

ILLINOIS HEALTH FACILITIES PLANNING BOARD  
APPLICATION FOR EXEMPTION FOR THE  
CHANGE OF OWNERSHIP FOR AN EXISTING HEALTH CARE FACILITY

ORIGINAL

1. INFORMATION FOR EXISTING FACILITY

DEC 28 2010

E-003-10

Current Facility Name \_\_\_\_\_ please see following page \_\_\_\_\_  
Address \_\_\_\_\_  
City \_\_\_\_\_ Zip Code \_\_\_\_\_  
Name of current licensed entity for the facility \_\_\_\_\_  
Does the current licensee: own this facility \_\_\_\_\_ OR lease this facility \_\_\_\_\_ (if leased, check if sublease ☐)  
Type of ownership of the current licensed entity (check one of the following:) \_\_\_\_\_ Sole Proprietorship  
\_\_\_\_\_ Not-for-Profit Corporation \_\_\_\_\_ For Profit Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Governmental  
\_\_\_\_\_ Limited Liability Company \_\_\_\_\_ Other, specify \_\_\_\_\_  
Illinois State Senator for the district where the facility is located: Sen. \_\_\_\_\_  
State Senate District Number \_\_\_\_\_ Mailing address of the State Senator \_\_\_\_\_  
Illinois State Representative for the district where the facility is located: Rep. \_\_\_\_\_  
State Representative District Number \_\_\_\_\_ Mailing address of the State Representative \_\_\_\_\_

2. **OUTSTANDING PERMITS.** Does the facility have any projects for which the State Board issued a permit that will not be completed (refer to 1130.140 "Completion or Project Completion" for a definition of project completion) by the time of the proposed ownership change? Yes ☐ No ☐. If yes, refer to Section 1130.520(f), and indicate the projects by Project # CDH: 07-59 (bed tower), 07-147 (proton), 08-159 (cancer center), and 09-007 (ED). Delnor: none

3. **FACILITY'S BED OR DIALYSIS STATION CAPACITY BY CATEGORY OF SERVICE** (Complete "APPENDIX A" attached to this application)

4. **FACILITY'S OTHER CATEGORIES OF SERVICE AS DEFINED IN 77 IAC 1100** (Complete "APPENDIX A" attached to this application)

5. **NAME OF APPLICANT** (complete this information for each co-applicant and insert after this page).

Exact Legal Name of Applicant Central DuPage Hospital Association  
Address 25 Winfield Road  
City, State & Zip Code Winfield, IL 60190  
Type of ownership of the current licensed entity (check one of the following:) \_\_\_\_\_ Sole Proprietorship  
☒ Not-for-Profit Corporation \_\_\_\_\_ For Profit Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Governmental  
\_\_\_\_\_ Limited Liability Company \_\_\_\_\_ Other, specify \_\_\_\_\_

6. **NAME OF LEGAL ENTITY THAT WILL BE THE LICENSEE/OPERATING ENTITY OF THE FACILITY NAMED IN THE APPLICATION AS A RESULT OF THIS TRANSACTION.**

Exact Legal Name of Entity to be Licensed \_\_\_\_\_ please see following page \_\_\_\_\_  
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\_\_\_\_\_ Limited Liability Company \_\_\_\_\_ Other, specify \_\_\_\_\_

6. **BUILDING/SITE OWNERSHIP. NAME OF LEGAL ENTITY THAT WILL OWN THE "BRICKS AND MORTAR" (BUILDING) OF THE FACILITY NAMED IN THIS APPLICATION IF DIFFERENT FROM THE OPERATING/LICENSED ENTITY**

Exact Legal Name of Entity That Will Own the Site \_\_\_\_\_ please see following page \_\_\_\_\_  
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- 5. NAME OF APPLICANT** (complete this information for each co-applicant and insert after this page).  
Exact Legal Name of Applicant Central DuPage Health  
Address 25 Winfield Road  
City, State & Zip Code Winfield, IL 60190  
Type of ownership of the current licensed entity (check one of the following:) \_\_\_\_\_ Sole Proprietorship  
☒ Not-for-Profit Corporation \_\_\_\_\_ For Profit Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Governmental  
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Illinois State Representative for the district where the facility is located: Rep. \_\_\_\_\_  
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- 2. OUTSTANDING PERMITS.** Does the facility have any projects for which the State Board issued a permit that will not be completed (refer to 1130.140 "Completion or Project Completion" for a definition of project completion) by the time of the proposed ownership change? Yes ☐ No ☐. If yes, refer to Section 1130.520(f), and indicate the projects by Project # \_\_\_\_\_

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- 5. NAME OF APPLICANT** (complete this information for each co-applicant and insert after this page).

Exact Legal Name of Applicant Delnor-Community Hospital  
Address \_\_\_\_\_ 300 Randall Road  
City, State & Zip Code \_\_\_\_\_ Geneva, IL 60134  
Type of ownership of the current licensed entity (check one of the following:) \_\_\_\_\_ Sole Proprietorship  
☒ Not-for-Profit Corporation \_\_\_\_\_ For Profit Corporation \_\_\_\_\_ Partnership \_\_\_\_\_ Governmental  
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2. **OUTSTANDING PERMITS.** Does the facility have any projects for which the State Board issued a permit that will not be completed (refer to 1130.140 "Completion or Project Completion" for a definition of project completion) by the time of the proposed ownership change? Yes ☐ No ☐. If yes, refer to Section 1130.520(f), and indicate the projects by Project # \_\_\_\_\_
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5. **NAME OF APPLICANT** (complete this information for each co-applicant and insert after this page).  
Exact Legal Name of Applicant Delnor-Community Health System  
Address \_\_\_\_\_ 300 Randall Road \_\_\_\_\_  
City, State & Zip Code \_\_\_\_\_ Geneva, IL 60134 \_\_\_\_\_  
Type of ownership of the current licensed entity (check one of the following:) \_\_\_\_\_ Sole Proprietorship  
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\_\_\_\_\_ Limited Liability Company \_\_\_\_\_ Other, specify \_\_\_\_\_

**Item 1:**

**Name:** Central DuPage Hospital

**Address:** 25 North Winfield Road Winfield, IL 60190 DuPage County

**Name of Current Licensed Entity:** Central DuPage Hospital

**Does the Current Licensee Own the Facility:** facility is owned by Central DuPage Hospital Association

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**Illinois State Senator:** Randall M. Hultgren

**State Senate District Number:** 48

**Mailing Address of State Senator:** 1725 S. Naperville Road Suite 200 Wheaton, IL 60189

**Illinois State Representative:** Mike Fortner

**Illinois State Representative District:** 95

**Mailing Address of State Representative:** 135 Fremont Street West Chicago, IL 60185

**Name:** Delnor-Community Hospital

**Address:** 300 Randall Road Geneva, IL 60134 Kane County

**Name of Current Licensed Entity:** Delnor-Community Hospital

**Does the Current Licensee Own the Facility:** facility is owned by Delnor-Community Health System

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**Illinois State Senator:** Randall M. Hultgren

**State Senate District Number:** 48

**Mailing Address of State Senator:** 1725 S. Naperville Road Suite 200 Wheaton, IL 60189

**Illinois State Representative:** Mike Fortner

**Illinois State Representative District:** 95

**Mailing Address of State Representative:** 135 Fremont Street West Chicago, IL 60185

**Item 6:**

**Exact Legal Name of Entity to be Licensed:** Central DuPage Hospital

**Address:** 25 North Winfield Road Winfield, IL 60190

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**Building/Site Ownership:** Central DuPage Health

**Address:** 25 North Winfield Road Winfield, IL 60190

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**Exact Legal Name of Entity to be Licensed:** Delnor-Community Hospital

**Address:** 300 Randall Road Geneva, IL 60134

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**Building/Site Ownership:** Central DuPage Health

**Address:** 25 North Winfield Road Winfield, IL 60190

**Type of Ownership of the Current Licensed Entity:** Not-for-Profit Corporation

**8. TRANSACTION TYPE. CHECK THE FOLLOWING THAT APPLY TO THE TRANSACTION:**

- Purchase resulting in the issuance of a license to an entity different from current licensee;  
Lease resulting in the issuance of a license to an entity different from current licensee;  
Stock transfer resulting in the issuance of a license to a different entity from current licensee;  
Stock transfer resulting in no change from current licensee;  
Assignment or transfer of assets resulting in the issuance of a license to an entity different from the current licensee;  
☒ Assignment or transfer of assets not resulting in the issuance of a license to an entity different from the current licensee;  
☒ Change in membership or sponsorship of a not-for-profit corporation that is the licensed entity;  
☒ Change of 50% or more of the voting members of a not-for-profit corporation's board of directors that controls a health care facility's operations, license, certification or physical plant and assets;  
Change in the sponsorship or control of the person who is licensed, certified or owns the physical plant and assets of a governmental health care facility;  
Sale or transfer of the physical plant and related assets of a health care facility not resulting in a change of current licensee;  
Any other transaction that results in a person obtaining control of a health care facility's operation or physical plant and assets, and explain in "Attachment 3 Narrative Description"

9. **APPLICATION FEE.** Submit the application fee in the form of a check or money order for \$2,500 payable to the Illinois Department of Public Health and append as **ATTACHMENT #1**.

10. **FUNDING.** Indicate the type and source of funds which will be used to acquire the facility (e.g., mortgage through Health Facilities Authority; cash gift from parent company, etc.) and append as **ATTACHMENT #2**.

11. **ANTICIPATED ACQUISITION PRICE:** \$ 815,250,000 \* \*insured replacement value of Central

12. **FAIR MARKET VALUE OF THE FACILITY:** \$ 815,250,000 \* DuPage Hospital and Delnor-  
(to determine fair market value, refer to 77 IAC 1130.140) Community Hospital

13. **DATE OF PROPOSED TRANSACTION:** by April 30, 2011

14. **NARRATIVE DESCRIPTION.** Provide a narrative description explaining the transaction, and append it to the application as **ATTACHMENT #3**.

15. **BACKGROUND OF APPLICANT** (co-applicants must also provide this information). Corporations and Limited Liability Companies must provide a current Certificate of Good Standing from the Illinois Secretary of State. Partnerships must provide the name and address of each partner and specify whether each is a general or limited partner. Append this information to the application as **ATTACHMENT #4**.

16. **TRANSACTION DOCUMENTS.** Provide a copy of the document(s) which detail the terms and conditions of the proposed transaction (purchase, lease, stock transfer, etc). Applicants should note that the document(s) submitted should reflect the applicant's (and co-applicant's, if applicable) involvement in the transaction. The document must be signed by both parties and contain language stating that the transaction is contingent upon approval of the Illinois Health Facilities Planning Board. Append this document(s) to the application as **ATTACHMENT #5**.

17. **FINANCIAL INFORMATION** (co-applicants must also provide this information). Per 77 IAC 1130.520(b)(3), an applicant must demonstrate it has sufficient funds to finance the acquisition and to operate the facility for 36 months by providing evidence of a bond rating of "A" or better (that must be less than two years old) from Fitch, Moody or Standard and Poor's rating agencies or evidence of compliance with the financial viability review criteria (as applicable) to the type of facility being acquired (as specified at 77 IAC 1120). Append as **ATTACHMENT #6**.

- 18. PRIMARY CONTACT PERSON.** Individual representing the applicant to whom all correspondence and inquiries pertaining to this application are to be directed. (Note: other persons representing the applicant not named below will need written authorization from the applicant stating that such persons are also authorized to represent the applicant in relationship to this application).

