

# PURCHASE AND SALE AGREEMENT

**THIS PURCHASE AND SALE AGREEMENT** ("Agreement") is made as of the \_\_\_<sup>th</sup> day of June, 2019 (the "Effective Date"), between the **Community Development Authority of the City of West Allis**, a separate body politic created by ordinance of the City of West Allis, pursuant to Section 66.1335 of the Wisconsin Statutes, ("Authority"), the **City of West Allis**, a Wisconsin municipal corporation ("City"), and **Milwaukee Behavioral Health, LLC** ("Developer"), its successors and/or assigns (hereinafter referred to Authority and City are collectively "West Allis"). **FOR AND IN CONSIDERATION** of the promises and the undertakings and mutual covenants of the Parties set forth herein, the receipt and sufficiency of which are hereby acknowledged, Authority, City, and Developer hereby covenant and agree as follows:

- 1. Guarantor.** For purposes of this Agreement, UHS of Delaware, Inc. shall be the "Guarantor" under this Agreement.
- 2. Property.** Authority hereby agrees to sell and convey to the Developer, and the Developer hereby agrees to buy and pay for the certain parcels of real property within the City of West Allis, Milwaukee County, Wisconsin, consisting of approximately 7.519 acres of land which is more particularly described and depicted as tax key parcel 453-0776-003 located at 1706 S. 68th St. (the "Property"). The legal description of the Property is attached hereto as **Exhibit A – Legal Description of Property**. The sale includes all of Authority's interest in each parcel and every easement, access right, privilege and appurtenance thereto, currently in existence (or to be created pursuant to this Agreement) serving the Property.
- 3. Project.** The development of the Property (the "Project") will include the construction of an estimated 120 bed, behavioral health care facility with an anticipated construction value of \$25 million and an estimated 200 employees. The Project will include \_\_\_ surface parking spaces. The Project is depicted in the attached **Exhibit B – Project Elevation and Site Plan**.

4. **Purchase Price.** The purchase price for the Property shall be \$750,000.00 (the "Purchase Price"), to be paid at Closing. Closing will occur after Plan Commission Approval of the Site and Landscaping Plan and Architectural Review of the Project and satisfaction or waiver of all West Allis's contingencies and Developer's contingencies, but not later than 30 days following satisfaction or waiver of the last of such contingencies, unless otherwise agreed by West Allis and Developer in writing (the "Closing Date").

5. **Conveyance.** Authority shall, at closing and upon receiving payment of the Purchase Price, convey the Property to the Developer by Warranty Deed as in the form attached hereto as **Exhibit C –Warranty Deed**. Pursuant to Sections 6 and 31 herein, the Property is being conveyed by the Authority to the Developer in "as is, where is" condition.

6. **As Is, Where Is.** Except as otherwise expressly set forth, the Property is being conveyed "as is, where is" by Authority to the Developer. The Authority and City have not made, and have no duty or obligation to make, any warranties or representations, written or oral, express or implied, in any way related to the Property other than as expressly set forth in this Agreement. Developer has been provided ample opportunity to inspect the Property and perform its own due diligence as to the physical condition and suitability of the Property for Developer's intended use. Developer is not relying upon any representations from West Allis that are not expressly set forth in this Agreement.

7. **Site Preparation.** Per a letter dated September 18, 2017, the Wisconsin Department of Natural Resources ("WDNR") approved a Post Closure Modification for the Property. The letter is hereby attached **Exhibit D – Post Closure Modification – Notice to Proceed**. Authority shall assist the Developer in interactions with and/or obtaining further approvals from the WDNR in connection with the Project; however, the Developer shall be **responsible for all costs associated with environmental remediation and all general site preparation unless** expressly provided otherwise in this Agreement. Notwithstanding the foregoing, West Allis shall remain

responsible for the costs of the maintenance and closure of the existing monitoring wells in accordance with the Post-Closure Modification—Notice to Proceed. At Closing, West Allis shall assign to Developer all of its rights, title and interest giving rise to any ability to pursue a third party with respect to any site matters, including, without limitation any right to pursue any polluter responsible for any environmental issues with respect to the Property or any warranties or representations with respect to work done on the Property prior to Closing or after Closing on West Allis' behalf.

**8. Conditions to Closing.**

**A. West Allis's Contingencies to Closing.** The obligation of West Allis to consummate the transaction contemplated hereby is subject to the fulfillment of all of the following conditions on or before the Closing Date, except as provided in Section 8. A. (7) (which may be waived by West Allis in whole or in part in its sole discretion):

- (1). **Compliance with Agreement.** Developer shall have performed and complied with all of its obligations under this Agreement to the extent such obligations are to be performed or complied with by Developer on or before the Closing Date.
- (2). **No Litigation.** There shall be no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated by this Agreement, or seeking the restraint, prohibition, damages or other relief in connection with this Agreement, and none of the same shall have been instituted by any person, agency, or governmental entity prior to closing.
- (3). **Purchase Price.** Developer shall pay the Purchase Price outlined in the above Section 4.
- (4). **Executed Terms.** Developer or Guarantor, as applicable, shall have executed, accepted the terms, and signed this Agreement, the Development Agreement attached as **Exhibit E**, the Development Financing Agreement attached as **Exhibit F**, the Memorandum of Agreements

attached as **Exhibit G**, and the Guaranty of Performance attached as **Exhibit H**.

(5). **Title**. West Allis shall have determined that it is able to meet the title and document requirements in Section 9. B.(4).

