the burden of persuasion by clear and convincing evidence.

SECTION 7-NOTICES

Section 7.1. Notices.

Except as otherwise provided herein or permitted by applicable law, notices to directors and stockholders shall be in writing and delivered personally or mailed to the directors or stockholders at their addresses appearing on the books of the Corporation. If mailed, notice to a stockholder of the Corporation shall be deemed given when deposited in the mail, postage prepaid, directed to a stockholder at such stockholder’s address as it appears on the records of the Corporation. Without limiting the manner by which notice otherwise may be given effectively to stockholders, any notice to stockholders of the Corporation may be given by electronic transmission in the manner provided in Section 232 of the DGCL.

Section 7.2. Waivers.

A written waiver of any notice, signed by a stockholder or director, or a waiver by electronic transmission by such person or entity, whether given before or after the time of the event for which notice is to be given, shall be deemed equivalent to the notice required to be given to such person or entity. Neither the business nor the purpose of any meeting need be specified in the waiver. Attendance at any meeting shall constitute waiver of notice except attendance for the sole purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

SECTION 8-MISCELLANEOUS

Section 8.1. Corporate Seal.

The Board of Directors may provide a suitable seal, containing the name of the Corporation, which seal shall be in the charge of the Secretary of the Corporation. If and when so directed by the Board of Directors, duplicates of the seal may be kept and used by the Treasurer or by an Assistant Secretary, Assistant Treasurer or the Chief Financial Officer.

Section 8.2. Reliance upon Books, Reports, and Records.

Each director and each member of any committee designated by the Board of Directors of the Corporation shall, in the performance of his or her duties, be fully protected in relying in good faith upon the books and records of the Corporation and upon such information, opinions, reports or statements presented to the Corporation by any of its officers, agents or employees, or committees of the Board of Directors so designated, or by any other person or entity as to matters which such director or committee member reasonably believes are within such other person's or entity's professional or expert competence and that has been selected with reasonable care by or on behalf of the Corporation.

Section 8.3. Fiscal Year.

The fiscal year of the Corporation shall be as fixed by the Board of Directors.

Section 8.4. Time Periods.

In applying any provision of these bylaws that requires that an act be done or not be done a specified number of days before an event or that an act be done during a specified number of days before an event, calendar days shall be used, the day of the doing of the act shall be excluded, and the day of the event shall be included.

SECTION 9-AMENDMENTS

These bylaws may be altered, amended or repealed in accordance with the Certificate of Incorporation and the DGCL.

Exhibit B

FORM OF SURGERY PARTNERS, INC.

Amended and Restated Certificate of Incorporation

Pursuant to Sections 242 and 245 of the General Corporation Law of the State of Delaware, Surgery Partners, Inc. has adopted this Amended and Restated Certificate of Incorporation restating, integrating and amending its Certificate of Incorporation (originally filed April 2, 2015 and amended and restated on September 21, 2015), which Amended and Restated Certificate of Incorporation has been duly proposed by the directors and adopted by the stockholders of this corporation (by written consent pursuant to Section 228 of the General Corporation Law of the State of Delaware) in accordance with the provisions of Sections 242 and 245 of the General Corporation Law of the State of Delaware.

ARTICLE I – NAME

The name of the corporation is Surgery Partners, Inc. (the "Corporation").

ARTICLE II — REGISTERED OFFICE AND AGENT

The address of the Corporation's registered office in the State of Delaware is 1209 Orange Street, in the City of Wilmington, County of New Castle, 19801. The name of the Corporation's registered agent at such address is The Corporation Trust Company.

ARTICLE III – PURPOSE

The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the General Corporation Law of the State of Delaware (the "DGCL").

ARTICLE IV – CAPITALIZATION

(a) Authorized Shares. The total number of shares of stock that the Corporation shall have authority to issue is [●], consisting of 300,000,000 shares of Common Stock, par value $0.01 per share ("Common Stock"), and [●] shares of Preferred Stock, par value $0.01 per share ("Preferred Stock"). Such stock may be issued from time to time by the Corporation for such consideration as may be fixed by the board of directors of the Corporation (the "Board of Directors").

(b) Common Stock. Subject to the powers, preferences and rights of any Preferred Stock, including any series thereof, having any preference or priority over, or rights superior to, the Common Stock and except as otherwise provided by law and this Article IV, the holders of the Common Stock shall have and possess all powers and voting and other rights pertaining to the stock of the Corporation.

(i) *Voting*. Each holder of Common Stock, as such, shall be entitled to one vote for each share of Common Stock held of record by such holder on all matters on which stockholders generally are entitled to vote; provided, however, that to the fullest extent permitted by law, holders of Common Stock, as such, shall have no voting power with respect to, and shall not be entitled to vote on, any amendment to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) that relates solely to the terms of one or more outstanding series of Preferred Stock if only the holders of such affected series are entitled, either separately or together with the holders of one or more other such series, to vote thereon pursuant to this Amended and Restated Certificate of Incorporation (including any certificate of designations relating to any series of Preferred Stock) or pursuant to the DGCL. There shall be no cumulative voting.

(ii) *Dividends.* Dividends may be declared and paid on the Common Stock from funds lawfully available therefor as and when determined by the Board of Directors and subject to any preferential dividend rights of any then outstanding Preferred Stock. Except as otherwise provided by the DGCL or this Amended and Restated Certificate of Incorporation, the holders of record of shares of Common Stock shall share ratably in all dividends payable in cash, stock or otherwise and other distributions, whether in respect of liquidation or dissolution (voluntary or involuntary) or otherwise.

(iii) *No Preemptive Rights*. The holders of the Common Stock shall have no preemptive rights to subscribe for any shares of any class of stock of the Corporation whether now or hereafter authorized.

(iv) *No Conversion Rights*. The Common Stock shall not be convertible into, or exchangeable for, shares of any other class or classes or of any other series of the same class of the Corporation's capital stock.

(v) *Liquidation Rights*. In the event of any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, after payment or provision for payment of the debts and other liabilities of the Corporation and of the preferential and other amounts, if any, to which the holders of Preferred Stock shall be entitled, the holders of all outstanding shares of Common Stock shall be entitled to receive the remaining assets of the Corporation available for distribution ratably in proportion to the number of shares held by each such stockholder. A merger or consolidation of the Corporation with or into any other corporation or other entity or a sale or conveyance of all or any part of the assets of the Corporation, in any such case which shall not in fact result in the liquidation of the Corporation and the distribution of assets to its stockholders, shall not be deemed to be a voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation.

(c) Preferred Stock. Shares of Preferred Stock may be issued in one or more series, from time to time, with each such series to consist of such number of shares and to have such voting powers relative to other classes or series of Preferred Stock, if any, or Common Stock, full or limited or no voting powers, and such designations, preferences and relative, participating, optional or other special rights, and the qualifications, limitations or restrictions thereof, as shall be stated in the resolution or resolutions providing for the issuance of such series adopted by the Board of Directors, and the Board of Directors is hereby expressly vested with the authority, to the full extent now or hereafter provided by applicable law, to adopt any such resolution or resolutions. Except as otherwise provided in this Amended and Restated Certificate of Incorporation or any certificate of designations relating to any series of Preferred Stock, no vote of the holders of the Preferred Stock or Common Stock shall be a prerequisite to the designation or issuance of any shares of any series of the Preferred Stock authorized by and complying with the conditions of this Amended and Restated Certificate of Incorporation and any certificate of designations relating to any series of Preferred Stock, the right to have such vote being expressly waived by all present and future holders of the capital stock of the Corporation. Any shares of Preferred Stock that are redeemed, purchased or acquired by the Corporation may be reissued except as otherwise provided by law, this Amended and Restated Certificate of Incorporation or any certificate of designations relating to any series of Preferred Stock. Different series of Preferred Stock shall not be construed to constitute different classes of shares for the purposes of voting by classes unless expressly provided in any certificate of designations or any resolution or resolutions providing for the issue of such series adopted by the Board of Directors.

(d) No Class Vote on Changes in Authorized Number of Shares of Preferred Stock. Subject to the rights of the holders of any series of Preferred Stock pursuant to the terms of this Amended and Restated Certificate of Incorporation, any certificate of designations or any resolution providing for the issuance of such series of stock adopted by the Board of Directors, the number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL.

ARTICLE V – BOARD OF DIRECTORS

(a) Number of Directors; Vacancies and Newly Created Directorships. The number of directors constituting the Board of Directors shall be not fewer than three and not more than 15, each of whom shall be a natural person.

Subject to the special rights of the holders of any series of Preferred Stock to elect directors, the precise number of directors shall be fixed from time to time by a majority vote of the Board of Directors, provided that, prior to the date (the "Trigger Date") that the Sponsor Entities (as defined below) cease collectively to beneficially own (directly or indirectly) fifty percent (50%) or more of the then outstanding capital stock of the Corporation entitled to vote generally in the election of directors ("Voting Stock"), the size of the Board of Directors will be determined by the affirmative vote of at least a majority of the Corporation's then outstanding Voting Stock. Vacancies and newly-created directorships shall be filled exclusively by vote of a majority of the directors then in office, even if less than a quorum, or by a sole remaining director, except that (i) any vacancy created by the removal of a director by the stockholders for cause shall only be filled, in addition to any other vote otherwise required by law, by vote of a majority of the then outstanding Voting Stock and (ii) prior to the Trigger Date, vacancies will be filled by vote of a majority of the then outstanding Voting Stock. No decrease in the number of directors constituting the Board of Directors shall shorten the term of any incumbent director. A director elected to fill a vacancy shall be elected for the unexpired term of his or her predecessor in office, and a director chosen to fill a position resulting from an increase in the number of directors shall hold office until the next election of the class for which such director shall have been chosen, subject to the election and qualification of his or her successor and to his or her earlier death, resignation or removal. "Affiliate" means, with respect to any Person, any other Person that controls, is controlled by, or is under common control with such Person; the term "control," as used in this definition, means the power to direct or cause the direction of the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and "controlled" and "controls" have meanings correlative to the foregoing. "HIG Stock Sale Agreement" means that certain Stock Purchase Agreement, dated as of May 9, 2017, by and among H.I.G. Surgery Centers, LLC, H.I.G. Bayside Debt & LBO Fund II L.P., BCPE Seminole Holdings LP, and the Corporation. "HIG Stock Sale Closing" means the closing of the purchase and sale of Common Stock pursuant to the HIG Stock Sale Agreement. "Person" means an individual, any general partnership, limited partnership, limited liability company, corporation, trust, business trust, joint stock company, joint venture, unincorporated association, cooperative or association or any other legal entity or organization of whatever nature, and shall include any successor (by merger or otherwise) of such entity. "Sponsor Entities" means, collectively, (x) before the HIG Stock Sale Closing, investment funds affiliated with H.I.G. Capital, LLC or Bain Capital Private Equity, LP and their respective successors, Transferees and Affiliates and (b) after the HIG Stock Sale Closing, investment funds affiliated with Bain Capital Private Equity, LP and its successors, Transferees and Affiliates. "Transferee" means, any Person who becomes a beneficial owner of Voting Stock upon having purchased such shares from the investment funds affiliated with the Sponsor Entities or their respective Affiliates, provided, however, that a purchaser of Voting Stock in an registered public offering shall not be a "Transferee." For the purpose of this Amended and Restated Certificate of Incorporation, "beneficial ownership" shall be determined in accordance with Rule 13d-3 promulgated under the Securities Exchange Act of 1934, as amended (the "Exchange Act").

(b) Classified Board of Directors. Subject to the special rights of the holders of any series of Preferred Stock to elect directors, the Board of Directors (other than those directors elected by the holders of any series of Preferred Stock) shall be classified into three classes: Class I; Class II; and Class III. Each class shall consist, as nearly as practicable, of one-third of the total number of directors constituting the entire Board of Directors and the allocation of directors among the three classes shall be determined by the Board of Directors. The term of office of the Class I Directors shall expire at the 2019 annual meeting of stockholders, the term of office of the Class II Directors shall expire at the 2020 annual meeting of stockholders and the term of office of the Class III Directors shall expire at the 2018 annual meeting of stockholders. Each director in each class shall hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. At each annual meeting of stockholders beginning with the first annual meeting of stockholders following the filing of this Amended and Restated Certificate of Incorporation, the successors of the class of directors whose term expires at that meeting shall be elected to hold office for a term expiring at the annual meeting of stockholders to be held in the third year following the year of their election, with each director in each such class to hold office until his or her successor is duly elected and qualified or until his or her earlier death, resignation or removal. If the number of directors is changed, any increase or decrease shall be apportioned among the classes so as to maintain the number of directors in each class as nearly equal as possible and such apportionment shall be determined by the Board of Directors.

(c) Removal. Subject to the special rights of the holders of any series of Preferred Stock to elect directors, the directors of the Corporation may be removed only for cause by the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, at a meeting of the stockholders called for that purpose.

ARTICLE VI – LIMITATION OF DIRECTOR LIABILITY

To the fullest extent that the DGCL or any other law of the State of Delaware (as they exist on the date hereof or as they may hereafter be amended) permits the limitation or elimination of the liability of directors, no director of the Corporation shall be liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director. No amendment to, or modification or repeal of, this Article VI shall adversely affect any right or protection of a director of the Corporation existing hereunder with respect to any state of facts existing or act or omission occurring, or any cause of action, suit or claim that, but for this Article VI, would accrue or arise, prior to such amendment, modification or repeal. If the DGCL is amended after the Effective Time to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

ARTICLE VII – MEETINGS OF STOCKHOLDERS

(a) No Action by Written Consent. From and after the Trigger Date, any action required or permitted to be taken by the stockholders of the Corporation may be effected only at a duly called annual or special meeting of stockholders of the Corporation and may not be effected by any consent in writing by such stockholders.

(b) Special Meetings of Stockholders. Subject to any special rights of the holders of any series of Preferred Stock, and to the requirements of applicable law, special meetings of stockholders of the Corporation may be called only (i) by or at the direction of the Board of Directors pursuant to a written resolution adopted by a majority of the total number of directors which the Corporation would have if there were no vacancies, or (ii) prior to the Trigger Date, by the Secretary of the Corporation at the request of the holders of fifty percent (50%) or more of the then outstanding Voting Stock. Any business transacted at any special meeting of stockholders shall be limited to matters relating to the purpose or purposes stated in the notice of meeting.

(c) Election of Directors by Written Ballot. Election of directors need not be by written ballot.

ARTICLE VIII – AMENDMENTS TO THE CERTIFICATE OF INCORPORATION AND BYLAWS

(a) Bylaws. In furtherance and not in limitation of the powers conferred by law, the Board of Directors is expressly authorized to make, alter, amend or repeal the bylaws of the Corporation subject to the power of the stockholders of the Corporation entitled to vote with respect thereto to make, alter, amend or repeal the bylaws both before and after the Trigger Date; provided, that with respect to the powers of stockholders entitled to vote with respect thereto to make, alter, amend or repeal the bylaws, from and after the Trigger Date, in addition to any other vote otherwise required by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote with respect thereto, voting together as a single class, shall be required to make, alter, amend or repeal the bylaws of the Corporation.

(b) Amendments to the Certificate of Incorporation. Subject to any certificate of designations relating to any series of Preferred Stock, the Corporation reserves the right to amend, alter, change or repeal any provision contained in this Amended and Restated Certificate of Incorporation, in the manner now or hereafter prescribed by the DGCL, and all rights conferred upon stockholders herein are granted subject to this reservation. Notwithstanding anything to the contrary contained in this Amended and Restated Certificate of Incorporation, and notwithstanding that a lesser percentage may be permitted from time to time by applicable law, no provision of Article V, Article VI, paragraphs (a) and (b) of Article VII, Article VIII, Article IX, Article X and Article XI may be altered, amended or repealed in any respect, nor may any provision or bylaw inconsistent therewith be adopted, unless, in addition to any other vote required by this Amended and Restated Certificate of Incorporation or

otherwise required by law, (i) prior to the Trigger Date, such alteration, amendment, repeal or adoption is approved by, in addition to any other vote otherwise required by law, the affirmative vote of the holders of a majority of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, and (ii) from and after the Trigger Date, such alteration, amendment, repeal or adoption is approved by, in addition to any other vote otherwise required by law, the affirmative vote of the holders of at least seventy-five percent (75%) of the voting power of the outstanding shares of capital stock of the Corporation entitled to vote generally in the election of directors, voting together as a single class, at a meeting of the stockholders called for that purpose.

ARTICLE IX – BUSINESS COMBINATIONS

(a) Opt Out of DGCL 203. The Corporation shall not be governed by Section 203 of the DGCL.

(b) Limitations on Business Combinations. Notwithstanding the foregoing, the Corporation shall not engage in any business combination (as defined below), at any point in time at which the Corporation's Common Stock is registered under Sections 12(b) or 12(g) of the Exchange Act, with any interested stockholder (as defined below) for a period of three (3) years following the time that such stockholder became an interested stockholder, unless:

(i) prior to such time, the Board of Directors approved either the business combination or the transaction which resulted in the stockholder becoming an interested stockholder, or

(ii) upon consummation of the transaction which resulted in the stockholder becoming an interested stockholder, the interested stockholder owned at least 85% of the voting stock (as defined below) of the Corporation outstanding at the time the transaction commenced, excluding for purposes of determining the voting stock outstanding (but not the outstanding voting stock owned by the interested stockholder) those shares owned by (i) persons who are directors and also officers or (ii) employee stock plans in which employee participants do not have the right to determine confidentially whether shares held subject to the plan will be tendered in a tender or exchange offer, or

(iii) at or subsequent to such time, the business combination is approved by the Board of Directors and authorized at an annual or special meeting of stockholders, and not by written consent, by the affirmative vote of at least two thirds of the outstanding voting stock of the Corporation which is not owned by the interested stockholder.

(c) Definitions. For purposes of this Article IX, references to:

(i) "affiliate" means a person that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, another person.

(ii) "associate," when used to indicate a relationship with any person, means: (i) any corporation, partnership, unincorporated association or other entity of which such person is a director, officer or partner or is, directly or indirectly, the owner of 20% or more of any class of voting stock; (ii) any trust or other estate in which such person has at least a 20% beneficial interest or as to which such person serves as trustee or in a similar fiduciary capacity; and (iii) any relative or spouse of such person, or any relative of such spouse, who has the same residence as such person.

(iii) "business combination," when used in reference to the Corporation and any interested stockholder of the Corporation, means:

(1) any merger or consolidation of the Corporation or any direct or indirect majority-owned subsidiary of the Corporation (a) with the interested stockholder, or (b) with any other corporation, partnership, unincorporated association or other entity if the merger or consolidation is caused by the interested stockholder and as a result of such merger or consolidation paragraph (b) of this Article IX is not applicable to the surviving entity;

(2) any sale, lease, exchange, mortgage, pledge, transfer or other disposition (in one transaction or a series of transactions), except proportionately as a stockholder of the Corporation, to or with the interested stockholder, whether as part of a dissolution or otherwise, of assets of the Corporation or of any direct or indirect majority-owned subsidiary of the Corporation which assets have an aggregate market value equal to 10% or more of either the aggregate market value of all the assets of the Corporation determined on a consolidated basis or the aggregate market value of all the outstanding stock of the Corporation;

(3) any transaction which results in the issuance or transfer by the Corporation or by any direct or indirect majority-owned subsidiary of the Corporation of any stock of the Corporation or of such subsidiary to the interested stockholder, except: (a) pursuant to the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which securities were outstanding prior to the time that the interested stockholder became such; (b) pursuant to a merger under Section 251(g) of the DGCL; (c) pursuant to a dividend or distribution paid or made, or the exercise, exchange or conversion of securities exercisable for, exchangeable for or convertible into stock of the Corporation or any such subsidiary which security is distributed, pro rata to all holders of a class or series of stock of the Corporation subsequent to the time the interested stockholder became such; (d) pursuant to an exchange offer by the Corporation to purchase stock made on the same terms to all holders of said stock; or (e) any issuance or transfer of stock by the Corporation; *provided*, *however*, that in no case under items (c)-(e) of this subsection (3) shall there be an increase in the interested stockholder's proportionate share of the stock of any class or series of the Corporation or of the voting stock of the Corporation (except as a result of immaterial changes due to fractional share adjustments);

(4) any transaction involving the Corporation or any direct or indirect majority-owned subsidiary of the Corporation which has the effect, directly or indirectly, of increasing the proportionate share of the stock of any class or series, or securities convertible into the stock of any class or series, of the Corporation or of any such subsidiary which is owned by the interested stockholder, except as a result of immaterial changes due to fractional share adjustments or as a result of any purchase or redemption of any shares of stock not caused, directly or indirectly, by the interested stockholder; or

(5) any receipt by the interested stockholder of the benefit, directly or indirectly (except proportionately as a stockholder of the Corporation), of any loans, advances, guarantees, pledges, or other financial benefits (other than those expressly permitted in subsections (1)-(4) above) provided by or through the Corporation or any direct or indirect majority-owned subsidiary.

(iv) "control," including the terms "controlling," "controlled by" and "under common control with," means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a person, whether through the ownership of voting stock, by contract, or otherwise. A person who is the owner of 20% or more of the outstanding voting stock of the Corporation, partnership, unincorporated association or other entity shall be presumed to have control of such entity, in the absence of proof by a preponderance of the evidence to the contrary. Notwithstanding the foregoing, a presumption of control shall not apply where such person holds voting stock, in good faith and not for the purpose of circumventing this Article IX, as an agent, bank, broker, nominee, custodian or trustee for one or more owners who do not individually or as a group have control of such entity.

(v) "interested stockholder" means any person (other than the Corporation or any direct or indirect majority-owned subsidiary of the Corporation) that (i) is the owner of 15% or more of the outstanding voting stock of the Corporation, or (ii) is an affiliate or associate of the Corporation and was the owner of 15% or more of the outstanding voting stock of the Corporation at any time within the three (3) year period immediately prior to the date on which it is sought to be determined whether such person is an interested stockholder, and the affiliates and associates of such person; provided, however, that the term "interested stockholder" shall not include (a) the Sponsor Entities, or (b) any person whose ownership of shares in excess of the 15% limitation set forth herein is the result of any action taken solely by the Corporation; provided that such person specified in this clause (b) shall be an interested stockholder if thereafter such person acquires additional shares of voting stock of the Corporation, except as a result of further corporate action not caused, directly or indirectly, by such person. For the purpose of

determining whether a person is an interested stockholder, the voting stock of the Corporation deemed to be outstanding shall include stock deemed to be owned by the person through application of the definition of "owner" below but shall not include any other unissued stock of the Corporation which may be issuable pursuant to any agreement, arrangement or understanding, or upon exercise of conversion rights, warrants or options, or otherwise.

(i) "owner," including the terms "own" and "owned," when used with respect to any stock, means a person that individually or with or through any of its affiliates or associates:

(1) beneficially owns such stock, directly or indirectly; or

(2) has (a) the right to acquire such stock (whether such right is exercisable immediately or only after the passage of time) pursuant to any agreement, arrangement or understanding, or upon the exercise of conversion rights, exchange rights, warrants or options, or otherwise; *provided, however*, that a person shall not be deemed the owner of stock tendered pursuant to a tender or exchange offer made by such person or any of such person's affiliates or associates until such tendered stock is accepted for purchase or exchange; or (b) the right to vote such stock pursuant to any agreement, arrangement or understanding; *provided, however*, that a person shall not be deemed the owner of any stock because of such person's right to vote such stock if the agreement, arrangement or understanding to vote such stock arises solely from a revocable proxy or consent given in response to a proxy or consent solicitation made to ten (10) or more persons; or

(3) has any agreement, arrangement or understanding for the purpose of acquiring, holding, voting (except voting pursuant to a revocable proxy or consent as described in item (b) of subsection (2) above), or disposing of such stock with any other person that beneficially owns, or whose affiliates or associates beneficially own, directly or indirectly, such stock.

(ii) "person" means any individual, corporation, partnership, unincorporated association or other entity.

(iii) "stock" means, with respect to any corporation, capital stock and, with respect to any other entity, any equity interest.

(iv) "voting stock" means stock of any class or series entitled to vote generally in the election of directors.

ARTICLE X – RENOUNCEMENT OF CORPORATE OPPORTUNITY

(a) Scope. The provisions of this Article X are set forth to define, to the extent permitted by applicable law, the duties of Exempted Persons (as defined below) to the Corporation with respect to certain classes or categories of business opportunities. "Exempted Persons" means the Sponsor Entities and all of their respective partners, principals, directors, officers, members, managers and/or employees, including any of the foregoing who serve as officers or directors of the Corporation.

(b) Competition and Allocation of Corporate Opportunities. The Exempted Persons shall not have any fiduciary duty to refrain from engaging directly or indirectly in the same or similar business activities or lines of business as the Corporation or any of its subsidiaries. To the fullest extent permitted by applicable law, the Corporation, on behalf of itself and its subsidiaries, renounces any interest or expectancy of the Corporation and its subsidiaries in, or in being offered an opportunity to participate in, business opportunities that are from time to time presented to the Exempted Persons, even if the opportunity is one that the Corporation or its subsidiaries might reasonably be deemed to have pursued or had the ability or desire to pursue if granted the opportunity to do so, and each such Exempted Person shall have no duty to communicate or offer such business opportunity to the Corporation and, to the fullest extent permitted by applicable law, shall not be liable to the Corporation or any of its subsidiaries for breach of any fiduciary or other duty, as a director or officer or otherwise, by reason of the fact that such Exempted Person pursues or acquires such business opportunity, directs such business opportunity to another person or fails to present such business opportunity, or information regarding such business opportunity, to the Corporation or its subsidiaries.

(c) Certain Matters Deemed Not Corporate Opportunities. In addition to and notwithstanding the foregoing provisions of this Article X, a corporate opportunity shall not be deemed to belong to the Corporation if it is a business opportunity that the Corporation is not financially able or contractually permitted or legally able to undertake, or that is, from its nature, not in the line of the Corporation's business or is of no practical advantage to it or that is one in which the Corporation has no interest or reasonable expectancy.

(d) Amendment of this Article. No amendment or repeal of this Article X in accordance with the provisions of paragraph (b) of Article VIII shall apply to or have any effect on the liability or alleged liability of any Exempted Person for or with respect to any activities or opportunities of which such Exempted Person becomes aware prior to such amendment or repeal. This Article X shall not limit any protections or defenses available to, or indemnification or advancement rights of, any director or officer of the Corporation under this Amended and Restated Certificate of Incorporation, the Corporation's bylaws or applicable law.