Name: \_\_\_\_\_ please see following page \_\_\_\_\_  
Address: \_\_\_\_\_  
City, State & Zip Code: \_\_\_\_\_  
Telephone ( ) Ext. \_\_\_\_\_

- 19. ADDITIONAL CONTACT PERSON.** Consultant, attorney, other individual who is also authorized to discuss this application and act on behalf of the applicant.

Name: \_\_\_\_\_ Mary Jacobs Skinner \_\_\_\_\_  
Address: \_\_\_\_\_ Sidley Austin 1 South Dearborn Street \_\_\_\_\_  
City, State & Zip Code: \_\_\_\_\_ Chicago, IL 60603 \_\_\_\_\_  
Telephone ( ) Ext. \_\_\_\_\_ (312) 853-7577 \_\_\_\_\_

## **Primary Contact Person**

For Central DuPage Health and  
Central DuPage Hospital:

J. Luke McGuinness  
President & CEO  
25 N. Winfield Road  
Winfield, IL 60190  
(630) 933-1600

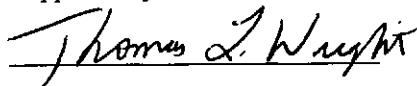
For Delnor-Community Health System and  
Delnor-Community Hospital:

Thomas L. Wright  
President & CEO  
300 Randall Road  
Geneva, IL 60134  
(630) 208-3000

19. **CERTIFICATION—Delnor-Community Hospital**

I certify that the above information and all attached information are true and correct to the best of my knowledge and belief. I certify that the categories of service, number of beds and/or dialysis stations within the facility will not change as part of this transaction. I certify that no adverse action has been taken against the applicant(s) by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois. I certify that I am fully aware that a change in ownership will void any permits for projects that have not been completed unless such projects will be completed or altered pursuant to the requirements in 77 IAC 1130.520(f) prior to the effective date of the proposed ownership change. I also certify that the applicant has not already acquired the facility named in this application or entered into an agreement to acquire the facility named in the application unless the contract contains a clause that the transaction is contingent upon approval by the State Board.

Signature of Authorized Officer



Typed or Printed Name of Authorized Officer: Thomas L. Wright

Title of Authorized Officer: President & CEO

Address: 300 Randall Road

City, State & Zip Code: Geneva, Illinois 60134

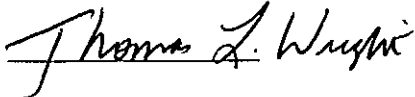
Telephone (630) 208-3074

Date: December 21, 2010

**NOTE:** complete a separate signature page for each co-applicant and insert following this page.

## 20. CERTIFICATION—**Delnor-Community Health System**

I certify that the above information and all attached information are true and correct to the best of my knowledge and belief. I certify that the categories of service, number of beds and/or dialysis stations within the facility will not change as part of this transaction. I certify that no adverse action has been taken against the applicant(s) by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois. I certify that I am fully aware that a change in ownership will void any permits for projects that have not been completed unless such projects will be completed or altered pursuant to the requirements in 77 IAC 1130.520(f) prior to the effective date of the proposed ownership change. I also certify that the applicant has not already acquired the facility named in this application or entered into an agreement to acquire the facility named in the application unless the contract contains a clause that the transaction is contingent upon approval by the State Board.

Signature of Authorized Officer 

Typed or Printed Name of Authorized Officer: Thomas L. Wright

Title of Authorized Officer: President & CEO

Address: 300 Randall Road

City, State & Zip Code: Geneva, Illinois 60134

Telephone (630) 208-3074

Date: December 21, 2010

**NOTE:** complete a separate signature page for each co-applicant and insert following this page.

**19. CERTIFICATION—Central DuPage Hospital**

I certify that the above information and all attached information are true and correct to the best of my knowledge and belief. I certify that the categories of service, number of beds and/or dialysis stations within the facility will not change as part of this transaction. I certify that no adverse action has been taken against the applicant(s) by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois. I certify that I am fully aware that a change in ownership will void any permits for projects that have not been completed unless such projects will be completed or altered pursuant to the requirements in 77 IAC 1130.520(f) prior to the effective date of the proposed ownership change. I also certify that the applicant has not already acquired the facility named in this application or entered into an agreement to acquire the facility named in the application unless the contract contains a clause that the transaction is contingent upon approval by the State Board.

Signature of Authorized Officer:



Typed or Printed Name of Authorized Officer: J. Luke McGuinness

Title of Authorized Officer: President and CEO

Address: 25 N. Winfield Road

City, State & Zip Code: Winfield, IL 60190

Telephone: (630) 933-5500

Date: 12/21/10

**NOTE:** complete a separate signature page for each co-applicant and insert following this page.

**19. CERTIFICATION—Central DuPage Hospital Association**

I certify that the above information and all attached information are true and correct to the best of my knowledge and belief. I certify that the categories of service, number of beds and/or dialysis stations within the facility will not change as part of this transaction. I certify that no adverse action has been taken against the applicant(s) by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois. I certify that I am fully aware that a change in ownership will void any permits for projects that have not been completed unless such projects will be completed or altered pursuant to the requirements in 77 IAC 1130.520(f) prior to the effective date of the proposed ownership change. I also certify that the applicant has not already acquired the facility named in this application or entered into an agreement to acquire the facility named in the application unless the contract contains a clause that the transaction is contingent upon approval by the State Board.

Signature of Authorized Officer: J. Luke McGuinness

Typed or Printed Name of Authorized Officer: J. Luke McGuinness

Title of Authorized Officer: President and CEO

Address: 25 N. Winfield Road

City, State & Zip Code: Winfield, IL 60190

Telephone: (630) 933-5500

Date: 12/21/16

**NOTE: complete a separate signature page for each co-applicant and insert following this page.**

## 20. CERTIFICATION—Central DuPage Health

I certify that the above information and all attached information are true and correct to the best of my knowledge and belief. I certify that the categories of service, number of beds and/or dialysis stations within the facility will not change as part of this transaction. I certify that no adverse action has been taken against the applicant(s) by the federal government, licensing or certifying bodies, or any other agency of the State of Illinois. I certify that I am fully aware that a change in ownership will void any permits for projects that have not been completed unless such projects will be completed or altered pursuant to the requirements in 77 IAC 1130.520(f) prior to the effective date of the proposed ownership change. I also certify that the applicant has not already acquired the facility named in this application or entered into an agreement to acquire the facility named in the application unless the contract contains a clause that the transaction is contingent upon approval by the State Board.

Signature of Authorized Officer:



Typed or Printed Name of Authorized Officer: J. Luke McGuinness

Title of Authorized Officer: President and CEO

Address: 25 N. Winfield Road

City, State & Zip Code: Winfield, IL 60190

Telephone: (630) 933-5500

Date: 12/21/10

**NOTE:** complete a separate signature page for each co-applicant and insert following this page.



## FUNDING

The proposed transaction, which will result in the change of ownership discussed in Attachment 3, is a merger of Delnor-Community Health System and Central DuPage Health, and not an acquisition of one entity by the other. As a result, the proposed change of ownership does not involve any exchange of funds.

## NARRATIVE DESCRIPTION

On December 16, 2010 Central DuPage Health, the parent of Central DuPage Hospital in Winfield, and Delnor-Community Health System, the parent of Delnor-Community Hospital in Geneva entered into an Agreement of Merger (see attached). Pursuant to that agreement, the two health systems propose to merge and form a common health system, whereby their respective subsidiaries and affiliates will be controlled by a common not-for-profit corporate member ("the parent Board").

The merger will combine the two existing "parent" entities, each of which currently controls "a licensed health care facility." Accordingly, the Illinois Health Facilities and Services Review Board's rules consider this merger to constitute a "change of ownership" that requires the filing of a Certificate of Exemption ("COE") application. (The merger qualifies for COE, rather than Certificate of Need, because both Central DuPage and Delnor have current A bond ratings.)

Central DuPage Hospital and Delnor-Community Hospital are located approximately 12.6 miles apart, with Central DuPage Hospital located in western DuPage County and Delnor-Community Hospital located in east central Kane County.

The Central DuPage Hospital and Delnor-Community Hospital Boards of Trustees/Directors' intention is to identify and then implement a plan to better serve the patients of the region. This plan will activate a common strategy to support significant improvements in health care delivery and outcome, and to preserve these systems' shared investment in the greater community. Their common goal is to seamlessly, efficiently and effectively contribute to the health and well being of the community. The guiding principles of the new, merged health system include:

- the system must deliver superior value to patients, physicians and payers;
- the governance structure must be one that is committed to the best interests of the new service area, rather than its constituent parts; and
- the governing board must provide equal representation from each of the current parent entities.

Following the merger, Central DuPage Health and Delnor-Community Health Systems will seek to elevate the quality and breadth of health care services available in the region, to expand local access to care, and to create a scale of service that will result in high quality of care at a lower cost.

Within 12 months of its establishment, the new "parent" Board will adopt a strategic plan. That plan, at minimum, will set forth a specific vision for the merged

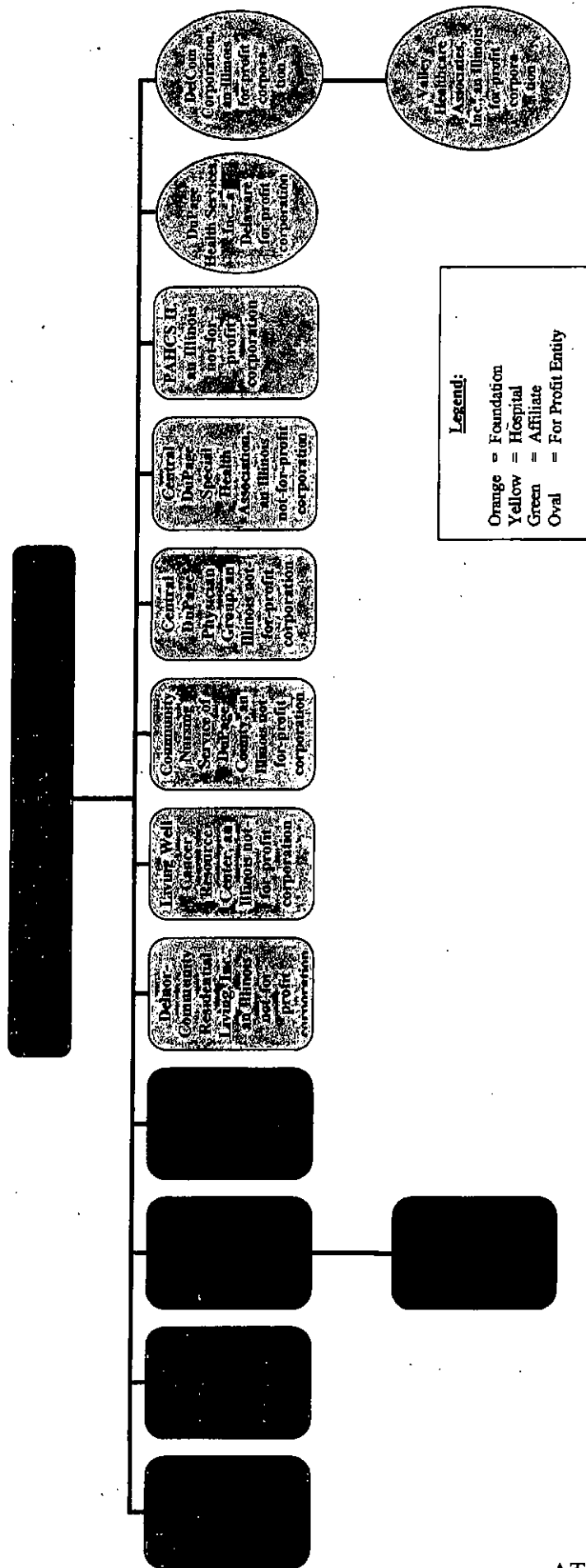
system, and will provide plans for the deployment of capital, physician integration initiatives, and service line development.