(6). **Financing**. West Allis approves the Developer's evidence that it has the necessary resources to self-finance all costs of the Project with such approval not to be unreasonably withheld.

(7). **No Misrepresentation or Breach of Covenants and Warranties**. There shall have been no uncured, material breach by Developer in its performance of any of its covenants herein, and each of the representations and warranties of Developer outlined or referred to in this Agreement shall be deemed to be true and correct in all respects on the Closing Date as though made on the Closing Date. Closing on the conveyance of the Property shall be deemed a satisfaction of waiver of the said conditions.

**B. Developer's Contingencies to Closing**. The obligation of Developer to consummate the transaction contemplated hereby is subject to the fulfillment of all of the following conditions on or before the Closing Date, except as provided in Section 8. B. (9) (which may be waived by Developer in whole or in part, in its sole discretion):

(1). **Compliance with Agreement**. West Allis shall have performed and complied with all of its obligations under this Agreement, to the extent such obligations are to be performed or complied with by West Allis on or before the Closing Date.

(2). **No Misrepresentation or Breach of Covenants and Warranties**. There shall have been no breach by West Allis in the performance of any of its covenants herein, and each of the representations and warranties of West Allis outlined or referred to in this Agreement shall be deemed to be true and correct in all respects on the Closing Date as though made on the Closing Date.

(3). **No Litigation.** There shall be no litigation, threat, investigation, or other proceeding challenging or affecting the legality of the transactions contemplated by this Agreement, or seeking the restraint, prohibition, damages or other relief in connection with this Agreement or the use intended for the Property by Developer, and none of the same shall have been instituted or threatened by any person, agency, or other entity prior to closing. Such litigation or threat thereof shall include, but not be limited to, challenges to West Allis's right to take or to have taken the Property or the rights of tenants or occupants of the Property to remain.

(4). **New Market Tax Credit (NMTC).** Developer shall have confirmed not later than two hundred and ten (210) days after the Effective Date, that Developer has secured, or has obtained adequate assurances of securing, NMTC financing per the terms and conditions within the **Exhibit E – Development Financing Agreement.**

(5). **West Allis's Approvals, Test, and Reports.** West Allis has furnished to the Developer such documents in West Allis's possession or under its control within fifteen (15) calendar days following the Effective Date, or, if obtained by West Allis after the Effective Date, then within fifteen calendar (15) days after so obtained, as may be requested by Developer hereunder or otherwise in writing for purposes of evaluating the Property and its ability to use the Property for the use intended by Developer. Developer shall furnish to West Allis, within five (5) calendar days after the Effective Date, a comprehensive list of documents, test results, studies and reports ("Document List") referred to or described above that are already in the possession of Developer or its agents, and West Allis shall not be obligated to provide anything to Developer which is contained on the Document List.

(6). **Government Approvals.** Developer shall have confirmed not later than one hundred and twenty (120) days after the Effective Date, that Developer has obtained, or has obtained adequate assurances of the availability of, any governmental permits, easement agreements, licenses, and

approvals that it may deem necessary to develop and use the Property in the manner intended by Developer; provided, however, if any such approvals cannot be obtained within said time period, Developer may request that this contingency and the date for Closing be extended for up to an additional 90 days and West Allis shall consent to such extensions provided, in the reasonable judgment of West Allis, Developer is pursuing such approvals in good faith and with due diligence.

(7). **Utilities.** Developer shall have been satisfied, in its sole discretion, with the location, availability and suitability of municipal and other utilities in connection with Developer's intended use of the Property. West Allis makes no representations or warranties concerning the location or the condition of utilities.

(8) **Due Diligence.** Developer and its lender, if any, shall have been satisfied, in their sole discretion, with the physical condition of the Property, including any environmental conditions, and with the condition of title to the Property.

(9) **Termination.** If Developer fails to notify West Allis in writing within one hundred and twenty (120) days from the Effective Date that Developer has satisfied or waived the conditions in (5), (7), and (8), then either Developer or West Allis may thereafter terminate this Agreement by providing written notice to the other party within thirty (30) days following the expiration of such 120-day period. In case of such termination, no Party shall have any further liability under this Agreement except as specifically set forth as surviving termination. Closing on the Property shall be deemed as satisfaction or waiver of all of the said conditions.

**9. A. Authority's Obligations under this Agreement include:**

(1). **Zoning and Permitting Cooperation.** The Authority shall cooperate with the Developer throughout the term of this Agreement and shall promptly assist Developer in its applications for the necessary City approvals and shall review and/or process all submissions and applications in a

timely manner in accordance with the applicable City ordinances.

(2). Due Diligence Documents. Subject to satisfaction of all the terms and conditions of this Agreement regarding the contribution and assistance contemplated herein, the Authority shall make available to the Project the following contributions and assistance:

(a) Authority will convey the certain parcel described in **Exhibit A - Legal Description of Property** to the Developer.

(b) The financial assistance as outlined under **Exhibit F - Development Financing Agreement** shall be provided to the Developer.

**B. Developer's Obligations under this Agreement include:**

(1). Approvals. Developer will exercise good faith efforts to obtain all necessary governmental approvals and financing without contingencies to construct the Project in accordance with the Project Plans.

(2). Financial Standing. Within fifteen (15) days following the Effective Date, Developer and Guarantor will deliver financial statements to West Allis's financial consultant (which shall remain confidential) and such financial consultant will report to West Allis on the adequacy of Developer's and Guarantor's financial strength to fulfill their respective financial obligations under this Agreement.