ARTICLE XI – EXCLUSIVE JURISDICTION FOR CERTAIN ACTIONS

The Court of Chancery of the State of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation arising pursuant to any provision of the DGCL or the Corporation's Amended and Restated Certificate of Incorporation or bylaws or (iv) any action asserting a claim against the Corporation governed by the internal affairs doctrine, in each case excluding actions in which the Court of Chancery of the State of Delaware concludes that an indispensable party is not subject to the jurisdiction of the Delaware courts and can be subject to the jurisdiction of another court within the United States. Any person or entity purchasing or otherwise acquiring any interest in the shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Article XI.

ARTICLE XII – SEVERABILITY

If any provision or provisions of this Amended and Restated Certificate of Incorporation shall be held to be invalid, illegal or unenforceable as applied to any circumstance for any reason whatsoever: (i) the validity, legality and enforceability of such provisions in any other circumstance and of the remaining provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable that is not itself held to be invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and (ii) to the fullest extent possible, the provisions of this Amended and Restated Certificate of Incorporation (including, without limitation, each such portion of any paragraph of this Amended and Restated Certificate of Incorporation containing any such provision held to be invalid, illegal or unenforceable) shall be construed so as to permit the Corporation to protect its directors, officers, employees and agents from personal liability in respect of their good faith service to or for the benefit of the Corporation to the fullest extent permitted by law.

* * * * *

IN WITNESS WHEREOF, the undersigned has caused this Amended and Restated Certificate of Incorporation to be executed by the officer below this [●] day of [●], 2017.

SURGERY PARTNERS, INC.

By: _____
Name:
Title:

[Signature Page to Amended and Restated Certificate of Incorporation]

Exhibit C

Form of

Amended and Restated

Registration Rights Agreement

by and among

Surgery Partners, Inc.,

Certain Stockholders of Surgery Partners, Inc.

and

Certain other parties hereto.

Dated as of [●], 2017

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AMENDED AND RESTATED REGISTRATION RIGHTS AGREEMENT

This Amended and Restated Registration Rights Agreement (this "Agreement") is made as of [●], 2017 by and among Surgery Partners, Inc., a Delaware corporation (the "Company"), BCPE Seminole Holdings LP, a Delaware limited partnership ("Bain"), and each other Stockholder party hereto as listed on the signature pages to this Agreement or who becomes a party hereto pursuant to Section 4.1 (each, individually, a "Stockholder" and together, the "Stockholders").

RECITALS

1. This agreement amends and restates that certain Registration Rights Agreement, dated as of September 30, 2015, by and among the Company, H.I.G. Surgery Centers, LLC, a Delaware limited liability company ("H.I.G."), and each other stockholder party thereto, regarding the Company's common stock, $0.01 par value per share ("Common Stock") held by H.I.G. and the other stockholders party thereto.

2. Bain and H.I.G. are party to that that certain Stock Purchase Agreement, dated as of May 9, 2017 (the "Stock Purchase Agreement") pursuant to which Bain will purchase Common Stock from H.I.G.

3. Bain and the Company are party to that certain Securities Purchase Agreement, dated as of May 9, 2017 (the "Securities Purchase Agreement") pursuant to which Bain will purchase 10.00% Series A Convertible Perpetual Participating Preferred Stock, par value $0.01 per share, of the Company ("Preferred Stock").

4. In connection with transactions contemplated by the foregoing agreements, the parties hereto have agreed to set forth their agreements regarding registration rights with respect to the Common Stock and Preferred Stock and certain other matters relating to the transactions contemplated by the Stock Purchase Agreement and the Securities Purchase Agreement.

AGREEMENT

Therefore, the parties hereto hereby agree as follows:

ARTICLE I
EFFECTIVENESS; DEFINITIONS.

1.1 Effectiveness. This Agreement shall become effective upon consummation of the transactions contemplated by the Securities Purchase Agreement.

1.2 Definitions. Certain terms are used in this Agreement as specifically defined herein. These definitions are set forth or referred to in Section 6 hereof.

ARTICLE II
REGISTRATION RIGHTS.

The Company will perform and comply, and cause each of its subsidiaries to perform and comply, with such of the following provisions as are applicable to it. Each Holder will perform and comply with such of the following provisions as are applicable to such Holder.

2.1 Demand Registration Rights. The Bain Parties may, by written notice to the Company, request that the Company effect the registration for a Public Offering of Registrable Shares having an anticipated net aggregate offering price of at least $10,000,000 ($25,000,000 in the case of an underwritten offering) (for the avoidance of doubt, the Bain Parties may deliver a demand for registration under this Section 2.1 whether or not the Bain Parties own Registrable Shares at the time of such request). If the Bain Party initiating the registration intends to distribute the Registrable Shares in an underwritten offering, it will so advise the Company in their request. Promptly after receipt of notice requesting registration pursuant to this Section 2.1, the Company will give written notice of such requested registration to all other holders of Registrable Shares (a "Demand Notice"). Subject to the limitations set forth in Sections 2.1.1, the Company will use its commercially reasonable efforts to effect the registration under the Securities Act of the Registrable Shares that the Company has been requested to register by the Bain Party requesting such registration and all other Registrable Shares that the Company has been requested to register by other holders of Registrable Shares by notice delivered to the Company within 20 days after the giving of such notice by the Company.

2.1.1 Limitations. The Company will not be required to effect more than five registrations at the request of any Bain Party; *provided*, that, the Bain Parties shall be charged with a request only if a Registration Statement covering at least 25% of the applicable Registrable Shares shall have been declared effective by the SEC and remained effective for not less than one hundred eighty (180) days. For the avoidance of doubt, a request for Shelf Registration pursuant to Section 2.3.2 shall constitute a request within the meaning of this Section 2.1.1, but Takedown Demands pursuant to Section 2.3.3 shall not constitute additional requests. If from the time of any request to register Registrable Shares pursuant to this Section 2.1 to but not including the date when such registration becomes effective, the Company is engaged or has firm plans to engage within 90 days of the time of such request in a registered public offering as to which the holders may include Registrable Shares pursuant to Section 2.2, then the Company may, at its option, decline such request.

2.2 Piggyback Registration Rights.

2.2.1 Piggyback Registration. Whenever the Company (for itself or for any other Stockholder) proposes to register any of its equity securities under the Securities Act on a form of Registration Statement that would allow registration of Registrable Shares for sale to the public (except with respect to Registration Statements on Form S-4, Form S-8 or their respective successor forms) the Company will, prior to such filing, give written notice to each Stockholder of the Company's intention to so register. Upon the written request of any Stockholder given within 10 days after the Company provides such notice, the Company shall use reasonable efforts to cause all of such parties' requested Registrable Shares to be registered under the Securities Act; *provided, however*, that the Company shall have the right to postpone or withdraw any registration proposed pursuant to this Section 2.2 without obligation to any Stockholder.

2.2.2 Selection of Underwriter. In the case of any offering under this Section 2.2 involving an underwriting, the Board shall have the right to designate the managing underwriter; *provided, however*, that such managing underwriter shall be an investment bank of national reputation.

2.2.3 Allocation of Shares. In connection with any offering under this Section 2.2 involving an underwriting, the Company shall not be required to include any Registrable Shares in such underwriting unless the holders thereof accept the terms of the underwriting as agreed

upon between the Company and the underwriters selected by it. Further, if the managing underwriter advises the Company that, in its view, the number of Registrable Shares requested to be included in such registration exceeds the Maximum Offering Size, the Company will include in such registration, in the following priority, up to the Maximum Offering Size: first, so many shares of Common Stock proposed to be registered by the Company (for itself or for any other Stockholder pursuant to a Demand Notice) as would not cause the offering to exceed the Maximum Offering Size; and second, any Registrable Shares requested to be included in such registration by the Stockholders, allocated, if necessary, pro rata on the basis of their relative number of Registrable Shares so held.

2.2.4 Registration and Offering Procedures. In connection with the registration of Registrable Shares under the Securities Act, the Company shall:

(a) Prepare and file with the Commission the Registration Statement and use its commercially reasonable efforts to cause such Registration Statement to become effective.

(b) Following the effectiveness of the Registration Statement, use its commercially reasonable efforts to prepare and file with the Commission any amendments and supplements to the Registration Statement and the prospectus included in the Registration Statement as may be necessary to keep the Registration Statement continuously effective under the Securities Act until the Registrable Shares requested to be registered thereunder are sold; *provided further* that the Company shall promptly amend, renew or replace, as necessary, any Registration Statement that shall have expired or otherwise been deemed unusable and shall use its commercially reasonable efforts to keep such amended, renewed or replaced Registration Statement continuously effective under the Securities Act until the Registrable Shares requested to be registered thereunder are sold.

(c) Furnish to each selling Stockholder such reasonable numbers of copies of the prospectus included in the Registration Statement, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as the selling Stockholder may reasonably request in order to facilitate the public sale or other disposition of the Registrable Shares owned by such selling Stockholder;

(d) Use commercially reasonable efforts to promptly remove restrictive legends from any Registrable Shares to be sold pursuant to the Registration Statement.

(e) Use commercially reasonable efforts to register or qualify the Registrable Shares covered by the Registration Statement under the securities or blue sky laws of such states as the selling Stockholder shall reasonably request, and do any and all other acts and things that may be necessary or desirable to enable the selling Stockholder to consummate the public sale or other disposition within such states of the Registrable Shares owned by the selling Stockholder; *provided*, *however*, that the Company shall not be required in connection with this paragraph (e) to qualify as a foreign corporation in any jurisdiction, execute a general consent to service of process in any jurisdiction, or subject itself to taxation in any jurisdiction;

(f) Enter into customary agreements (including an underwriting agreement in customary form) and take such other actions as are reasonably required in order to

expedite or facilitate the sale of such Registrable Shares, including without limitation providing reasonable access for due diligence to a representative appointed by the majority of the Holders covered by the applicable Registration Statement, any underwriter participating in any disposition to be effected pursuant to such Registration Statement or any attorney, accountant or other agent retained by such Holders or any such underwriter, including such information in the prospectus as is reasonably requested by the representative, managing underwriter or attorney, accountant or other agent and making management available to participate in a "roadshow" as reasonably requested by the representative, managing underwriter or attorney, accountant or other agent;

(g) To the extent practicable, provide legal opinions covering the matters customarily covered in opinions requested in underwritten offerings and such other matters as may be reasonably requested by the holders of Registrable Shares and the underwriter, and an auditor's "comfort letter" addressed to the selling Stockholder;

(h) Following a Public Offering, provide adequate current public information necessary for compliance with Rule 144(c) of the Securities Act; and

(i) Otherwise cooperate reasonably with, and take such customary actions as may reasonably be requested by the holders of Registrable Shares in connection with such registration.

2.2.5 Amended Prospectus. If the Company has delivered preliminary or final prospectuses to the selling Stockholders and after having done so the prospectus is amended to comply with the requirements of the Securities Act, the Company shall promptly notify the selling Stockholders and, if requested, the selling Stockholders shall immediately cease making offers of Registrable Shares and return all prospectuses to the Company. The Company shall promptly provide the selling Stockholders with revised prospectuses and, following receipt of the revised prospectuses and compliance with any related requirements of the Securities Act and any applicable state securities or blue sky laws, the selling Stockholders shall be free to resume making offers of the Registrable Shares. Any period during which a prospectus is unusable pursuant to this Section 2.2 shall be added to the 180-day period in Section 2.2.4(b).

2.2.6 Allocation of Expenses. The Company will pay all expenses in complying with this Article II, including all registration and filing fees, exchange listing fees, printing, messenger and delivery expenses, applicable stock exchange fees, fees of accountants for the Company, fees and disbursements of counsel of the Company and the reasonable fees and expenses of one counsel selected by the holder(s) of a majority of the Registrable Shares included in such registration, state securities or blue sky reasonable fees and expenses, the expense of any special audits incident to or required by any such registration, any fees and disbursements customarily paid by the issuers of securities and expenses incurred in connection with any road show (including the reasonable out-of-pocket expenses of the selling Stockholders) but excluding underwriting discounts, selling commissions or any other brokerage or underwriting fees and expenses and the fees and expenses of the selling Stockholders' own counsel (other than the one counsel selected as provided above and, if an additional counsel to certain selling Stockholders is used that is also counsel to the Company, such counsel).

2.3 Short-Form Registration.

2.3.1 Request for Short-Form Registration. At any time and from time to time, the Bain Parties shall have the right to make a written request to the Company to register, and the Company shall register in accordance with the terms of this Agreement, the sale of the number of Registrable Shares stated in such request under the Securities Act on Form S-3 or any similar short-form registration (a "Short-Form Registration"); *provided*, *however*, that the Company shall not be obligated to effect such demand for a Short-Form Registration (i) if the aggregate offering price of the Registrable Shares to be sold in such offering (including piggyback shares and before deduction of any underwriting discounts or commissions) is not reasonably expected to be at least $25,000,000 or (ii) within 90 days after the effective date of a previous Short-Form Registration or other previous registration in which the Holders of Registrable Shares were given piggyback rights pursuant to Section 2.2. Each request for a Short-Form Registration by the Bain Parties shall state the amount of the Registrable Shares proposed to be sold and the intended method of disposition thereof. If on the date of the request for Short Form Registration: (i) the Company is a WKSI, then the Short Form Registration request may request Registration of an unspecified amount of Registrable Securities; and (ii) the Company is not a WKSI, then the Short Form Registration request shall specify the aggregate amount of Registrable Securities to be registered. The Company shall provide to the Bain Parties the information necessary to determine the Company's status as a WKSI upon request.

2.3.2. Shelf Registration. If the Bain Parties request that a Short-Form Registration be filed pursuant to Rule 415 (a "Shelf Registration") and the Company is qualified to do so, the Company shall use commercially reasonable efforts to cause the Shelf Registration to be declared effective under the Securities Act as soon as reasonably practicable after filing, and, if the Company is a WKSI at the time of any such request, to cause such Shelf Registration to be an automatic shelf registration statement (as defined in Rule 405 under the Securities Act), and once effective, the Company shall cause the Shelf Registration to remain effective (including by filing a new Shelf Registration, if necessary) for a period ending on the earlier of (i) the date on which all Registrable Securities included in such registration have been sold or distributed pursuant to the Shelf Registration and (ii) the date as of which there are no longer in existence any Registrable Securities covered by the Shelf Registration. Notwithstanding the foregoing obligations, if the Company furnishes to the Bain Parties a certificate signed by the Company's chief executive officer stating that in the good faith judgment of the Company's Board of Directors it would be materially detrimental to the Company and its stockholders for such registration statement to either become effective or remain effective for as long as such registration statement otherwise would be required to remain effective, because such action would (i) materially interfere with a significant acquisition, corporate reorganization, or other similar transaction involving the Company; (ii) require premature disclosure of material information that the Company has a bona fide business purpose for preserving as confidential; or (iii) render the Company unable to comply with requirements under the Securities Act or Exchange Act, then the Company shall have the right to defer taking action with respect to such filing for a period of not more than sixty days after the request is given.

2.3.3. Shelf Takedowns. At any time when a Shelf Registration is effective, upon a written demand (a "Takedown Demand") by any Bain Party that is a Shelf Participant holding Registrable Securities at such time, the Company will facilitate in the manner described in this Agreement a "takedown" of Registrable Securities off of such Shelf Registration and the Company shall pay expenses in connection therewith in accordance with Section 2.2.6; *provided* that the Company will provide (x) in connection with any non-marketed underwritten takedown offering (other than a Block Trade) or non-underwritten takedown offering, at least two (2)

business days' notice of such Takedown Demand to each other Stockholder that is a Shelf Participant, (y) in connection with any Block Trade, notice of such Takedown Demand to each other Stockholder that is a Shelf Participant no later than noon Eastern time on the second business day prior to the requested Takedown Demand and (z) in connection with any marketed underwritten takedown offering, at least five (5) business days' notice of such Takedown Demand to each other Stockholder that is a Shelf Participant. If any Shelf Participants request inclusion of their Registrable Securities (by notice to the Company, which notice must be received by the Company no later than (A) in the case of a non-marketed underwritten takedown offering (other than a Block Trade) or a non-underwritten takedown offering, the second business day following the date notice is given to such participant, (B) in the case of a Block Trade, by 10:00 p.m. Eastern time on the date notice is given to such participant and (C) in the case of a marketed underwritten takedown offering, three (3) business days following the date notice is given to such participant), the Bain Parties and the other Shelf Participants that request inclusion of their Registrable Securities shall be entitled to sell their Registrable Securities in such offering (x) in connection with any non-underwritten takedown offering, on a pro rata basis based on the amount of Registrable Securities owned by all such Shelf Participants requesting to include Registrable Securities in such non-underwritten takedown offering as of the date the Company provided notice of the Takedown Demand to the Shelf Participants pursuant to this Section 2.3.3 and (y) in connection with any underwritten takedown offering, in accordance with the order of priority set forth in Section 2.2.3. Each holder of Registrable Securities that is a Shelf Participant agrees that such holder shall treat as confidential the receipt of the notice of a Takedown Demand and shall not disclose or use the information contained in such notice without the prior written consent of the Company until such time as the information contained therein is or becomes available to the public generally, other than as a result of disclosure by the holder in breach of the terms of this Agreement.

2.4 Secondary Offering. If at any time the SEC takes the position that the offering of some or all of the Registrable Securities in a Registration Statement are not eligible to be made as a secondary offering, the Company shall use commercially reasonable best efforts to persuade the SEC that the offering contemplated by the Registration Statement is a bona fide secondary offering. In the event that the SEC refuses to alter its position, the Company shall (i) remove from the Registration Statement such portion of the Registrable Securities (the "Cut Back Shares") and/or (ii) agree to such restrictions and limitations on the registration and resale of the Registrable Securities as the SEC may require to assure that the Registration Statement is deemed a secondary offering (collectively, the "SEC Restrictions"); *provided*, *however*, that the Company shall not agree to name any Holder as an "underwriter" in such Registration Statement without the prior written consent of such Holder. Any cut-back imposed pursuant to this Section 2.4 shall be allocated among the Holders on a pro rata basis in accordance with the number of shares that such Holders have requested to be included in such Registration Statement, unless the SEC Restrictions otherwise require or provide or the participating Holders otherwise agree. From and after the date that the Company is able to effect the registration of such Cut Back Shares in accordance with any SEC Restrictions, all of the provisions of this Section 2.4 shall again be applicable to such Cut Back Shares.

2.5 Indemnification and Contribution.

2.5.1 Indemnities by the Company. The Company will indemnify and hold harmless each seller of Registrable Shares, each underwriter of Registrable Shares, and each other person, if any, who controls any such seller or underwriter within the meaning of the Securities Act or the Securities Exchange Act of 1934 against any losses, claims, damages or liabilities, joint or

several, to which such seller, underwriter or controlling person may become subject under the Securities Act, the Exchange Act, state securities or blue sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of any material fact contained in any Registration Statement including such Registrable Shares, any preliminary prospectus or final prospectus contained in such Registration Statement, any amendment or supplement to such Registration Statement, or any other disclosure document, or arise out of or are based upon the omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading; and, the Company will reimburse each such seller, underwriter and each such controlling person for any legal or any other expenses reasonably incurred by such seller, underwriter or controlling person in connection with investigating or defending any such loss, claim, damage, liability or action; *provided*, *however*, that the Company will not be liable in any such case to the extent that any such loss, claim, damage or liability arises out of or is based upon (a) any untrue statement or omission made in such Registration Statement, preliminary prospectus or prospectus, or any such amendment or supplement, in reliance upon and in conformity with information furnished to the Company, in writing, relating to such seller by or on behalf of such seller, underwriter or controlling person specifically for use in the preparation thereof or (b) the failure of such seller to deliver copies of the prospectus in the manner required by the Securities Act.

2.5.2 Indemnities to the Company. Each seller of Registrable Shares, severally (and not jointly or jointly and severally), will indemnify and hold harmless the Company, each of its directors and officers and each underwriter, if any, and each person, if any, who controls the Company or any such underwriter within the meaning of the Securities Act or the Exchange Act, against any losses, claims, damages or liabilities, joint or several, to which the Company, such director, officer, underwriter or controlling person may become subject under the Securities Act, Exchange Act, state securities or blue sky laws or otherwise, insofar as such losses, claims, damages or liabilities (or actions in respect thereof) arise out of or are based upon any untrue statement or alleged untrue statement of a material fact contained in any Registration Statement under which such Registrable Shares were registered under the Securities Act, any preliminary prospectus or final prospectus contained in the Registration Statement, or any amendment or supplement to the Registration Statement, or any other disclosure document, or arise out of or are based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading, if the statement or omission was made in reliance upon and in conformity with information furnished in writing to the Company relating to such seller by or on behalf of such seller, specifically for use in connection with the preparation of such Registration Statement, prospectus, amendment, supplement or other disclosure document; *provided*, *however*, that the obligations of an Stockholder hereunder shall be limited to an amount equal to the net proceeds to the Stockholder arising from the sale of Registrable Shares as contemplated herein.

2.5.3 Notice of Claims. Each party entitled to indemnification under this Section 2.5.3 (the "Indemnified Party") shall give notice to the party required to provide indemnification (the "Indemnifying Party") within a reasonable period of time after such Indemnified Party has actual knowledge of any claim as to which indemnity may be sought, and shall permit the Indemnifying Party to assume the defense of any such claim or any litigation resulting therefrom; *provided*, *however*, that counsel for the Indemnifying Party, who shall conduct the defense of such claim or litigation, shall be approved by the Indemnified Party (whose approval shall not be withheld unreasonably). The Indemnified Party may participate in such defense at such party's expense;

provided, *however*, that the Indemnifying Party shall pay such expense if representation of such Indemnified Party by the counsel retained by the Indemnifying Party would be inappropriate due to actual or potential differing interests between the Indemnified Party and any other party represented by such counsel in such proceeding. No Indemnifying Party in the defense of any such claim or litigation shall, except with the prior written consent of each Indemnified Party, consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such Indemnified Party of a release from all liability in respect of such claim or litigation, and no Indemnified Party shall consent to entry of any judgment or settle such claim or litigation without the prior written consent of the Indemnifying Party (which consent shall not be unreasonably withheld).

2.5.4 Contribution. If the indemnification provided for herein is for any reason unavailable to the Indemnified Parties in respect of any losses, claims, damages or liabilities referred to herein, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, will contribute to the amount paid or payable by such Indemnified Party as a result of such losses, claims, damages or liabilities in such proportion as is appropriate to reflect the relative fault of the Company, the sellers of Registrable Shares and any underwriter in connection with the statements or omissions which resulted in such losses, claims, damages or liabilities, as well as any other relevant equitable considerations. The relative fault of the Company, the sellers of Registrable Shares and any underwriter will be determined by reference to, among other things, whether the untrue or alleged untrue statement of a material fact or the omission or alleged omission to state a material fact relates to information supplied by such party, and the parties relative intent, knowledge, access to information and opportunity to correct or prevent such statement or omission. The Company and sellers of Registrable Shares agree that it would not be just and equitable if contribution pursuant to this Section 2.5.4 were determined by pro rata allocation or by any other method of allocation which does not take account of the equitable considerations referred to in the immediately preceding sentence. The amount paid or payable by an Indemnified Party as a result of the losses, claims, damages or liabilities referred to in the immediately preceding sentence will be deemed to include, subject to the limitations set forth above, any legal or other expenses reasonably incurred by such Indemnified Party in connection with investigating or defending any such action or claim. Notwithstanding the provisions of this Section 2.5.4, no seller of Registrable Shares will be required to contribute any amount in excess of the amount by which the total price at which the Registrable Shares of such seller of Registrable Shares was offered to the public (less underwriters discounts and commissions) exceeds the amount of any damages which such seller of Registrable Shares has otherwise been required to pay by reason of such untrue or alleged untrue statement or omission or alleged omission. No person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) will be entitled to contribution from any person who was not guilty of such fraudulent misrepresentation.

2.6 Certain Other Provisions

2.6.1 Information by Holder. Each Holder of Registrable Shares included in any registration shall furnish to the Company such information regarding such holder and the distribution proposed by such holder as the Company may reasonably request in writing if it is required in connection with any registration, qualification or compliance referred to in this Article II.

2.6.2 Lock-Up. Each Stockholder, if requested by the Board and an underwriter of Common Stock or other securities of the Company, shall agree pursuant to a written agreement

not to sell or otherwise transfer or dispose of any Registrable Shares or other securities of the Company held by such Stockholder for a specified period of time (not longer than seven days) prior to the effective date of a Registration Statement and for a specified period of time (not longer than 180 days) following the effective date of a Registration Statement; *provided*, *however*, that such agreement shall not apply to any Registrable Shares (or other securities of the Company) held by such Stockholder if they are included in the Registration Statement. The Company may impose stop transfer instructions with respect to the Registrable Shares or other securities subject to the foregoing restrictions, until the end of the lock-up period. The written agreement referred to in the first sentence of this Section 2.6.2 is in addition to and not in replacement of other transfer restrictions contained in this Agreement.

ARTICLE III
REMEDIES.

3.1 Generally. The parties shall have all remedies available at law, in equity or otherwise in the event of any breach or violation of this Agreement or any default hereunder. The parties acknowledge and agree that in the event of any breach of this Agreement, in addition to any other remedies which may be available, each of the parties hereto shall be entitled to specific performance of the obligations of the other parties hereto and, in addition, to such other equitable remedies (including preliminary or temporary relief) as may be appropriate in the circumstances.

ARTICLE IV
ASSIGNMENT.

4.1 Permitted Registration Rights Assignees. The rights of a Stockholder hereunder to cause the Company to register its Registrable Securities pursuant to Section 2.1, Section 2.2 or Section 2.3 may be assigned (but only with all related obligations as set forth below) in connection with a Transfer of such Shares effected in accordance with the terms of this Agreement to a Permitted Registration Rights Assignee of such Holder. Without prejudice to any other or similar conditions imposed hereunder with respect to any such Transfer, no assignment permitted under the terms of this Section 4.1 shall be effective unless the Permitted Registration Rights Assignee, if not a Stockholder, has delivered to the Company a written acknowledgment and agreement in form and substance reasonably satisfactory to the Company that the Shares in respect of which such assignment is made shall continue to be deemed Shares and shall be subject to all of the provisions of this Agreement relating to Shares and that such Permitted Registration Rights Assignee shall be bound by, and shall be a party to, this Agreement. A Permitted Registration Rights Assignee to whom rights are transferred pursuant to this Section 4.1 may not again Transfer such rights to any other Permitted Registration Rights Assignee, other than as provided in this Section 4.1.