In addition to the new "parent" Board, the two hospitals will maintain separate Boards and separate licenses. Each member of the hospital Boards will also be a member of the "parent" Board. The hospital Boards will retain certain responsibilities, including: 1) the granting and revoking of Medical Staff privileges, 2) the maintenance of professional standards and the oversight of care, and 3) the approval of the respective hospital's CEO.

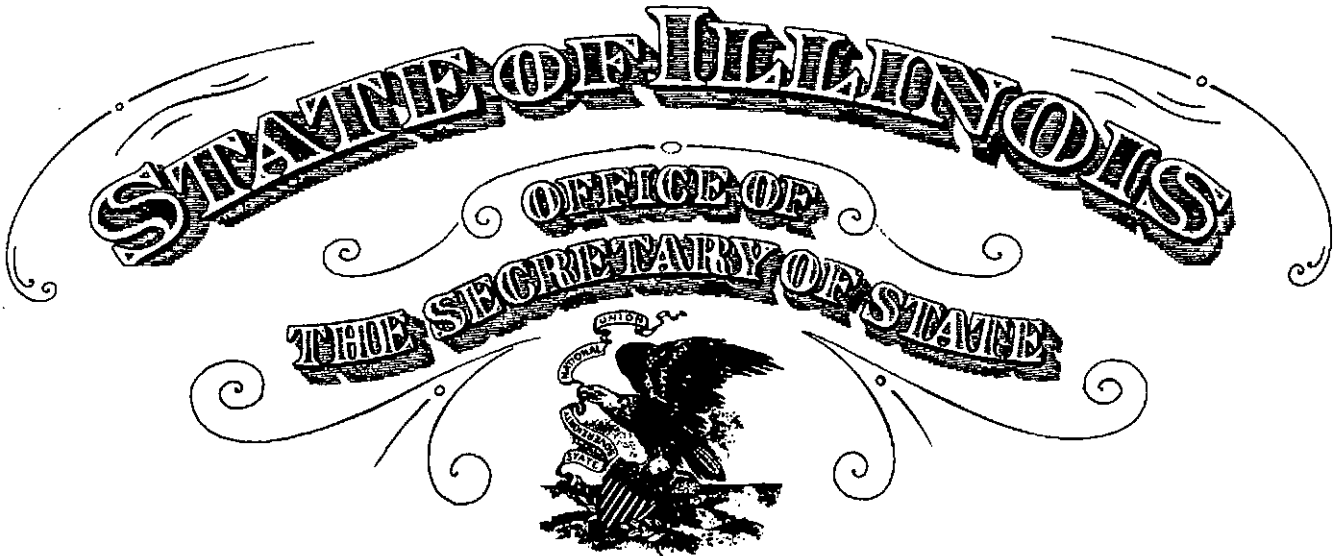
The two hospitals' Medical Staffs will remain independent of one another, but will integrate and share information and "best practices" as appropriate, for the purpose of establishing a continuum of care and safer and more efficient outcomes for patients.

The hospitals' respective foundations will continue to be managed and governed by each foundation's current board. These foundations will continue to provide support to their respective hospitals, with donor-restricted gifts being used in a manner consistent with donors' intent.

# Post-Transaction Organization Chart



**Legend:**  
 Orange = Foundation  
 Yellow = Hospital  
 Green = Affiliate  
 Oval = For Profit Entity



*To all to whom these Presents Shall Come, Greeting:*

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

DELNOR-COMMUNITY HEALTH SYSTEM, A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE ON APRIL 03, 1985, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE GENERAL NOT FOR PROFIT CORPORATION ACT OF THIS STATE, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS.



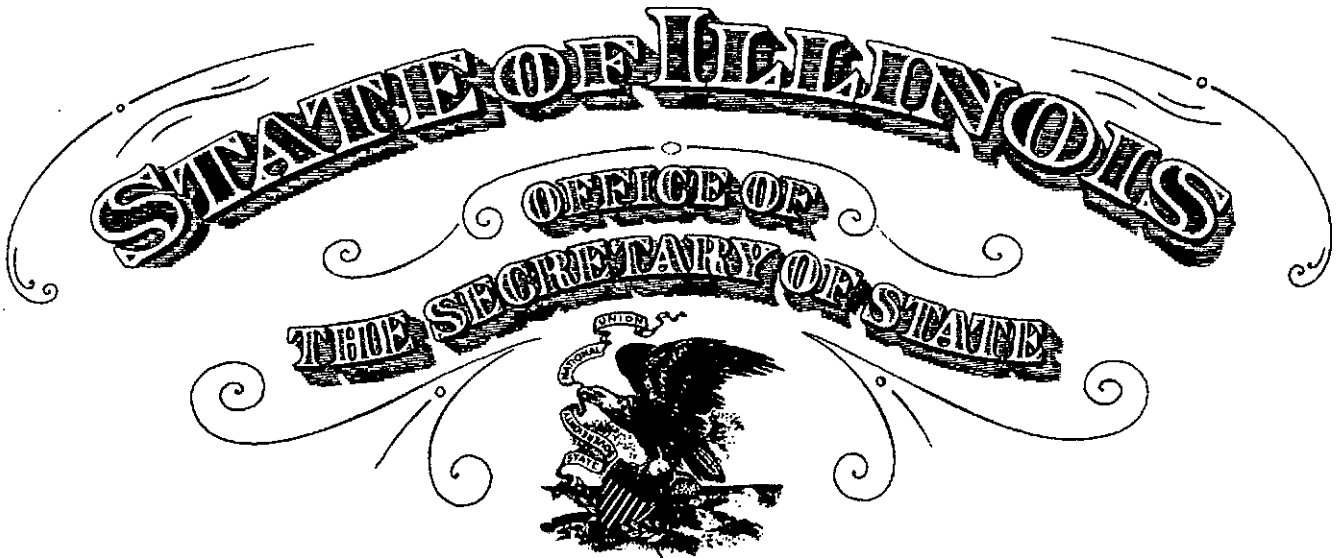
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*In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 6TH day of NOVEMBER A.D. 2010 .*

*Jesse White*

SECRETARY OF STATE  
ATTACHMENT 4



*To all to whom these Presents Shall Come, Greeting:*

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

DELNOR-COMMUNITY HOSPITAL, A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE ON JULY 29, 1986, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE GENERAL NOT FOR PROFIT CORPORATION ACT OF THIS STATE, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS.



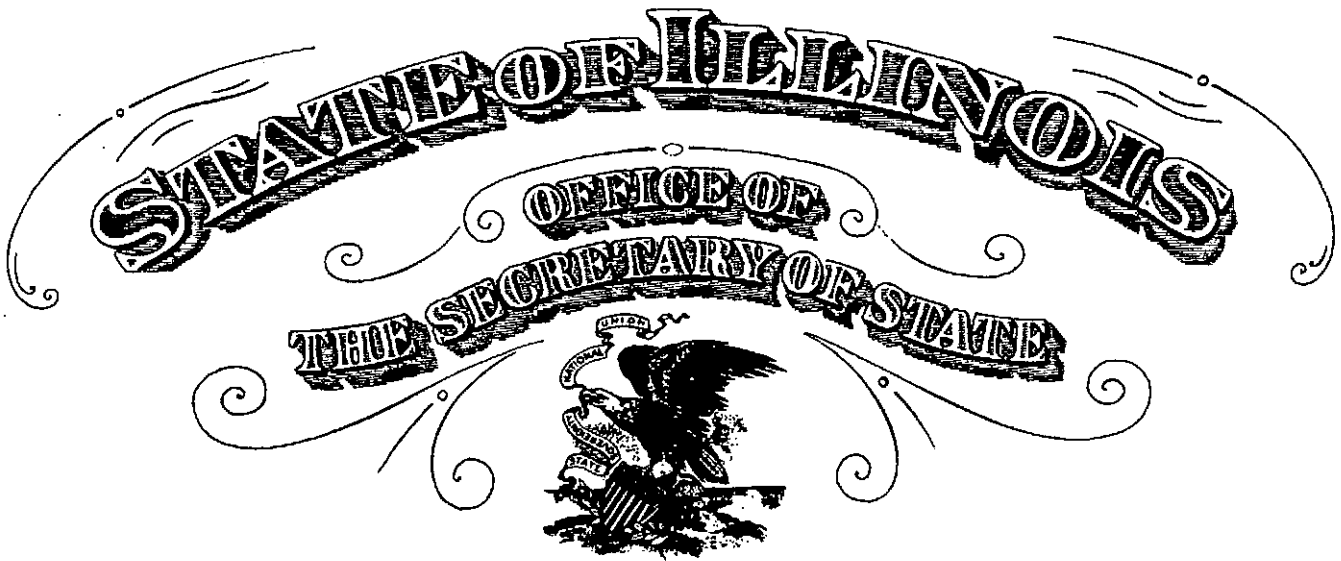
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*In Testimony Whereof, I hereto set  
my hand and cause to be affixed the Great Seal of  
the State of Illinois, this 6TH  
day of NOVEMBER A.D. 2010 .*

*Jesse White*

SECRETARY OF STATE  
ATTACHMENT 4



*To all to whom these Presents Shall Come, Greeting:*

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

CENTRAL DUPAGE HEALTH, A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE ON OCTOBER 03, 1980, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE GENERAL NOT FOR PROFIT CORPORATION ACT OF THIS STATE, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS.



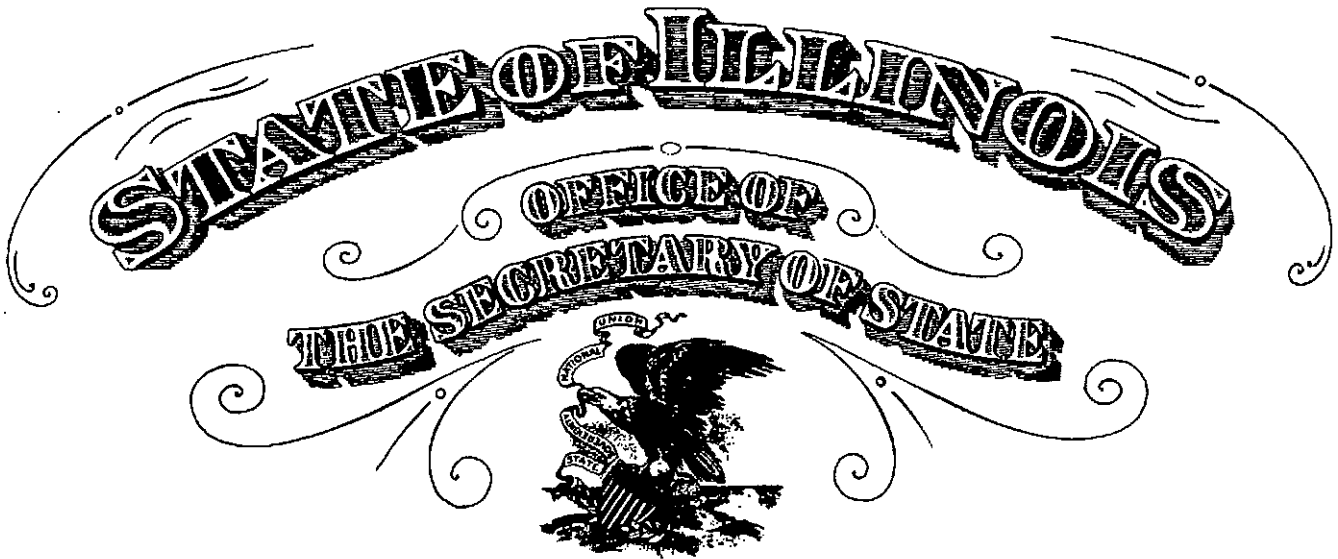
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*In Testimony Whereof, I hereto set my hand and cause to be affixed the Great Seal of the State of Illinois, this 5TH day of NOVEMBER A.D. 2010 .*

*Jesse White*

SECRETARY OF STATE  
ATTACHMENT 4



*To all to whom these Presents Shall Come, Greeting:*

*I, Jesse White, Secretary of State of the State of Illinois, do hereby certify that*

CENTRAL DU PAGE HOSPITAL ASSOCIATION, A DOMESTIC CORPORATION, INCORPORATED UNDER THE LAWS OF THIS STATE ON AUGUST 05, 1958, APPEARS TO HAVE COMPLIED WITH ALL THE PROVISIONS OF THE GENERAL NOT FOR PROFIT CORPORATION ACT OF THIS STATE, AND AS OF THIS DATE, IS IN GOOD STANDING AS A DOMESTIC CORPORATION IN THE STATE OF ILLINOIS.