(3). **Executed Documents**. Guarantor will deliver to West Allis the executed guaranties required under this Agreement, the form of which is attached hereto and incorporated herein as **Exhibit H – Guaranty of Performance**.

(4). Title Evidence and Documents.

(a) Developer shall have received within fifteen (15) calendar days after the Effective Date a commitment (the "Title Commitment") from First American Title Insurance Company (the "Title Company") to issue an owner's policy of title insurance ("Title

Policy") to Developer in the amount of the Purchase Price of the Property, which Title Commitment shall show Authority's title to be merchantable as of the Closing Date, subject only to such liens as will be paid out of the proceeds of closing and such exceptions to title which will not unreasonably inhibit, prohibit or impair the Developer's use of the Property for Developer's intended uses as determined by Developer in its sole, but reasonable, discretion.

(b) Developer shall be responsible for obtaining and the paying for an ALTA/ASCM all-urban standards survey ("Survey") of the Property.

(c) Developer, within fifteen (15) calendar days after receipt of the last of the Title Commitment and Survey, shall submit to West Allis in writing a list of matters affecting the Property to which the Developer objects ("Title Objections"). West Allis shall have fifteen (15) calendar days to remove or cause the Title Company to insure over the Title Objections and provide notice to Developer of same. Developer reserves the right to approve the means and methods by which West Allis proposes to remove or cause the Title Company to insure over the Title Objections. In the event that West Allis is unable or unwilling to remove the Title Objections prior to or at Closing to the Developer's satisfaction, Developer's shall have 5 days from receipt of notice thereof, to deliver written notice waiving the Title Objections. If the Developer does not waive the Title Objections after receiving notice from West Allis, then this Agreement shall be null and void and both the Developer and West Allis shall have no further liabilities under this Agreement. If West Allis commits to remove or cause the Title Company to insure over the Title Objections and subsequently is unable or unwilling to do so, Developer may terminate this Agreement and refuse to close or close hereunder and seek remedy as set forth in Section 39.

(5). **Assessments.** As of the date hereof and as of the Closing Date, there are no special



assessments or charges outstanding for public improvements, which remain unpaid, that have been made, or will have been made against the Property. If an unpaid property tax bill exists as of the Closing Date, any unpaid taxes shall be prorated between the Developer and Authority. Developer shall pay all taxes, special assessments, and charges made against the Property after the Closing Date.

(6). **Developer Acceptance.** Developer acknowledges that it is purchasing the Property on the basis of its own investigations and due diligence and accepts responsibility for ensuring that the condition of the Property is suitable for Developer's intended use.

10. **Intentionally omitted.**

11. **Intentionally omitted.**

12. **Intentionally Omitted.**

13. **Payment In Lieu of Taxes.** The Property is located within the boundaries of Tax Increment District No. 14 (the "TID") and West Allis is providing financial assistance to the Project on the condition that the Project remain subject to real estate taxation for the duration of the TID. Ownership of the Property by any person, partnership, corporation, or entity, which in any manner renders any part of the Property exempt from property taxation during the life of the TID shall result in a payment in lieu of taxes from the Developer, its successors, heirs and assigns, to City each year in an amount equal to the amount of taxes that would be due and owing on the Property if it was not tax exempt. Such payment shall be due, payable and collected in the same manner as property taxes, to the extent permitted by law. Developer, its successors, heirs, and assigns waive the right to contest the validity of this provision. This Section shall automatically terminate upon the termination of the TID.

14. **Intentionally Omitted**

15. **Memorandum of Agreements.** West Allis and Developer agree that they will execute a memorandum of this Agreement and the Development Agreement to be recorded in the Office of the Register of Deeds of Milwaukee County, Wisconsin in substantially the form attached hereto as **Exhibit G**. The Memorandum of Agreements shall be executed by the Parties at the time of Closing. The Parties further agree that the Memorandum of Agreements shall be recorded prior to Developer attaching any mortgage, lien, or other encumbrance on the Property.

16. **Development Agreement.** Simultaneously with the execution of this Agreement, the Developer and West Allis shall execute a Development Agreement (the "Development Agreement") in the form attached hereto as **Exhibit E**.

17. **Intentionally Omitted**

18. **Closing.** The closing of the sale and purchase of the Property (the "Closing") shall be held at such place as the Parties may mutually agree, on or before the Closing Date, or another date, time, or manner specified in writing by mutual agreement of the Parties.

A. Closing will be into an escrow account with the Title Company.

B. Closing Costs will be allocated as follows:

- (1). Developer shall pay the cost to record the Deed and any loan documents;
- (2). Authority shall pay the premium for the Title Policy (except that Developer shall pay for any endorsements requested for the Title Policy other than a "gap" endorsement) and any transfer fee arising by reason of transfer of the Property;
- (3). Authority shall pay the recording fee for any satisfaction of its existing liens and encumbrances and Memorandum of Agreements;
- (4). Each Party shall pay its own attorney's and other professional fees; and

(5). All other non-specified closing costs shall be paid by Developer.

19. **Representation and Warranties.**

A. **Authority's Representations and Warranties.** Authority hereby represents and warrants that as of the date hereof and as of the Closing Date:

(1). **Organization; Good Standing.** Authority is a Community Development Authority duly organized and validly existing under Sec. 66.1335 of the laws of the State of Wisconsin. Authority has full power and authority to sell, own, or hold under lease its properties and assets and to carry on its business as presently conducted, to enter into this Agreement, and to carry out the transactions contemplated hereby.