ARTICLE V
AMENDMENT, TERMINATION, ETC.

5.1 Oral Modifications. This Agreement may not be orally amended, modified, extended or terminated, nor shall any oral waiver of any of its terms be effective.

5.2 Written Modifications. This Agreement may be amended, modified, extended or terminated, and the provisions hereof may be waived, only by an agreement in writing signed by the Company and the Stockholders that hold a majority of the Shares held by all Stockholders: *provided*, *however*, that any amendment, modification, extension, termination or waiver (an “Amendment”) shall also require the consent of any Stockholder who would be disproportionately and adversely affected

thereby. Each such Amendment shall be binding upon each party hereto and each holder of Shares subject hereto. In addition, each party hereto and each holder of Shares subject hereto may waive any right hereunder by an instrument in writing signed by such party or holder.

5.3 Effect of Termination. No termination under this Agreement shall relieve any Person of liability for breach prior to termination. In the event this Agreement is terminated, each party hereto shall retain the indemnification rights pursuant to Section 2.6 hereof with respect to any matter that (i) may be an indemnified liability thereunder and (ii) occurred prior to such termination.

ARTICLE VI
DEFINITIONS.

For purposes of this Agreement:

6.1 Certain Matters of Construction. In addition to the definitions referred to or set forth below in this Section 6:

(i) The words "hereof", "herein", "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular Section or provision of this Agreement, and reference to a particular Section of this Agreement shall include all subsections thereof;

(ii) The word "including" shall mean including, without limitation;

(iii) Definitions shall be equally applicable to both nouns and verbs and the singular and plural forms of the terms defined; and

(iv) The masculine, feminine and neuter genders shall each include the other.

6.2 Definitions. The following terms shall have the following meanings:

"Affiliate" shall mean, with respect to any specified Person, any Person that directly or through one or more intermediaries controls or is controlled by or is under common control with the specified Person (as used in this definition, the term "control" means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through ownership of voting securities, by contract or otherwise).

"Agreement" shall have the meaning set forth in the Preamble.

"Amendment" shall have the meaning set forth in Section 5.2.

"Bain" shall have the meaning set forth in the Preamble.

"Bain Parties" shall mean Bain, Bain Capital Private Equity, LP, a Delaware limited partnership ("Bain Capital"), investment funds affiliated with Bain Capital Private Equity, LP, and each of their respective successors, Permitted Registration Rights Assignees pursuant to clauses (a) and (b) of the definition thereof and Affiliates.

"Block Trade" shall mean any non-marketed underwritten takedown offering taking the form of a bought deal or block sale to a financial institution.

"Board" shall mean the board of directors of the Company.

"business day" shall mean any day that is not a Saturday, a Sunday or other day on which banks are required or authorized by law to be closed in the City of New York.

"Commission" shall mean the Securities and Exchange Commission.

"Common Stock" shall have the meaning set forth in the Recitals.

"Company" shall have the meaning set forth in the Preamble.

"Convertible Securities" shall mean any evidence of indebtedness, shares of stock (other than Common Stock) or other securities (other than Options and Warrants) which are directly or indirectly convertible into or exchangeable or exercisable for shares of Common Stock, including, without limitation, the Preferred Stock.

"Cut Back Shares" shall have the meaning set forth in Section 2.4.

"Demand Notice" shall have the meaning set forth in Section 2.1.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as in effect from time to time.

"H.I.G." shall have the meaning set forth in the Recitals.

"Holders" shall mean the holders of Registrable Securities under this Agreement.

"IPO" means the underwritten initial public offering of the Company's common stock on September 30, 2015.

"Maximum Offering Size" shall mean the largest aggregate number of shares which can be sold without having a material adverse effect on such offering, as determined by the managing underwriter.

"Members of the Immediate Family" shall mean, with respect to any individual, (i) each spouse, or natural or adopted child or grandchild of such individual or natural or adopted child or grandchild of such individual's spouse, (ii) each trust created solely for the benefit of one or more of such individual and the Persons listed in clause (i) above, and solely for estate planning purposes, (iii) each custodian or guardian of any property of one or more of the Persons listed in clause (i) above, in his capacity as such custodian or guardian and (iv) each corporation, limited partnership or limited liability company controlled by such individual or one or more of the Persons listed in clause (i) above for the benefit of one or more of such Persons.

"Options" shall mean any options to subscribe for, purchase or otherwise directly acquire Common Stock, other than any such option held by the Company or any right to purchase shares pursuant to this Agreement.

"Permitted Registration Rights Assignee" shall mean a transfer: (a) with respect to each holder which is not a natural person, to any Affiliate or to a Person for whom such holder (or an Affiliate of such holder) acts as investment advisor or investment manager; (b) with respect to each holder who is a

natural person: (i) to a Member of the immediate family of such holder; (ii) to a charitable entity, immediate family member or any trust for the direct or indirect benefit of the holder; or (iii) and upon the death of a holder, pursuant to the will or other instrument of such holder or by applicable laws of descent and distribution to such holder's estate, executors, administrators and personal representatives, and then to such holder's heirs, legatees or distributees, whether or not such recipients are Members of the Immediate Family of such holder; *provided*, *however* no part of an Interest may be transferred to a minor or an incompetent except in trust or pursuant to the Uniform Gifts to Minors Act or (c) with respect to any Bain Party, in a transfer other than that described in clauses (a) and (b) above, to any Person, so long as in accordance with applicable securities laws, *provided* that the transferred Registrable Securities shall represent not less than 20% of the Registrable Securities then held by the Bain Parties.

"Person" shall mean any individual, partnership, corporation, company, association, trust, joint venture, limited liability company, unincorporated organization, entity or division, or any government, governmental department or agency or political subdivision thereof.

"Preferred Stock" shall have the meaning set forth in the Recitals.

"Public Offering" shall mean a public offering and sale of Common Stock for cash pursuant to an effective registration statement under the Securities Act.

"Registrable Shares" or "Registrable Securities" shall mean: (i) any shares of Common Stock issued through the exchange of units in Surgery Center Holdings, LLC in the Reorganization in connection with the IPO; (ii) any shares of Common Stock (including shares of Common Stock issued or issuable in respect of the Preferred Stock) or Preferred Stock acquired or issued pursuant to the Stock Purchase Agreement or the Securities Purchase Agreement; and (iii) any Common Stock or Preferred Stock issued or issuable with respect to the securities referred to in clauses (i) or (ii) above by way of conversion, dividend, distribution, split or combination of securities, or any recapitalization, merger, consolidation or other reorganization; *provided*, *however*, that shares of Common Stock which are Registrable Shares shall cease to be Registrable Shares (a) upon any sale pursuant to a Registration Statement, Section 4(a)(1) of the Securities Act or Rule 144, or (b) at such time as such securities may be distributed without volume limitation or other restrictions on transfer under Rule 144 (including without application of paragraphs (c), (e) (f) and (h) of Rule 144). Notwithstanding the foregoing, any Registrable Shares transferred by a Bain Party to a Permitted Registration Rights Assignee shall continue to be Registrable Shares in the hands of such Permitted Registration Rights Assignee.

"Registration Statement" means a registration statement (on Form S-1 or Form S-3) filed by the Company with the Commission for a public offering and sale of securities of the Company.

"Reorganization" means the reorganization of the Company and Surgery Center Holdings, LLC in connection with the Company's IPO, pursuant to the Reorganization Agreement, dated as of September 30, 2015.

"Rule 144" shall mean Rule 144 under the Securities Act (or any successor Rule).

"Rule 415" shall mean Rule 415 under the Securities Act (or any successor Rule).

"SEC" means the United States Securities and Exchange Commission.

"SEC Restrictions" shall have the meaning set forth in Section 2.4.

"Securities Act" shall mean the Securities Act of 1933, as amended, as in effect from time to time.

"Securities Purchase Agreement" shall have the meaning set forth in the Recitals.

"Shares" shall mean all shares of Common Stock held by a Stockholder, whenever issued, including all shares of Common Stock issued upon the exercise, conversion or exchange of any Options, Warrants or Convertible Securities.

"Shelf Participant" means any holder of Registrable Securities listed as a potential selling stockholder in connection with any Shelf Registration or any such holder that could be added to such Shelf Registration without the need for a post-effective amendment thereto or added by means of an automatic post-effective amendment thereto.

"Shelf Registration" shall have the meaning set forth in Section 2.3.2.

"Short-Form Registration" shall have the meaning set forth in Section 2.3.1.

"Stock Purchase Agreement" shall have the meaning set forth in the Recitals.

"Stockholders" shall have the meaning set forth in the Preamble.

"Takedown Demand" shall have the meaning set forth in Section 2.3.3.

"Transfer" shall mean any sale, pledge, assignment, encumbrance or other transfer or disposition of any Shares to any other Person, whether directly, indirectly, voluntarily, involuntarily, by operation of law, pursuant to judicial process or otherwise.

"Warrants" shall mean any warrants to subscribe for, purchase or otherwise directly acquire Common Stock.

"WKSI" means any Securities Act registrant that is a well-known seasoned issuer as defined in Rule 405 under the Securities Act at the most recent eligibility determination date specified in paragraph (2) of that definition.

ARTICLE VII
MISCELLANEOUS.

7.1 Authority; Effect. Each party hereto represents and warrants to and agrees with each other party that the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized on behalf of such party and do not violate any agreement or other instrument applicable to such party or by which its assets are bound. This Agreement does not, and shall not be construed to, give rise to the creation of a partnership among any of the parties hereto, or to constitute any of such parties members of a joint venture or other association.

7.2 Notices. Any notices, requests, demands, claims and other communications required or permitted to be delivered, given or otherwise provided under this Agreement shall be in writing and shall be (a) delivered or given personally, (b) sent by facsimile or email, or (c) sent by overnight courier in each case, to the address (or facsimile number) listed below:

If to the Company:

Surgery Partners, Inc.
40 Burton Hills Boulevard
Suite 500
Nashville, Tennessee 37215
Attention: Teresa Sparks and Michael Doyle
E-mail: tsparks@surgerypartners.com and mdoyle@surgerypartners.com

with a copy to:

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Carl Marcellino
Facsimile No.: (646) 728-1523
Email: carl.marcellino@ropesgray.com

If to any Bain Party:

c/o Bain Capital Private Equity, LP
200 Clarendon Street
Boston, Massachusetts 02116
Attention: Devin O'Reilly, Andrew Kaplan and David Hutchins
E-mail: doreilly@baincapital.com, akaplan@baincapital.com and dhutchins@baincapital.com
Facsimile No.: (617) 516-2010

with a copy to:

Kirkland & Ellis LLP
300 North LaSalle
Chicago, Illinois 60654
Attention: Neal J. Reenan, P.C. and Ian N. Bushner
E-mail: neal.reenan@kirkland.com and ian.bushner@kirkland.com
Facsimile No.: (312) 862-2200

Notice to the holder of record of any shares of capital stock shall be deemed to be notice to the holder of such shares for all purposes hereof.

Unless otherwise specified herein, such notices or other communications shall be deemed effective (a) on the date received, if personally delivered, (b) on the date received if delivered by facsimile or email on a business day, or if delivered on other than a business day, on the first business day thereafter and (c) 2 business days after being sent by overnight courier. Each of the parties hereto shall be entitled to specify a different address by giving notice as aforesaid to each of the other parties hereto.

7.3 Merger; Binding Effect, Etc. This Agreement, together with the certificate of designations for the Preferred Stock, constitute the entire agreement of the parties with respect to their

subject matter, supersede all prior or contemporaneous oral or written agreements or discussions with respect to such subject matter, and shall be binding upon and inure to the benefit of the parties hereto and thereto and their respective heirs, representatives, successors and permitted assigns. Except as otherwise expressly provided herein, no Stockholder or other party hereto may assign any of its respective rights or delegate any of its respective obligations under this Agreement without the prior written consent of the other parties hereto, and any attempted assignment or delegation in violation of the foregoing shall be null and void.

7.4 Descriptive Headings. The descriptive headings of this Agreement are for convenience of reference only, are not to be considered a part hereof and shall not be construed to define or limit any of the terms or provisions hereof.

7.5 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one instrument.

7.6 Severability. In the event that any provision hereof would, under applicable law, be invalid or unenforceable in any respect, 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 law. The provisions hereof are severable, and in the event any provision hereof should be held invalid or unenforceable in any respect, it shall not invalidate, render unenforceable or otherwise affect any other provision hereof.

7.7 No Recourse. Notwithstanding anything that may be expressed or implied in this Agreement, the Company and each Stockholder covenant, agree and acknowledge that no recourse under this Agreement or any documents or instruments delivered in connection with this Agreement shall be had against any current or future director, officer, employee, general or limited partner, member or stockholder of any Stockholder or of any Affiliate or assignee thereof, as such, whether by the enforcement of any assessment or by any legal or equitable proceeding, or by virtue of any statute, regulation or other applicable law, it being expressly agreed and acknowledged that no personal liability whatsoever shall attach to, be imposed on or otherwise be incurred by any current or future director, officer, employee, partner, member or stockholder of any Stockholder or of any Affiliate or assignee thereof, as such, for any obligation of any Stockholder under this Agreement or any documents or instruments delivered in connection with this Agreement for any claim based on, in respect of or by reason of such obligations or their creation.

ARTICLE VIII
GOVERNING LAW.

8.1 Governing Law. This Agreement shall be governed by and construed in accordance with the domestic substantive laws of the State of Delaware without giving effect to any choice or conflict of laws provision or rule that would cause the application of the domestic substantive laws of any other jurisdiction.

8.2 Consent to Jurisdiction. Each party to this Agreement, by its execution hereof, (a) hereby irrevocably submits to the exclusive jurisdiction of the state and federal courts sitting in the State of Delaware for the purpose of any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof, (b) hereby waives to the extent not prohibited by applicable law, and agrees not to assert, and agrees not to allow any of its subsidiaries to assert, by way of motion, as a defense or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-

named courts, that its property is exempt or immune from attachment or execution, that any such proceeding brought in one of the above-named courts is improper, or that this Agreement or the subject matter hereof or thereof may not be enforced in or by such court and (c) hereby agrees not to commence or maintain any action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation arising out of or based upon this Agreement or relating to the subject matter hereof or thereof other than before one of the above-named courts nor to make any motion or take any other action seeking or intending to cause the transfer or removal of any such action, claim, cause of action or suit (in contract, tort or otherwise), inquiry, proceeding or investigation to any court other than one of the above-named courts, whether on the grounds of inconvenient forum or otherwise. Notwithstanding the foregoing, to the extent that any party hereto is or becomes a party in any litigation in connection with which it may assert indemnification rights set forth in this Agreement, the court in which such litigation is being heard shall be deemed to be included in clause (a) above. Each party hereto hereby consents to service of process in any such proceeding in any manner permitted by Delaware law, and agrees that service of process by registered or certified mail, return receipt requested, at its address specified pursuant to Section 7.4 hereof is reasonably calculated to give actual notice. The provisions of this Section 8.2 shall not restrict the ability of any party to enforce in any court any judgment obtained in a federal or state court of the State of Delaware.

8.3 WAIVER OF JURY TRIAL. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW WHICH CANNOT BE WAIVED, EACH PARTY HERETO HEREBY WAIVES AND COVENANTS THAT IT WILL NOT ASSERT (WHETHER AS PLAINTIFF, DEFENDANT OR OTHERWISE) ANY RIGHT TO TRIAL BY JURY IN ANY FORUM IN RESPECT OF ANY ISSUE OR ACTION, CLAIM, CAUSE OF ACTION OR SUIT (IN CONTRACT, TORT OR OTHERWISE), INQUIRY, PROCEEDING OR INVESTIGATION ARISING OUT OF OR BASED UPON THIS AGREEMENT OR THE SUBJECT MATTER HEREOF OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE TRANSACTIONS CONTEMPLATED HEREBY, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING. EACH PARTY HERETO ACKNOWLEDGES THAT IT HAS BEEN INFORMED BY THE OTHER PARTIES HERETO THAT THIS SECTION 8.3 CONSTITUTES A MATERIAL INDUCEMENT UPON WHICH THEY ARE RELYING AND WILL RELY IN ENTERING INTO THIS AGREEMENT. ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OR A COPY OF THIS SECTION 8.3 WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF EACH SUCH PARTY TO THE WAIVER OF ITS RIGHT TO TRIAL BY JURY.

8.4 Exercise of Rights and Remedies. No delay of or omission in the exercise of any right, power or remedy accruing to any party as a result of any breach or default by any other party under this Agreement shall impair any such right, power or remedy, nor shall it be construed as a waiver of or acquiescence in any such breach or default, or of any similar breach or default occurring later; nor shall any such delay, omission nor waiver of any single breach or default be deemed a waiver of any other breach or default occurring before or after that waiver.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, each of the undersigned has duly executed this Agreement (or caused this Agreement to be executed on its behalf by its officer or representative thereunto duly authorized) as of the date and year first above written.

COMPANY:

Surgery Partners, Inc.
By:
Name:
Title:

[Signature Page to Surgery Partners, Inc. Registration Rights Agreement]

STOCKHOLDERS:

[Signature Page to Surgery Partners, Inc. Registration Rights Agreement]

FORM OF CERTIFICATE OF DESIGNATIONS,
PREFERENCES, RIGHTS AND LIMITATIONS
OF
10.00% SERIES A CONVERTIBLE PERPETUAL PARTICIPATING PREFERRED
STOCK
OF
SURGERY PARTNERS, INC.

Pursuant to Section 151 of the General Corporation Law of the State of Delaware (the "DGCL"), SURGERY PARTNERS, INC., a Delaware corporation (the "Corporation"), certifies that pursuant to the authority contained in Article 4(c) of its Amended and Restated Certificate of Incorporation, as amended (the "Amended and Restated Certificate of Incorporation"), and in accordance with the provisions of Section 141 and Section 151 of the DGCL, the Board of Directors ("Board of Directors") of the Corporation has adopted the following resolution on [●], 2017, creating a series of [●] shares of preferred stock, par value $0.01 per share, of the Corporation designated as "10.00% Series A Convertible Perpetual Participating Preferred Stock":

RESOLVED, that a series of preferred stock, par value $0.01 per share, of the Corporation be, and hereby is, created, and that the designation and number of shares of such series and the voting powers, preferences and relative, participating, optional and other special rights, and such qualifications, limitations or restrictions thereof, of the shares of such series, are as follows:

Section 1. Designation; Ranking; Issuance.

(a) There is hereby created out of the authorized and unissued shares of preferred stock, par value $0.01 per share, of the Corporation authorized to be issued pursuant to the Amended and Restated Certificate of Incorporation, a series of preferred stock, designated as "10.00% Series A Convertible Perpetual Participating Preferred Stock" par value $0.01 per share (the "Series A Preferred Stock"). The number of shares constituting such series shall be [●]. Each share (a "Share") of the Series A Preferred Stock shall be identical in all respects to every other share of the Series A Preferred Stock.

(b) The Series A Preferred Stock ranks prior to the Common Stock and any other Capital Stock (including with respect to dividends, redemption and rights upon any Liquidation Event).

(c) The Shares shall be issued by the Corporation in certificated form for their Initial Value, in such amounts, at such times and to such Persons as shall be specified by the Board of Directors, from time to time.

Section 2. Number of Shares. The number of Shares authorized is [●],which number may be decreased (but not below the number thereof then outstanding), but not increased, from time to time by the Board of Directors.

Section 3. Defined Terms and Rules of Construction.

(a) Definitions.

"Accrued Value" means, with respect to any Share, on any date, the sum of (a) the Initial Value *plus* (b) all dividends (whether or not declared) on such Share that have compounded through each and every Dividend Compounding Date starting from the first Dividend Compounding Date up to, and including such date (if such date is a Dividend Compounding Date) or the most recent Dividend Compounding Date, in each case, to the extent not otherwise paid in cash.

"Affiliate" means, with respect to any Person, any other Person, directly or indirectly, controlling or controlled by, or under direct or indirect common control with, such Person. For purposes of this definition: "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act, and the terms "controlling" and "controlled" have meanings correlative to the foregoing. For the avoidance of doubt, each investment fund managed and/or advised by, or any other Person under common control with, Sponsor or any such investment fund shall be deemed to be an Affiliate of the Sponsor.

"Alternative Fundamental Change Redemption Date" is defined in Section 6(b)(iii).

"Amended and Restated Certificate of Incorporation" is defined in the preamble.

"Applicable Fundamental Change Percentage" means, in respect of any Fundamental Change that occurs (a) before the first anniversary of the Issue Date, 110%, (b) on or after the date that is one year following the Issue Date and prior to the date that is two years following the Issue Date, 109%, (c) on or after the date that is two years following the Issue Date and prior to the date that is three years following the Issue Date, 108%, (d) on or after the date that is three years following the Issue Date and prior to the date that is four years following the issue date, 107%, (e) on or after the date that is four years following the Issue Date and prior to the date that is five years following the Issue Date, 106%, (f) on or after the date that is five years following the Issue Date and prior to the date that is six years following the Issue Date, 105%, (g) on or after the date that is six years following the Issue Date and prior to the date that is seven years following the Issue Date, 103%, (h) on or after the date that is seven years following the Issue Date and prior to the date that is eight years following the Issue Date, 101% and (i) on or after the date that is eight years following the Issue Date, 100%.

"Applicable Optional Redemption Percentage" means, in respect of any Optional Redemption for which the related Redemption Date occurs (1) on or after the date that is five years following the Issue Date and prior to the date that is six years following the Issue Date, 105%, (2) on or after the date that is six years following the Issue Date and prior to the date that is seven years following the Issue Date, 103%, (3) on or after the date that is seven years following the Issue Date and prior to the date that is eight years following the Issue Date, 101% and (4) on or after the date that is eight years following the Issue Date, 100%.

"Board of Directors" is defined in the preamble.

"Business Day" means any day except Saturday, Sunday and any day on which banking institutions in the State of New York generally are authorized or required by law or other governmental actions to close.

"Bylaws" means the Amended and Restated Bylaws of the Corporation in effect on the date hereof, as they may be amended from time to time.

"Capital Stock" means any and all shares of stock (in each case however designated) issued or issuable by the Corporation, and any rights to purchase, warrants or options to acquire, or participations or other interests in, such stock.

"Certificate of Designations" means this Certificate of Designations, Preferences, Rights and Limitations relating to the Series A Preferred Stock, as it may be amended from time to time.

"Change of Control" means any (a) consolidation, merger, sale, assignment, conveyance, lease, transfer or other disposition of substantially all of the assets or properties of the Corporation and its Subsidiaries on a consolidated basis in any transaction or series of related transactions, (b) acquisition by any single Person or group (other than any Sponsor Entity or any group (as defined in Rule 13d-5 of the Exchange Act) of which any such Sponsor Entity is a member) of the beneficial ownership, direct or indirect, of greater than 30% of the voting power of the Corporation's issued and outstanding Voting Stock, or (c) merger or consolidation to which the Corporation is a party except any such merger or consolidation involving the Corporation or a subsidiary in which the shares of capital stock of the Corporation outstanding immediately prior to such merger or consolidation continue to represent, or are converted into or exchanged for shares of capital stock that represent, immediately following such merger or consolidation, at least a majority, by voting power, of the capital stock of (1) the surviving or resulting corporation; or (2) if the surviving or resulting corporation is a wholly owned subsidiary of another corporation immediately following such merger or consolidation, the parent corporation of such surviving or resulting corporation.

"Change of Control Purchase Price" means, with respect to any Change of Control, an amount equal to the sum of (a) the price payable in cash in such Change of Control for one share of the Common Stock outstanding immediately prior to such Change of Control, *plus* (b) if the consideration payable for each share of Common Stock is not solely cash, the Fair Market Value of such non-cash consideration payable in such Change of Control for one share of Common Stock.

"Close of Business" means, with respect to any Business Day, 5:00 p.m., New York City time, on such day.

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

"Common Stock" means the common stock, par value $0.01 per share, of the Corporation under the Amended and Restated Certificate of Incorporation.

"Common Stock Deemed Outstanding" means, as of any time, the number of shares of Common Stock then actually outstanding at such time.

"Conversion Date" is defined in Section 7(c).

"Conversion Price" means, as of the Issue Date, $19.00 per share of Common Stock, subject to adjustment from time to time thereafter as set forth in Section 8.

"Conversion Stock" means shares of the Common Stock issuable upon the conversion of Shares.

"Convertible Securities" means any stock or securities (other than Options) directly or indirectly convertible into or exchangeable for Common Stock.

"Corporation" is defined in the preamble.

"Corporation Conversion Date" is defined in Section 7(b).

"Deemed Conversion Shares" means, with respect to each Share, with respect to any date, the number of shares of Conversion Stock (including fractional shares) equal to the quotient of (i) the Accrued Value of such Share as of and including such date *plus*, without duplication, dividends accrued but not yet compounded as of and through such date *divided by* (ii) the Conversion Price in effect as of such date.

"Deemed Redeemed Shares" is defined in Section 6(c).

"DGCL" is defined in the preamble.

"Dividend Compounding Date" means March 31, June 30, September 30 and December 31 of each year, beginning for any Share, on the earliest such date after the Issuance Date.

"Dividend Rate" means 10.00% per annum as may be adjusted pursuant to Section 11(b).

"Dividend Record Date" means, with respect to any Dividend Compounding Date, March 15, June 15, September 15 or December 15, as the case may be, immediately preceding such Dividend Compounding Date.

"Event of Noncompliance" is defined in Section 11(a).

"Exchange Act" means the Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Fair Market Value" means, with respect to any security or other property (including for the avoidance of doubt any Common Stock, Option or Convertible Security issued to the owners of the non-surviving entity in connection with any merger in which the Corporation is the surviving corporation), the fair market value of such security or other property at such time, as determined in good faith by the Board of Directors using a nationally recognized investment bank to provide a valuation opinion.

"Fundamental Change" means (a) Change of Control or (b) the Common Stock ceasing to be listed or quoted on a Trading Market.

"Fundamental Change Make-Whole Amount" is defined in Section 6(b)(ii)(1).

"Fundamental Change Redemption Date" is defined in Section 6(b)(iii).

"Indebtedness" means as to any Person, all indebtedness (including principal, interest, fees and charges) of such Person for borrowed money and any other indebtedness that is evidenced by a promissory note, bond, debenture or similar instrument.