Authentication #: 1030902222

Authenticate at: <http://www.cyberdriveillinois.com>

*In Testimony Whereof, I hereto set  
my hand and cause to be affixed the Great Seal of  
the State of Illinois, this 5TH  
day of NOVEMBER A.D. 2010 .*

*Jesse White*

SECRETARY OF STATE

ATTACHMENT 4

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**AGREEMENT OF MERGER**  
**BY AND BETWEEN**  
**CENTRAL DUPAGE HEALTH**  
**AND**  
**DELNOR-COMMUNITY HEALTH SYSTEM**

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**December 16, 2010**

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## LIST OF EXHIBITS

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|----------------|-----------------------------------|
| A              | CDH Affiliates                    |
| B              | Delnor Affiliates                 |
| C              | Articles of Merger                |
| D              | Plan of Merger                    |
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## AGREEMENT OF MERGER

This **AGREEMENT OF MERGER** (the "**Agreement**") is made and entered into as of December 16, 2010 (the "**Execution Date**"), by and between **CENTRAL DUPAGE HEALTH**, an Illinois not-for-profit corporation ("**CDH Parent**") and **DELNOR-COMMUNITY HEALTH SYSTEM**, an Illinois not-for-profit corporation ("**Delnor Parent**"). CDH Parent and Delnor Parent are each referred to individually herein as a "**Party**" and, collectively, as the "**Parties**" to this Agreement. Capitalized terms not defined in the body of this Agreement shall have the meanings ascribed to them in the Glossary set forth in Article 17.

### RECITALS

**WHEREAS**, CDH Parent directly or indirectly controls Central DuPage Hospital Association d/b/a Central DuPage Hospital, an Illinois not-for-profit corporation ("**Central DuPage Hospital**"); Central DuPage Health Foundation, an Illinois not-for-profit corporation which acts as a tax-exempt supporting organization of Central DuPage Hospital (the "**CDH Foundation**"); and the other affiliated health care entities listed on Exhibit A (each a "**CDH Affiliate**," and collectively, the "**CDH Affiliates**");

**WHEREAS**, Delnor Parent directly or indirectly controls Delnor-Community Hospital, an Illinois not-for-profit corporation ("**Delnor-Community Hospital**"); Delnor-Community Healthcare Foundation, an Illinois not-for-profit corporation which acts as a tax-exempt supporting organization of Delnor-Community Hospital (the "**Delnor Foundation**"); and the affiliated health care entities listed on Exhibit B (each, a "**Delnor Affiliate**," and collectively, the "**Delnor Affiliates**");

**WHEREAS**, Central DuPage Hospital and Delnor-Community Hospital each operates within a patient-centered culture that is committed to excellence, quality and transparency;

**WHEREAS**, Central DuPage Hospital and Delnor-Community Hospital each have a history of sound governance and management, with a commitment to engaging effectively with physicians, nurses, caregivers and the community to achieve superior results;

**WHEREAS**, given the similar culture and commitment to patient care, the Parties have engaged in discussions to explore the possibility of a combining their respective health systems to support and further their common and unifying health care missions and to better serve their respective communities;

**WHEREAS**, as a result of such discussions, the Parties entered into a Memorandum of Understanding, dated October 4, 2010 ("**MOU**"), pursuant to which they set forth their preliminary understandings and agreements regarding the nature and terms of a potential corporate combination whereby CDH Parent, Central DuPage Hospital, CDH Foundation and the CDH Affiliates (each, a "**CDH Entity**," and collectively, the "**CDH Entities**"), on the one hand, and Delnor Parent, Delnor-Community Hospital, Delnor Foundation and the Delnor Affiliates (each, a "**Delnor Entity**," and collectively, the "**Delnor Entities**"), on the other hand, would all reorganize to become governed by a single parent entity (the "**Transaction**") in order to create an integrated health care delivery system (the "**New Health System**") serving Central DuPage

Hospital's and Delnor-Community Hospital's combined service areas (together, the "Combined Service Area"); and

WHEREAS, the Parties now desire to enter into this Agreement to evidence the full and complete terms of their agreement with respect to the Transaction and related matters.

NOW, THEREFORE, for and in consideration of the premises, and the agreements, covenants, representations and warranties hereinafter set forth, and other good and valuable consideration, the receipt and adequacy of which are forever acknowledged and confessed, the Parties agree as follows:

## ARTICLE 1

### COMBINATION GOALS AND OBJECTIVES

**1.1 Rationale and Vision.** The governing boards of each of the Parties (each a "Board"), in keeping with their fiduciary duties to oversee their respective organization's charitable assets, have engaged in a deliberative process to explore ways to more seamlessly, efficiently and effectively serve their constituencies and provide world-class health care services. It is each respective Board's vision to create a locally-based and governed health system that would support significant improvements in health care delivery and outcomes and would preserve their investments in their communities. As a result, the Parties hereby desire to implement the Transaction, creating a strong and effective long-term relationship between the CDH Entities and the Delnor Entities and ensuring that the organizations continue to achieve their charitable missions.

**1.2 Transaction Goals and Objectives.** The Transaction is designed to meet the current and future healthcare needs of the communities respectively served by Central DuPage Hospital and Delnor-Community Hospital by, among other things, assuring and providing for: (a) more effective and efficient delivery of patient care; (b) development and growth of a combined service capability with seamless access for caregivers and patients; (c) development of a platform for quality and patient safety that produces top-level industry performance and is characterized by collaboration among caregivers, a culture of accountability and a commitment to continuous improvement and learning; (d) a combination of the financial strength of both institutions to support future growth; (e) establishment of a combined and streamlined governance structure with equal representation from both institutions and with a provision for delegated governance at the institutional level; (f) continued opportunities for growth and development of the workforce at both institutions; (g) maintenance of the community focus and benefits of each institution; (h) the formation of a broad network of clinically integrated providers; and (i) the joint creation of a brand synonymous with bringing high quality, advanced care to the Combined Service Area.

**1.3 Ensuring Success.** The Parties agree that in order for the foregoing objectives to be achieved, the following key philosophical and structural components of the Transaction are critical:

(a) The New Health System must deliver superior value to patients, physicians and payers, including excellence in clinical quality, broader access to services on both hospital campuses and in the Combined Service Area, a mindfulness of expense, and a preparedness for a new model of health care delivery that will require further integration and collaboration among providers and the ability to accept and manage different payment mechanisms designed to inspire differentiation in service and outcomes;

(b) The New Health System must foster collaboration and decisions that are in the best interests of the Combined Service Area and the New Health System through: (a) a governance structure characterized by consolidated authority and control, a commitment to the objectives and best interests of the New Health System and the Combined Service Area, and equal representation from the Parties on the initial New Parent Board (defined in Section 3.2); and (b) the careful and deliberate selection by each of CDH Parent and Delnor Parent of the directors who will serve on the initial New Parent Board.

(c) The New Health System must respect, celebrate and maintain the unique aspects of each institution through a continued focus on community benefit, the retention of certain aspects of the identity of Central DuPage Hospital and Delnor-Community Hospital, and the recognition of the individuals and groups which have and will continue to contribute to the success of the constituent institutions, including community members, patients, employers, contributors, physicians and other professional staff.

## ARTICLE 2

### OVERVIEW OF TRANSACTION

On the Closing Date, and subject to the satisfaction of the closing conditions set forth in Article 13, the Parties will consummate the Transaction by: (a) merging CDH Parent and Delnor Parent in accordance with the terms of Article 3 and effecting the streamlined governance structure described therein; (b) amending and restating the organizational documents of Central DuPage Hospital, Delnor-Community Hospital, the CDH Foundation, the Delnor Foundation, the CDH Affiliates and Delnor Affiliates in accordance with the terms of Article 4, Article 5 and Article 6; (c) initiating a process to create and implement a Strategic Plan and New Health System Brand in accordance with Article 8; and (d) fostering collaboration between the medical staffs of Central DuPage Hospital and Delnor-Community Hospital as described in Article 9.

## ARTICLE 3

### CREATION, GOVERNANCE AND MANAGEMENT OF NEW HEALTH SYSTEM PARENT

#### 3.1 Merger of CDH Parent and Delnor Parent.

(a) On or before the Closing Date (as herein defined), to be effective as of the Closing Date, the Parties shall file with the Illinois Secretary of State of the State the Articles of Merger in substantially the same form attached as Exhibit C (the "Articles of Merger"),

pursuant to which Delnor Parent shall be merged with and into CDH Parent in accordance with the Plan of Merger attached as Exhibit D (the "Plan of Merger").

(b) The Articles of Merger and Plan of Merger shall provide that, effective as of the Closing Date: (a) the assets and liabilities of Delnor Parent shall be co-mingled and combined with those of CDH Parent, which shall be the surviving corporation in the merger (such merged entity to be referred to herein as the "New Health System Parent"); (b) the New Health System Parent shall change its name to "CDH-Delnor Health System"; and (c) the articles of incorporation and bylaws of the New Health System Parent shall be amended and restated in substantially the forms attached as Exhibit E and Exhibit F, respectively, to reflect: (i) the governance and operational changes described in this Article 3; and (ii) any and all changes as may be agreed upon by the Parties pursuant to Section 12.3.

**3.2 Governance of the New Health System Parent.** Effective as of the Closing Date, the business and affairs of the New Health System Parent (including, but not limited to, the selection and retention of the Successor CEO as described in Section 3.6(a)) shall be governed by a Board of Directors (the "New Parent Board"), which shall consist of twenty (20) directors, comprised of the following voting members:

(a) The president of the medical staff of each of Central DuPage Hospital and Delnor-Community Hospital, ex-officio (collectively, the "Ex-Officio Directors");

(b) One additional member of the medical staff of Central DuPage Hospital (the "CDH Medical Staff Director");

(c) One additional member of the medical staff of Delnor-Community Hospital (the "Delnor Medical Staff Director") (the CDH Medical Staff Director and the Delnor Medical Staff Director collectively shall be referred to herein as the "Medical Staff Directors"); and

(d) Sixteen (16) additional directors (collectively, the "At-Large Directors").