(2). **Authorization.** The execution and delivery of this Agreement and the consummation by Authority of the transaction contemplated hereby are within the power and authority of Authority and have been duly authorized by all necessary actions on the part of Authority and the persons executing this Agreement on behalf of the Authority have been duly authorized.

(3). **No Violation or Conflict.** The execution, delivery, and performance of this Agreement by Authority does not and will not conflict with or violate any law, regulation, judgment, deed restriction, order, decree, or any contract or agreement to which Authority is a party or by which it is bound.

(4). **Ownership of Property.** Authority is the owner of the Property in fee simple and has good and merchantable title to the Property and the right to transfer Property.

(5) **Floodplain.** No part of the Property is located in a floodplain, flood hazard area, shore land, wetland, or similarly restricted area.

(6). **Liens.** All work performed or materials furnished for lienable work on the Property contracted for by West Allis, if any, shall have been fully paid for, and West Allis shall provide

Developer with appropriate lien waivers or releases from any and all contractors, laborers, or materialmen furnishing labor or material for lienable work on the Property during the six (6) months preceding the Closing Date.

(7). **Brokers.** West Allis represents that it has not entered into a listing agreement in connection with the sale of the Property and will indemnify and hold Developer harmless from any claim for commission made by any agent or broker claiming to have acted on behalf of West Allis. Pursuant to the Development Financing Agreement, West Allis will be contributing the sum of \$60,000 to Developer to be applied toward the commission payable to Developer's broker (CBRE) by Developer. West Allis has no contractual relationship with Developer's broker and Developer agrees to indemnify and hold West Allis harmless from any claim for commission made by such broker.

(8). **Leases.** There are no written or oral leases affecting the Property.

(9). **Service Agreements.** There is no existing service, maintenance, management or any other agreements with regard to the Property.

(10). **Pending Defaults, Violations or Litigation.** With respect to the Property and to West Allis's knowledge and excluding any matters pertaining to the compliance of the Property with any environmental laws or regulations, there are no lawsuits, proceedings, claims, governmental investigations, citations or actions of any kind pending or threatened against West Allis or against the Property; further, there is no action, suit or proceeding by any governmental agency pending or threatened which questions the legality, validity or propriety of the transactions contemplated hereby nor is there any basis known to West Allis for any such action.

(11). **Laws.** Excluding any matters pertaining to the compliance of the Property with any environmental laws or regulations, to West Allis' knowledge there is no violation of any law or any building, zoning, environmental, or other ordinance, code, rule, or regulation and no notice

from any governmental body or other person has been served upon West Allis or upon the Property claiming the violation of any such law, ordinance, code, rule, or regulation; there are no legal actions, suits, or administrative proceedings, including condemnation, pending or threatened against the Property.

(12). **Access and Utilities.** West Allis makes no representations or warranties regarding the accessibility and adequacy of public and private utilities required for the operation of the Project to be constructed on the Property.

(13). **Zoning.** West Allis shall process all applications submitted by Developer to obtain the proper zoning in accordance with applicable ordinances. Developer is responsible at its sole cost to obtain zoning approvals from the City's Development Department, Plan Commission and Common Council to ensure that all improvements to be constructed thereon by the Developer pursuant to this Agreement and the Development Agreement will conform and comply in all respects with the City's Zoning and City Planning code.

(14). **Warranty.** West Allis acknowledges that the express warranties and representations made herein are a material inducement to the Developer entering into this Agreement, the Developer is entitled to rely upon these warranties and representations despite independent investigation undertaken by the Developer and that the warranties and representations made herein by West Allis shall survive the Closing and the execution and delivery of the Deed.

**B. Developer's Warranties.** The Developer hereby represents and warrants that as of the date hereof and as of the Closing Date:

(1). **Organization; Good Standing.** Developer is a Delaware corporation duly organized and validly existing under the laws of the State of Delaware and authorized to do business in the State of Wisconsin. Developer has full power and authority to acquire and own real estate and to carry on its business as presently conducted, to enter into this Agreement, and to carry out the

transactions contemplated hereby.

(2). **Authorization**. The execution and delivery of this Agreement and the consummation by Developer of the transaction contemplated hereby are within the power and authority of Developer and have been duly authorized by all necessary actions on the part of Developer, and the persons executing this Agreement on behalf of Developer have been duly authorized.

(3). **No Violation or Conflict**. The execution, delivery, and performance of this Agreement by Developer do not and will not conflict with or violate any law, regulation, judgment, deed restriction, order, decree, or any contract or agreement to which Developer are a party or by which they are bound.

(4). **Intentionally Deleted**.

(5). **Litigation**. To the Developer's knowledge, there are no lawsuits, proceedings, claims, governmental investigations, citations or actions of any kind pending or threatened against Developer, nor is there any basis known to Developer for any such action, and there is no action, suit or proceeding by any governmental agency pending or threatened which questions the legality, validity or propriety of the transactions contemplated hereby nor is there any basis known to Developer for any such action.

(6). **Warranty**. Developer acknowledges that the warranties and representations made herein by Developer are a material inducement to West Allis entering into this Agreement, that West Allis is entitled to rely upon these warranties and representations despite independent investigation undertaken by West Allis and that the warranties and representations made herein by Developer shall survive the Closing and the execution and delivery of the Deed.