"Initial Value" means $1,000.00 per Share.

"Internal Reorganization Event" means a merger or consolidation which is effected (a) by or among the Corporation and its direct and/or indirect Subsidiaries or any new parent company or (b) between the Corporation and any Person for the primary purpose of changing the domicile of the Corporation.

"Investor" means BCPE Seminole Holdings LP, a Delaware limited partnership.

"Issue Date" means [●], 2017, the original date of issuance of the Series A Preferred Stock.

"Junior Stock" means any class or series of stock issued by the Corporation that ranks junior to the Series A Preferred Stock as to (a) the payment of dividends or (b) the distribution of assets on any Liquidation Event, or both (a) and (b).

"Liquidation Event" means any liquidation, dissolution or winding up of the Corporation (whether voluntary or involuntary).

"Loan Documents" means the definitive documents entered into by the Corporation and its Subsidiaries governing the indebtedness contemplated under the debt financing commitment letters provided in connection with the Purchase Agreement and any documentation with respect to outstanding indebtedness on the Issue Date.

"Majority Owned" is defined in the definition of Subsidiary.

"Market Price" means, with respect to one share of any security, as of a particular date (the "Valuation Date"), the following: (a) if such security is then quoted on The New York Stock Exchange ("NYSE"), The NASDAQ Global Market (the "NASDAQGM"), The NASDAQ Global Select Market (the "NASDAQGSM"), Pink OTC Markets (the "OTC") or any similar exchange, quotation system or association (together, each of the NYSE, the NASDAQGM, the NASDAQGSM and the OTC, a "Trading Market"), the arithmetic average of the daily volume weighted average prices, as reported by Bloomberg Financial L.P., of one share of such security on the principal Trading Market for the period of five Trading Days consisting of the Trading Day immediately prior to the Valuation Date and the four Trading Days immediately prior to such date (unless, between the first and last Trading Day of such five Trading Day period, the ex-dividend or effective date occurs for an event that would give rise to an adjustment to the Conversion Price pursuant to Section 8 if such event were to occur with respect to the Common Stock, in which case the Board of Directors will determine the Market Price of such security for such date in good faith taking into account Trading Market information) or, (b) if such security is not then quoted on a Trading Market, the Fair Market Value of one share of such security as of

the Close of Business on the Valuation Date. If the Common Stock is not then quoted on a Trading Market, then the Board of Directors shall respond promptly, in writing, to any inquiry by any holder of Series A Preferred Stock as to the Fair Market Value of a share of the Common Stock. Notwithstanding the above, for the purposes of adjustments to the Conversion Price made in accordance with Section 8(b), if an announcement or disclosure of a potential issuance or sale is made after the end of trading on a Trading Day, the Valuation Date for measuring the "Market Price" in such circumstance shall be such Trading Day and if an announcement or disclosure of a potential issuance or sale is made other than after the end of trading on a Trading Day, the Valuation Date for measuring the "Market Price" in such circumstance shall such be the last Trading Day immediately prior to such announcement or disclosure.

"NASDAQGM" is defined in the definition of Market Price.

"NASDAQGSM" is defined in the definition of Market Price.

"NYSE" is defined in the definition of Market Price.

"Optional Redemption" is defined in Section 6(a)(i).

"Optional Redemption Date" is defined in Section 6(a)(ii).

"Optional Redemption Notice" is defined in Section 6(a)(ii).

"Optional Redemption Price" is defined in Section 6(a)(i).

"Options" means any rights, warrants or options to subscribe for, acquire or purchase the Common Stock or Convertible Securities.

"Organic Change" is defined in Section 8(i).

"OTC" is defined in the definition of Market Price.

"Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a governmental entity or any department, agency or political subdivision thereof.

"Prospectus" means the prospectus (including any preliminary, final or summary prospectus) included in any Registration Statement, all amendments and supplements to such prospectus, and all other material incorporated by reference in such prospectus.

"Purchase Agreement" means that certain purchase agreement related to the purchase and sale of the Series A Preferred Stock, dated as of May 9, 2017, between Investor and the Corporation, as amended from time to time in accordance with its terms.

"Redemption Date" is defined in Section 6(c).

"Reg Rights Agreement" means that certain Amended and Restated Registration Rights Agreement, dated [●], 2017, as it may be amended from time to time, by and among the Corporation and the Investor (and any other Persons who may become bound by such agreement at a later date in accordance with its terms).

"Regulation FD" means Regulation FD as promulgated under the Exchange Act.

"Registrable Securities" is defined in the Reg Rights Agreement.

"Required Percentage" means greater than 50% of the Shares acquired by the Sponsor Entities on the Issue Date with any proportional adjustments for any stock split, stock dividend, recapitalization or similar transactions. For purposes of determining whether the Required Percentage is met, all Shares held by the Sponsor Entities shall be aggregated.

"SEC" means the U.S. Securities and Exchange Commission.

"Securities Act" means the Securities Act of 1933, as amended, and the rules and regulations of the SEC promulgated thereunder.

"Series A Directors" is defined in Section 9.

"Series A Preferred Stock" is defined in Section 1(a).

"Share" is defined in Section 1(a).

"Shelf Registration Statement" means a "shelf" registration statement of the Corporation that covers all the Registrable Securities (and may cover other securities of the Corporation) on Form S-3 and under Rule 415 under the Securities Act or, if the Corporation is not then eligible to file on Form S-3, on Form S-1 under the Securities Act, or any successor rule that may be adopted by the SEC, and all amendments and supplements to such "shelf" registration statement, including post-effective amendments, in each case, including the Prospectus contained therein, all exhibits thereto and any document incorporated by reference therein.

"Sponsor" means Bain Capital Private Equity, LP, a Delaware limited partnership.

"Sponsor Entities" means Investor, Sponsor, investment funds affiliated with Sponsor, and each of their respective successors and Affiliates.

"Sponsor Fundamental Change Redemption Date" is defined in Section 6(b)(ii).

"Subsidiary" means, when used with respect to any Person, any other Person of which (a) in the case of a corporation, at least a majority of the equity and the voting interests of which are owned or controlled, directly or indirectly, by such first Person (any such entity, a "Majority Owned" entity), by any one or more of its Majority Owned subsidiaries, or by such first Person and one or more of its Majority Owned subsidiaries, or (b) in the case of any Person other than a corporation, such first Person, one or more of its Majority Owned subsidiaries, or such first Person and one or more of its Majority Owned subsidiaries either (i) owns a majority of the equity interests thereof or (ii) has the power to elect or direct the election of a majority of the members of the governing body thereof.

"Tax" or "Taxes" means any federal, state, local or foreign income, gross receipts, branch profits, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, escheat, environmental, customs duties, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, registration, ad valorem, value added, alternative or add-on minimum or estimated tax or other tax of any kind whatsoever, including any interest, penalty or addition thereto, whether disputed or not and including any obligation to indemnify or otherwise assume or succeed to the Tax liability of any other Person by law, by contract or otherwise.

"Trading Day" means any day on which (a) trading in a security generally occurs on the principal Trading Market for such security, (b) such principal Trading Market does not fail to open for trading during its regular trading session and (c) there does not occur or exist on such day, for more than a one half-hour period, in the aggregate, any suspension or limitation imposed on the trading of such security or of any options, contracts or futures contracts relating to such security, which suspension or limitation occurs or exists at any time before 1:00 p.m. (New York City time) on such day. If a security is not quoted on any Trading Market, "Trading Day" shall have the same meaning as Business Day.

"Trading Market" is defined in the definition of Market Price.

"Valuation Date" is defined in the definition of Market Price.

"Voting Stock" means Capital Stock of the class or classes pursuant to which the holders thereof have the general voting power under ordinary circumstances (determined without regard to any classification of directors) to elect one or more members of the Board of Directors (without regard to whether or not, at the relevant time, Capital Stock of any other class or classes (other than Common Stock) shall have or might have voting power by reason of the happening of any contingency).

"Window Trigger Date" is defined in Section 7(b).

"Withholding Tax" is defined in Section 16.

(b) Rules of Construction. Capitalized terms used in this Certificate of Designations which are not defined in this Section 3 (or in a document referenced in Section 3) have the meanings contained elsewhere in this Certificate of Designations. Whenever the words "include," "includes" or "including" are used in this Certificate of Designations, they are deemed to be followed by the words "without limitation." Any definitions used herein defined in the plural shall be deemed to include the singular as the context may require, and any definitions used herein defined in the singular shall be deemed to include the plural as the context may require. Wherever reference is made herein to the male, female or neuter genders, such reference shall be deemed to include any of the other genders as the context may require.

Section 4. Dividends.

(a) Dividends shall accrue and accumulate on each Share (subject to appropriate adjustment in the event of any stock dividend, stock split, combination or other similar recapitalization with respect to the Shares) on a daily basis at the Dividend Rate on the

Accrued Value from and including the Issue Date of such Share to and including the first date on which any of the following occurs: (i) payment is made in respect to such Share in connection with a Liquidation Event pursuant to Section 5, (ii) such Share is redeemed by the Corporation in accordance with Section 6, or (iii) such Share is converted into shares of Conversion Stock pursuant to Section 7. Dividends on Shares shall compound quarterly on each Dividend Compounding Date. Dividends on Shares shall accrue, accumulate, and compound whether or not they have been declared, whether or not there are profits, surplus or other funds of the Corporation legally available for the payment of dividends, and whether or not a cash payment of such dividends would be prohibited under any Loan Documents. In any given quarter, to the extent that (x) the Corporation is legally permitted to pay dividends in cash and (y) an independent committee of the Board of Directors (which for the avoidance of doubt shall exclude any directors employed within the last three years by investment funds affiliated with H.I.G. Capital, LLC) has determined that payment of such dividends in cash is in the best interest of stockholders (taking into account the impact that payment of such dividends in cash or the ability to make such cash payment of such dividends, would have on the treatment of the Shares as debt or equity by the credit agencies rating the Company, its Subsidiaries, Indebtedness of the Company or its Subsidiaries or the Shares), the Board of Directors may, in its sole discretion, declare a cash dividend in an amount up to 50% of the amount of the dividends that have accrued and accumulated on the Shares through the end of such quarter, and, if the Board of Directors so declares, the Corporation shall pay such cash dividend on the Dividend Compounding Date for such quarter to the holders of record of the Shares as they appear on the Company's stock register at the Close of Business on the relevant Dividend Record Date. For the avoidance of doubt, the amount of any quarterly dividend on Shares paid in cash to the holders of Shares on the Dividend Compounding Date pursuant to the immediately preceding sentence shall not compound on the Dividend Compounding Date and shall not be included in Accrued Value. With respect to any Share, its Issue Date shall remain the same regardless of the number of times transfer of such Share is made on the stock records maintained by or for the Corporation and regardless of the number of certificates which may be issued to evidence such Share.

(b) Participating Dividends. In addition to any other dividends accruing or declared hereunder, in the event that the Corporation declares or pays any dividends upon the Common Stock (whether payable in cash, securities or other property), the Corporation shall also declare and pay to the holders of the Series A Preferred Stock at the same time that it declares and pays such dividends to the holders of the Common Stock, the dividends which would have been declared and paid with respect to the Common Stock issuable upon conversion of the Series A Preferred Stock as if all of the outstanding Series A Preferred Stock had been converted into Common Stock immediately prior to the record date for such dividend, or if no record date is fixed, the date as of which the Corporation will determine the record holders of Common Stock entitled to such dividends.

Section 5. Liquidation. Upon any Liquidation Event, each holder of Series A Preferred Stock then outstanding shall be entitled to be paid for each Share, out of the assets of the Corporation available for distribution to shareholders of the Corporation, and after satisfaction of (or reservation of an amount sufficient to satisfy) all liabilities and obligations to creditors of the Corporation, but before any distribution or payment is made upon any Junior Stock, an amount in cash equal to the greater of (a) the Accrued Value of such Share as of and including the date of the Liquidation Event *plus*, without duplication, dividends accrued but not yet compounded as of and through such date and (b) the amount that such holder would be entitled to receive in respect of Conversion Stock in connection with such Liquidation Event if such Share were converted into Conversion Stock immediately prior to such event in accordance with Section 7(a), and the holders of Series A Preferred Stock shall not be entitled to any other payment with respect to such Share. If upon any Liquidation Event, the assets of the Corporation to be distributed among the holders of the Series A Preferred Stock are insufficient to permit

payment to such holders of the entire aggregate amount that they are entitled to be paid under the first sentence of this Section 5, then the entire assets available (including any right to future or contingent distributions) to be distributed to the Corporation's stockholders shall be distributed pro rata among the holders of the Series A Preferred Stock, based upon the aggregate Accrued Value (*plus*, without duplication, any accrued dividends not already included in such Accrued Value) as of and including the date of the Liquidation Event of the Series A Preferred Stock held by each such holder. As soon as practicable prior to the payment date stated therein, the Corporation shall deliver written notice of any such Liquidation Event to each record holder of Series A Preferred Stock, setting forth in reasonable detail the amount of proceeds to be paid with respect to each Share and to each share of Common Stock in connection with such Liquidation Event.

Section 6. Redemptions.

(a) Redemption at the Option of the Corporation.

(i) No sinking fund is provided for the Series A Preferred Stock. The Corporation shall not have the right to redeem the Series A Preferred Stock prior to the fifth anniversary of the Issue Date. On or after the fifth anniversary of the Issue Date, the Corporation will have the right (but not the obligation) to redeem (an "Optional Redemption") all, but not less than all, of the Series A Preferred Stock then outstanding in accordance with this Section 6, for an amount of cash per Share, payable by wire transfer to the account or accounts designated in writing to the Corporation by such holder, equal to the product of (A) the Applicable Optional Redemption Percentage *multiplied by* (B) the sum of the Accrued Value of such Share as of and including the Optional Redemption Date *plus*, without duplication, dividends accrued but not yet compounded as of and through such date (such amount, the "Optional Redemption Price").

(ii) In case the Corporation exercises its Optional Redemption right to redeem all of the Series A Preferred Stock then outstanding pursuant to this Section 6(a), it shall fix a date for redemption (each, an "Optional Redemption Date") and it shall mail a notice of such Optional Redemption (an "Optional Redemption Notice") not less than 30 days prior to the Optional Redemption Date to each holder of Series A Preferred Stock at its last address as the same appears on the Corporation's stock register. The Optional Redemption Date must be a Business Day. For the avoidance of doubt, any holder may convert its Shares pursuant to Section 7(a) at any time prior to the Close of Business on the date that is three (3) Business Days prior to the Optional Redemption Date.

(iii) Each Optional Redemption Notice shall specify:

(1) the Optional Redemption Date;

(2) the Optional Redemption Price;

(3) that on the Optional Redemption Date, the Optional Redemption Price will become due and payable upon each Share, and that any dividends thereon will cease to accumulate after the Optional Redemption Date;

(4) the place or places where such Shares are to be surrendered for payment of the Optional Redemption Price; and

(5) that holders may surrender their Shares for conversion at any time prior to the Close of Business on the date that is three (3) Business Days immediately preceding the Optional Redemption Date.

Any delivered Optional Redemption Notice is irrevocable.

(iv) If any Optional Redemption Notice has been given in respect of Shares in accordance with this Section 6(a), holders of Shares shall surrender any Shares that have not been converted prior to the related Optional Redemption Date to the Corporation on the Optional Redemption Date at the place or places stated in the Redemption Notice for the payment in full of the Optional Redemption Price solely in cash.

(v) From and after the Optional Redemption Date (unless the Corporation shall default in providing for the payment of the Optional Redemption Price), (1) dividends will cease to accrue on Shares, (2) Shares shall no longer be deemed outstanding and (3) all rights of the holders of Shares hereunder will terminate, except the right to receive the Optional Redemption Price for each Share payable in full in cash on the Optional Redemption Date.

(b) Redemption at the Option of the Holder Upon Fundamental Change.

(i) If, prior to the effective date of a Fundamental Change, the Corporation has knowledge of such Fundamental Change, then no later than 30 days prior (or such lesser number of days as is practicable if such knowledge is obtained thereafter) to the occurrence of the Fundamental Change, the Corporation shall, to the extent legally permissible, give written notice of such proposed Fundamental Change, which notice shall describe (to the extent known) the expected date of consummation thereof to each holder of Series A Preferred Stock (provided, that the Corporation shall not be required to deliver such notice if its delivery would result in, or, in the Corporation's sole reasonable discretion, be likely to result in, the Corporation having to generally disclose material non-public information pursuant to Regulation FD, any successor law or any similar provision of any law applicable to the Corporation; provided, further, that so long as the Sponsor and its Affiliates are subject to a confidentiality obligation with the Corporation, the exception to the notice requirement set forth in the immediately preceding proviso shall not apply to the Sponsor or its Affiliates).

(ii) If a Fundamental Change occurs, each holder of the Series A Preferred Stock will have the right (but not the obligation) to require the Corporation to redeem all, but not less than all, of such holder's Series A Preferred Stock on the Fundamental Change Redemption Date for an amount of cash per Share, payable by wire transfer to the account or accounts designated in writing to the Corporation by such holder, equal to:

(1) if the Fundamental Change is a Change of Control, the greater of (A) the product of (1) the Applicable Fundamental Change Percentage *multiplied by* (2) the sum of the Accrued Value of such Share as of and including the Fundamental Change Redemption Date *plus*, without duplication, dividends

accrued but not yet compounded as of and through such date (such amount in this clause (A), the "Fundamental Change Make-Whole Amount") and (B) the product of (1) the Deemed Conversion Shares at the time of closing of such Change of Control *multiplied by* (2) the Change of Control Purchase Price; and

(2) if the Fundamental Change is not a Change of Control, the Fundamental Change Make-Whole Amount;

by delivering to the Corporation, at its principal office or to such other location as may be directed by the Corporation, the Shares to be redeemed and written notice of such election (x) if notice was delivered by the Corporation to such holder pursuant to Section 6(b)(i), by 12:00 p.m., New York time, on the Business Day immediately preceding the effective date of the Fundamental Change, and (y) if notice was delivered by the Corporation to such holder pursuant to Section 6(b)(iii), by the Close of Business on the day that is three Business Days prior to the Alternative Fundamental Change Redemption Date. Upon timely receipt of any holder's election and Shares, the Corporation shall be obligated to redeem the Shares of such holder (1) if the Corporation delivered notice to such holder pursuant to Section 6(b)(i), on the date of the occurrence of the Fundamental Change (the "Sponsor Fundamental Change Redemption Date"), and (2) if the Corporation delivered notice to such holder pursuant to Section 6(b)(iii), on the Alternative Fundamental Change Redemption Date, in each case, in priority over any payments to the holders of Junior Stock. If any proposed Fundamental Change does not occur, any request for redemption in connection therewith shall be automatically rescinded, or if there has been a material change in the terms or the timing of the transaction, any holder of Series A Preferred Stock may rescind such holder's request for redemption by giving written notice of such rescission to the Corporation.

(iii) If a Fundamental Change occurs and notice is not given to such holder pursuant to Section 6(b)(i), then the Corporation will deliver notice of such Fundamental Change to such holder as promptly as practicable after the occurrence of such Fundamental Change, which notice shall set forth the date on which the Corporation will redeem any Shares properly tendered by such holder in accordance with Section 6(b)(ii) in connection with such Fundamental Change, which date, shall be no fewer than 25 Business Days, and no more than 35 Business Days after the date on which such notice is delivered (the "Alternative Fundamental Change Redemption Date", and together with the Sponsor Fundamental Change Redemption Date, the "Fundamental Change Redemption Date").

(c) Redemption Payments. For each Share to be redeemed hereunder, to the extent required by the Corporation, upon surrender by the holder thereof at the Corporation's principal office, or to such other location as may be directed by the Corporation, of the certificate representing such Share and any other documentation required pursuant to this Certificate of Designations and reasonably requested by the Corporation, the Corporation shall be obligated on the Optional Redemption Date or any Fundamental Change Redemption Date (each a "Redemption Date") to pay to the holder thereof, by wire transfer to an account or accounts designated by the holder at least three Business Days prior to the relevant Redemption Date, an amount in cash equal to the redemption price of such Share in accordance with Section 6(a), Section 6(b), or Section 6(c), as applicable. If the Corporation pays any holder of more than one Share an amount of cash less than the amount of the redemption price due in accordance with

Section 6(a), Section 6(b), or Section 6(c) with respect to such Shares, the payment shall be deemed to satisfy the Corporation's obligations with respect to a number of Shares held by such holder (the "Deemed Redeemed Shares") equal to the maximum number of Shares held by such holder for which the applicable redemption price could have been paid in full by such amount of cash, and thereafter, such Deemed Redeemed Shares shall be redeemed by the Corporation in accordance with Section 6(a) or Section 6(b), as applicable, and cancelled and retired. For the avoidance of doubt, any Shares not redeemed pursuant to Section 6(a), Section 6(b), or Section 6(c), as applicable, shall remain outstanding.

(d) Redeemed or Otherwise Acquired Shares. Any Shares which are redeemed by the Corporation or otherwise acquired by the Corporation or which are converted shall be canceled and retired to "authorized but unissued shares" and shall not be reissued, sold or transferred.

(e) No Other Redemptions. The Series A Preferred Stock shall not be redeemable except as expressly authorized in this Section 6.

Section 7. Conversion.

(a) Conversion at the Option of the Holder. Each Share may be converted on any date, from time to time, at the option of the holder thereof into a number of shares of Conversion Stock equal to the Deemed Conversion Shares.

(b) Conversion at the Option of the Corporation. If, on any date following the date that is two years after the Issue Date, (i) no Event of Noncompliance has occurred and is continuing, (ii) there is an effective Shelf Registration Statement covering the resale of all of the Registrable Securities, which remains effective through and including the Corporation Conversion Date, and and (iii) for any 20 Trading Days out of the 30 consecutive Trading Day-period immediately preceding such date, the volume weighted average closing price of the Common Stock on such Trading Days equaled or exceeded $42.00 per share (such day, the "Window Trigger Date"), then the Corporation may cause the conversion of all, but not less than all, of the Shares into a number of shares of Conversion Stock equal to the Deemed Conversion Shares by providing written notice to the holders of the Series A Preferred Stock, no later than 10 days after such Window Trigger Date, of the Corporation's election to cause such conversion, and of the effective date of such conversion, which effective date shall not be earlier than 30 days or later than 60 days after the date of such notice (the "Corporation Conversion Date").

(c) Conversion Procedure. To convert Shares pursuant to Section 7(a) or Section 7(b), the holder of such Shares must deliver the certificate(s) representing such Shares to the Corporation at its principal corporate office, or to such other locations as may be directed by the Corporation, and with respect to a conversion pursuant to Section 7(a), together with an irrevocable written notice of conversion. The "Conversion Date" means, for any Share, (i) in the case of a conversion under Section 7(a), the date on which such Share is submitted for conversion and the duly signed and completed notice of conversion of such Share is received by the Corporation and (ii) in the case of a conversion under Section 7(b), the Corporation Conversion Date. Upon conversion of a Share, (x) the Person entitled to receive the Conversion Stock issuable upon such conversion shall be treated for all purposes as the record holder or

holders of such Conversion Stock at the Close of Business on the Conversion Date for such Share (and, for the avoidance of doubt, without limiting the rights of holders of Shares provided herein (including voting rights as provided in Section 9 or rights to dividends as provided in Section 4), prior to such time will not be treated as the holder or holders of record of such Conversion Stock or as entitled to any rights with respect to such shares of Conversion Stock by virtue of holding Shares), and (y) such Person shall cease to be a record holder of the Series A Preferred Stock at the Close of Business on such Conversion Date, in each of (x) and (y) irrespective of whether Conversion Stock is issued on or after the Conversion Date. As promptly as practicable on or after the Conversion Date for any Share, the Corporation shall issue the number of whole shares of Conversion Stock issuable upon conversion, with such number of shares of Conversion Stock determined based on the aggregate number of Shares converted by the converting holder on such Conversion Date and any remaining balance satisfied in cash. Such delivery shall be made, at the option of the applicable holder, in certificated form or by book-entry (if Common Stock is then issued in one or more global certificates with a depositary). If any holder converts only a portion of the Shares represented by a single certificate, the Corporation will promptly issue a new certificate representing the portion of the Shares that such holder has not converted. Any such certificate or certificates shall be delivered by the Corporation to the appropriate holder by sending certificates evidencing the shares to the holders at their respective addresses as set forth in the conversion notice. The Corporation shall be entitled to treat the registered holder of any share of Common Stock issued upon the conversion of a Share as the owner of such share for all purposes.

(d) Contingent Conversion. Notwithstanding any other provision of this Section 7, if a conversion of Series A Preferred Stock is to be made in connection with an event or transaction affecting the Corporation, the conversion of any Shares may, at the election of the holder thereof, be conditioned upon the consummation of such event or transaction, in which case such conversion shall not be deemed to be effective until such event or transaction has been consummated.

(e) Common Stock Reserved for Issuance. The Corporation shall at all times reserve and keep available out of its authorized and unissued shares of Conversion Stock, solely for the purpose of issuance upon the conversion of the Series A Preferred Stock, the number of shares of Conversion Stock that would be issuable upon the conversion of all outstanding Series A Preferred Stock. All shares of Conversion Stock which are so issuable shall, when issued, be duly and validly issued, fully paid and nonassessable and free from all taxes, liens, charges and encumbrances. The Corporation shall take reasonable best efforts to assure that all such shares of Conversion Stock may be so issued without violation of any applicable law or governmental regulation or any requirements of any domestic securities exchange upon which shares of Conversion Stock may be listed (except for official notice of issuance which shall be promptly delivered by the Corporation upon each such issuance and except for any such law, regulation or requirement applicable because of the business or nature of the holder). The Corporation shall not take any action which would cause the number of authorized but unissued shares of Conversion Stock to be less than the number of such shares required to be reserved hereunder for issuance upon conversion of the Series A Preferred Stock in accordance with this Section 7(e).

(f) Taxes. The Corporation shall pay any and all transfer Taxes that may be payable in respect of the issue or delivery of shares of Conversion Stock on conversion of the

Shares. The Corporation shall not, however, be required to pay any Tax which may be payable in respect of any transfer involved in the issue or delivery of shares of Conversion Stock in a name other than that in which the converted Shares of Series A Preferred Stock were registered, and no such issue or delivery shall be made unless and until the Person requesting such issue has paid to the Corporation the amount of any such Tax, or has established to the satisfaction of the Corporation that such Tax has been paid.