**3.3 Selection of Initial Directors; Terms.**

(a) The initial New Parent Board shall be comprised of the individuals set forth in the initial resolution of the New Parent Board attached hereto as Exhibit G (the "Initial Resolution"), the non Ex-Officio Directors of which shall be selected as follows: eight (8) At-Large Directors shall be selected by CDH Parent; eight (8) At-Large Directors shall be selected by Delnor Parent, one (1) CDH Medical Staff Director shall be selected by CDH Parent and one (1) Delnor Medical Staff Director shall be selected by Delnor Parent. Each of the At-Large Directors appointed to the New Parent Board shall have the appropriate background and experience to effectively govern the New Health System.

(b) Each At-Large Director and Medical Staff Director serving on the initial New Parent Board shall serve for an initial term of three (3) years.

(c) The Ex-Officio Directors shall serve throughout their tenure in their offices, and shall cease to serve as Ex-Officio Directors when they cease to hold such offices for any reason.

(d) The New Parent Board shall select the initial chairperson of the New Parent Board at its first meeting (the "**Initial Chairperson**"). The Initial Chairperson shall serve for a term of three (3) years (or until his or her sooner resignation or removal as Chairperson or as a Director), and his or her successors shall be appointed by the New Parent Board in accordance with the bylaws of New Health System Parent.

(e) The bylaws of the New Health System Parent provides for a category of honorary status designed to recognize long and distinguished service of individuals to CDH Parent or Delnor Parent based on such individual's participation in governance of the entities. Such honorary status is non-voting and shall be granted only to those individuals who: (i) have been designated as "honorary" or "emeritus" members of a Party's Board prior to the execution of this Agreement; and (ii) are identified in the Initial Resolution. In selecting individuals for such honorary status, the Parties shall strive to respect each organization's prior designation of individuals to such honorary status with rights similar to those that existed prior to formation of the New Health System.

### **3.4 Vacancies on the Parent Board; Subsequent Terms.**

(a) Following the Closing Date, any vacancy in an At-Large Director's or Medical Staff Director's position (whether due to the expiration of the director's term, or the death, resignation or removal of such director) shall be filled exclusively by the action of the remaining directors serving on the New Parent Board. Any director who is appointed to fill a vacancy shall be appointed for the remainder of his or her predecessor's term. If a vacancy occurs in the seat of an At-Large Director during the first three (3) years following the Closing Date, the New Parent Board shall fill the vacancy with a replacement who is from the same service area as his or her predecessor.

(b) Following the initial three-year term, the terms of the At-Large Directors and Medical Staff Directors shall be staggered such that: (i) four (4) At-Large Directors, the CDH Medical Staff Director and the Delnor Medical Staff Director shall be elected for a subsequent term of three (3) years; (ii) six (6) At-Large Directors shall be elected for a subsequent term of two (2) years; and (iii) six (6) At-Large Directors shall be elected for a subsequent term of one (1) year. Thereafter, all directors shall be appointed for subsequent terms of three (3) years each.

(c) No At-Large Director or Medical Staff Director shall serve more than three (3) consecutive three-year terms.

**3.5 New Parent Board Committees.** The New Parent Board, at a minimum, shall have the following committees and subcommittees: (i) an Executive Committee; (ii) a Governance Committee; (iii) a Compensation Committee; (iv) an Audit Committee; (v) a Finance Committee; and (vi) an Investments Committee, which shall be a subcommittee of the Finance Committee. Throughout the initial three-year term, the Executive Committee shall be

comprised of members half of whom were appointed by CDH Parent and half of whom were appointed by Delnor Parent. The New Parent Board, in its sole discretion, shall from time to time and in accordance with the bylaws of the New Health System Parent, appoint, remove or replace the members of the committees and any subcommittees (collectively, the "**Committee Members**") based upon their skills, qualifications and competencies. The New Parent Board may include one or more non-Directors as Committee Members (excluding the Executive Committee); provided however, that: (x) no more than three (3) non-director members may be designated by each Party for initial appointment to the New Health System Parent's committees as of the Closing Date; and (y) such individuals shall be appointed to the New Health System Parent's committees as set forth in the Initial Resolution. The New Parent Board may from time to time form such other committees as it deems necessary in accordance with the New Health System Parent's Bylaws.

### **3.6 Management of New Health System Parent.**

(a) Provided that he retains the office and title of chief executive officer of CDH Parent as of the Closing Date, the initial chief executive officer of the New Health System Parent (the "**Initial CEO**") shall be Luke McGuinness. Beginning with its first meeting, the New Parent Board shall initiate a plan of succession for the Initial CEO, which shall include the recruitment and retention of a successor chief executive officer (the "**Successor CEO**"). The Initial CEO and the Successor CEO are sometimes referred to herein as the "**Parent CEO**."

(b) Schedule 3.6(b) sets forth the identity and role of certain members of senior management of the New Health System effective on and as of the Closing Date, including the identity of the persons who will act as the initial chief executive of Central DuPage Hospital and Delnor-Community Hospital as of the Closing Date (the "**New Health System Executive Leadership**"). The New Health System Executive Leadership shall be offered the positions with the New Health System Parent, Central DuPage Hospital and/or Delnor-Community Hospital as specified therein.

(c) From and after the Closing Date, the New Parent Board shall have the power to appoint, remove and replace the Parent CEO. The roles and responsibilities of the Parent CEO will be addressed as part of the process outlined in Section 12.3.

## **ARTICLE 4**

### **HOSPITAL GOVERNANCE AND OPERATIONS**

**4.1 Amendment of Hospital Governance Documents.** On or before the Closing Date, to be effective as of the Closing Date, Central DuPage Hospital and Delnor-Community Hospital shall file with the Illinois Secretary of State's Office amended and restated articles of incorporation, and shall amend and restate their bylaws to include: (i) the provisions set forth in this Article 4; and (ii) any and all changes as may be agreed upon by the Parties pursuant to Section 12.3.

4.2 **Membership.** From and after the Closing Date, the New Health System Parent shall be the sole corporate member of Central DuPage Hospital and Delnor-Community Hospital.

4.3 **Governance of Central DuPage Hospital and Delnor-Community Hospital.** Effective as of the Closing Date, the business and affairs of each of Central DuPage Hospital and Delnor-Community Hospital shall be governed by the New Health System Parent, acting in its capacity as sole corporate member, subject to the following powers which shall be delegated (collectively, the "Hospital Delegated Powers") to each of Central DuPage Hospital's board of directors (the "Central DuPage Hospital Board") and Delnor-Community Hospital's board of directors (the "Delnor Hospital Board," and collectively with the Central DuPage Hospital Board, the "Hospital Boards"):

(a) Granting and revoking professional staff privileges at the hospital and the taking of any professional disciplinary actions;

(b) Maintaining professional standards and overseeing the quality of care provided at the hospital;

(c) Approving the chief executive of the hospital proposed by the Parent CEO;

(d) Such other powers as are required by law or applicable accreditation standards (as are in effect from time to time), to be exercised by the Hospital Boards, which powers shall be delegated by the New Parent Board; and

(e) Such other powers as the New Parent Board may, by resolution, delegate to the Hospital Boards.

4.4 **Composition of Central DuPage Hospital Board and Delnor Hospital Board.** On and following the Closing Date, the Central DuPage Hospital Board and the Delnor Hospital Board shall be comprised of the directors serving on the New Parent Board from time to time.

4.5 **Hospital Board Committees.** On and following the Closing Date, the Central DuPage Hospital Board and the Delnor Hospital Board each shall have a standing quality committee and a credentialing committee with responsibilities described in the bylaws of Central DuPage Hospital and Delnor-Community Hospital. The New Parent Board may from time to time form such other committees as it deems necessary. The New Parent Board, in its sole discretion, from time to time may appoint, remove or replace the members of such committees based upon their skills, qualifications and competencies.

## ARTICLE 5

### FOUNDATION GOVERNANCE AND OPERATIONS

5.1 **Amendment of Foundation Governance Documents.** On or before the Closing Date, to be effective as of the Closing Date, the CDH Foundation and the Delnor Foundation shall file with the Illinois Secretary of State's Office amended and restated articles of

incorporation, and shall amend and restate their bylaws to include: (i) the provisions set forth in this Article 5; and (ii) any and all changes as may be agreed upon by the Parties pursuant to Section 12.3.

**5.2 Membership.** From and after the Closing Date, the New Health System Parent shall be the sole corporate member of the CDH Foundation and the Delnor Foundation.

**5.3 Governance of the CDH Foundation and the Delnor Foundation.**

(a) Effective as of the Closing Date, the business and affairs of the CDH Foundation shall be governed by the CDH Foundation's Board of Directors (the "**CDH Foundation Board**"), subject to the Foundation Reserved Powers (as hereinafter defined) held by the New Health System Parent and set forth in Section 5.3(c).

(b) Effective as of the Closing Date, the business and affairs of the Delnor Foundation shall be governed by the Delnor Foundation's Board of Directors (the "**Delnor Foundation Board**"), subject to the Foundation Reserved Powers held by the New Health System Parent and set forth in Section 5.3(c).

(c) Effective as of the Closing Date, New Health System Parent, acting in its capacity as the sole corporate member of the CDH Foundation and the Delnor Foundation, shall have the following rights and powers (the "**Foundation Reserved Powers**") with respect to the governance of the business and affairs of the CDH Foundation and the Delnor Foundation:

- (i) Approving, appointing and removing all directors;
- (ii) Approving, appointing and removing all officers;
- (iii) Approving all strategic plans and budgets;
- (iv) Authorizing and/or approving any changes to articles of incorporation and bylaws;
- (v) Authorizing and/or approving transactions outside the ordinary course of business, including mergers, consolidations, member substitution and dispositions of substantially all assets;
- (vi) Authorizing and/or approving any incurrence, assumption, or guarantee of debt, except as otherwise set forth in an approved budget;
- (vii) Authorizing and/or approving contracts that call for expenditures of sums which, individually or in the aggregate, exceed a limit determined from time to time by the New Parent Board; provided, however, that the Delnor Foundation Board and the CDH Foundation Board may enter into contracts for expenditures of sums that are included within approved budgets as long as such contracts meet any internal review and compliance policies of the New Health System Parent;

financial auditors;

(viii) Authorizing and/or approving all accounting policies and

(ix) Authorizing and/or approving investment policies;

(x) Developing and/or approving compliance policies;

(xi) Authorizing and approving intercompany transfers of capital;

(xii) Authorizing and approving the imposition and removal of restrictions made by the CDH Foundation Board or Delnor Foundation Board on the use of funds; and

(xiii) Managing, selling, purchasing or encumbering real property.

**5.4 Composition of CDH Foundation Board.** The members of the CDH Foundation Board as of the Closing Date, and as set forth in the Initial Resolution, shall serve as the members of the CDH Foundation Board on and as of the Closing Date; provided, however, that on and following the Closing Date, the Chairperson of Delnor Foundation Board also shall serve as an ex-officio voting member of the CDH Foundation Board. From and after the Closing Date, all vacancies in the seats of non ex-officio members of the CDH Foundation Board, whether caused by the expiration of a director's term, or by the death, resignation or removal of the director, shall be filled by the New Parent Board.