C. **Waiver and Release**. Except to matters otherwise specifically set forth herein, if this transaction closes, Developer agrees to waive, release and forever discharge West Allis and West Allis' officers, employees and agents or any other person acting on behalf of West Allis, of and from any claims, actions,

causes of action, demands, rights, damages, costs, expenses or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, which may arise in the future on account of or in any way growing out of or connected with this transaction. This waiver and release does not extend to any matter with respect to which West Allis had actual notice or knowledge prior to Closing, was obligated by this Agreement to disclose to Developer and failed to disclose to Developer, or to any breach of this Agreement.

20. **Time of the Essence.** Time is of the essence with respect to all obligations arising hereunder.

21. **Closing Documentation.** The closing of the purchase and sale of the Property shall occur by placing all documents and funds into a trust or escrow with a Title Company, and on the date specified in the notice required under Section 18 above (the "Closing"). The Title Company shall prepare a closing statement setting forth a summary of the Purchase Price and debits and credits to Developer and Authority. The Title Company shall provide for execution at the Closing of a properly completed Wisconsin Real Estate Transfer Return. A Payout Letter shall be delivered for any mortgages or other liens being satisfied as of the Closing Date.

A. At the Closing, the Authority shall deliver to Developer the following:

- (1). **Possession.** Legal and physical possession of the Property.
- (2). **Warranty Deed.** A General Warranty Deed to the Property.
- (3). **Development Agreement.** The Development Agreement as required under Section 8. A. (4) and is attached as **Exhibit F.**
- (4). **Memorandum of Agreements.** The Memorandum of Agreements required under Section 8. A. (4) in the form attached hereto as **Exhibit G.**
- (5). **Title Affidavits.** Owner's Affidavit and standard GAP affidavit required by the Title Company for title insurance purposes.

(6) **Assignment of Rights and Warranties.** An Assignment of Rights and Warranties in form acceptable to both parties transferring all rights or warranties of West Allis with respect to the Property.

**B.** At the Closing, Developer shall deliver to West Allis the following:

- (1). **Purchase Price** set forth in Section 4.
- (2). **Development Agreement.** The Development Agreement required under Section 8 A. (4), above and is as attached as **Exhibit E.**
- (3). **Development Financing Agreement.** The Development Financing Agreement as required under Section 8. A. (4) and is attached as **Exhibit F.**
- (4). **Memorandum of Agreements.** The Memorandum of Agreements required under Section 8 A. (4) in the form attached hereto as **Exhibit G.**
- (5). **Guaranty.** The Guaranty of Performance required under Section 8 A. (4). in the form attached hereto as **Exhibit H.**

**C.** At the Closing, City shall deliver to the Developer the following:

- (1) The Developer Financing Agreement required in Section 8 A. (4) in the form attached hereto as **Exhibit F.**
- (2) The Memorandum of Agreements required under Section 8 A. (4) in the form attached hereto as **Exhibit G.**
- (3) An Assignment of Rights and Warranties in form acceptable to both parties transferring all rights or warranties of West Allis with respect to the Property.

**22. Project Documents.** If this Agreement is terminated prior to start of construction, Developer shall provide West Allis with copies of third-party consultant reports obtained by Developer for the Project, except for architectural drawings or other Project reports that Developer is not permitted to disclose by law or contract.



**23. Condemnation.** If, prior to the Closing Date, an authority other than West Allis itself takes the Property or any material portion thereof by power or exercise of eminent domain, or institutes any proceedings to effect such a taking, West Allis shall immediately give Developer notice of such occurrence, and Developer shall have the option to terminate this Agreement, whereupon no Party shall have any obligation to another under this Agreement; provided, however, if such action is instituted by West Allis, Developer shall have the option to terminate this Agreement and West Allis shall reimburse Developer for actual pre-development expenses incurred by Developer prior to the date of such notice. If this Agreement is not so terminated, the conveyance that is the subject of this Agreement shall be completed and Developer shall receive all proceeds of such condemnation. As used herein, a material portion of the Property shall be deemed taken if the same shall unreasonably interfere with the intended use of the Property by Developer.

**24. No Partnership or Venture.** Developer and its contractors or subcontractors shall be solely responsible for the completion of the Project. Nothing contained in this Agreement shall create or effect any partnership, venture or relationship between West Allis and Developer or any contractor or subcontractor employed by the Developer in the construction of the Project. No elected official, member, officer, or employee of West Allis during his/her tenure or for one year thereafter, will have or shall have had any interest, direct or indirect, in this Agreement or any proceeds thereof.

**25. Notices.** All notices permitted or required by this Agreement shall be given in writing and shall be considered given upon receipt if hand delivered to the party or person intended, or one calendar day after deposit with a nationally recognized overnight commercial courier service, airbill prepaid, or two (2) business days after deposit in the United States mail, postage prepaid, by certified mail, return receipt requested, addressed by name and address to the party or person intended as follows:

To West Allis:                   Community Development Authority of the City of West Allis  
Office of the Executive Director  
7525 West Greenfield Avenue, West Allis, WI 53214  
Attn: Executive Director

With a copy to: City of West Allis  
Office of the City Attorney  
7525 West Greenfield Avenue  
West Allis, WI 53214  
Attn: City Attorney

To Developer: Milwaukee Behavioral Health, LLC  
Attn: Office of General Counsel  
367 South Gulph Road  
King of Prussia, PA 19406

To Guarantor: UHS of Delaware, Inc.  
Attn: Office of General Counsel  
367 South Gulph Road  
King of Prussia, PA 19406

With a Copy to: Davis & Kuelthau, S.C.  
Attn: Brian Randall, Esq.  
111 East Kilbourn Avenue  
Milwaukee, WI 53202

**26. Further Assurances.** Following the Closing Date, each of the Parties will take such further actions and execute and deliver such additional documents and instruments as may be reasonably requested by any other Party in order to perfect and complete the purchase and sale of the Property as set forth herein as well as any other transactions specifically contemplated herein.