(g) No Impairment. The Corporation shall not, by amendment of this Certificate of Designations or the Amended and Restated Certificate of Incorporation or through any reorganization, transfer of assets, consolidation, merger, dissolution, issue or sale of securities or any other voluntary action, avoid or seek to avoid the observance or performance of any of the terms to be observed or performed hereunder by the Corporation.

Section 8. Conversion Price; Adjustments.

(a) In order to prevent dilution of the conversion rights granted under Section 7, the Conversion Price shall be subject to adjustment from time to time, without duplication, in the circumstances and in the manner described in this Section 8.

(b) Stock Dividends. In case the Corporation shall pay or make a dividend or other distribution on the Common Stock in Common Stock, the Conversion Price, as in effect at the opening of business on the day following the date fixed for the determination of stockholders of the Corporation entitled to receive such dividend or other distribution, shall be adjusted by multiplying such Conversion Price by a fraction of which the numerator shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination and the denominator shall be the sum of such number of shares and the total number of shares constituting such dividend or other distribution, such adjustment to become effective immediately after the opening of business on the day following the date fixed for such determination.

(c) Stock Purchase Rights. If the Corporation issues or sells to all holders of its Common Stock any Options entitling them to subscribe for or purchase shares of Common Stock for a period expiring within 60 days from the date of issuance of such Options at a price per share for an amount of consideration per share less than the Market Price of one share of Common Stock determined as of the date of such issue or sale, then at the opening of business on the day following the date fixed for such determination the Conversion Price shall be reduced to equal (x) the Conversion Price in effect immediately prior to such issue or sale *multiplied* by (y) a fraction, the numerator of which shall be (1) the number of shares of Common Stock Deemed Outstanding on the close of business on the date fixed for such determination *plus* (2) the aggregate consideration expected to be received by the Company upon the exercise, conversion or exchange of such Options (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a resolution of the Board of Directors) and the denominator of which shall be the number of shares of Common Stock outstanding at the close of business on the date fixed for such determination *plus* the number of shares of Common Stock so offered for subscription or purchase.

(d) Debt, Asset or Security Distributions. In case the Corporation shall, by dividend or otherwise, distribute to all holders of its Common Stock evidences of its indebtedness, assets or securities (but excluding any dividend or distribution of Options referred to in Section 8(c), any dividend or distribution paid exclusively in cash, any dividend or distribution of shares of Capital Stock of any class or series, or similar equity interests, or any dividend or distribution referred to in Section 8(b)), the Conversion Price shall be reduced by multiplying the Conversion Price in effect immediately prior to the close of business on the date fixed for the determination of stockholders of the Company entitled to receive such distribution by a fraction, the numerator of which shall be Market Price minus the fair market value (as determined in good faith by the Board of Directors, whose determination shall be conclusive and described in a Board Resolution) of the portion of the assets or evidences of indebtedness so distributed applicable to one share of Common Stock and the denominator of which shall be the Market Price on the date fixed for such determination, such adjustment to become effective immediately prior to the opening of business on the day following the date fixed for the determination of stockholders of the Company entitled to receive such distribution.

(e) Treasury Shares. The number of shares of Common Stock outstanding at any given time shall not include shares owned or held by or for the account of the Corporation or any Subsidiary, and the disposition of any shares so owned or held shall be considered an issue or sale of Common Stock.

(f) Subdivision or Combination of Common Stock. If the Corporation at any time subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Price in effect immediately prior to the effective date or record date, as the case may be, for such subdivision shall be proportionately reduced on such effective date or record date, as the case may be, and if the Corporation at any time combines (by reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Price in effect immediately prior to the effective date or record date for such combination shall be proportionately increased immediately after such effective date or record date.

(g) Record Date. If the Corporation takes a record of the holders of Common Stock for the purpose of entitling them (a) to receive a dividend or other distribution payable in Common Stock, Options or in Convertible Securities or (b) to subscribe for or purchase Common Stock, Options or Convertible Securities, then such record date shall be deemed to be the date of the issue or sale of the shares of Common Stock deemed to have been issued or sold upon the declaration of such dividend or upon the making of such other distribution or the date of the granting of such right of subscription or purchase, as the case may be.

(h) Notices Related to Conversion Adjustments.

(i) Promptly upon any adjustment of the Conversion Price, the Corporation shall give written notice thereof to all holders of Series A Preferred Stock, setting forth in reasonable detail and certifying the calculation of such adjustment.

(ii) The Corporation shall give written notice to all holders of Series A Preferred Stock at least 10 Business Days prior to the date on which the Corporation closes its books or takes a record (a) with respect to any dividend or distribution upon Common Stock, (b) with respect to any *pro rata* subscription offer to holders of Common Stock or (c) for determining rights to vote with respect to any Organic Change or Liquidation Event.

(iii) So long as the delivery of such notice would not result in, or, in the Corporation's sole reasonable discretion, be likely to result in, the Corporation having to generally disclose material non-public information pursuant to Regulation FD, any successor law or any similar provision of any law applicable to the Corporation (provided, that so long as the Sponsor and its Affiliates are subject to a confidentiality obligation with the Corporation, such exception shall not apply to the Sponsor or its Affiliates), the Corporation shall also give written notice to the holders of Series A Preferred Stock at least 10 Business Days prior to the date on which any Organic Change shall take place.

(i) Consolidation, Merger or Sale. Any consolidation, merger, sale, assignment, conveyance, lease, transfer or other disposition of substantially all of the assets or properties of the Corporation and its Subsidiaries on a consolidated basis in any transaction or series of related transactions, in each case, which is effected in such a manner that the holders of Common Stock are entitled to receive (either directly or upon subsequent liquidation) stock, securities, cash or assets with respect to, or in exchange for, Common Stock, is referred to herein as an "Organic Change". Prior to the consummation of any Organic Change, the Corporation shall, at its election, either redeem the Shares pursuant to Section 6(a) if the Corporation has the right to force such redemption at such time, cause the conversion of the Shares pursuant to Section 7(b) if the Corporation has the right to force such conversion at such time or make appropriate provisions to insure that the holder of any Share not being redeemed in accordance with Section 6(b) shall thereafter have the right to acquire and receive, upon conversion of such Share, in lieu of each share of Common Stock immediately theretofore acquirable and receivable upon the conversion of such Share, the types and amounts of stock, other securities, cash or other assets that such holder would have received in connection with such Organic Change if such holder had converted its Share immediately prior to such Organic Change. The Corporation shall not effectuate an Internal Reorganization Event unless the Series A Preferred Stock shall be outstanding as a class of preferred stock of the surviving corporation having the same rights, terms, preferences, liquidation preference and accrued and unpaid dividends as the Series A Preferred Stock in effect immediately prior to such Internal Reorganization Event.

Section 9. Voting Rights. Except as otherwise provided herein (including Section 10) or by applicable law, the holders of Shares shall be entitled to vote with the holders of shares of Common Stock, together as a single class, on all matters submitted to a vote of shareholders of the Corporation. Each holder of Shares shall be entitled to the number of votes equal to the number of whole shares of Common Stock into which all Shares held of record by such holder could then be converted pursuant to Section 7 at the record date for the determination of the shareholders entitled to vote on such matters or, if no such record date is established, at the date such vote is taken or any written consent of shareholders is first executed. The holders of Shares shall be entitled to notice of any meeting of shareholders of the Corporation in accordance with the Bylaws. On and following the Trigger Date (as defined in the Amended and Restated Certificate of Incorporation), for so long as the Sponsor Entities continue to own the Required

Percentage, the holders of at least a majority of the then-outstanding Shares held by the Sponsor Entities, voting as a separate class, shall be entitled to elect two (2) directors to the Board of Directors and at each meeting or pursuant to each consent of the Company's stockholders for the election of directors (the "Series A Directors"); provided that, if and for so long as the Sponsor Entities continue to own more than 50% of the Required Percentage but less than 100% of the Required Percentage, the holders of at least a majority of the then-outstanding Shares held by the Sponsor Entities, voting as a separate class, shall be entitled to elect one (1) Series A Director at each meeting or pursuant to each consent of the Company's stockholders for the election of directors. The Series A Directors shall only be removed by the holders of at least a majority of the then-outstanding Shares held by the Sponsor Entities, voting as a separate class.

Section 10. Protective Provisions. For so long as the Sponsor Entities continue to own the Required Percentage, the Corporation shall not, and shall cause its Subsidiaries not to, without first obtaining the approval (by vote or written consent as provided by law) of the holders of at least the majority of the then-outstanding Shares, voting as a separate class:

(a) amend, modify, waive, repeal or restate any provision in this Certificate of Designations, the Amended and Restated Certificate of Incorporation or Bylaws, similar organizational documents of the Corporation's Subsidiaries, the Reg Rights Agreement or any other rights involving the rights of holders with respect to any Shares, including, by merger, consolidation, recapitalization or otherwise, in each case, in any manner that adversely affects the powers, preferences or rights of the Shares;

(b) enter into any contract that would prohibit or restrict the ability of the Corporation to perform its obligations with respect to the Series A Preferred Stock;

(c) incur Indebtedness (including guarantees on Indebtedness) in excess of the amount of Indebtedness outstanding on the Issue Date;

(d) extend, supplement, amend, waive or otherwise modify any material provisions of the Loan Documents or any other agreement, indenture or similar instrument governing any terms of Indebtedness of the Corporation or its Subsidiaries, other than refinancing Indebtedness outstanding on the Issue Date;

(e) acquire or divest in one or more series of transactions the stock or assets of any Person for consideration in excess of $25 million individually or $125 million in the aggregate in any given year;

(f) establish or acquire any Subsidiaries outside of the United States;

(g) effect a Fundamental Change;

(h) effect any bankruptcy or Liquidation Event of the Corporation or its Subsidiaries;

(i) declare or pay any dividends other than dividends on the Series A Preferred Stock;

(j) authorize, create or issue any Capital Stock of the Corporation or any of its Subsidiaries other than Junior Stock or pursuant to any management plan approved by the Board of Directors;

(k) (i) reclassify, alter or amend any existing security of the Corporation that is pari passu with the Shares in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to the Shares in respect of any such right, preference, or privilege or (ii) reclassify, alter or amend any existing security of the Corporation that is Junior Stock in respect of the distribution of assets on the liquidation, dissolution or winding up of the Corporation, the payment of dividends or rights of redemption, if such reclassification, alteration or amendment would render such other security senior to or pari passu with the Shares in respect of any such right, preference or privilege;

(l) enter into or effect any transaction involving the recapitalization, reorganization, reclassification, repurchase, redemption, exchange or other acquisition of any equity securities of the Corporation or its Subsidiaries, other than repurchases or redemptions by a wholly owned Subsidiary of its outstanding securities, or redemptions or other repurchases of Common Stock from employees of the Corporation and its Subsidiaries pursuant to plans or arrangements approved by the Board of Directors; or

(m) agree in writing or commit or publicly announce an intention to do any of the foregoing.

Section 11. Events of Noncompliance.

(a) Definition. An "Event of Noncompliance" shall have occurred if: (A) the Corporation fails to make any redemption payment with respect to the Series A Preferred Stock which it is required to make under this Certificate of Designations, whether or not such payment is legally permissible or is prohibited by any Loan Document or any other agreement to which the Corporation is subject or (B) the Corporation breaches any of its payment obligations under this Certificate of Designations, including Section 7(f) hereto.

The foregoing shall constitute Events of Noncompliance whatever the reason or cause for any such Event of Noncompliance and whether it is voluntary or involuntary or is effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body and regardless of the effects of any subordination provisions.

(b) Consequences of Events of Noncompliance.

(i) If an Event of Noncompliance has occurred and is continuing, the Dividend Rate for such outstanding Shares will increase by 3.00% per annum, effective as of the date of the Event of Noncompliance, and will increase by an additional 0.50% per annum on each successive Dividend Compounding Date (up to a maximum Dividend Rate of 20.00% per annum), in each case, until such Event of Noncompliance has been cured and no longer is continuing.

(ii) If any Event of Noncompliance exists, each holder of Series A Preferred Stock shall also have any other rights which such holder is entitled to under any contract or agreement at any time and any other rights and remedies which such holder may have at law or in equity.

(c) For the avoidance of doubt, any action by the Corporation in violation of this Certificate of Designations, including with respect to the rights of holders of Shares pursuant to Section 8 or Section 10, shall be null and void ab initio, and of no force or effect.

Section 12. Registration of Transfer. The Corporation shall keep at its principal office a register for the registration of Series A Preferred Stock. The Corporation shall be entitled to treat the registered holder of any Share as the owner of such Share for all purposes. Upon the surrender of any certificate representing Shares at such place, the Corporation shall, at the request of the record holder of such certificate, execute and deliver (at the Corporation's expense) a new certificate or certificates in exchange therefor representing in the aggregate the number of Shares represented by the surrendered certificate. Each such new certificate shall be registered in such name and shall represent such number of Shares as is requested by the holder of the surrendered certificate and shall be substantially identical in form to the surrendered certificate.

Section 13. Notices. Except as otherwise expressly provided hereunder, all notices referred to herein shall be in writing and shall be deemed to have been given when so mailed or sent (a) to the Corporation, at its principal executive offices and (b) to any holder of Shares, at such holder's address as it appears in the stock records of the Corporation (unless otherwise indicated by any such holder by written notice to the Corporation).

Section 14. Replacement Certificates. Upon receipt of evidence reasonably satisfactory to the Corporation (an affidavit of the registered holder shall be satisfactory) of the ownership and the loss, theft, destruction or mutilation of any certificate evidencing Shares, and in the case of any such loss, theft or destruction, upon receipt of indemnity reasonably satisfactory to the Corporation (provided that if the holder is a financial institution or other institutional investor its own agreement shall be satisfactory), or, in the case of any such mutilation upon surrender of such certificate, the Corporation shall (at the holders expense) execute and deliver in lieu of such certificate a new certificate of like kind representing the number of Shares of such class represented by such lost, stolen, destroyed or mutilated certificate and dated the date of such lost, stolen, destroyed or mutilated certificate, and dividends shall accrue on the Shares represented by such new certificate from the date to which dividends have been fully paid on such lost, stolen, destroyed or mutilated certificate.

Section 15. Amendment and Waiver. No amendment, modification, alteration, repeal or waiver of any provision of this Certificate of Designations shall be binding or effective without the prior written consent of the holders of a majority of the Shares outstanding at the time such action is taken. For the avoidance of doubt, no amendment, modification, alteration, repeal or waiver of the terms or relative priorities of the Shares may be accomplished whether by

the merger, consolidation or other transaction of the Corporation with any other Person unless the Corporation has obtained the prior written consent of the holders of the majority the Shares then outstanding.

Section 16. Withholding; Offset of Taxes. The Corporation or any other withholding agent shall be entitled to deduct and withhold from the amounts otherwise payable to a holder of Shares such amounts as the Corporation or such withholding agent are required to deduct and withhold under the Code with respect to the making of such payment ("Withholding Tax"). The Corporation or such other withholding agent shall provide the holder with (x) to the extent practicable, at least 10 Business Days advance notice of any amounts proposed to be withheld, (y) an original or certified copy of a receipt from the applicable taxing authority showing payment of any such Withholding Tax, and (z) such other information regarding any such Withholding Tax as the holder may reasonably request. To the extent that Withholding Tax is withheld, (i) the Corporation or such other withholding agent timely shall pay over such amounts to the applicable taxing authority and (ii) such withheld amounts shall be treated for all purposes as having been paid to the Person in respect of whom such deduction and withholding was made. To the extent that the Corporation is required to pay over to a taxing authority any Withholding Tax (excluding for the avoidance of doubt any Taxes referred to in the second sentence of Section 7(f)) on behalf of or with respect to any holder of Shares and such Withholding Tax is not withheld from a cash payment payable to such holder, then the Corporation may, in its sole and absolute discretion, set off such Withholding Tax payment against any payments of Conversion Stock or cash on such Shares or Common Stock received as Conversion Stock.

Section 17. Incorporation by Reference. The full text of the Purchase Agreement, the Reg Rights Agreement, the Loan Documents and any other agreement referenced herein is on file at the registered office of the Corporation as set forth in the Amended and Restated Certificate of Incorporation (as such registered office may be modified from time to time in accordance with Section 133 of the DGCL or any successor provision).

* * * * *

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Designations as of [●], 2017.

SURGERY PARTNERS, INC.

By: _____
Name:
Title:

[SIGNATURE PAGE TO CERTIFICATE OF DESIGNATIONS, PREFERENCES, RIGHTS AND LIMITATIONS (10.00% SERIES A CONVERTIBLE PERPETUAL PARTICIPATING PREFERRED STOCK) – SURGERY PARTNERS, INC.]

Exhibit 10.2

STOCK PURCHASE AGREEMENT

This STOCK PURCHASE AGREEMENT (this "Agreement") is entered into as of May 9, 2017, by and between the entities set forth on Schedule 1 (the "Sellers"), BCPE Seminole Holdings LP, a Delaware limited partnership ("Purchaser") and Surgery Partners, Inc., a Delaware corporation (the "Company").

WHEREAS, the Sellers collectively own 26,455,651 shares of Common Stock, par value $0.01 per share, of the Company (the "Common Stock"), as set forth on Schedule 1 (the "Purchased Shares");

WHEREAS, Purchaser agrees to purchase the Purchased Shares from the Sellers, and each Seller agrees to sell its Purchased Shares as set forth on Schedule 1 to Purchaser, with such sale to be consummated in accordance with the terms and subject to the conditions set forth herein;

WHEREAS, following the consummation of the transactions contemplated hereby, the Sellers will own no equity interests in the Company;

WHEREAS, concurrently with the execution and delivery of this Agreement, the Company, SP Merger Sub, Inc., a Delaware corporation, NSH Holdco, Inc. ("NSH") and IPC/NSH, L.P., solely in its capacity as sellers' representative, have entered into that certain Agreement and Plan of Merger (the "Merger Agreement"), dated as of the date hereof, pursuant to which a wholly-owned subsidiary of the Company has agreed to acquire all of the outstanding equity of NSH (the "NSH Merger");

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of Purchaser to enter into this Agreement, Purchaser and the Company entered into that certain Securities Purchase Agreement (the "Preferred Stock Purchase Agreement"), dated as of the date hereof, pursuant to which the Company will sell to Purchaser and Purchaser will buy from the Company shares of the Company's 10.00% Series A Convertible Perpetual Participating Preferred Stock, par value $0.01 per share (the "Series A Preferred Stock") and the transactions contemplated by the Preferred Stock Purchase Agreement, the "Preferred Stock Purchase";

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition to the willingness of Sellers to enter into this Agreement, the Company and HIG SP entered into that certain Amendment No. 1 to the Income Tax Receivables Agreement, dated as of September 30, 2015, by and among the Company, HIG SP, as the stockholders representative, and the other parties referred to therein (the "TRA Amendment" and, collectively with the Merger Agreement, this Agreement, the Preferred Stock Purchase Agreement, the Confidentiality Agreement and the other agreements, certificates and other documents to be entered into or delivered pursuant to the terms hereof or thereof or in connection herewith or therewith, the "Transaction Documents");

NOW, THEREFORE, in consideration of the foregoing and the representations, warranties and agreements set forth in this Agreement, and intending to be legally bound by this Agreement, for other good and valuable consideration, the receipt, sufficiency, and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
PURCHASE AND SALE OF PURCHASED SHARES

1.1 Purchase and Sale of the Purchased Shares. On the terms and conditions set forth in this Agreement, at the Closing, the Sellers shall each transfer, assign, set over, convey and deliver to Purchaser, and Purchaser shall purchase from each Seller, the rights, title, and interest of such Seller in and to the number of Purchased Shares set forth on Schedule 1. The purchase price for the Purchased Shares shall be nineteen dollars ($19.00) per share, for an aggregate purchase price of $502,657,369 (the "Purchase Price").

1.2 Closing. The consummation of the purchase and sale of the Purchased Shares and the other transactions contemplated by this Agreement (the "Closing") shall take place at the offices of Ropes & Gray LLP at 10:00 a.m. New York City time on the first date following the date on which each of the conditions set forth in Sections 4.1 or 4.2 have previously been fulfilled or waived (other than those conditions that can be fulfilled only at the Closing, but subject to their being fulfilled), or at such other time and place as Purchaser and the Sellers shall mutually agree (such date, the "Closing Date").

1.3 Closing Payments and Delivery of Purchased Shares. Purchaser shall remit the Purchase Price to each Seller as set forth on Schedule 1, in accordance with wire instructions provided by each Seller to Purchaser no later than two (2) Business Days prior to the Closing Date, in immediately available funds concurrently with the delivery to Purchaser of one (1) or more stock certificates in respect of the Purchased Shares.

1.4 Withholding. Notwithstanding anything in this Agreement to the contrary, Purchaser or its designee shall be entitled to withhold and deduct from any amounts payable pursuant to this Agreement such amounts as Purchaser or its designee is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or non-U.S. Tax Law. To the extent that amounts are so withheld or deducted and timely paid to the appropriate Tax authority, such amounts shall be treated for all purposes of this Agreement as having been paid to the Person in respect of which such withholding or deduction was made.

ARTICLE II
REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF THE SELLERS

Each Seller represents and warrants to Purchaser, as of the date hereof and as of the Closing Date, as follows:

2.1 Such Seller is duly organized, validly existing, and in good standing under the Laws of its jurisdiction of formation; has all requisite power and authority to own its properties and conduct its business as presently conducted and to consummate the transactions contemplated by this Agreement. Each Seller has the full legal right, power, and authority to sell, assign, transfer, set over, deliver and convey the Purchased Shares in accordance with the terms of this Agreement, and the delivery to Purchaser of the Purchased Shares pursuant to the terms of this Agreement will transfer to Purchaser good, valid, and legal title to the Purchased Shares, free and clear of any and all Liens.

2.2 The authorization, execution and delivery by such Seller of this Agreement, the performance of all of its obligations under this Agreement and the consummation of the transactions contemplated hereby are within the power and authority of such Seller and have been duly authorized by all necessary action on the part of such Seller, its officers, directors and stockholders. The execution, delivery, and performance by such Seller of this Agreement and the consummation of the transactions contemplated hereby, require no approval of, filing with, or other action by such Seller, by or in respect of, any Governmental Authority or any other person, other than (i) as set forth on Schedule 2.2 of the Sellers' disclosure letter, (ii) the Stockholder Approval, (iii) the expiration or termination of any applicable waiting periods (together with any extensions thereof) under the HSR Act, (iv) a filing of a Schedule 13D or 13G by the parties hereto, (v) an amendment to Sellers' existing Schedule 13G, (vi) any required filings by such Seller or its Affiliates under Section 16 of the Exchange Act, (vii) the filing of a Form 8-K under the Exchange Act by the Company, (viii) the filing with the SEC of such reports under the Exchange Act or the Securities Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement, and (ix) such consents, approvals, orders, authorizations, registrations, qualifications, declarations and filings of the Company or such Seller the failure of which to make or obtain would not reasonably be expected to have a Material Adverse Effect on such Seller or the Company.

2.3 This Agreement has been (a) duly executed and delivered by such Seller and (b) constitutes a legal, valid, and binding obligation of such Seller, enforceable against such Seller in accordance with its terms, subject to applicable Law.

2.4 Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (a) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which such Seller is subject or conflict with, or (b) result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under, any agreement, contract, lease, license, instrument, or other arrangement to which such Seller is a party or by which such Seller is bound, or to which any assets of such Seller are subject, other than as would not reasonably be expected to have a Material Adverse Effect on such Seller.

2.5 Such Seller (a) is the sole record and beneficial owner of each of the Purchased Shares listed next to its name on Schedule 1 hereto, (b) has good and marketable title to such Purchased Shares, (c) has the full and exclusive right, power, and authority to transfer and deliver to Purchaser valid title to such Purchased Shares, and (d) has the full and exclusive right, power, and authority to exercise all power afforded each Purchased Share under the organizational documents of the Company, free and clear (in each of the preceding clauses (a), (b), (c), and (d)) of any and all Liens. Immediately following the Closing, Purchaser (x) will be the sole record and beneficial owners of the Purchased Shares, and (y) will have good and marketable title to the Purchased Shares, free and clear (in each of the preceding clauses (x) and (y)) of any and all Liens. Such Seller is not a party to, and none of the Purchased Shares are subject to, any shareholders agreement, voting agreement, voting trust, proxy, or any other contractual obligation relating to the transferability or the voting of either the Purchased Shares.

2.6 Other than as previously disclosed to Purchaser, no broker or finder has acted for such Seller in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commissions in respect of such transactions based upon agreements, arrangements, or understandings made by or on behalf of such Seller.

2.7 The information relating to such Seller and its respective Affiliates that is or will be supplied in writing by such Seller or its Affiliates for inclusion in the Information Statement (or any supplement thereto), and in any other document filed with the SEC in connection with the transactions contemplated hereby, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

ARTICLE III
REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF PURCHASER

Purchaser represents and warrants to each Seller and the Company, as of the date hereof and as of the Closing Date, as follows:

3.1 Purchaser is a limited partnership, duly formed, validly existing, and in good standing under the laws of its jurisdiction of formation, and has the power to carry on its business as it is now being conducted and to consummate the transactions contemplated by this Agreement.

3.2 The authorization, execution, delivery, and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby are within the power and authority of Purchaser and have been duly authorized by all necessary action on the part of Purchaser. The execution, delivery, and performance by Purchaser of this Agreement and the consummation of the transactions contemplated hereby, require no approval of, filing with, or other action by Purchaser, by or in respect of, any Governmental Authority or any other person, other than (i) the expiration or termination of any applicable waiting periods (together with any extensions thereof) under the HSR Act, (ii) a filing of a Schedule 13D or 13G by the parties hereto, (iii) the filing with the SEC of such reports under the Exchange Act or the Securities Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement, (iv) such as has been previously obtained, made, or taken prior to the Closing Date or (v) such consents, approvals, orders, authorizations, registrations, qualifications, declarations and filings the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to prevent or materially delay or materially impair the ability of the Purchaser to consummate the transactions contemplated by this Agreement and to perform its obligations hereunder.

3.3 This Agreement has been (a) duly executed and delivered by Purchaser and (b) constitutes a legal, valid, and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, subject to applicable Law.