**5.5 Composition of Delnor Foundation Board.** The members of the Delnor Foundation Board as of the Closing Date, and as set forth in the Initial Resolution, shall serve as the members of the Delnor Foundation Board on and as of the Closing Date; provided, however, that on and following the Closing Date, the Chairperson of CDH Foundation Board also shall serve as an ex-officio voting member of the Delnor Foundation Board. From and after the Closing Date, all vacancies in the seats of non ex-officio members of the Delnor Foundation Board, whether caused by the expiration of a director's term, or by the death, resignation or removal of the director, shall be filled by the New Parent Board.

**5.6 Operation of the CDH Foundation and Delnor Foundation.**

(a) On and after the Closing Date, the CDH Foundation shall continue to provide support for Central DuPage Hospital and shall continue to use donor-restricted gifts solely in a manner consistent with the donor's intent, and, subject to the Foundation Reserved Powers, shall continue to use board-restricted funds in a manner consistent with the resolution authorizing such restrictions.

(b) On and after the Closing Date, the Delnor Foundation shall continue to provide support for Delnor-Community Hospital and shall continue to use donor-restricted gifts solely in a manner consistent with the donor's intent, and, subject to the Foundation Reserved Powers, shall continue to use board-restricted funds in a manner consistent with the resolution authorizing such restrictions.

## ARTICLE 6

### GOVERNANCE AND OPERATIONS OF THE CDH AFFILIATES AND DELNOR AFFILIATES

**6.1 Amendment of the Governance Documents of the CDH Affiliates and the Delnor Affiliates.** On or before the Closing Date, to be effective as of the Closing Date, each CDH Affiliate and each Delnor Affiliate shall file with the Illinois Secretary of State's Office amended and restated articles of incorporation, and shall amend and restate their bylaws to: (i) include the provisions set forth in this Article 6; and (ii) any and all changes as may be agreed upon by the Parties pursuant to Section 12.3.

**6.2 Membership.** From and after the Closing Date, each CDH Affiliate and each Delnor Affiliate shall have the member or shareholder identified on the organizational chart attached as Exhibit H.

**6.3 Governance of the CDH Affiliates and the Delnor Affiliates.**

(a) Effective as of the Closing Date, the business and affairs of each CDH Affiliate shall be governed by the Board of Directors of such CDH Affiliate (each such board a "CDH Affiliate Board" and collectively, the "CDH Affiliate Boards"), subject to the following powers (the "Affiliate Reserved Powers") reserved by the New Health System Parent:

(i) Approving, appointing and removing all directors, managers or trustees (as applicable);

(ii) Approving, appointing and removing all officers;

(iii) Approving all strategic plans and budgets;

(iv) Authorizing and/or approving any changes to articles of incorporation and bylaws;

(v) Authorizing and/or approving transactions outside the ordinary course of business, including mergers, consolidations, member substitution and dispositions of substantially all assets;

(vi) Authorizing and/or approving any incurrence, assumption, or guarantee of debt (except as set forth in an approved budget);

(vii) Authorizing and/or approving contracts that call for expenditures of sums which, individually or in the aggregate, exceed a limit determined from time-to-time by the New Parent Board; provided, however, that the CDH Affiliate Board or the Delnor Affiliate Board (as defined in Section 6.3(b)) may enter into contracts for expenditures of sums that are included within approved budgets as long as such contracts meet any applicable contract review and compliance policies of the New Health System Parent;

(viii) Authorizing and/or approving all accounting policies and financial auditors;

(ix) Developing and/or approving compliance policies; and

(x) Managing, selling, purchasing or encumbering real property.

(b) Effective as of the Closing Date, the business and affairs of each Delnor Affiliate shall be governed by the Board of Directors of such Delnor Affiliate (each such board a "**Delnor Affiliate Board**" and collectively, the "**Delnor Affiliate Boards**"), subject to the Affiliate Reserved Powers, which shall be held by the New Health System Parent.

**6.4 Composition of CDH Affiliate Boards.** The members of each CDH Affiliate Board as of the Closing Date, and as set forth in the Initial Resolution, shall serve as the members of such CDH Affiliate Board on and as of the Closing Date. From and after the Closing Date, all vacancies on the CDH Affiliate Boards, whether caused by the expiration of a trustee's or director's term, or by the death, resignation or removal of the trustee or director, shall be filled by the New Parent Board.

**6.5 Composition of Delnor Affiliate Boards.** The members of each Delnor Affiliate Board as of the Closing Date, and as set forth in the Initial Resolution, shall serve as the members of such Delnor Affiliate Board on and as of the Closing Date. From and after the Closing Date, all vacancies on the Delnor Affiliate Boards, whether caused by the expiration of a trustee's or director's term, or by the death, resignation or removal of the trustee or director, shall be filled by the New Parent Board.

## ARTICLE 7

### EFFECT OF THE TRANSACTION

**7.1 Ownership of Assets.** The transactions contemplated hereby shall not, in and of themselves, effect any transfer, conveyance or change in the ownership of the assets of Central DuPage Hospital, Delnor-Community Hospital, the CDH Foundation, the Delnor Foundation, the CDH Affiliates or the Delnor Affiliates.

**7.2 Retention of Liabilities.** The transactions contemplated hereby shall not, in and of themselves, effect any assignment or assumption of any liabilities, indebtedness, commitments or other financial or operational obligations of Central DuPage Hospital, Delnor-Community Hospital, the CDH Foundation, the Delnor Foundation, the CDH Affiliates or the Delnor Affiliates to or by any other person, whether such liabilities, indebtedness, commitments or obligations are known or unknown, fixed or contingent, recorded or unrecorded, currently existing as of the Closing Date or thereafter arising (collectively, the "**Existing Liabilities**"), all of which shall remain the liabilities and obligations exclusively of the entity that was liable or obligated for such Existing Liabilities immediately prior to the Closing Date.

### 7.3 Donor Restricted Funds.

(a) Following the Closing Date, bequests, gifts and endowments of a CDH Entity that are restricted as to use or manner of investment shall continue to be so restricted, shall continue to be owned by the CDH Entity to which they were donated (recognizing that, in the case of CDH Parent, any bequests, gifts and endowments shall be owned by the New Health System Parent following the Closing Date), and the New Health System Parent shall honor donative intent with respect thereto.

(b) Following the Closing Date, bequests, gifts and endowments of a Delnor Entity that are restricted as to use or manner of investment shall continue to be so restricted, shall continue to be owned by the Delnor Entity to which they were donated (recognizing that, in the case of Delnor Parent, any bequests, gifts and endowments shall be owned by the New Health System Parent following the Closing Date), and the New Health System shall honor donative intent with respect thereto.

(c) Notwithstanding the foregoing, at least thirty (30) days prior to the Closing Date, CDH Parent and Delnor Parent shall review all restricted funds held by the CDH Entities and the Delnor Entities, respectively, and shall provide to the other a list of any temporary or permanent restricted funds for which it believes the applicable restrictions are or may be inconsistent with the Transaction contemplated hereby (each an "Impacted Funds List"). Each Party shall use commercially reasonable efforts to amend the restrictions on the funds described in the Impacted Funds List as necessary to make them consistent with the Transaction prior to the Closing Date.

### 7.4 Joint Ventures.

(a) The Parties acknowledge that the CDH Entities are members and equity holders of joint ventures in which they hold less than all of the outstanding membership or equity interests, all of which are identified on Exhibit I (each a "CDH Joint Venture," and collectively, the "CDH Joint Ventures"), which sets forth the name of the CDH Joint Venture, the business or operations conducted by the CDH Joint Venture, the percentage membership or relative number of equity interest held by the CDH Entity in each CDH Joint Venture, the names of the other members or equity holders in each CDH Joint Venture, the percentage or relative number of membership or equity interest held by the other members or equity holders in each CDH Joint Venture, and if there is more than one class of membership or equity interests of the CDH Joint Venture, a description of each class and the relative rights and obligations associated therewith.

(b) The Parties acknowledge that the Delnor Entities are members and equity holders of joint ventures in which they hold less than all of the outstanding membership or equity interests, all of which are identified on Exhibit J (each a "Delnor Joint Venture," and collectively, the "Delnor Joint Ventures"), which sets forth the name of the Delnor Joint Venture, the business or operations conducted by the Delnor Joint Venture, the percentage or relative number of membership or equity interest held by the Delnor Entity in each Delnor Joint Venture, the names of the other members or equity holders in each Delnor Joint Venture, the percentage or relative number of membership or equity interest held by the other members or equity holders in each Delnor Joint Venture, and if there is more than one class of membership or

equity interests of the Delnor Joint Venture, a description of each class and the relative rights and obligations associated therewith.

(c) The transactions contemplated hereby shall not, in and of themselves, effect a transfer, conveyance or change in the ownership of any CDH Joint Venture or Delnor Joint Venture to any other person (recognizing that any membership or equity interests owned by CDH Parent and Delnor Parent shall be owned by the New Health System Parent following the Closing Date). Not later than January 1, 2011, CDH Parent and Delnor Parent shall review the organizational documents of the CDH Joint Ventures and the Delnor Joint Ventures, respectively, and shall provide to the other a list of any third party consents, notices or waivers necessary to consummate the Transaction (the "Joint Venture Consents"). Each Party shall use commercially reasonable efforts to obtain the Joint Venture Consents prior to the Closing Date.

## ARTICLE 8

### STRATEGIC PLANNING AND SYSTEM INITIATIVES

8.1 **Pro forma Financial Statements.** The Parties have developed proforma financial statements attached hereto as Exhibit K (the "Proforma Financial Statements") which identify opportunities for beneficial cost savings, improved service or operating efficiencies and shall serve as an operational guide for the integration of the New Health System following the Closing Date.

8.2 **Strategic Plan.** The New Parent Board, no later than twelve (12) months following the Closing Date, shall adopt a strategic plan which shall set forth the strategic vision of the New Health System, and which shall serve as a roadmap for its operations (the "Strategic Plan"). The Strategic Plan shall describe, at a minimum: (a) the development of key service lines at each of Central DuPage Hospital and Delnor-Community Hospital; (b) physician integration initiatives; and (c) a plan for the deployment of capital. In addition, the Strategic Plan shall consider, prioritize and, as applicable, set forth the timeline for implementation of each of the following proposed projects (the "System Projects"), which the Parties believe are important to the success of the New Health System:

(a) Recruit physicians at both Central DuPage Hospital and Delnor-Community Hospital, as well as continue to invest in primary care and specialty care, including assisting independent practices where appropriate, and advancing destination service lines at both Central DuPage Hospital and Delnor-Community Hospital;

(b) Add two (2) new facilities to provide primary care and ambulatory care in the western portion of the Combined Service Area;

(c) Maintain Central DuPage Hospital's national and regional affiliate relationships and expand them to Delnor-Community Hospital;

(d) Implement the Epic inpatient electronic health record ("EHR") system at both Central DuPage Hospital and Delnor-Community Hospital, and consider offering Epic to Central DuPage Hospital's and Delnor-Community Hospital's medical staffs as an ambulatory EHR;

- (e) Continue to implement and support the Sage ambulatory EHR system, including all necessary interfaces with Epic;
- (f) Implement a standardized set of clinical protocols and practices and maintain a focus on patient-centered care;
- (g) Create an integration team that will develop and implement a detailed, multi-year plan to integrate clinical services and operations utilizing processes, including, by way of example, Lean methodologies;
- (h) Develop a set of performance metrics designed to achieve top-decile performance for all inpatient and outpatient sites and to seek to earn and maintain accolades, such as top 100 status and Magnet Hospital designation;
- (i) Implement a broad range of strategies and tactics to create clinical integration with physicians (such as physician-hospital organizations and/or accountable care organizations);
- (j) Invest in the training and development of the work force;
- (k) Invest necessary routine and strategic capital to maintain the state-of-the-art facilities and equipment required to deliver top-tier clinical services, quality and safety at the facilities operated by Central DuPage Hospital, the CDH Affiliates, Delnor-Community Hospital and the Delnor Affiliates;
- (l) Maintain an efficient operating platform that delivers an outstanding patient experience;
- (m) Maintain and expand the already robust community benefit missions at both Central DuPage Hospital and Delnor-Community Hospital;
- (n) Maintain existing physician contracts, joint venture commitments and other important relationships (consistent with Applicable Laws) and support independent physicians by providing MSO services; and
- (o) Develop a comprehensive cancer center and diagnostic imaging center on Delnor-Community Hospital's campus.