**27. Waiver of Terms.** Except as otherwise provided herein, any of the terms or conditions of this Agreement may be waived at any time by the Party or Parties entitled to benefit thereof, but only by a written notice signed by the Party or Parties waiving such terms or conditions. The waiver of any term or condition shall not be construed as a waiver of any other term or condition of this Agreement.

**28. Right of Entry.**

**A. To Developer.** Authority grants to the Developer, its agents and contractors, the right to enter upon the Property at all reasonable times prior to Closing for the purpose of performing the physical and

environmental tests, investigations, testing and analysis of the Property and the feasibility of the Property/Project, however Developer must restore the Property to substantially its previous condition if the Closing does not occur and this Agreement and the Development Agreement are terminated. Developer must provide Authority copies of all written reports generated from such investigation.

**B. Cooperation.** The Parties shall cooperate with each other and their respective agents and contractors to facilitate the timely and accurate completion of the aforesaid tests, examinations, inspections and remedial activities.

**C. License.** The Parties acknowledge that this right of entry is a license only and does not constitute a lease of or grant of any easement or other interests in real property; and each agree that in the exercise of such right they shall comply with all valid laws, ordinances, rules, orders or regulations of the United States, the State of Wisconsin, the County of Milwaukee, City or any agencies, departments, districts or commissions thereof.

**D. Indemnity.** Developer and Guarantor shall indemnify and hold West Allis harmless from and against any and all claims, damages and awards of every type and nature that may arise due to Developer's negligence (or the negligence of Developer's consultants, contractors or agents) while on the Property, provided however that Developer shall have no liability for any claims, damages, or awards that arise from pre-existing environmental conditions or the discovery of an environmental condition or occurrence affecting the Property; except to the extent such pre-existing environmental conditions have been exacerbated by Developer or its consultants, contractors or agents.

**29. Amendment of Agreement.** This Agreement may be amended, supplemented, or modified at any time, but only by a written instrument duly executed by West Allis and Developer.

**30. Governing Law and Venue.** This Agreement shall, in all respects whether as to validity, construction, capacity, performance, or otherwise, be governed by the laws of the State of Wisconsin. Any suit or proceeding

arising out of or related to this Agreement shall be commenced and maintained only in a court of competent jurisdiction in the state or federal courts located in Milwaukee County, Wisconsin. Each party irrevocably consents to submit to the exclusive jurisdiction of such courts.

**31. As Is, Where Is.**

A. Sale. The sale of the Property to the Developer hereunder shall be AS IS, WHERE IS, as described in Section 6 herein with all faults and without representation or warranty of any kind except as expressly provided in this Agreement. Any other warranties or representations of any kind made either orally or in writing by any agent or representative of West Allis or anyone purporting to be an agent or representative of West Allis shall be of no force and effect. The Developer hereby acknowledges that Developer does not rely upon any representation or warranty made by West Allis or by West Allis's agents, and that none have been made, except as expressly provided in this Agreement.

B. Developer's Investigation. Prior to Closing, the Developer, with the cooperation and assistance of West Allis as provided in this Agreement, will have investigated and will have knowledge of operative or proposed governmental laws and regulations (including, but not limited to, zoning, environmental and land use laws and regulations) to which the Property is or may be subject. Based upon the foregoing, by closing on the acquisition of the property Developer shall be deemed to have acquired the Property upon the basis of its review and determination of the applicability and effect of such laws and regulations, except as expressly provided in this Agreement.

C. Warranties. The Developer further acknowledges that West Allis, its agents and employees and other persons acting on behalf of West Allis have made no representation or warranty of any kind in connection with any matter relating to the condition, value, fitness, use or zoning of the Property upon which the Developers have relied directly or indirectly for any purpose other than as may be expressly provided in this Agreement.

**32. Successors and Assigns.** This Agreement and all rights and obligations therein, including but not limited

to the indemnification provisions thereunder, may be assigned by Developers to an affiliated entity upon notice to West Allis. For purposes of this Section 32, the term “affiliated entity” shall mean an entity controlling or controlled by or under common control with Developer.

**33. Execution in Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original Agreement, but all of which together shall constitute one and the same instrument.

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

**35. Entire Agreement.** This Agreement, including the schedules and Exhibits annexed hereto, and listed as follows:

Exhibit A - Legal Description of the Property,

Exhibit B - Project Elevation and Site Plan

Exhibit C - Warranty Deed Form

Exhibit D – Intentionally omitted

Exhibit E - Development Agreement

Exhibit F - Development Financing Agreement

Exhibit G - Memorandum of Agreements

Exhibit H –Guaranty of Performance

constitutes the entire agreement and supersedes all other prior agreements and understandings, both written and oral, by the Parties or any of them, with respect to the subject matter hereof.

**36. Interpretation.** Unless the context requires otherwise, all words used in this Agreement in the singular number shall extend to and include the plural, all words in the plural number shall extend to and include the

singular, and all words in any gender shall extend to and include all genders.