3.4 Neither the execution and the delivery of this Agreement, nor the consummation of the transactions contemplated hereby, will (a) violate any constitution, statute, regulation, rule, injunction, judgment, order, decree, ruling, charge, or other restriction of any Governmental Authority to which Purchaser is subject, or (b) conflict with, result in a breach of, constitute a default under, result in the acceleration of, create in any party the right to accelerate, terminate, modify, or cancel, or require any notice under, any agreement, contract, lease, license, instrument, or other arrangement to which Purchaser is a party or by which Purchaser is bound or to which any of the assets of Purchaser is subject, other than as would not reasonably be expected to have a Material Adverse Effect on Purchaser.

3.5 No broker or finder has acted for Purchaser in connection with this Agreement or the transactions contemplated hereby, and no broker or finder is entitled to any brokerage or finder's fee or other commissions in respect of such transactions based upon agreements, arrangements, or understandings made by or on behalf of Purchaser.

3.6 Purchaser is an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act, and has such knowledge and experience in financial and business matters that it is capable of evaluating the merits and risks of the transactions contemplated under this Agreement. Purchaser is acquiring the Purchased Shares for its own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that such Purchaser has no present intention of selling, granting any participation in or otherwise distributing the same in any manner that violates the Securities Act. Purchaser represents that by reason of its, or of its management's, business and financial experience, Purchaser has the capacity to evaluate the merits and risks of its investment in the Purchased Shares and to protect its own interests in connection with the transactions contemplated in this Agreement. Purchaser's financial condition is such that it is able to bear all economic risks of investment in the Purchased Shares, including a complete loss of its investment.

3.7 Purchaser has received and reviewed information about the Company and has had an opportunity to discuss the Company's business, management, and financial affairs with the Company's management and to review the Company's facilities. Purchaser believes it has received all the information it considers necessary or appropriate to decide whether to purchase the Purchased Shares. Purchaser understands and acknowledges that such discussions, as well as any written information issued with respect to the Company, (a) were intended to describe the aspects of the Company's business and prospects that the Company believes to be material, but were not necessarily an exhaustive description, and (b) may have contained forward-looking statements involving known and unknown risks and uncertainties that may cause the Company's actual results in future periods or plans for future periods to differ materially from what was anticipated, and that no representations or warranties were or are being made by the Sellers or the Company except as set forth in ARTICLE II and ARTICLE VII of this Agreement, respectively. The foregoing, however, does not limit or modify the representations and warranties of the Seller in ARTICLE II or the Company in ARTICLE VII of this Agreement or the right of Purchaser to rely thereon, or in any way restrict or otherwise limit Purchaser's right to bring any action or proceeding based upon fraud.

3.8 Bain Capital Fund XI, L.P., a Cayman Islands limited partnership ("Sponsor"). has delivered to Sellers a true, complete and correct copy of an equity commitment letter dated as of the date hereof (the "Equity Commitment Letter") from Sponsor pursuant to which Sponsor has agreed, subject to the terms and conditions thereof, to invest in Purchaser the amounts set forth therein. The Equity Commitment Letter is in full force and effect and is a legal, valid and binding obligation of the Sponsor, enforceable against it in accordance with its terms, except to the extent that enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar applicable Laws affecting the enforcement of creditors' rights in general and by the general principles of equity and the discretion of courts in granting equitable remedies (regardless of whether enforcement is sought in a proceeding at law or in equity). The Equity Commitment Letter provides that each Seller is a third-party beneficiary thereof and is entitled to enforce such agreement, in each case, to the extent and subject to the terms and conditions thereof. The cash equity committed pursuant to the Equity Commitment Letter is collectively referred to in this Agreement as the "Equity Financing." The proceeds of the Equity Financing, if funded in accordance with the Equity Commitment Letter at the Closing, shall provide Purchaser with the funds necessary at the Closing to purchase the Purchased Shares on the terms and conditions contemplated by this Agreement.

3.9 The information relating to Purchaser and its Affiliates that is or will be supplied in writing by Purchaser or its Affiliates for inclusion in the Information Statement (or any supplement thereto), and in any other document filed with the SEC in connection with the transactions contemplated hereby, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading.

ARTICLE IV
CONDITIONS TO THE OBLIGATIONS AT CLOSING

4.1 Conditions to the Sellers' Obligations at Closing. The obligations of each Seller to sell and deliver to Purchaser the Purchased Shares and consummate the other transactions contemplated hereby are subject to the fulfillment or waiver (if permitted by Law) on or before the Closing of each of the following conditions:

4.1.1 Representations and Warranties. Each of the representations and warranties of Purchaser in this Agreement shall be true and correct as of the Closing (except for such representations and warranties made as of a specific date, which shall be true and correct only as of such date), in each case except where the failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or which would materially and adversely affect the ability of Purchaser to perform its obligations under this Agreement.

4.1.2 No Legal Bar. No Order (whether permanent, preliminary or temporary) shall be in effect by a Governmental Authority of competent jurisdiction that restrains, enjoins or otherwise prevents the consummation of the Closing or the consummation of the other transactions contemplated herein.

4.1.3 Performance. Purchaser shall have performed and complied in all material respects with the agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with it on or prior to the Closing;

4.1.4 NSH Merger. The Closing, as defined in the Merger Agreement, on the terms set forth in the Merger Agreement (the "NSH Closing") has occurred prior to the Closing of this Agreement.

4.1.5 HSR Act. The applicable waiting period, together with any extensions thereof, under the HSR Act shall have expired or been terminated.

4.1.6 Regulatory Consents. The parties shall have obtained the governmental and regulatory consents and third party approvals and made the filings (if any) set forth on Schedule 4.2.10.

4.1.7 Information Statement. Twenty (20) days or more shall have elapsed since the Company filed with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act.

4.1.8 Purchaser Deliveries. Purchaser shall have delivered to the Sellers and the Company:

(a) copies of the resolutions or written consent duly adopted by the governing body of Purchaser authorizing the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby; and

(b) a certificate, signed by an officer of Purchaser, certifying as to the matters set forth in Section 4.1.1 and Section 4.1.3.

4.2 Conditions to Purchaser's Obligations at Closing. The obligations of Purchaser to purchase the Purchased Shares from Sellers at the Closing are subject to the fulfillment or waiver by Purchaser (if permitted by Law) on or before the Closing of each of the following conditions:

4.2.1 Representations and Warranties. Each of (i) the representations and warranties of each Seller and the Company in this Agreement (except for Section 7.6 (No Material Adverse Effect)) shall be true and correct at and as of the Closing (except for such representations and warranties made as of a specific date, which shall be true and correct only as of such date), in each case except where the failure of such representations and warranties to be true and correct (without giving effect to any limitation as to "materiality" or "Material Adverse Effect" set forth therein) does not have, and would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (ii) the representation and warranty set forth in Section 7.6 (No Material Adverse Effect) shall be true and correct at and as of the Closing Date.

4.2.2 No Legal Bar. No Order (whether permanent, preliminary or temporary) shall be in effect by a Governmental Authority of competent jurisdiction that restrains, enjoins or otherwise prevents the consummation of the Closing or the consummation of the other transactions contemplated herein.

4.2.3 Performance. Each Seller and the Company shall have performed and complied in all material respects with the agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with it on or prior to the Closing.

4.2.4 TRA Amendment. The TRA Amendment shall have been duly executed by HIG SP and the Company and be in full force and effect as of the Closing.

4.2.5 NSH Merger. The NSH Closing has occurred prior to the Closing of this Agreement.

4.2.6 NASDAQ Requirements. All NASDAQ listing requirements applicable to the transactions contemplated hereby shall have been satisfied.

4.2.7 No Material Adverse Effect. No Material Adverse Effect of the Company will have occurred after the date of this Agreement that is continuing.

4.2.8 Stockholder Approval. The Stockholder Approval shall be in full force and effect as of the Closing.

4.2.9 HSR Act. The applicable waiting period, together with any extensions thereof, under the HSR Act shall have expired or been terminated.

4.2.10 Regulatory Consents. The parties shall have obtained the governmental and regulatory consents and third party approvals and made the filings (if any) set forth on Schedule 4.2.10 and Purchaser shall have received evidence of the same.

4.2.11 Information Statement. Twenty (20) days or more shall have elapsed since the Company filed with the SEC the Information Statement in definitive form as contemplated by Rule 14c-2 promulgated under the Exchange Act.

4.2.12 Deliveries by Sellers. The Sellers shall have delivered, or caused the Company to have delivered, to Purchaser:

(a) all certificate(s), if any, representing the Purchased Shares, duly endorsed in blank or accompanied by stock powers endorsed in blank in proper form for transfer;

(b) a copy of the Stockholder Approval;

(c) copies of the resolutions or written consent duly adopted by the Board authorizing the execution, delivery and performance of the Transaction Documents and the consummation of the transactions contemplated thereby;

(d) if requested by Purchaser at least five (5) Business Days prior to the Closing, evidence of the written resignations or removal from the Board of the directors affiliated with Sellers, effective as of the Closing;

(e) an affidavit from the Company dated as of the Closing Date and duly executed under penalties of perjury, stating that the Company is not, and has not been, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code at any time during the five-year period ending on the Closing Date together with a notice from the Company, prepared in accordance with Section 1.897-2(h)(2) of the Treasury Regulations and duly executed under penalties of perjury by the Company to be mailed promptly to the IRS in accordance with Section 1.897-2(h)(2) of the Treasury Regulations; provided, however, that this condition alternatively may be satisfied if each Seller delivers a certificate, as described in Treasury Regulations Section 1.1445-2(b), establishing payments to such Seller are not subject to withholding under Section 1445 of the Code as a result of it not being a "foreign person"; and

(f) a certificate, signed by an officer of (a) each Seller certifying as to the matters with respect to such Seller set forth in Section 4.2.1, Section 4.2.3, and Section 4.2.8 and (b) the Company, certifying as to the matters with respect to the Company, set forth in Section 4.2.1, Section 4.2.3, Section 4.2.7, and Section 4.2.8.

ARTICLE V
COVENANTS

5.1 The Company, Purchaser and the Sellers each hereby covenant and agree, for the benefit of the other parties to this Agreement and their respective assigns, as follows:

5.1.1 Reasonable Best Efforts; Notices and Consents.

(a) Subject to the terms and conditions of this Agreement, from the date of this Agreement to the Closing, (i) Purchaser shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to cause the conditions specified in Section 4.1 to be satisfied as soon as reasonably practicable and (ii) the Company and each Seller shall use its reasonable best efforts to take, or cause to be taken, all appropriate action, and do, or cause to be done, all things necessary, proper or advisable under applicable Law or otherwise to cause the conditions specified in Section 4.2 to be satisfied as soon as reasonably practicable.

(b) The Sellers, the Company and Purchaser will cooperate and consult with each other and use reasonable best efforts to prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, orders, approvals and authorizations of, or any exemption by, all third persons required to consummate the transactions contemplated by this Agreement.

(c) The Sellers and Purchaser will each use, and cause their respective Affiliates to use, reasonable best efforts to take, or cause to be taken, and to do, or cause to be done, and to assist and cooperate with the other parties in doing all things necessary, proper or advisable to consummate the transactions contemplated by this Agreement, and the Preferred Stock Purchase.

5.1.2 HSR. Each of the Sellers and the Company, on the one hand, and Purchaser, on the other hand, shall use their reasonable best efforts to make, as promptly as reasonably practicable following the date hereof and, in any event, within ten Business Days, or shall cause each of their respective ultimate parent entities (as that term is defined in the HSR Act) to make, all pre-transaction notification filings required under the HSR Act, if any, and required under any other applicable Antitrust Laws, if any. Each of the Sellers and the Company, on the one hand, and Purchaser, on the other hand, shall (a) cooperate fully with each other and shall furnish to the other such necessary information and reasonable assistance as the other may reasonably request in connection with its preparation of any required filings under the HSR Act or any applicable Antitrust Laws and (b) keep the other party reasonably informed of any communication received by such party from, or given by such party to any Antitrust Authority and of any communication received or given in connection with any proceeding by a private party, in each case regarding the transactions contemplated hereby and in a manner that protects attorney-client or attorney work product privilege. Further, without limiting the obligations stated in this Section 5.1.2, the Sellers and the Company, on the one hand, and Purchaser, on the other hand, shall each use their reasonable best efforts to respond to any request for information regarding the transactions contemplated hereby or filings under the HSR Act or any applicable Antitrust Laws from any Antitrust Authority. Notwithstanding anything to the contrary contained in this Agreement, none of the Company, the Sellers or any of their respective Subsidiaries shall be obligated to agree to divest, hold separate or otherwise restrict its operations in connection with obtaining any applicable approvals under the HSR Act or any other applicable Antitrust Laws.

5.1.3 Stockholder Approval. Concurrently with the execution of this Agreement and the other Transaction Documents, the Sellers will deliver to the Company (with a copy to the Purchaser) a written consent executed by each Seller, that, when taken together, evidence the obtainment of the irrevocable approval by holders of a majority of the Common Stock of the transactions contemplated by this Agreement and the other Transaction Documents (the "Stockholder Approval").

5.1.4 Information Statement; Cooperation. As promptly as practicable following the date hereof, Sellers and Purchaser shall cooperate with the Company and one another in connection with the preparation of, and the Company will prepare and file with the SEC an information statement on Schedule 14C, complying as to form in all material respects with the requirements of the Exchange Act (the "Information Statement"), to be sent in definitive form to the Company's stockholders providing the Company's stockholders with notice of the Stockholder Approval and the notice contemplated by Section 228(e) of the DGCL of the taking of corporate action without a meeting by less than a unanimous written consent, and any other rights of the Purchaser that are subject to stockholder approval by the rules of NASDAQ and such other information as may be required under the DGCL to be included therein. Sellers and Purchaser agree to furnish to the Company in writing all information concerning the Sellers, Purchaser and their respective Affiliates as the Company may reasonably request in connection with the Information Statement.

5.1.5 Operation of the Business. Except (a) with the prior written consent of Purchaser (which consent shall not be unreasonably withheld or delayed), (b) as contemplated by the Transaction Documents, (c) as required by applicable Law, (d) as set forth on Schedule 5.1.5 or (e) as required by the terms and conditions or contracts or other arrangements described in the SEC Reports, from and after the date of this Agreement until the earlier of (i) the Closing or (ii) October 21, 2018, the Company shall, and shall cause each of its Subsidiaries to, conduct their respective business in the ordinary course consistent with the past practice of the Company and its Subsidiaries; provided, however, that in no event shall the Company nor any of its Subsidiaries engage in any sale, issuance, or authorization of the issuance or sale of any capital stock or other security of the Company or any of its Subsidiaries.

5.1.6 Grant of Irrevocable Proxy Coupled with an Interest; Appointment of Proxy.

(a) Each Seller hereby irrevocably automatically and without any further action by any party, on the date on which each of the conditions set forth in Section 4.1 have been fulfilled or waived (other than those conditions that can be fulfilled only at the Closing, but subject to their being fulfilled) (i) grants to Purchaser and any designee of Purchaser, alone or together, such Seller's proxy, and (ii) appoints Purchaser and any designee of Purchaser as such Seller's proxy, attorney-in-fact and agent (with full power of substitution and resubstitution), alone or together, for and in the name, place and stead of such Seller, to vote the Purchased Shares, or grant a consent or approval in respect of the Purchased Shares at any meeting of the shareholders of the Company or at any adjournment thereof or in any other circumstances upon which their vote, consent or other approval is sought. Each Seller agrees to execute such documents or certificates evidencing such proxy as Purchaser may reasonably request.

(b) Each Seller represents that any proxies heretofore given in respect of the Purchased Shares are not irrevocable and hereby revokes any such proxies.

(c) EACH SELLER HEREBY AFFIRMS THAT THE PROXY SET FORTH IN THIS SECTION 5.1.6 IS COUPLED WITH AN INTEREST AND IS IRREVOCABLE UNTIL SUCH TIME AS THIS AGREEMENT TERMINATES IN ACCORDANCE WITH ITS TERMS. Each Seller hereby further affirms that the irrevocable proxy is given in connection with the execution of this Agreement and that such irrevocable proxy is given to secure the performance of the duties of such Seller under this Agreement. Each Seller hereby ratifies and confirms all that such irrevocable proxy may lawfully do or cause to be done by virtue hereof. Such irrevocable proxy shall be valid until the termination of this Agreement in accordance with its terms. The power of attorney granted by each Seller is a durable power of attorney and shall survive the bankruptcy, dissolution, death or incapacity of such Seller.

5.1.7 Lock-Up Period. Purchaser agrees that for a period of ninety (90) days from the Closing, as defined in the Preferred Stock Purchase Agreement, on the terms set forth in the Preferred Stock Purchase Agreement (the "Preferred Stock Closing"), Purchaser will not transfer to any third party (including via an open market trade) any of the Series A Preferred Stock acquired at the Closing without the Company's consent, which consent shall not be unreasonably withheld, conditioned, or denied; provided, that Purchaser may transfer the Series A Preferred Stock to an Affiliate of Purchaser within such 90 day period without the Company's consent.

5.1.8 Confidentiality. The confidentiality provisions of Section 1, Section 3, Section 4, Section 5, Section 7, Section 8, Section 10 and Sections 12 through 20 of the Confidentiality Agreement dated as of October 2, 2016, by and between Bain Capital Private Equity, LP and the Company (the "Confidentiality Agreement") shall remain in full force and effect until the Preferred Stock Closing and shall terminate at the Preferred Stock Closing. All other provisions of the Confidentiality Agreement are hereby terminated as of the date hereof and have no further force or effect.

5.1.9 Interim Matters. After the applicable waiting period, together with any extensions thereof, under the HSR Act shall have expired or been terminated, each of the Sellers and the Company shall take, and cause to be taken, all required action to appoint up to two observers in a non-voting capacity, designated by Purchaser, to the Board to attend regular, special and telephonic meetings of the Board; provided, however, that such observers shall not be entitled to participate in any meetings of the Board (or the applicable portions thereof) (i) if during such meeting, any transactions or potential transactions between or among the Company and the Purchaser or its Affiliates, are to be considered or acted upon, including with respect to the transactions contemplated by the Transaction Documents, or (if) the Board determines in good faith that attendance by such observers or the receipt by such observer of any information or materials would reasonably be expected to result in a waiver or compromise of attorney-client privilege or noncompliance with any applicable Law. After the Preferred Stock Closing, each of Sellers and the Company shall take, and cause to be taken, all required action to appoint up to two directors, designated by Purchaser, to the Board.

5.1.10 Relationship. H.I.G. Bayside Debt & LBO Fund II, L.P., a Delaware limited partnership ("HIG Fund"), will use its reasonable best efforts to cause Sellers to comply with their obligations under the Transaction Documents and, to the extent HIG Fund has obligations under the Transaction Documents, it will use its reasonable best efforts to comply with such obligations.

ARTICLE VI
MISCELLANEOUS

6.1 Definitions. As used in this Agreement, the following terms shall have the respective meanings set forth in this Section 6.1:

6.1.1 "Affiliate" shall mean, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such specified Person. For purposes of this definition, "control" when used with respect to any Person has the meaning specified in Rule 12b-2 under the Exchange Act (including SEC and judicial interpretations thereof), and the terms "controlling" and "controlled" shall have the meanings correlative to the foregoing.

6.1.2 "Antitrust Authority" shall mean any Governmental Authority charged with enforcing, applying, administering or investigating any Antitrust Laws, including the U.S. Federal Trade Commission, the U.S. Department of Justice, any attorney general of any state of the United States, the European Commission or any other competition authority of any jurisdiction.

6.1.3 "Antitrust Laws" shall mean the HSR Act and any Law designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening of competition, through merger or acquisition or otherwise.

6.1.4 "Board" shall mean the Board of Directors of the Company.

6.1.5 "Business Day" means any day other than (a) a Saturday, Sunday or federal holiday or (b) a day on which commercial banks in New York, New York are authorized or required to be closed.

6.1.6 "Code" shall mean the Internal Revenue Code of 1986, together with all regulations, rulings and interpretations thereof or thereunder by the Internal Revenue Service.

6.1.7 "Company Stock Plan" means the 2015 Omnibus Incentive Plan and each other plan, program policy and arrangement that provides for the award of rights of any kind to receive shares of Common Stock or benefits measured in whole or in part by reference to shares of Common Stock.

6.1.8 "Exchange Act" shall mean the U.S. Securities Exchange Act of 1934, and the rules and regulations promulgated by the SEC thereunder.

6.1.9 "Generally Accepted Accounting Principles" shall mean United States generally accepted accounting principles, as in effect as of the date of the applicable financial statement, applied on a consistent basis.

6.1.10 "Government Programs" means all state and federal health care programs as defined in 42 U.S.C. § 1320a-7b(f), including the federal Medicare and all applicable state Medicaid and successor programs, as well as TRICARE and state workers' compensation programs.

6.1.11 "Governmental Authority" shall mean any foreign governmental authority, the United States of America, any state of the United States and any political subdivision of any of the foregoing, and any agency, instrumentality, department, commission, board, bureau, central bank, authority, court or other tribunal, in each case whether executive, legislative, judicial, regulatory or administrative.

6.1.12 "Healthcare Laws" means any local, state or Federal Applicable Law relating to the provision and payment of healthcare services and items, including the following: (i) the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)), (ii) the Physician Self-Referral Law (42 U.S.C. §§ 1395nn), (iii) the civil False Claims Act (31 U.S.C. §§ 3729 et seq.), (iv) the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), (v) the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a; (vi) the Exclusion Laws, 42 U.S.C. § 1320a-7s; (vii) the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), (viii) the Medicare and Medicaid Patient and Program Protection Act of 1987 (42 U.S.C. Section 1320a 7b), (ix) the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. § 1320d et seq.) as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 (42 U.S.C. § 17921 et seq.), (x) Medicare (Title XVIII of the Social Security Act); (xi) Medicaid (Title XIX of the Social Security Act); (xii) state corporate practice of medicine and professional fee-splitting laws and regulations, and (xiii) state certificate of need and licensing laws and regulations.

6.1.13 "HSR Act" shall mean the Hart-Scott-Rodino Antitrust Improvements Act of 1976.

6.1.14 "Law" means, with respect to any Person, any federal, state, local or foreign common or statutory law, code, ordinance, rule, regulation, order or other requirement or rule of law that is binding upon such Person.

6.1.15 "Lien" shall mean any mortgage, pledge, charge, encumbrance, security interest, collateral assignment or other lien or restriction of any kind, whether based on common law, constitutional provision, statute or contract.

6.1.16 "Legal Action" means any action, suit, litigation, proceeding, arbitration, investigation, claim, condemnation proceeding, or other similar legal proceeding, whether judicial, administrative or otherwise.

6.1.17 "Material Adverse Effect" means with respect to any Person, any event, change, effect, condition, circumstance or occurrence (whether or not constituting any breach of a representation, warranty, covenant or agreement set forth in this Agreement) (collectively, a "Change"), that has had or would reasonably be expected to (x) have a material adverse effect upon the condition (financial or otherwise), business, or results of operations such Person and its Subsidiaries, taken as a whole or (y) prevent, hinder or delay the ability of such Person to consummate the transactions contemplated by this Agreement; provided, however, that any adverse Change arising from or related to the following (by itself or when aggregated or take together with any and all other Changes) shall not be deemed to be or constitute a Material Adverse Effect and shall not be taken into account in determining whether a Material Adverse Effect has occurred: (i) Changes affecting the economy generally or affecting financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index, or changes in interest rates or exchange rates), (ii) Changes that are generally applicable to the industries or markets in which such Person and its Subsidiaries operate (including increases in the cost of products, supplies and materials purchased from third party suppliers), (iii) any Changes to national or international political conditions, including the engagement or escalation by the United States or any other country in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or escalation of any military or terrorist attack upon the United States or any other country, or any of their respective territories, possessions, or diplomatic or consular offices or upon any military installation, equipment or personnel of the United States or any other country, (iv) Changes in weather, meteorological conditions or climate, pandemics, or natural disasters (including hurricanes, storms, tornados, flooding, earthquakes, volcanic eruptions or similar occurrences) affecting the business of such Person and its Subsidiaries, (v) Changes in Generally Accepted Accounting Principles, (vi) Changes in any Laws (including Healthcare Laws) issued by any Governmental Authority (or Changes in the interpretation thereof) or any action required to be taken under any applicable Law (actual or proposed), including any amendment or repeal of the Patient Protection and Affordable Care Act of 2010 (Pub. Law 111-148), as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. Law 111-152), (vii) the entry into,

announcement or pendency of this Agreement, or the transactions contemplated hereby, and including any termination of, reduction in or similar negative impact on relationships, contractual or otherwise, with any customers, suppliers, distributors, partners, employees, physicians, medical professionals or other clinical providers of such Person and its Subsidiaries due to the announcement and performance of this Agreement (provided, that the exception in this clause (vii) shall not prevent or otherwise affect a determination that any Change in connection with a breach of any representation or warranty of Sellers in ARTICLE II or the Company in ARTICLE VII or Purchaser in ARTICLE III has resulted in or contributed to a Material Adverse Effect), (viii) any failure, in and of itself, by such Person and its Subsidiaries to meet any internal or published projections, forecasts, predictions or guidance relating to revenues, income, cash position, cash-flow or other financial measure (provided, that the exception in this clause (viii) shall not prevent or otherwise affect a determination that any Change underlying such failure not otherwise excluded from the definition of "Material Adverse Effect" has resulted in or contributed to a Material Adverse Effect), (ix) seasonal fluctuations in the business of such Person and its Subsidiaries consistent with prior fiscal years, (x) any Changes to requirements, reimbursement rates, policies or procedures of third party payors (including Government Programs) or accreditation commissions or organizations that are generally applicable to hospitals or health care facilities, (xi) the taking of any action or omission requested in writing or authorized in writing by Purchaser, with respect to Sellers or the Company or by the Company or Sellers, with respect to Purchaser, including the completion of the transactions contemplated hereby and thereby (including the impact thereof on relations (contractual or otherwise) with, or actual, potential or threatened loss or impairment of, employees, customers, suppliers, distributors, physicians, medical professionals or other clinical providers, or others having relationships with such Person or any of its Subsidiaries) (provided, that the exception in this clause (xi) shall not prevent or otherwise affect a determination that any Change in connection with a breach of any representation or warranty of Sellers in ARTICLE II or the Company in ARTICLE VII or Purchaser in ARTICLE III has resulted in or contributed to a Material Adverse Effect), and (xii) any action taken by Purchaser or its Affiliates, with respect to Sellers or the Company or by the Company, Sellers or their respective Affiliates, with respect to Purchaser, that is not contemplated by this Agreement, except to the extent such Change arising from or related to the matters described in clauses (i) through (iv) disproportionately affects such Person and its Subsidiaries, taken as a whole, as compared to other companies operating in the industries and markets in which such Person and its Subsidiaries operate (but only to the extent of the incremental disproportionate effect on such Person and its Subsidiaries, taken as a whole, compared to other companies operating in the industries and markets in which such Person and its Subsidiaries operate).

