

## PERFORMANCE GUARANTY

THIS PERFORMANCE GUARANTY ("Guaranty") made as of June \_\_\_, 2019, by UHS of Delaware, Inc. ("Guarantor"), to and for the benefit of the CITY OF WEST ALLIS, its successors and assigns, ("City").

### RECITALS

A. UHS OF DELAWARE, INC., a Delaware company (the "Developer"), the CITY OF WEST ALLIS, a Wisconsin municipal corporation (the "City") and 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") have entered into a purchase and sale agreement (the "Purchase and Sale Agreement") for the purchase and the sale of approximately 7.519 acres of land located at 1706 S. 68th St. in the City of West Allis, Wisconsin, tax key parcel 453-0776-003 (the "Property"), a development agreement of even date herewith (the "Development Agreement") pursuant to which the Developer agreed to, among other matters, construct an estimated 120 bed, behavioral health care facility with an anticipated construction value of \$25 million and have an estimated 200 employees (the "Project", as such term in fully defined in the Development Agreement); and a development finance agreement of even date herewith (the "Development Finance Agreement") pursuant to which the City agreed to, among other matters, provide financial assistance to the Developer in furtherance of the construction (the "Construction") of the Project. The Purchase Agreement, Development Agreement and Development Finance Agreement are collectively referred to herein as the "Agreements."

B. Guarantor will derive material financial benefit from the City Investment.

C. Guarantor is willing to enter into this Guaranty of the performance of its obligations to construct the Project.

D. It is a condition precedent to City's willingness to enter into the Agreements that the Guarantor guaranty to the City the full performance of the Obligations (as defined below) and the full, prompt and faithful payment of all amounts owed to the City under the Agreements.

### AGREEMENTS

NOW THEREFORE, in consideration of the foregoing and to induce the City to enter into the Agreements, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the Guarantor hereby covenants and agrees as follows:

1. Guarantor, absolutely, unconditionally, and irrevocably guarantees the full, complete and punctual observance, performance and satisfaction of the obligations, duties, covenants and agreements of Developer under the Agreements with respect to the completion of Construction of the Project free of any claim for mechanics', materialmen's or any other liens, and in accordance with (1) all laws, (2) the Project Plans, and (3) the time periods and other requirements set forth in the Agreement, including, without limitation, the following:

(a) To perform, complete and pay for (or cause to be performed, completed and paid for) the Construction and to pay all costs of said Construction (including any and all cost

overruns) and all other costs associated with the construction of the Project (including, without limitation, the costs of any architects' and engineers' fees), if Developer shall fail to perform, complete or pay for such work, including any sums expended in excess of the amount of indebtedness incurred by Developer under the Agreements, whether or not the Construction is actually completed;

(b) If any mechanics' or materialmen's liens should be filed, or should attach, with respect to the Project by reason of the Construction, to immediately cause the removal of such liens, or post security against the consequences of their possible foreclosure and procure an endorsement(s) to the title policy insuring City against the consequences of the foreclosure or enforcement of such lien(s);

(c) If any chattel mortgages, conditional vendor's liens or any liens, encumbrances or security interests whatsoever should be filed, or should attach, with respect to the personal property, fixtures, attachments and equipment delivered upon the Project and owned by Developer, attached to the Project or used in connection with the Construction, to timely cause the removal of such lien(s) or post security against the consequences of their possible foreclosure and procure an endorsement(s) to the title policy insuring City against the consequences of the foreclosure or enforcement of such lien(s); and

(d) To pay the premiums for all policies of insurance required to be furnished by Developer pursuant to the Agreements during the Construction if such premiums are not paid by Developer;

All obligations described in this Section 1 are referred to herein as the "Obligations." "Obligations" hereunder shall be limited to those obligations in the Agreements regarding construction of the Project and Developer's performance thereof. Obligations shall expressly not include any obligations that extend beyond the issuance of a Certificate of Completion, including, without limitation, any anticipated value or expected employment, it being the intent of this Guaranty to be limited to performance of the construction of the Project in accordance with (1) all laws, (2) the Project Plans, and (3) the time periods and other requirements set forth in the Agreement.

2. In the event of any default by Developer in performance of the Obligations and the expiration of any applicable cure or grace period, Guarantor agrees, on demand by the City (which demand may be made concurrently with notice to Developer that Developer is in default of its obligations past any cure periods), to perform all the Obligations. After Developer is beyond any applicable cure period, the City shall have the right, at its option, either before, during or after pursuing any other right or remedy against Developer or Guarantor, to perform any and all of the Obligations by or through any agent, contractor or subcontractor of its selection, all as the City in its sole, but reasonable, discretion deems proper, and Guarantor shall indemnify and hold the City free and harmless from and against any and all loss, damage, cost, expense, injury, or liability the City may suffer or incur in connection with the exercise of its rights under this Guaranty or the performance of the Obligations, unless such loss, damage, cost, expense, injury, or liability arises from the negligence of the City or its agents.

2.1 During the course of any Construction undertaken by the City or any other party on behalf of City in accordance with the terms of this Guaranty, Guarantor shall pay on demand any amounts due to contractors, subcontractors, and material suppliers and for permits

and licenses necessary or desirable in connection therewith. Guarantor's obligations in connection with such work shall not be affected by any errors or omissions of the general contractor, architect, the City's consultant or any subcontractor or agent or employee of any of the foregoing in the design, supervision, and performance of the work; it being understood that such risk is assumed by Guarantor. Neither the completion of the Construction nor failure of said party to complete the Construction shall relieve Guarantor of any liabilities hereunder; rather, such liability shall be continuing and may be enforced by City until the Construction shall be timely completed, lien-free, without loss, cost, expense, injury or liability of any kind to City, except through the negligence of City or its agents.