**37. Construction.** West Allis and the Developer acknowledge that each Party and its counsel have reviewed and revised this Agreement and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments or exhibits hereto.

**38. Severability.** If any term or provision of this Agreement is determined to be invalid, illegal or incapable of being enforced by any rule or law, or public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect.

**39. Default Provisions and Remedies.**

**A.** Except as provided herein, should the Developer default under this Agreement, in addition to all other rights and remedies provided for in this Agreement and the Development Agreement, West Allis shall have the following specific rights and remedies: (1) with respect to matters that are capable of being corrected by West Allis, West Allis may at its option enter upon the Property for the purpose of correcting the default and West Allis's reasonable costs in correcting same, plus interest, shall be paid by the Developer to West Allis immediately upon demand; (2) injunctive relief; (3) action for specific performance; and (4) action for direct money damages.

**B.** Except as provided herein, should West Allis default under this Agreement, in addition to all other rights and remedies provided for in this Agreement and the Development Agreement, the Developer shall have the following specific rights and remedies: (1) with respect to matters that are capable of being corrected by the Developer, the Developer may at its option correct the default and the Developer's reasonable costs in correcting same, plus interest, shall be paid by West Allis to the Developer

immediately upon demand; (2) injunctive relief; (3) action for specific performance; and (4) action for direct money damages.

**C.** No Party shall be liable to another for consequential, indirect, incidental or exemplary damages, whether based on contract, negligence, and strict liability or otherwise. In any action to enforce this Agreement, the prevailing Party shall be entitled to costs, including statutory attorney's fees. Actual attorney's fees shall not be awarded.

**D.** A breach of any of the material provisions of this Agreement shall constitute a default. In addition, the following shall constitute the Developer's default under this Agreement:

(1). The Developer fails to perform or satisfy any of its obligations under this Agreement or the Development Agreement within ten (10) days following written notice from West Allis; provided, however, if the default is not reasonably susceptible of cure within such ten (10) day period, then the Developer shall have such additional time to cure the default as may be reasonably necessary so long as the Developer is diligently pursuing such cure to completion.

(2). Developer is adjudicated insolvent or generally does not pay or becomes unable to pay or admit in writing to its inability to pay, its debts as they mature.

(3). The Developer makes an assignment for the benefit of creditors or to an agent authorized to liquidate any substantial amount of assets.

(4). The Developer becomes the subject of an "order for relief" within the meaning of the United States Bankruptcy Code or file a petition in bankruptcy, for reorganization or to effect a plan or other arrangement with creditors.

(5). The Developer has a petition or application filed against it in bankruptcy or any similar proceeding or have such a proceeding commenced against it, and such petition, application or proceeding shall remain undismissed for a period of ninety (90) days or the Developer shall file an answer to such petition or application, admitting the material allegations thereof.

(6). The Developer applies to a court for the appointment of a receiver or custodian for any of its assets or properties or have a receiver or custodian appointed for any of its assets or properties, with or without consent, and such receiver shall not be discharged within ninety (90) days after his appointment.

(7). The Developer adopts a plan of complete liquidation of its assets.

**E.** In addition to all other remedies West Allis may have under this Agreement or at law or in equity, in the event the Developer is beyond all cure periods and does not commence and/or complete construction of the Project as set forth above, West Allis may, but shall not be required to, purchase the Property for the price paid to West Allis by the Developer (assuming no construction has occurred on the Property), by giving written notice to the Developer of its intention to repurchase. Upon receipt of such notice, Developer shall have an additional opportunity to cure based on submission to West Allis of an acceptable plan of cure and reasonable timelines (not to exceed ninety days) to complete such cure. If construction of the Project has begun, the repurchase price shall be the sums expended toward the Project together with the purchase price of the Property the Developer paid to West Allis. If West Allis and Developer are not able to reach agreement as to the repurchase price, the value of improvements (but not the land which shall be the purchase price paid by the Developer to Authority) will be based upon fair market value. If the Parties cannot agree on the fair market value of the improvements, such value will be determined by appraisals as follows. Any party, may by notice to another, appoint a disinterested MAI appraiser as one of the appraisers. Within ten (10) days thereafter another Party shall, by written notice to the party appointing the first appraiser, appoint another disinterested MAI appraiser as a second appraiser. The appraisers thus appointed shall appoint a third disinterested MAI appraiser, and such three appraisers shall as promptly as possible determine such value, provided however that:

(1). If the second appraiser shall not have been appointed as aforesaid, the first appraiser shall proceed to determine such value; and



(2). If, within five (5) days after the appointment of the second appraiser, the two appraisers appointed by the Parties shall be unable to agree upon the appointment of a third appraiser, they shall give written notice of such failure to agree to the Parties, and, if the Parties fail to agree upon the selection of such third appraiser within five (5) days after the appraisers appointed by the Parties gave notice as aforesaid, then within five (5) days thereafter either of the Parties upon written notice to the other party hereto may apply for such appointment to the Circuit Court of Milwaukee County in which the Property is located.

(3). The Parties shall each be entitled to present evidence and argument to the appraisers. The determination of the majority of the appraisers or the sole appraiser, as the case may be, shall be conclusive upon the Parties and judgment upon the same may be entered in any court having jurisdiction thereof. The appraisers shall give written notice to the Parties stating their determination, and shall furnish to each Party a copy of such determination signed by them. The expense of such appraisal(s) shall be borne equally by the Parties. In the event of the failure, refusal or inability of any appraiser to act, a new appraiser shall be appointed in his stead, which appointment shall be made in the same manner as provided above for the appointment of the appraiser so failing, refusing or unable to act.