**8.3 Branding.** Following the Closing Date, the New Health System shall develop and implement a naming and branding strategy for the New Health System (the "New Health System Brand"), which shall be reflective of: (a) the history of Central DuPage Hospital and Delnor-Community Hospital and their future within the New Health System; (b) the culture of Central DuPage Hospital and Delnor-Community Hospital; and (c) the communities encompassed by the Expanded Service Area. After the Closing Date, each of Central DuPage Hospital and Delnor-Community Hospital shall retain its current name.

## ARTICLE 9

### MEDICAL STAFF MATTERS

**9.1 Medical Staff Privileges and Credentials.** On and after the Closing Date, the medical staff of Central DuPage Hospital (the "CDH Medical Staff") and the medical staff of Delnor-Community Hospital (the "Delnor Medical Staff") shall remain independent from each other. Subject to the Medical Staff transition planning described in Section 9.2, the transactions contemplated by this Agreement shall not, in and of themselves, affect or change: (a) the medical staff privileges held by members of the CDH Medical Staff or the Delnor Medical Staff on the Closing Date; (b) the medical staff bylaws, rules and regulations, or credentialing procedures of the CDH Medical Staff or Delnor Medical Staff in effect on the Closing Date; or (c) any agreements with physician members of the CDH Medical Staff or Delnor Medical Staff, whether as employees or independent contractors. The consummation of the transactions contemplated by this Agreement, in and of themselves (consistent with Applicable Laws), shall not result in a need for any reapplications for credentials or privileges by current members of the either the CDH Medical Staff or Delnor Medical Staff (recognizing that Central DuPage Hospital's or Delnor-Community Hospital's current medical staff bylaws may require reapplications upon expiration of medical staff appointments or credentials).

**9.2 Medical Staff Transition Team.** The Parties or the New Health System, as applicable, shall appoint a group of individuals, who shall include members of New Health System management and an equal numbers of representatives of the CDH Medical Staff and the Delnor Medical Staff (the "Medical Staff Transition Team") who shall, within a reasonable period of time not to exceed twenty-four (24) months following the Closing Date (the "Transition Period"), assess the differences in the medical staff bylaws, rules and regulations, organizational materials and other governing documents of each of the CDH Medical Staff and Delnor Medical Staff in order to identify "best practices." The Medical Staff Transition Team shall, to the extent practicable, develop and recommend to each of the CDH Medical Staff and Delnor Medical Staff for approval common medical staff bylaws, rules and regulations, organizational materials and other governance documents (the "New System Medical Staff Materials"). The New System Medical Staff Materials shall be subject in all respects to the approval of the New Parent Board, the Delnor Hospital Board the CDH Hospital Board, the Delnor Medical Staff, and the CDH Medical Staff, and upon such approval, shall be implemented at each of Central DuPage Hospital and Delnor-Community Hospital. During the Transition Period, each of the CDH Medical Staff and the Delnor Medical Staff shall continue to operate under its existing medical staff bylaws, rules and regulations, organizational materials and other governance documents.

**9.3 Medical Staff Transition.** After the Closing Date, the Medical Staff Transition Team shall identify opportunities for collaboration and efficiency and shall share information among themselves for the purpose of establishing a continuum of care and safer and more efficient outcomes for patients of the New Health System (the "Medical Staff Transition"). The New Health System and Medical Staff Transition Team shall use good faith efforts to achieve the following objectives in implementing the Medical Staff Transition:

(a) All members of the CDH Medical Staff and the Delnor Medical Staff shall be similarly qualified and reviewed to ensure consistent performance and common expectations.

(b) All members of the CDH Medical Staff and the Delnor Medical Staff shall, absent an exclusive arrangement or closed department, have the opportunity, but not the obligation, to participate on the other Medical Staff.

(c) Wherever possible, the Delnor Medical Staff and the CDH Medical Staff shall seek operational efficiencies in processing the verification of credentials, the processing of applications, and the preparation for medical staff meetings.

## ARTICLE 10

### REPRESENTATIONS AND WARRANTIES OF CDH PARTIES

CDH Parent hereby makes to Delnor Parent the representations and warranties set forth in this Article 10.

#### 10.1 Due Organization; Good Standing; Power.

(a) Each of CDH Parent, Central DuPage Hospital and CDH Foundation, is an Illinois not-for-profit corporation, exempt from federal income taxation under Section 501(a) of the Internal Revenue Code (the "Code"), as an organization described in Section 501(c)(3) of the Code and is not a "private foundation" within the meaning of Section 509(a) of the Code. Each of the CDH Affiliates and CDH Joint Ventures is organized and has the tax status set forth on Schedule 10.1(a).

(b) Except as set forth on Schedule 10.1(b), each of CDH Entities, and to the Knowledge of CDH Parent, each of the CDH Joint Ventures, is duly formed, validly existing and in good standing under the laws of its respective state of formation, and has the corporate power and authority to own, operate or hold under lease its properties and assets and to carry on its business and operations as presently conducted. Each of the CDH Entities and to the Knowledge of CDH Parent, each of the CDH Joint Ventures, has registered with the proper governmental authorities all assumed names under which it operates its businesses and has continuously maintained all such filings in good standing.

#### 10.2 Corporate Authority.

(a) CDH Parent has full corporate power and authority to enter into and to perform its obligations under this Agreement and the documents to be delivered related hereto (collectively with this Agreement, the "Transaction Documents"). The CDH Entities and, to the Knowledge of CDH Parent, the CDH Joint Ventures have full corporate power and authority to enter into and to perform their respective obligations under any Transaction Documents to which they are parties.

(b) The execution, delivery and performance of the Transaction Documents by CDH Parent and the CDH Entities have been duly and properly authorized by all necessary corporate action in accordance with their respective articles of incorporation and bylaws.

(c) Assuming the valid authorization, execution and delivery of the same by the parties to the Transaction Documents other than the CDH Entities and the CDH Joint Ventures, the Transaction Documents constitute the valid and legally binding obligation of CDH Parent and the CDH Entities and, to the Knowledge of CDH Parent, the CDH Joint Ventures, enforceable against them in accordance with their terms, except as enforceability may be limited by: (i) general principles of equity, regardless of whether enforcement is sought in a proceeding in equity or at law; and (ii) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application now or hereafter in effect relating to or affecting the enforcement of creditors' rights generally.

#### **10.3 No Violation: Approvals.**

(a) Except as set forth in Schedule 10.3(a), the execution, delivery and performance of the Transaction Documents by CDH Parent and the CDH Entities and, to the Knowledge of CDH Parent, the CDH Joint Ventures, shall not result in the creation of any lien, charge, or encumbrance of any kind or the termination or acceleration of any indebtedness or other obligation of any CDH Entity (and to the Knowledge of CDH Parent, any CDH Joint Venture), and is not prohibited by, does not constitute a material default under or material breach of any Material Contract, indenture, mortgage, material permit or license or approval to which any CDH Entity (and to the Knowledge of CDH Parent any CDH Joint Venture), is a party or is subject or by which it is bound, or any Applicable Laws, except to the extent any of the foregoing is not likely to result in a Material Adverse Change.

(b) Except to the extent specified in Schedule 10.3(b), no approval, authorization, registration, consent, order, filing or other action that has not occurred or been obtained with or from any person, including any court, administrative agency or other governmental authority, is required for the execution and delivery by CDH Parent and the CDH Entities, or to the Knowledge of CDH Parent, any CDH Joint Venture, of the Transaction Documents or the consummation of the transactions contemplated or required hereby, except for filings required pursuant to the Hart-Scott-Rodino Antitrust Improvements Act ("HSR Act") and the Illinois Health Facilities Planning Act.

#### **10.4 Financial Statements.**

(a) CDH Parent has delivered to Delnor Parent true and correct copies of (a) its audited financial statements and the audited financial statements of Central DuPage Hospital for the two (2) years ended June 30, 2010 and 2009 (collectively, the "CDH Audited Financial Statements"); and (b) its unaudited financial statements and the unaudited financial statements of Central DuPage Hospital for the interim period from June 30, 2010, through the most recent month end date for which financial statements were available prior to the Execution Date (collectively, the "CDH Unaudited Financial Statements" and together with the CDH Audited Financial Statements, the "CDH Financial Statements").

(b) The CDH Financial Statements are: (i) true and correct in all material respects and present fairly the financial position of the CDH Parent and Central DuPage Hospital (and, to the extent consolidated, present fairly the financial position of the other CDH Entities) and the results of their operations as of the dates and for the periods indicated; and (ii) are in conformity with GAAP, applied consistently for the periods specified, including the consistent use of assumptions, practices, procedures and terminology, except: (A) as otherwise disclosed on Schedule 10.4(b); and (B) that the CDH Unaudited Financial Statements do not contain footnotes and other year-end adjustments required to comply with GAAP.

(c) Except as set forth in Schedule 10.4(c), from and after the most recent month-end date of the CDH Unaudited Financial Statements, CDH Parent has not made any material changes to its accounting methods or practices, including methods or practices used to:

- (i) Establish reserves on any patient, notes and accounts receivable;
- (ii) Establish estimates of any third-party settlements;
- (iii) Determine the value of any other accounts that require subjective determinations; and
- (iv) Establish malpractice, general liability or other self-insurance reserves, including claims incurred but not reported.

(d) Except as disclosed on Schedule 10.4(d), CDH Parent and the CDH Entities have no non-ordinary course liabilities or obligations of any kind, whether contingent or absolute, direct or indirect, or matured or unmatured, that are not disclosed or reserved on the CDH Financial Statements.

**10.5 Interim Changes.** Since the most recent month-end date of the CDH Unaudited Financial Statements, the CDH Entities have conducted their businesses in the ordinary course and consistent with past practices. Except for matters expressly permitted or authorized by this Agreement and except as set forth on Schedule 10.5, there has not been, after the date of the most recent month-end of the CDH Unaudited Financial Statements:

- (a) Any Material Adverse Change in the CDH Entities in the aggregate;
- (b) Any material disposition by the CDH Entities of any property, rights or other assets owned by or employed in the operation of the CDH Entities, except for dispositions in the usual and ordinary course of business;
- (c) Any amendment or termination of any Material Contract that has had or could reasonably be expected to result in a Material Adverse Change in the CDH Entities in the aggregate;
- (d) Any material damage, destruction or other casualty loss affecting the tangible assets of the CDH Entities; or

(e) Any adoption or material amendment of any bonus, profit-sharing, incentive, retention or severance agreement or arrangement, or any CDH Benefit Plan applicable to officers, directors or employees of the CDH Entities (collectively, "**CDH Compensation Relationships**"), other than: (i) amendments required by Applicable Laws; and (ii) new CDH Compensation Relationships or amendments of existing CDH Compensation Relationships designed to retain key employees and which have been disclosed to Delnor Parent.