6.1.18 "NASDAQ" means the securities trading exchange operating under that name operated by NASDAQ OMX Group, Inc., including its Global Select Market, its Global Market and its Capital Market, as applicable to any specific securities.

6.1.19 "Order" means any order, judgment, injunction, award, decree, sanction, compliance agreement or writ of any Governmental Authority.

6.1.20 "Person" shall mean any individual, association, partnership, limited liability company, joint venture, corporation, trust, unincorporated organization, Governmental Authority or any other form of entity.

6.1.21 "SEC" shall mean the U.S. Securities and Exchange Commission or any other U.S. federal agency then administering the Securities Act or Exchange Act.

6.1.22 "SEC Reports" shall mean the Company's Annual Report on Form 10-K for the fiscal year ended December 31, 2016 or its other reports and forms filed with or furnished to the SEC under Sections 12, 13, 14 or 15(d) of the Exchange Act after December 31, 2016 (other than any forward looking disclosures set forth in any risk factor section or forward looking statement disclaimer and any other disclosure that is similarly nonspecific and predictive or forward looking in nature) on or before the date of this Agreement, including the draft Quarterly Report on Form 10-Q of the Company for the fiscal quarter ended March 31, 2017, delivered to the Purchaser (collectively, the "SEC Reports").

6.1.23 "Securities Act" shall mean the U.S. Securities Act of 1933, and the rules and regulations of the SEC thereunder.

6.1.24 "Stock Options" means all stock options to acquire shares of Common Stock from the Company, whether granted pursuant to the Company Stock Plan or otherwise.

6.1.25 "Subsidiary" of any Person shall mean any corporation, partnership, joint venture, limited liability company, trust or other form of legal entity of which (or in which) more than 50% of (i) the issued and outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (irrespective of whether at the time capital stock of any other class or classes of such corporation shall or might have voting power upon the occurrence of any contingency), (ii) the interest in the capital or profits of such partnership, joint venture or limited liability company or (iii) the beneficial interest in such trust or estate is at the time directly or indirectly owned or controlled by such Person, by such Person and one or more of its other Subsidiaries or by one or more of such Person's other Subsidiaries

6.2 Survival. Each of the representations and warranties in this Agreement shall survive the Closing until the date that is the two (2) year anniversary of the Closing. Each of the covenants in this Agreement shall survive the Closing and shall terminate and expire on the first (1st) anniversary of the Closing Date; provided, that any covenant contained in this Agreement that, by its terms, provides for performance following the Closing shall survive the Closing and shall terminate and expire on the first (1st) anniversary of the date on which such covenants are due to be performed in full. Any claim by a party under this Agreement with respect to a breach of such covenants, representations and warranties shall be brought no later than the applicable survival date.

6.3 Notices. All notices, consents, waivers, and other communications under this Agreement must be in writing and (a) delivered by hand, (b) sent by facsimile transmission (with written confirmation of delivery), or (c) sent by a nationally recognized overnight delivery service (receipt requested), in each case to the appropriate addresses and facsimile numbers set forth below (or to such other addresses and facsimile numbers as a party may designate by notice to the other parties):

if to the Company:

Surgery Partners, Inc.
40 Burton Hills Blvd.
Nashville, TN 37215
Attention: General Counsel

with a copy to (which will not constitute notice to the Company):

Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Attention: Carl Marcellino
Facsimile: (646) 728-1523

if to the Sellers:

H.I.G. Capital, LLC
600 5th Avenue, 24th Floor
New York, NY 10020
Attention: Matt Lozow
Facsimile: (212) 506-0559

if to Purchaser:

BCPE Seminole Holdings LP
c/o Bain Capital Private Equity, LP
200 Clarendon Street
Boston, MA 02116
Attention: Devin O'Reilly, Andrew Kaplan and David Hutchins
Facsimile: (617) 516-2010

with a copy to (which will not constitute notice to Purchaser):

Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Attention: Neal J. Reenan, P.C. and Ian N. Bushner
Facsimile: (312) 862-2200

Any of the above addresses may be changed at any time by notice given as provided above; provided, however, that any such notice of change of address shall be effective only upon receipt. All notices, requests or instructions given in accordance herewith shall be deemed received on the date of delivery, if by hand delivery, on the date of transmission, if sent by facsimile, and one (1) Business Day after the date of sending, if mailed by nationally recognized overnight delivery service.

6.4 Public Disclosure. On the date of this Agreement, or within 24 hours thereafter the Company shall issue a press release in a form mutually agreed to by the Company, Sellers and Purchaser. Notwithstanding the preceding sentence, Purchaser, or an Affiliate of Purchaser, may issue a press release at any time on the date of this Agreement, or within 24 hours thereafter in a form mutually agreed to by the Company, Purchaser and Sellers. No other written release, announcement or filing concerning the purchase of the Purchased Shares or the transactions contemplated by any of the Transaction Documents shall be issued, filed or furnished, as the case may be, by any party without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as may be required by Law or the rules or regulations of any securities exchange, in which case the party required to make the release or announcement shall, to the extent reasonably practicable, allow the other party reasonable time to comment on such release or announcement in advance of such issuance. The provisions of this Section shall not restrict the ability of (a) a party to summarize or describe the transactions contemplated by this Agreement in any prospectus or similar offering document so long as the other party is provided a reasonable opportunity to review such disclosure in advance, (b) representatives of the Company to orally summarize or describe the transactions contemplated by this Agreement on any telephone conference or in-person meeting with any investor in or analyst following the Company or (c) a party to make any such release, announcement or filing which contains only information which has previously been publicly disclosed in a manner consistent with this Section 6.4.

6.5 Assignment. Except as otherwise provided herein, the provisions hereof shall inure to the benefit of, and be binding upon, the successors by operation of law and permitted assigns of the parties hereto. No assignment of this Agreement may be made by any party at any time, whether or not by operation of law, without the other parties' prior written consent; provided that, Purchaser may assign this Agreement to an Affiliate at any time without the Company's or Sellers' consent; provided, that Purchaser shall remain liable for its obligations hereunder in the event the assignee fails to perform them.

6.6 Third-Party Beneficiaries. Notwithstanding anything contained in this Agreement to the contrary, nothing in this Agreement, expressed or implied, is intended to confer on any Person other than the parties any rights, remedies, obligations or liabilities under or by reason of this Agreement, and no Person that is not a party to this Agreement (including any partner, member, stockholder, director, officer, employee or other beneficial owner of any party, in its own capacity as such or in bringing a derivative action on behalf of a party) shall have any standing as third-party beneficiary with respect to this Agreement or the transactions contemplated by this Agreement, except, in each case, as contemplated by this Section 6.6 (Third-Party Beneficiaries) and Section 6.20 (Non-Recourse).

6.7 Severability. If any term or other provision of this Agreement is invalid, illegal, or incapable of being enforced by any applicable Law or public policy, all other terms or provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Any such term or provision held invalid, illegal, or incapable of being enforced only in part or degree will remain in full force and effect to the extent not held invalid, illegal, or incapable of being enforced. Upon such determination that any term or other provision is invalid, illegal, or incapable of being enforced, such term or provision is hereby deemed modified to give effect to the original written intent of the parties to the greatest extent consistent with being valid and enforceable under applicable Law.

6.8 Further Assurances. The Sellers and Purchaser will cooperate and consult with each other and use commercially reasonable efforts to prepare and file all necessary documentation, to effect all necessary applications, notices, petitions, filings and other documents, and to obtain all necessary permits, consents, orders, approvals and authorizations of, or any exemption by, all third Persons required to consummate the transactions contemplated by this Agreement and the other Transaction Documents.

6.9 Entire Agreement; Amendment. This Agreement, including the disclosure letter and the other documents referred to herein which form a part hereof, and the Transaction Documents, contain the entire understanding of the parties hereto with respect to the subject matter contained herein and therein. This Agreement, together with the other Transaction Documents, supersedes all prior and contemporaneous agreements, arrangements, contracts, discussions, negotiations, undertakings and understandings (whether written or oral) between the parties with respect to such subject matter. This Agreement may be amended, supplemented or changed only if such amendment, supplement or change is in writing and signed by the Sellers, the Company and Purchaser, and any provision hereof can be waived, only by a written instrument making specific reference to this Agreement executed by the party against whom enforcement of any waiver is sought. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege..

6.10 No Waiver. The failure of a party to insist upon strict adherence to any term or provision of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right thereafter to insist upon strict adherence to that term or provision or any other term or provision of this Agreement.

6.11 Counterparts. This Agreement may be executed in two (2) or more counterparts (including by electronic transmission), each of which shall constitute an original, and all of which taken together shall constitute one instrument. Delivery of a signed counterpart of a signature page of this Agreement by facsimile or by .PDF file (portable document format file) shall be as effective as delivery of a manually signed counterpart of this Agreement. This Agreement shall become effective when each party hereto shall have received a counterpart hereof signed by all of the other parties hereto. Until and unless each party has received a counterpart hereof signed by the other party hereto, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining a party's intent or the effectiveness of such signature.

6.12 Governing Law.

6.12.1 This Agreement, and all claims or causes of action (whether in contract or tort) that may be based upon, arise out of or relate to this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or warranty made in or in connection with this Agreement or as an inducement to enter this Agreement) shall be governed by and construed in accordance with the internal laws of the State of Delaware without giving effect to any choice of law principles that would require or permit the application of the laws of another jurisdiction.

6.12.2 Each of the parties agrees (i) that any Legal Action, whether at law or in equity, whether in contract or in tort or otherwise, with respect to this Agreement shall be brought in the Court of Chancery of the State of Delaware (or, if the Chancery Court of the State of Delaware declines to accept jurisdiction over a particular matter, any state or federal court within the State of Delaware) and, by execution and delivery of this Agreement, each party hereto hereby irrevocably submits itself in respect of its property, generally and unconditionally, to the exclusive jurisdiction of the aforesaid court in any Legal Action arising out of this Agreement, (ii) not to bring or permit any of their Affiliates to bring or support any other Person in bringing any such Legal Action in any other court, (iii) that service of process, summons, notice or document by registered mail addressed to them at their respective addresses provided in Section 6.3 shall be effective service of process against it for any such Legal Action brought in any such court, (iv) to waive and hereby waives, to the fullest extent permitted by Law, any objection which it may now or hereafter have to the laying of venue of, and the defense of an inconvenient forum to the maintenance of, any such Legal Action in any such court, and (v) that, notwithstanding the foregoing, a final judgment in any such Legal Action shall be conclusive and may be enforced in any court in any other jurisdictions (where the party against which enforcement is sought has operations or owns assets) by Legal Action on the judgment or in any other manner provided by Law. Nothing in this paragraph shall affect or eliminate any right to serve process in any other manner permitted by applicable Law.

6.13 WAIVER OF JURY TRIAL. EACH OF THE PARTIES HERETO HEREBY KNOWINGLY, INTENTIONALLY AND VOLUNTARILY WITH AND UPON THE ADVICE OF COMPETENT COUNSEL IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL ACTION BETWEEN THE PARTIES HERETO ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY OR THE ACTIONS OF ANY PARTY HERETO OR THERETO IN NEGOTIATION, ADMINISTRATION, PERFORMANCE OR ENFORCEMENT HEREOF.

6.14 Specific Enforcement.

6.14.1 The parties hereto agree that irreparable damage would occur in the event that any of the obligations, undertakings, covenants or agreements of the parties hereto were not performed in accordance with their specific terms or were otherwise breached and that monetary damages, even if available, would not be an adequate remedy. It is accordingly agreed that Sellers, on the one hand, and Purchaser, on the other hand, shall be entitled to an injunction or injunctions to prevent breaches of this Agreement by the other party, and to enforce specifically the terms and provisions of this Agreement (including to cause Purchaser to consummate the Closing and to pay the Purchase Price as required by Section 1.1) by a decree of specific performance, without the necessity of proving actual harm or posting a bond or other security therefor, this being in addition to, any other remedy to which such party is entitled at law or in equity, and each party hereto agrees, that it will not oppose the granting of an injunction, specific performance or other equitable relief on the basis that any other party hereto has an adequate remedy at law or that any award of specific performance or other equitable remedy is not an

appropriate remedy for any reason at law or in equity. Without limitation of the foregoing, the parties hereto hereby further acknowledge and agree that prior to the Closing, Sellers shall be entitled to seek specific performance to enforce specifically the terms and provisions of, and to prevent or cure breaches of the covenants required to be performed by Purchaser under this Agreement (including to cause Purchaser to consummate the Closing and to pay the Purchase Price as required by Section 1.1) in addition to any other remedy to which Sellers are entitled at law or in equity, including Sellers' right to terminate this Agreement pursuant to Section 6.16. In the event that Sellers, on the one hand, or Purchaser, on the other hand, brings a Legal Action for specific performance against the other party pursuant to this Section 6.14.1, and a court makes an order for specific performance against that other party, then the other party shall also pay the first party's costs and expenses (including attorneys' fees and expenses) in connection with all such Legal Actions to seek specific performance of such other party's obligations under this Agreement and all Legal Actions to collect such costs and expenses. Each of the parties hereto further agrees that it shall not take any position in any Legal Action concerning this Agreement that is contrary to the terms of this Section 6.14.1. In addition, Sellers and the Company agree to use reasonable best efforts cause any Legal Action commenced by Sellers or the Company and pending in connection with this Agreement against Purchaser or any other Person to be dismissed with prejudice promptly, and in any event within five (5) Business Days, after such time as Purchaser consummates the Closing pursuant to this Section 6.14.1.

6.14.2 Notwithstanding Section 6.14.1, it is explicitly agreed that Sellers shall be entitled to seek specific performance of Purchaser's obligation to consummate the Closing and to make the payments contemplated by Section 1.1 only in the event that: (i) all conditions to Closing under Section 4.2 have been satisfied (excluding conditions that, by their terms, are to be satisfied at the Closing, but subject to the satisfaction of such conditions at the Closing) and (ii) each Seller has irrevocably confirmed in writing that it is ready, willing and able to consummate the Closing if specific performance is granted and the Equity Financing is funded.

6.15 Titles and Subtitles; Interpretation. The titles and subtitles used in this Agreement are used for convenience only and are not to be considered in construing or interpreting this Agreement. When a reference is made in this Agreement to an Article, Section, or Schedule, such reference shall be to an Article, Section or Schedule of this Agreement unless otherwise indicated. Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation." The terms "hereof", "herein", "hereby" and derivative or similar words refer to this Agreement as a whole and not to any particular provision of this Agreement. Except when used together with the word "either" or otherwise for the purpose of identifying mutually exclusive alternatives, the term "or" has the inclusive meaning represented by the phrase "and/or." The terms "shall" and "will" mean "must," and shall and will have equal force and effect and express an obligation. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and also to all rules and regulations promulgated thereunder. The term "party" or "parties" shall mean a party to or the parties to this Agreement unless the context requires otherwise. Each of the parties has participated in the drafting and

negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement. All references in this Agreement to "dollars" or "$" shall mean United States dollars. Any period of time hereunder ending on a day that is not a Business Day shall be extended to the next Business Day. The word "day", unless otherwise indicated, shall be deemed to refer to a calendar day.

6.16 Expenses. The Sellers, the Company and Purchaser shall bear their own expenses and legal fees incurred on their behalf with respect to this Agreement and the transactions contemplated hereby.

6.17 Termination. This Agreement may be terminated and the transactions contemplated hereby may be abandoned at any time prior to the Closing (notwithstanding any approval of this Agreement by the Company's stockholders or Sellers' equityholders):

(a) by either Sellers or Purchaser, if:

(1) the Closing has not been consummated on or before November 9, 2017 (the "End Date"); provided, however, that if all of the conditions to Closing under Section 4.1 and Section 4.2 have been satisfied (excluding conditions that, by their terms, are to be satisfied at the Closing) other than those in Section 4.1.2 and Section 4.2.2, the End Date shall automatically be extended until the earlier of (x) the satisfaction of the conditions in Section 4.1.2 and Section 4.2.2 and (y) December 31, 2017;

(2) any Governmental Authority shall have enacted, issued or promulgated any Law, or shall have issued or granted any Order, in each case, that restrains, enjoins or otherwise prevents the consummation of the Closing or the consummation of the other transactions contemplated herein or the other Transaction Documents;

(3) the Merger Agreement has been terminated;

(b) by Purchaser, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Sellers or the Company set forth in this Agreement shall have occurred (A) that would cause any of the conditions set forth in Section 4.2 not to be satisfied, and (B) if such breach or failure is curable, such breach or failure is not cured by Sellers and the Company by the earlier of (x) the End Date or (y) thirty (30) calendar days following receipt by Sellers and the Company of written notice of such breach or failure, provided, that at the time of the delivery of such written notice, Purchaser shall not be in material breach of its obligations under this Agreement that would give rise to the failure of a condition set forth in Section 4.2; or

(c) by Sellers, if a breach of any representation or warranty or failure to perform any covenant or agreement on the part of Purchaser set forth in this Agreement shall have occurred (A) that would cause any of the conditions set forth in Section 4.1 not to be satisfied, and (B) if such breach or failure is curable, such breach or failure is not cured by the earlier of (x) the End Date or (y) thirty (30) calendar days following receipt by Purchaser of written notice of such breach or failure, provided, that at the time of the delivery of such written notice, Sellers and the Company shall not be in material breach of their respective obligations under this Agreement that would give rise to the failure of a condition set forth in Section 4.1.

The party desiring to terminate this Agreement pursuant to this Section 6.17 shall give notice of such termination to the other party, including a description in reasonable detail of the reasons for such termination, in accordance with Section 6.17, specifying the provision or provisions hereof pursuant to which such termination is effected. All rights and liabilities of the parties hereunder shall terminate without any liability of any party to any other party, except for liabilities arising in respect of willful and intentional breaches under this Agreement by any party prior to such termination.

6.18 Rights Cumulative. Except as expressly limited by this Agreement, all rights and remedies of each of the parties under this Agreement will be cumulative, and the exercise of one or more rights or remedies not preclude the exercise of any other right or remedy available under this Agreement or applicable Law.

6.19 Disclosure Letter. Certain information is contained in the Sellers' disclosure letter solely for informational purposes, may not be required to be disclosed pursuant hereto and will not imply that such information or any other information is required to be disclosed. Inclusion of such information will not establish any level of materiality or similar threshold or be an admission that any of such information is material to the business, assets, liabilities, financial position, operations or results of operations of any Person or otherwise material regarding such Person. Each matter disclosed in any section of the disclosure letter or in any representation or warranty in a manner that makes its relevance to one or more other sections of the disclosure letter or representations or warranties reasonably apparent on its face will be deemed to have been appropriately included in each such other section of the disclosure letter or representation or warranty (notwithstanding the presence or absence of any reference in or to any section of the disclosure letter or representation or warranty).

6.20 Non-Recourse. Except and only to the extent set forth in the Equity Commitment Letter and the Preferred Stock Purchase Agreement, this Agreement may only be enforced against, and a claim or cause of action based upon, arising out of, or related to this Agreement may only be brought by the expressly named party hereto and then only with respect to the specific obligations set forth herein with respect to such party. Except to the extent a named party and to the extent a named party to the Equity Commitment Letter (and then only to the extent of the specific obligations undertaken by such named party in this Agreement or by such named parties under the Equity Commitment Letter), no present, former or future Affiliate, officer, director, employee, incorporator, member, partner, stockholder, agent, attorney or other Representative of any party or their Affiliates shall have any Liability (whether in contract, in tort or otherwise) for any obligations or Liabilities of any party which is not otherwise expressly identified as a party, and no recourse shall be brought or granted against any of them, by virtue of or based upon any alleged misrepresentation or inaccuracy in or breach of any of the

representations, warranties, agreements or covenants of any party under this Agreement for any claim based upon, in respect of, or by reason of, the transactions contemplated by the Transaction Documents or in respect of any representations made or alleged to have been made in connection therewith. The provisions of this Section 6.20 are intended to be for the benefit of, and enforceable by the Affiliates, officers, directors, employees, incorporators, members, partners, stockholders, agents, attorneys and other Representatives referenced in this Section 6.20 and each such Person shall be a third-party beneficiary of this Section 6.20.

6.21 Certain Disclaimers.

6.21.1 Notwithstanding any other term herein, no party will be obligated to any other Person for any punitive damages or losses based thereon relating to the breach of any representation, warranty, covenant or agreement herein, unless such damages or losses are incurred in a third party claim related to such breach.

6.21.2 Notwithstanding any other term herein, other than as expressly made by the Sellers in ARTICLE II or the Company in ARTICLE VII or any other Transaction Document, no Seller nor the Company has made (and no Person on behalf of any Seller or the Company has made), nor will any Seller or the Company (or any other Person) have or be subject to any liability arising out of, relating to or resulting from, any representation or warranty or similar assurance (whether direct or indirect, written or oral, or statutory, express or implied), including in each case regarding (a) any information or document given or made available (or not given or made available) to Purchaser or any Person on Purchaser's behalf regarding Sellers or the Company, (b) the effect of any of the transactions contemplated herein or the reaction thereto of any Person or (c) any forward-looking statement relating to the Sellers or the Company (including any underlying assumption). Purchaser hereby expressly assumes all risks arising out of, relating to or resulting from, and Purchaser hereby disclaims all reliance upon, the matters in the preceding sentence (other than as expressly made by the Sellers in ARTICLE II or the Company in ARTICLE VII or any other Transaction Document). The Sellers and the Company disclaim any express or implied warranty relating to the Purchased Shares or the Company, except as expressly set forth in ARTICLE II or ARTICLE VII or any other Transaction Document. Notwithstanding anything herein to the contrary, nothing in this Agreement shall limit or otherwise restrict a fraud claim brought by Purchaser.

6.21.3 Notwithstanding any other term herein, other than as expressly made by Purchaser in ARTICLE III or any other Transaction Document, Purchaser has not made (and no Person on behalf of Purchaser has made), nor will Purchaser (or any other Person) have or be subject to any liability arising out of, relating to or resulting from, any representation or warranty or similar assurance (whether direct or indirect, written or oral, or statutory, express or implied), including in each case regarding (a) any information or document given or made available (or not given or made available) to a Seller or the Company or any Person on a Seller's or the Company's behalf regarding Purchaser, (b) the effect of any of the transactions contemplated herein or the reaction thereto of any Person or (c) any forward-looking statement relating to Purchaser (including any underlying assumption). Each Seller and the Company hereby expressly assumes all risks arising out of, relating to or resulting from, and each Seller and the Company hereby disclaims all reliance upon, the matters in the preceding sentence (other than as expressly made by Purchaser in ARTICLE III or any other Transaction Document). Purchaser disclaims any express or implied warranty relating to Purchaser, except as expressly set forth in ARTICLE III or any other Transaction Document. Notwithstanding anything herein to the contrary, nothing in this Agreement shall limit or otherwise restrict a fraud claim brought by a Seller or the Company.

ARTICLE VII
REPRESENTATIONS, WARRANTIES AND AGREEMENTS OF THE COMPANY

The Company represents and warrants to Purchaser, as of the date hereof and as of the Closing Date, as follows:

7.1 Each of the Company and its Subsidiaries is duly organized, validly existing and in good standing under the Laws of the state of its formation; has all requisite power and authority to own its properties and conduct its business as presently conducted; and is duly qualified to do business and in good standing in each jurisdiction where its business requires such qualification, except where failure to be so duly qualified and in good standing would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. True and accurate copies of the Company's Certificate of Incorporation, as in effect as of the date hereof (the "Certificate of Incorporation") and bylaws, as in effect as of the date hereof (the "Bylaws"), have been made available to Purchaser prior to the date of this Agreement.

7.2 All corporate action on the part of the Company, its Subsidiaries, its officers, directors, and stockholders necessary for the authorization, execution, and delivery of each of the Transaction Documents, the performance of all obligations of the Company and its Subsidiaries under each of the Transaction Documents, and each of the Transaction Documents, when executed and delivered, assuming due authorization, execution and delivery by Purchaser or the other parties thereto, constitutes and will constitute valid and legally binding obligations of the Company and its Subsidiaries, enforceable in accordance with their respective terms, subject to (A) the filing of the Series A Certificate (as defined in the Preferred Stock Purchase Agreement) with the Delaware Secretary of State pursuant to the Preferred Stock Purchase Agreement; and (B) as to enforcement, to applicable bankruptcy, insolvency, moratorium, reorganization, fraudulent conveyance or similar Laws affecting the enforcement of creditors' rights generally and to general equitable principles (whether considered in a proceeding in equity or at law).

7.3 On or prior to the date of this Agreement, the Board has duly adopted resolutions (i) authorizing and approving each of the Transaction Documents and the transactions contemplated thereby, (ii) adopting the Series A Certificate, and (iii) excluding Purchaser and its Affiliates from any applicable the restrictions on transactions with interested stockholders under the Delaware General Corporation Law (the "DGCL").

7.4 The Company and the Board have taken all necessary action, if any, in order to render inapplicable (to the maximum extent permitted by Law) any control share acquisition, business combination, poison pill (including any distribution under a rights agreement) or other similar anti-takeover provision under the Certificate of Incorporation, the Bylaws, the A&R Certificate of Incorporation (as defined in the Preferred Stock Purchase Agreement), the A&R Bylaws as defined in the Preferred Stock Purchase Agreement) and the

Laws of its state of incorporation that is or could become applicable to Purchaser as a result of the consummation of the transactions contemplated by the Transaction Documents, including without limitation as a result of the Company's issuance of the Series A Preferred Stock to Purchaser, the conversion of the Series A Preferred Stock, and the exercise of the Purchaser's rights under the Series A Certificate.