(4). The notice of intention to exercise the repurchase right can be given or withdrawn at any time after failure of the Developer to comply with this section and before this section terminates as provided below. If the Authority elects to pay the appraisal amount to the Developer for the Property, the Property shall be conveyed to Authority "as is." A title insurance policy shall be provided at the expense of Developer in the amount of the repurchase price and insuring Authority's title is in the same condition as when conveyed by the Authority to the Developer, subject only to the foregoing primary mortgage and construction liens. The foregoing right to repurchase shall automatically terminate upon final completion of construction of the Project and

related improvements on the Property pursuant to plans approved in accordance with the terms hereof

(5). The term “commence construction” as used in this Agreement shall mean the pouring of footings for a building within the Property. The term “completion” as used in this Agreement shall mean the issuance of an occupancy permit by City for each of the buildings on the Property.

**40. No Reliance.** No third party is entitled to rely on any of the representations, warranties, or agreements of the Developer or West Allis contained in this Agreement. The Developer and West Allis assume no liability to any third party because of any reliance on the representations, warranties and agreements of the Developer and West Allis contained in this Agreement.

**41. Survive the Closing.** The agreements, covenants, warranties and representations contained herein shall survive the Closing of the transaction contemplated herein. Following completion of the Project, West Allis agrees to provide upon request a written certificate of completion in a form mutually agreed to by the parties that confirms completion of the Project and termination of those provisions of this Agreement that, by their nature, terminate upon Project completion.

**42. Representations and Warranties.** All statements contained in any certificate, instrument or document delivered by or on behalf of the Developer pursuant to this Agreement and the transactions contemplated hereby shall be deemed representations and warranties by the Developer unless otherwise expressly provided.

**43. Binding Effect.** The terms and conditions of this Agreement shall be binding upon and benefit the Parties and their respective successors and assigns.

**44. Good Faith.** The Parties covenant and agree to act in good faith in the performance and enforcement of the provisions of this Agreement.

**45. Confidentiality Agreement.** West Allis acknowledges that certain portions of the materials to be exchanged pursuant to this Agreement (e.g., financial statements, project models) may contain sensitive and proprietary information relating to the Developer, Guarantor and the Project and that disclosure could cause irreparable harm if such materials were to be made available to the general public. Additionally, certain of the materials to be exchanged may be trade secrets or copyrighted. The Parties further acknowledge that West Allis is subject to the requirements of the Wisconsin Public Records Law. Wis. Stats. §§19.21 et seq. Under these statutes, all documents and records are subject to public disclosure, unless there is a statutory, common law, or public policy reason for nondisclosure. The Parties acknowledge that this Agreement is subject to the provisions of the Public Records Law of the State of Wisconsin. This Agreement, the Development Agreement, the Development Financing Agreement, and other attachments to this agreement are deemed to be public records. Should West Allis receive a records request for Developer's' pro forma, project financial models, or other documents that contain the Developer's financial information, West Allis shall notify the Developer of the request and afford the Developer a reasonable period of time (not to exceed 10 days) to respond to West Allis. If the Developer objects to release of the requested record(s) or part thereof, West Allis shall perform the common law balancing test. If West Allis determines that the balance falls in favor of non-disclosure, it shall so inform the Developer and the requestor. If West Allis determines that the balance falls in favor of disclosure, it shall so notify the Developer and the requestor and afford the Developer a reasonable time (not to exceed 10 business days) to commence an action seeking to prevent disclosure of the record(s).

**AGREED TO BY AND BETWEEN** Developers and Authority on the date first set forth above.

**COMMUNITY DEVELOPMENT AUTHORITY  
OF THE CITY OF WEST ALLIS**

By: \_\_\_\_\_  
John F. Stibal, Executive Director

Dated: \_\_\_\_\_

**CITY OF WEST ALLIS  
MILWAUKEE COUNTY, WISCONSIN**

By \_\_\_\_\_  
Dan Devine, Mayor

Dated: \_\_\_\_\_

By \_\_\_\_\_  
Steven Braatz, Jr. City Clerk

Dated: \_\_\_\_\_

**DEVELOPER:**

**MILWAUKEE BEHAVIORAL HEALTH, LLC**

By: UHS of Delaware, Inc., its member

By: \_\_\_\_\_  
Steve Felton, Executive Vice President and  
Chief Financial Officer

Dated: \_\_\_\_\_

**GUARANTOR:**

**UHS OF DELAWARE, INC.**

By: \_\_\_\_\_  
Steve Felton, Executive Vice President and  
Chief Financial Officer

Dated: \_\_\_\_\_

Approved as to form this \_\_\_\_ day  
of \_\_\_\_\_.

\_\_\_\_\_  
, City Attorney

## **EXHIBITS TABLE**

**Exhibit A – Legal Description**

**Exhibit B –Project Elevation and Site Plan**

**Exhibit C - Warranty Deed**

**Exhibit D – Intentionally Deleted**

**Exhibit E – Development Agreement**

**Exhibit F – Development Financing Agreement**

**Exhibit G - Memorandum of Agreements**

**Exhibit H –Guaranty of Performance**

Exhibits Table - Purchase and Sale Agreement