2.2 All of the remedies set forth herein and/or provided for in the Agreements, or at law or equity shall be available to City, including without limitation the right to sue for specific performance, the benefit of the bargain, or actual damages incurred, and the choice by City of one such alternative over another shall not be subject to question or challenge by Guarantor or any other person, nor shall any such choice be asserted as a defense, setoff, or failure to mitigate damages in any action, proceeding, or counteraction by City to recover or seeking any other remedy under this Guaranty, nor shall such choice preclude City from subsequently electing to exercise a different remedy. The parties have agreed to the alternative remedies hereinabove specified in part because they recognize that the choice of remedies in the event of a failure hereunder will necessarily be and should properly be a matter of good faith business judgment, which the passage of time and events may or may not prove to have been the best choice to maximize recovery by City at the lowest cost to Developer and/or Guarantor. It is the intention of the parties that such good faith choice by City be given conclusive effect regardless of such subsequent developments.

3. Guarantor does hereby (a) waive notice of acceptance of this Guaranty by City and any and all notices and demands of every kind which may be required to be given by any statute, rule or law, (b) waive presentment for payment, demand for payment, notice of nonpayment or dishonor, protest and notice of protest, diligence in collection and any and all formalities which otherwise might be legally required to charge Guarantor with liability, and (c) waive any failure by the City to inform Guarantor of any facts the City may now or hereafter know about the Developer, the Project, or the transactions contemplated by the Agreements, it being understood and agreed that City has no duty so to inform and that Guarantor is fully responsible for being and remaining informed by Developer of all circumstances bearing on the risk of nonperformance of the Obligations.

4. This is an absolute, present and continuing guaranty of performance and not of collection. Guarantor agrees that this Guaranty may be enforced by the City without the necessity at any time of resorting to or exhausting any other security or collateral given in connection herewith or with the Agreements, and Guarantor hereby waives any right to require the City to join Developer in any action brought hereunder or to commence any action against or obtain any judgment against Developer or to pursue any other remedy or enforce any other right. Guarantor further agrees that nothing contained herein or otherwise shall prevent the City from pursuing concurrently or successively all rights and remedies available to it at law and/or in equity or under the Agreements, and the exercise of any rights or the completion of any remedies shall not constitute a discharge of Guarantor's Obligations hereunder, it being the purpose and intent of Guarantor that the Obligations of Guarantor hereunder shall be absolute, independent and unconditional under any and all circumstances whatsoever except as specifically set forth herein. None of Guarantor's obligations under this Guaranty or any remedy for the enforcement thereof

shall be impaired, modified, changed or released in any manner whatsoever by any impairment, modification, change, release or limitation of the liability of the Developer under the Agreements or by reason of the bankruptcy of the Developer or by reason of any creditor or bankruptcy proceeding instituted by or against the Developer.

5. Without limitation, lessening or affecting in any manner whatsoever the liability of the Guarantor under this Guaranty, the City may, with or without consideration, and without notice to the Guarantor:

(a) Grant Developer extensions of time to perform its obligations to the City, or any other indulgences under the Agreements;

(b) Take, give up, modify, vary, exchange, release, substitute, renew or abstain from perfecting or taking advantage of any security for Developer's obligations under the Agreements; and

(c) Accept or make compromises or other arrangements with Developer under the Agreements, realize on any security for the Agreements and otherwise deal with Developer and other parties and security as the City may deem expedient.

6. Guarantor shall remain liable under this Guaranty notwithstanding any act, omission or thing which might otherwise operate as a legal or equitable discharge of Guarantor until the date on which the Obligations are fully performed and completed in accordance with the Agreements. Discharge of the Obligations covered by this Guaranty under the Federal Bankruptcy Code or under any other state or federal bankruptcy, insolvency or similar proceeding shall not affect the liability of Guarantor. Upon the date on which the Obligations are fully performed and completed in accordance with the Agreements, the City shall provide the Guarantor an instrument terminating this Guaranty.

7. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been properly given (a) if hand delivered, when delivered; (b) if mailed by United States Certified Mail (postage prepaid, return receipt requested), three Business Days after mailing (c) if by Federal Express or other reliable overnight courier service, on the next Business Day after delivered to such courier service or (d) if by telecopier on the day of transmission so long as copy is sent on the same day by overnight courier as set forth below:

Guarantor:	UHS of Delaware, Inc. Attn: Office of the General Counsel 367 South Gulph Road King of Prussia, PA 19406
City:	City of West Allis Attn: City Administrator 7525 West Greenfield Avenue, Room 123 West Allis, WI 53214

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice.

8. This Guaranty shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantor and shall not be discharged in whole or in part by the death of Guarantor.

9. This Guaranty shall be governed by, and construed in accordance with, the laws of the State of Wisconsin.

**10. GUARANTOR KNOWINGLY AND VOLUNTARILY WAIVES TRIAL BY JURY IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BASED UPON, ARISING OUT OF OR IN ANY WAY RELATING TO THIS GUARANTY, THE OBLIGATIONS OR ANY CONDUCT, ACT OR OMISSION OF CITY, AND AGREE AND CONSENT THAT ANY SUCH ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM SHALL BE DECIDED BY TRIAL TO THE COURT WITHOUT A JURY. GUARANTOR ACKNOWLEDGES AND UNDERSTANDS THAT THIS WAIVER AND CONSENT CONSTITUTES A MATERIAL INDUCEMENT TO CITY TO ENTER INTO THE DEVELOPMENT AGREEMENT WITH THE DEVELOPER.**

IN WITNESS WHEREOF, Guarantor has executed and delivered this Guaranty under seal as of the date first written above.

GUARANTOR:

UHS OF DELAWARE, INC.

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By: Steve Felton, Executive Vice President &  
Chief Financial Officer