7.5 No consent, approval, order, or authorization of or registration, qualification, declaration, or filing with or notice to, any federal, state, or local Governmental Authority on the part of the Company is required (a) in connection with the Transaction Documents or (b) in connection with the offer, sale, or issuance of the Series A Preferred Stock or the Common Stock issuable upon conversion of the Series A Preferred Stock or the consummation of any other transaction contemplated by the Transaction Documents, in each case, except for the following: (i) the filing of the Series A Certificate with the Delaware Secretary of State pursuant to the Preferred Stock Purchase Agreement; (ii) the compliance with applicable state securities Laws, which compliance will have occurred within the appropriate time periods; (iii) the approval of, and the filings required to be made, prior to or following the Closing under the published rules of NASDAQ in connection with the issuance and sale of the Series A Preferred Stock hereunder, and the Common Stock issuable upon conversion of the Series A Preferred Stock; (iv) the filing with the SEC of such reports under the Exchange Act or the Securities Act as may be required in connection with this Agreement and the transactions contemplated by this Agreement; (v) the expiration or termination of any applicable waiting periods (together with any extensions thereof) under the HSR Act; (vi) the consents, approvals and filings (if any) set forth on Schedule 6.13 to the Preferred Stock Purchase Agreement nd (vii) such consents, approvals, orders, authorizations, registrations, qualifications, declarations and filings the failure of which to make or obtain would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

7.6 Since December 31, 2016, there has not been any Effect that has had or would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect on the Company and its Subsidiaries.

7.7 The information relating to the Company, its Subsidiaries and its or their respective officers, directors, and Affiliates that is or will be provided by the Company or its Affiliates for inclusion in the Information Statement (or any supplement thereto), and in any other document filed with the SEC in connection with the transactions contemplated hereby, will not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in the light of the circumstances under which they are made, not misleading. The Information Statement (or any supplement thereto), except for such portions thereof that relate solely to information supplied in writing by the Purchaser or its Affiliates, will comply in all material respects with the provisions of the Exchange Act and the rules and regulations thereunder.

7.8 The Company is not a United States real property holding corporation within the meaning of Section 897 of the Code.

[The remainder of this page has been intentionally left blank.]

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date hereof.

PURCHASER:

BCPE SEMINOLE HOLDINGS LP

By: Bain Capital Investors, LLC
Its: General Partner

By: /s/ Devin O'Reilly
Name: Devin O'Reilly
Title: Managing Director

Address

c/o Bain Capital Private Equity, LP
200 Clarendon Street
Boston, MA 02116

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date hereof.

SELLER

H.I.G. SURGERY CENTERS, LLC

By: H.I.G.-GPII, Inc.
Its: Manager

By: /s/ Richard H. Siegel
Name: Richard H. Siegel
Title: Vice President and General Counsel

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date hereof.

SOLELY FOR PURPOSES OF SECTION 5.1.10:

H.I.G. BAYSIDE DEBT & LBO FUND II L.P.

By: H.I.G.-GPII, Inc.
Its: General partner

By: /s/ Richard H. Siegel
Name: Richard H. Siegel
Title: Vice President and General Counsel

Address

500 5th Avenue, 24th Floor
New York, NY 10020

IN WITNESS WHEREOF, the parties have caused this Agreement to be duly executed as of the date hereof.

COMPANY:

SURGERY PARTNERS, INC.

By: /s/ Michael T. Doyle
Name: Michael T. Doyle
Title: Chief Executive Officer

Address

Surgery Partners, Inc.
40 Burton Hills Blvd.
Nashville, TN 37215

SCHEDULE 1

Purchaser	Seller	Price per Purchased Share	# of Purchased Shares	Total
BCPE Seminole Holdings LP	H.I.G. Surgery Centers, LLC	$ 19.000	26,455,651	$502,657,369

Exhibit 10.3

AMENDMENT NO. 1 TO
INCOME TAX RECEIVABLE AGREEMENT

This AMENDMENT NO. 1 TO INCOME TAX RECEIVABLE AGREEMENT (this "Amendment"), dated as of May 9, 2017, is hereby entered into by and between Surgery Partners, Inc., a Delaware corporation (the "Corporation"), and H.I.G. Surgery Centers LLC, a Delaware limited liability company (the "Stockholders Representative," in its capacity as such).

WHEREAS, reference is hereby made to that certain Income Tax Receivable Agreement, dated as of September 30, 2015, by and among the Corporation, the Stockholders Representative and the other parties referred to therein (as amended or otherwise modified, the "Agreement"), and all capitalized terms used and not otherwise defined herein shall have the meanings ascribed thereto in the Agreement;

WHEREAS, the Corporation and the Stockholders Representative desire to hereby amend the Agreement in accordance with Section 7.06(c) of the Agreement;

WHEREAS, concurrently with the execution and delivery of this Amendment, the Corporation and BCPE Seminole Holdings, LP, a Delaware limited partnership (the "Investor") have entered into that certain Securities Purchase Agreement (the "Preferred Purchase Agreement"), dated as of the date hereof, pursuant to which the Corporation has agreed to sell to the Investor and the Investor has agreed to purchase from the Corporation, shares of Corporation's 10.00% Series A Convertible Perpetual Participating Preferred Stock, par value $0.01 per share, subject to the terms and conditions set forth therein;

WHEREAS, concurrently with the execution and delivery of this Amendment, the Corporation, the Investor and H.I.G. Surgery Centers, LLC and H.I.G. Bayside Debt & LBO Fund II L.P (collectively, "HIG") have entered into that certain Stock Purchase Agreement (the "HIG Purchase Agreement"), dated as of the date hereof, pursuant to which HIG has agreed to sell to Investor and Investor has agreed to purchase from HIG, all Common Stock (as defined in the Purchase Agreement) owned by HIG, subject to the terms and conditions therein;

WHEREAS, concurrently with the execution and delivery of this Amendment, the Corporation, Merger Sub (as defined in the NSH Merger Agreement (as defined below)), a Delaware corporation and a wholly owned subsidiary of the Corporation, NSH Holdco, Inc., a Delaware corporation ("NSH"), and IPC / NSH, L.P., a Delaware limited partnership, solely in its capacity as the sellers' representative, have entered into that certain Agreement and Plan of Merger (the "NSH Merger Agreement" and together with this Amendment, the HIG Purchase Agreement, the Preferred Purchase Agreement, and any other agreement, disclosure letter, certificate or other document to be entered into or delivered pursuant to the terms hereof or in connection herewith or therewith, the "Transaction Documents"), dated as of the date hereof, pursuant to which the Corporation has agreed to acquire all of the outstanding equity of NSH (the "NSH Acquisition"); and

WHEREAS, this Amendment is a condition to the willingness of HIG, the Corporation, and the Investor to enter into the Transaction Documents to which they are a party.

NOW, THEREFORE, in consideration of the foregoing and the respective covenants and agreements set forth herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Amendments. As of the Effective Time (as defined below), the Agreement is hereby amended as follows:

(a) The Agreement is hereby amended by replacing all references to "Tax Benefit Payment" therein with "Settlement Payment".

(b) The Agreement is hereby amended by replacing the contents of Annex B to the Agreement with the contents of Exhibit A to this Amendment.

(c) Section 1.01 of the Agreement is hereby amended by inserting the following new definitions in the appropriate alphabetical order:

"Applicable Federal Tax Rate" means, for any Applicable Tax Year, the maximum U.S. federal income Tax rate applicable to corporations organized within the United States in effect for such Applicable Tax Year; it being understood and agreed that, if the applicable Tax rate changes in the middle of a Taxable Year such that multiple rates are in effect with respect to any Applicable Tax Year, then the Applicable Federal Tax Rate will be determined using a blended Tax rate taking into account the Tax rates in effect both before and after such change occurred on a pro rata calendar day basis.

"Applicable Tax Rate" means, for any Applicable Tax Year, the Applicable Federal Tax Rate for such Applicable Tax Year (expressed as a percentage) plus three percent (3%).

"Applicable Tax Year" means, the tax year ending December 31 of the year set forth on Annex B in the column entitled "Tax Year."

"First Amendment" means that certain Amendment No. 1 to Income Tax Receivable Agreement, dated as of May 9, 2017, by and between the Corporation and the Stockholders Representative.

"Base Amount" means each amount set forth on Annex B in the column entitled "Base Amount".

(d) The definition of "ITR Payment" now appearing in Section 1.01 of the Agreement is hereby amended in its entirety to read as follows: "ITR Payment" means any Settlement Payment or Early Termination Payment required to be made by the Corporation to the Stockholders under this Agreement."

(e) The definition of "Material Objection Notice" now appearing in Section 1.01 of the Agreement is hereby amended in its entirety to read as follows: "Material Objection Notice" is defined in Section 4.02 of this Agreement."

(f) The definition of "Payment Date" now appearing in Section 1.01 of the Agreement is hereby amended in its entirety to read as follows: "Payment Date" means, with respect to each Applicable Tax Year, December 1 of the year following such Applicable Tax Year.

(g) The definition of "Valuation Assumptions" now appearing in Section 1.01 of the Agreement is hereby amended in its entirety to read as follows: "Valuation Assumptions" means, as of an Early Termination Date, the assumption that the Applicable Federal Income Tax Rate for each Payment Date ending on or after such Early Termination Date will be determined using the U.S. federal income Tax rate for corporations in effect for the Applicable Taxable Year as specified for such Applicable Taxable Year by the Code and other laws as in effect on the Early Termination Date (or, with respect to any Applicable Taxable Year for which such income Tax rates are not specified by the Code and other law as in effect on the Early Termination Date, such income Tax rates that are in effect on the Early Termination Date).

(h) Article II of the Agreement is hereby amended in its entirety to read as follows: "[Reserved]"

(i) Article III of the Agreement is hereby amended in its entirety to read as follows:

ARTICLE III
SETTLEMENT PAYMENTS

Section 3.01. Payments.

(a) Timing of Payments. Within five (5) Business Days after each Payment Date, the Corporation shall pay to each Stockholder its share (based on such Stockholder's Applicable Percentage) of the Settlement Payment with respect to such Payment Date. Each such share of a Settlement Payment shall be made by wire transfer of immediately available funds to a bank account of the applicable Stockholder previously designated by the Stockholder to the Corporation, or as otherwise agreed by the Corporation and the Stockholder.

(b) A "Settlement Payment" means, with respect to each Payment Date, the product of (i) the Base Amount set forth opposite such Payment Date on Annex B and (ii) the Applicable Tax Rate for the Applicable Tax Year set forth opposite such Payment Date on Annex B; provided that, if any change in the Applicable Federal Tax Rate occurring after the date of the First Amendment (a "Tax Rate Change") has a retroactive effect such that it would have resulted in a change in the amount of a Settlement Payment made prior to the date of such Tax Rate Change (the "Payment Difference"), then any Settlement Payments due on or after the Payment Date immediately following the date of such Tax Rate Change shall be adjusted (up or down as applicable) by an aggregate amount equal to the Payment Difference. Selective illustrative examples of the calculation of a Settlement Payment are set forth on Annex B hereto.

Section 3.02. No Duplicative Payments. It is intended that the provisions of this Agreement will not result in a duplicative payment of any amount (including interest) required under this Agreement, and this Agreement shall be construed and interpreted in accordance with such intention.

(j) Section 4.01(b) of the Agreement is hereby amended by replacing the words "set forth in (1), (2) and (3) above" therein with "set forth in (1) and (2) above".

(k) Section 4.01(c) of the Agreement is hereby amended in its entirety to read as follows: "[Reserved]"

(l) Section 4.01(d) of the Agreement is hereby amended in its entirety to read as follows: "[Reserved]"

(m) Section 4.02 of the Agreement is hereby amended in its entirety to read as follows:

Early Termination Notice. If the Corporation chooses to exercise its right of early termination under Section 4.01 above, the Corporation shall deliver to the Stockholders Representative notice of such intention to exercise such right (an "Early Termination Notice") and a schedule (the "Early Termination Schedule") showing in reasonable detail the calculation of the Early Termination Payment. The Early Termination Schedule shall become final and binding on all parties unless the Stockholders Representative, within thirty (30) calendar days after receiving the Early Termination Schedule, provides the Corporation with a notice of a material objection to such Schedule (a "Material Objection Notice") made in good faith. An Early Termination Schedule will also become final and binding upon the Stockholders Representative confirming in writing that it will not provide a Material Objection Notice with respect to such Schedule. If the parties, for any reason, are unable to successfully resolve the issues raised in such Material Objection Notice within thirty (30) calendar days after receipt by the Corporation of the Material Objection Notice, the Corporation and the Stockholders Representative shall employ the Reconciliation Procedures as described in Section 7.08 of this Agreement.

(n) Section 4.03(a) of the Agreement is hereby amended by deleting the words "or Divestiture Acceleration Payment" from the first sentence therein.

(o) Section 4.03(b) of the Agreement is hereby amended in its entirety to read as follows:

The "Early Termination Payment" means, as of the Early Termination Date, the present value, discounted at the Early Termination Rate as of such date and assuming the Applicable Tax Rate(s) then in effect on the Early Termination

Date, of all Settlement Payments (other than any Settlement Payment in respect to a Payment Date that occurred prior to the Early Termination Date and which is currently due and payable but unpaid as of the Early Terminate Date, which shall (subject to Section 3.02) be paid to the Stockholders on the date the Early Termination Payment becomes payable) that would be required to be paid by the Corporation beginning from the Early Termination Date, all as may be adjusted further in a manner agreed to by the Corporation and the Stockholders Representative. For purposes of calculating, pursuant to this Section 4.03(b), the present value of all Settlement Payments that would be required to be paid, it shall be assumed that, absent the Early Termination Notice, all Settlement Payments would be paid on the Payment Date with respect to such Settlement Payment.

(p) Section 4.03(c) of the Agreement is hereby amended in its entirety to read as follows: "[Reserved]"

(q) Section 5.02 of the Agreement is hereby amended by deleting the following words from the first sentence therein: "(other than, for clarity, any Early Termination Payment payable in connection with a Change of Control)"

(r) Section 6.01 of the Agreement is hereby amended in its entirety to read as follows:

Responsibility for Tax Matters. Except as otherwise provided in Section 6.02 or 6.03, the Corporation shall have full responsibility for, and sole discretion over, all Tax matters concerning the Corporation or other Taxable Entity, including the preparation, filing or amendment of any Tax Return and the defense, contest, or settlement of any issue pertaining to Taxes.

(s) Section 7.07 of the Agreement is hereby amended by deleting the words "Section 2.03," from the first sentence therein.

(t) Section 7.08 of the Agreement is hereby amended by: (i) deleting the words "Section 2.03," from the first sentence therein; (ii) replacing the words "an early termination, breach of agreement, Change of Control, or Divestiture Acceleration Payment" in the first sentence therein with the words "an early termination or breach of agreement"; (iii) amending the third sentence therein in its entirety to read "If the Reconciliation Dispute is not resolved before any payment that is the subject of the Reconciliation Dispute is due, such payment shall be made on the date prescribed by this Agreement, subject to adjustment or amendment upon resolution."; and (iv) amending the fourth sentence therein in its entirety to read "The costs and expenses relating to the engagement of such Expert shall be borne by the Corporation, except as provided in the next sentence."

(u) Section 7.10 of the Agreement is hereby amended in its entirety to read as follows: "[Reserved]"

(v) A new Section 7.14 (Tax Forms) is hereby inserted into the Agreement to read as follows: To the extent the Corporation does not currently have such Form in respect of a Stockholder, such Stockholder shall upon request provide the Corporation with duly executed IRS Forms W-8 or W-9, as the case may be, certifying to such Stockholder's exemption from withholding and backup withholding taxes in respect of all amounts payable to such Stockholder hereunder. Each Stockholder (including for the avoidance of doubt any permitted transferee) shall also provide new forms (or successor forms) or certificates upon the expiration or obsolescence of any previously delivered forms and promptly notify the Corporation of any change in circumstances that would modify or render invalid any claimed exemption or reduction.

2. Pre-Amendment Payments. The Stockholders Representative, on behalf of the Stockholders, hereby acknowledges and agrees that as of the Effective Time, neither the Corporation nor any other Taxable Entity shall have any liability to make any payment under the Agreement other than the Settlement Payments or Early Termination Payment as contemplated hereby.

3. Notices. As of the Effective Time, all notices to the Corporation under the Agreement shall be delivered as set forth below:

If to the Corporation, to:
Surgery Partners, Inc.
40 Burton Hills Boulevard
Suite 500
Nashville, Tennessee 37215
Fax: (615) 234-5998
Attention: Chief Financial Officer and Chief Executive Officer
Email: tsparks@surgerypartners.com and mdoyle@surgerypartners.com

with a copy (which shall not constitute notice) to:
Ropes & Gray LLP
1211 Avenue of the Americas
New York, NY 10036
Facsimile: (646) 728-1523
Attention: Carl Marcellino
Email: Carl.Marcellino@ropesgray.com

with a copy (which shall not constitute notice) to:
Kirkland & Ellis LLP
300 North LaSalle
Chicago, IL 60654
Fax: (312) 862-2200
Attention: Neal J. Reenan, P.C. and Ian N. Bushner
Email: NReenan@kirkland.com and ian.bushner@kirkland.com

4. Miscellaneous. This Amendment will not be effective unless and until immediately prior to the NSH Closing (as defined in the NSH Merger Agreement) (the "Effective Time"). Except as expressly provided in this Amendment, all of the terms and provisions of the Agreement are and will remain in full force and effect and are hereby ratified and confirmed. As of the Effective Time, each reference in the Agreement to "Agreement", and each reference to the Agreement in any other agreements, documents, or instruments executed and delivered pursuant to, or in connection with, the Agreement, will mean and be a reference to the Agreement as amended by this Amendment. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control. For the avoidance of doubt, the parties hereto agree that entry into the Transaction Documents and the other documents contemplated therein and consummation of the transactions contemplated therein are not prohibited by Section 7.13 of the Agreement. Sections 1.02, 7.01 (as updated hereby), 7.02, 7.03, 7.04, 7.05, 7.06, and 7.07 of the Agreement are hereby incorporated by reference into this Amendment and shall apply as if fully set forth herein *mutatis mutandis*.

[Signature pages follow]

IN WITNESS WHEREOF, the Corporation and the Stockholders Representative have duly executed this Amendment as of the date first written above.

SURGERY PARTNERS, INC.

By: /s/ Michael T. Doyle
Name: Michael T. Doyle
Title: Chief Executive Officer

[Signature Page to Amendment No. 1 to Income Tax Receivable Agreement]

IN WITNESS WHEREOF, the Corporation and the Stockholders Representative have duly executed this Amendment as of the date first written above.

H.I.G. SURGERY CENTERS, LLC, as Stockholders Representative

By: H.I.G.-GPII, Inc.
Its: Manager

By: /s/ Richard H. Siegel
Name: Richard H. Siegel
Title: Vice President and General Counsel

[Signature Page to Amendment No. 1 to Income Tax Receivable Agreement]

Exhibit A

Annex B

Payment Schedule

(See attached.)

Annex B to the First Amendment

Tax Year	Payment Date	Base Amount	Applicable Federal Tax Rate*	Assumed State Tax Rate (Fixed)	Applicable Tax Rate*	**Ilustrative Example: Settlement Payment (assuming no change in Max Fed Corp Tax Rates so Blended Rate is 38% at all times)**	**Illustrative Example: Settlement Payment (assuming Max Fed Corp Tax Rates is 25% so Blended Rate is 28% at all times)**
2016	December 1, 2017	$2,638,259.84	35.0%	3.0%	38.0%	$ 1,002,539	$ 738,713
2017	December 1, 2018	$ 1,641,769.8	35.0%	3.0%	38.0%	$ 623,873	$ 459,696
2018	December 1, 2019	$36,797,315.8	35.0%	3.0%	38.0%	$ 13,982,980	$ 10,303,248
2019	December 1, 2020	$77,508,444.0	35.0%	3.0%	38.0%	$ 29,453,209	$ 21,702,364
2020	December 1, 2021	$97,295,538.4	35.0%	3.0%	38.0%	$ 36,972,305	$ 27,242,751
2021	December 1, 2022	$92,552,144.0	35.0%	3.0%	38.0%	$ 35,169,815	$ 25,914,600
2022	December 1, 2023	$ 6,168,650.2	35.0%	3.0%	38.0%	$ 2,344,087	$ 1,727,222
2023	December 1, 2024	$ 2,414,853.6	35.0%	3.0%	38.0%	$ 917,644	$ 676,159

* Applicable Federal Tax Rate and Applicable Tax Rate may vary as provided in the First Amendment.

For the avoidance of doubt, the December 1, 2024 Payment Date is the last Payment Date under the Agreement

Exhibit 99.1

Surgery Partners to Acquire National Surgical Healthcare from Irving Place Capital

Combination creates leading independent surgery company with strong musculoskeletal programs

Transaction expected to be accretive in 2018

Bain Capital Private Equity acquiring H.I.G. Capital's stake in Surgery Partners and providing capital for the acquisition

NASHVILLE, Tenn. – May 10, 2017 – Surgery Partners, Inc. (NASDAQ:SGRY) ("Surgery Partners"), a leading healthcare services company, and National Surgical Healthcare ("NSH"), an owner and operator of surgical facilities in partnership with local physicians, today announced that they have entered into a definitive merger agreement under which Surgery Partners will acquire NSH from Irving Place Capital for approximately $760 million. Funding for Surgery Partners' acquisition of NSH will be provided in part by Bain Capital Private Equity, a leading global private investment firm, who as part of the transaction is injecting capital in exchange for a preferred security in the Company. In conjunction with this transaction, Bain Capital Private Equity will acquire H.I.G. Capital's existing equity stake in Surgery Partners.

The transaction builds upon each company's physician-centric services model. It combines two best in class organizations, creating a diversified inpatient and outpatient surgical provider with a portfolio of 125 surgical facilities, 58 physician practice locations and complementary ancillary services. The combined business will be one of the leading independent surgical facilities operators in the country, with a strong presence in musculoskeletal programs, including orthopedics, pain and spine. The combined company will operate facilities in 32 states with a network of over 5,000 physicians, creating an attractive, diversified surgical provider that is well-positioned to be the partner of choice for physicians and a valued provider for patients and payors.

"We are very excited about the acquisition of National Surgical Healthcare and welcome our new partnership with Bain Capital Private Equity," said Mike Doyle, Chief Executive Officer of Surgery Partners. "I would like to welcome the NSH team and physicians. This transaction strengthens our market position and will provide new opportunities to introduce ancillary services to our expanded network of surgical facilities. NSH and Surgery Partners share a commitment to high quality, cost effective healthcare services. We are optimistic that this combination will promote physician recruitment and new service line expansion while generating solid growth, and we expect this transaction to be accretive in 2018. We are thankful to have had the opportunity to grow the Company with H.I.G. Capital over the past seven years, and thank the entire H.I.G. team for their support of our Company and management team along the way."

"This transaction fits well with our efforts to deliver strong clinical outcomes and high quality patient care," said David Crane, Chairman and Chief Executive Officer of NSH. "Together we believe our physician-centric model will continue to draw interest and deliver on its goals of providing quality surgical services and superior facilities for patients, physicians and payors. We are very appreciative of the support and partnership that NSH has enjoyed from and with Irving Place Capital during their ownership of the company. We also appreciate Bain Capital Private Equity's investment with the new combined company and look forward to the next chapter for NSH with Surgery Partners."

John Howard, Co-Managing Partner of IPC, said, “We have truly enjoyed working with David and his talented team as they have successfully executed on their strategy of building a leading operator in the surgical facility space. We are incredibly grateful for all of the hard work the team has put in during our ownership period and we wish them continued success.”

“Surgery Partners and National Surgical Healthcare have both demonstrated their ability to partner with physicians to deliver great clinical outcomes for patients. The combined company will create the market-leading platform for high-quality, cost-efficient surgical care.” said Devin O’Reilly, a Managing Director of Bain Capital Private Equity.

“Both companies have an impressive track record of growth – we look forward to continuing to support management and our partner physicians in the expansion of the platform,” added Chris Gordon, a Managing Director of Bain Capital Private Equity.

Bain Capital Private Equity is a long-term investor and has a history of successful investments across a broad range of healthcare sectors including service providers, facilities, life sciences, devices, and distribution. The firm’s experience owning industry leading facilities-based healthcare businesses includes HCA Healthcare, Acadia Healthcare, Air Medical and Grupo Notre Dame Intermedica, among others.

The transaction is expected to close during 2017 and remains subject to the receipt of required regulatory approvals and the satisfaction of other customary closing conditions.

Jefferies LLC is serving as the exclusive financial advisor and is providing committed financing for the transaction, Ropes & Gray LLP is serving as legal counsel, and PwC LLP is acting as accounting advisor to Surgery Partners and Bain Capital Private Equity. Kirkland & Ellis is acting as counsel to Bain Capital Private Equity. J.P. Morgan Securities LLC is acting as financial advisor to NSH, and Weil, Gotshal & Manges LLP as its legal advisor.

About Surgery Partners

Headquartered in Nashville, Tennessee, Surgery Partners is a leading healthcare services company with a differentiated outpatient delivery model focused on providing high quality, cost effective solutions for surgical and related ancillary care in support of both patients and physicians. Founded in 2004, Surgery Partners is one of the largest and fastest growing surgical services businesses in the country, with more than 150 locations in 29 states, including ambulatory surgical facilities, surgical hospitals, a diagnostic laboratory, multi-specialty physician practices and urgent care facilities.

About National Surgical Healthcare

NSH is an innovative healthcare partner that empowers physicians to thrive in a changing marketplace. NSH owns and operates 21 surgical facilities, specializing in orthopedic surgery, spine and back, pain management, and neurosurgery. For information about NSH, visit the company’s website at www.nshinc.com.

About Bain Capital Private Equity

Bain Capital Private Equity (www.baincapitalprivateequity.com) has partnered closely with management teams to provide the strategic resources that build great companies and help them thrive since our founding in 1984. Our team of more than 220 investment professionals creates value for our portfolio

companies through our global platform and depth of expertise in key vertical industries, including industrials, consumer/retail, financial and business services, healthcare, and technology, media and telecommunications. In addition to private equity, Bain Capital invests across asset classes including credit, public equity and venture capital, and leverages the firm's shared platform to capture opportunities in strategic areas of focus.

About Irving Place Capital

Since its founding in 1997, Irving Place Capital has invested in over 60 portfolio companies, primarily in the industrial, packaging, consumer and retail industries. The firm focuses on making control or entrepreneur-driven investments where it can apply its substantial operating and strategic resources and expertise to enhance value. Irving Place Capital has successfully executed a broad range of transactions, including buyouts, recapitalizations, build-ups, corporate divestitures, take-privates and distressed-to-control situations. Irving Place Capital generally seeks to invest in companies headquartered in North America or Western Europe. More information about Irving Place Capital is available at www.irvingplacecapital.com.

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