**10.6 Material Contracts.** No CDH Entity is in breach or default under any term or provision of any Material Contract to which it is a party or by which it is bound, nor, to CDH Parent's Knowledge, is any other party thereto in breach or default thereunder. All Material Contracts to which a CDH Entity is a party or by which it is bound are in full force and effect and are valid and enforceable obligations of the CDH Entities which are parties thereto. Except as set forth on Schedule 10.6, no contract to which a CDH Entity is a party or by which it is bound requires the consent of, or notice to, a third party in order for the CDH Entities to enter into or to consummate the transactions contemplated by the Transaction Documents or in order to avoid a Material Adverse Change.

**10.7 Legal Proceedings.** Except as disclosed on Schedule 10.7, none of the CDH Entities is a defendant in, or, to the Knowledge of CDH Parent, has been threatened with any action, suit, proceeding, complaint, charge, hearing or arbitration that could reasonably be expected to, if resolved adversely to such person, result in a Material Adverse Change in the CDH Entities in the aggregate or adversely affect the ability of the CDH Entities to perform their respective obligations under the Transaction Documents. Except as disclosed on Schedule 10.7, none of the CDH Entities has received notice of any investigation or threatened investigation by any Federal, state or local governmental or regulatory agency, including those involving its business practices and policies, that could result in a Material Adverse Change in the CDH Entities in the aggregate.

**10.8 Licenses and Permits.**

(a) Each of the CDH Entities (and to the Knowledge of CDH Parent, each of the CDH Joint Ventures) holds and is in compliance with all governmental licenses, permits, certificates, consents and approvals, noncompliance with which could result in a Material Adverse Change in its business and operations (the "**CDH Licenses and Permits**"). The CDH Licenses and Permits held by the CDH Entities are current, unrestricted and valid, and to CDH Parent's Knowledge, the CDH Licenses and Permits held by the CDH Joint Ventures are current, unrestricted and valid.

(b) Except as set forth on Schedule 10.8(b), no application for any Certificate of Need, Certificate of Exemption (each as defined below) or declaratory ruling (an "**Application**") has been made by a CDH Entity, and to the Knowledge of CDH Parent, by a CDH Joint Venture, with the IHFSRB which is currently pending or open. Except as set forth on Schedule 10.8(b), neither a CDH Entity nor, to the Knowledge of CDH Parent, a CDH Joint Venture, has any approved Applications which relate to projects not yet completed. The CDH Entities and, to the Knowledge of CDH Parent, the CDH Joint Ventures have properly filed all required Applications (all of which are complete and correct in all material respects) with respect to any and all material improvements, projects, changes in services, zoning requirements,

construction and equipment purchases, and other changes for which approval is required under Applicable Laws. As used herein, "Certificate of Need" means a written statement issued by the IHFSRB evidencing community need for a new, converted, expanded or otherwise significantly modified health care facility, health service or capital expenditure, and a "Certificate of Exemption" means a written statement from the IHFSRB stating that a health care project is not subject to the Certificate of Need requirements under Applicable Laws.

#### **10.9 Compliance with Law.**

(a) Except as set forth on Schedule 10.9, each of the CDH Entities is in material compliance with and, to the Knowledge of CDH Parent, each of the CDH Joint Ventures is in material compliance with, all Applicable Laws, including, without limitation, all Health Care Laws.

(b) Except as set forth on Schedule 10.9, no CDH Entity has, nor to the Knowledge of CDH Parent has any CDH Joint Venture:

(i) knowingly or willfully offered, paid, solicited or received any remuneration (including any kickback, bribe or rebate, but excluding any legally permissible copayment or other payment), directly or indirectly, overtly or covertly, in cash or in kind: (A) in return for referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service for which payment may be made in whole or in part by Medicare, Medicaid, or a state healthcare program; or (B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare, Medicaid or a state healthcare program;

(ii) knowingly or willfully made a payment, directly or indirectly, to a physician as an inducement to reduce or limit necessary services to individuals who are under the direct care of the physician and who are entitled to benefits under Medicare, Medicaid or a state healthcare program, in a manner that would violate Applicable Laws;

(iii) knowingly or willfully made or caused to be made or induced or sought to induce the making of any false statement or representation (or omitted to state a material fact) required to be stated therein (or necessary to make the statement contained therein not misleading) of a material fact with respect to: (i) the conditions or operations of a CDH Entity or CDH Joint Venture in order that such entity would qualify for Medicare, Medicaid, or a state healthcare program certification; or (ii) information required to be provided under Section 1124A of the Social Security Act (42 U.S.C. Section 1320a-3a); or

(iv) knowingly or willfully: (i) charged for any Medicaid service money or other consideration at a rate in excess of the rates established by Applicable Laws; or (ii) charged, solicited, accepted or received, in addition to amounts paid by Medicaid, any gift money, donation or other consideration (other than a charitable, religious, or other philanthropic contribution from an organization or from a person unrelated to the patient) (A) as a precondition of admitting the patient; or (B) as a requirement for the patient's continued stay in a facility operated by the CDH Entities or CDH Joint Ventures in a manner that violates Applicable Laws.

#### 10.10 Owned Real Property.

(a) Except as set forth on Schedule 10.10(a), one or more of the CDH Entities is the sole and exclusive owner of all right, title and interest in and has good and marketable fee simple title to the real property owned by such CDH Entity (collectively, the "CDH Owned Real Property") free and clear of all liens, mortgages, security interests, options, pledges, charges, covenants, conditions, restrictions and other encumbrances and claims of any kind or character whatsoever, other than Permitted Encumbrances. There are no outstanding options, rights of first refusal or rights of first offer to purchase any CDH Owned Real Property or any portion thereof or interest therein. Except as described on Schedule 10.10(a), with respect to the CDH Owned Real Property:

(i) No CDH Entity has received during the past three (3) years notice of a violation of any Applicable Laws with respect to the CDH Owned Real Property, and no CDH Entity has received notice of condemnation, lien, assessment or the like relating to any part of the CDH Owned Real Property or the operation thereof;

(ii) Except for the CDH Entities, there are no tenants or other persons or entities occupying any space in the CDH Owned Real Property, or claiming any possession, adverse or not, to any portion of the CDH Owned Real Property, other than pursuant to tenant leases which: (A) are in writing and are fully executed by the parties thereto; (B) are upon terms that are commercially reasonable and fair from a financial perspective; (C) are consistent with Applicable Laws; (D) are not in default; (E) have not expired; and (F) have been entered into by a CDH Entity (or in the case of a sublease, a tenant of a CDH Entity, pursuant to a sublease approved by a CDH Entity);

(iii) Each parcel of CDH Owned Real Property is either: (i) exempt from real property or ad valorem taxation pursuant to Section 15-65 of the Property Tax Code (35 ILCS 200/15-65); or (ii) separately assessed for real estate tax purposes and is not combined with any land or real estate that is not a part of the CDH Owned Real Property for real estate tax assessment purposes.

(iv) None of the CDH Entities have received notice that the status of any CDH Owned Real Property will change from exempt to taxable;

(v) All permanent certificates of occupancy and all other licenses, permits, authorizations, consents, certificates and approvals required by all governmental authorities having jurisdiction and the requisite certificates of the local board of fire underwriters (or other body exercising similar functions), which, if not obtained, would result in a Material Adverse Change in any CDH Entity, have been issued for the CDH Owned Real Property, have been paid for, are in full force and effect, and, to the Knowledge of CDH Parent, will not be invalidated, violated or otherwise adversely affected by the transactions contemplated by the Transaction Documents;

(vi) No CDH Entity has received any notice of any existing, proposed or contemplated plans to modify or realign any street or highway or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of all or

any part of the CDH Owned Real Property or that would materially and adversely affect the current use of any part of the CDH Owned Real Property;

(vii) Upon consummation of the transactions contemplated by this Agreement, the current owners of the CDH Owned Real Property will be entitled to continue to use any CDH Owned Real Property that is currently employed by the CDH Entities in the conduct of their operations as currently conducted; and

(viii) The CDH Owned Real Property is subject to no easements, conditions, restrictions, ordinances, or other limitations that would make such property unusable for its current use or the title to such property unmarketable or materially restrict or impair the current use or operation of the business in a manner consistent with the current use, or that would require the removal of any improvements, except for Permitted Encumbrances.

(b) Except as set forth on Schedule 10.10(b): (i) the CDH Owned Real Property is not in material violation of any Environmental Laws; (ii) the CDH Entities have not received any notice within the past three (3) years alleging or asserting either a material violation of any Environmental Law or a legal obligation to investigate, assess, remove, or remediate any part or all of the CDH Owned Real Property under or pursuant to any Environmental Law; (iii) the CDH Entities have not possessed, managed, processed, released, handled or disposed of or discharged Hazardous Substances at, on or from the CDH Owned Real Property (including groundwater), except in material compliance with applicable Environmental Law; (iv) CDH Parent has no Knowledge that any prior owners, operators or occupants of the CDH Owned Real Property have caused or allowed any Hazardous Substances to be discharged, possessed, managed, processed, released, or otherwise handled on the CDH Owned Real Property in violation of any Environmental Law; (v) the CDH Entities are, and for the past three (3) years have been, in material compliance with all applicable Environmental Law; (vi) to the Knowledge of CDH Parent, the CDH Owned Real Property does not contain asbestos containing material in such form or condition for which abatement, repair or removal is required by applicable Environmental Law; and (vii) there are no, nor to the Knowledge of CDH Parent have there ever been any, dumps, pits, or surface impoundments located on the CDH Owned Real Property for the disposal or containment of Hazardous Substances. CDH Parent promptly shall notify Delnor Parent if it obtains Knowledge, prior to the Closing Date, of any lien, written notice, litigation, or threat of litigation relating to any alleged or actual unauthorized release of any Hazardous Substance with respect to any part of the CDH Owned Real Property. Except as set forth on Schedule 10.10(b), to the Knowledge of CDH Parent, none of the CDH Entities has sent, arranged for disposal or treatment, arranged with a transporter for transport for disposal or treatment, transported, or accepted for transport any Hazardous Substances, to a facility, site or location, that, pursuant to CERCLA or any similar state or local law: (i) has been placed or has been publicly proposed by authorities having jurisdiction to be placed, on the National Priorities List or its state equivalent; or (ii) is subject to a claim, administrative order or other demand to take removal or remedial action by any person having jurisdiction and authority in the matter. Except as set forth on Schedule 10.10(b), none of the CDH Entities has received any written requests for information, potentially responsible party letters or general or special notices alleging that any of the CDH Entities is or may be liable under CERCLA. Without in any way limiting the generality of the foregoing, all existing underground storage tanks used by the CDH

Entities to store Hazardous Substances are in compliance in all material respects with applicable Environmental Law.

**10.11 Leased Real Property.** With respect to leases of real property as to which a CDH Entity is the tenant (each a "CDH Lease" and collectively, the "CDH Leases"):

(a) Each CDH Entity has valid and enforceable leasehold interests to the leasehold estate in the leased real property, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity;

(b) Each CDH Lease has been duly authorized and executed by the CDH Entity, and to the Knowledge of CDH Parent, the other parties thereto;

(c) To the Knowledge of CDH Parent, all rents and other amounts payable by the CDH Entity pursuant to the CDH Leases are based upon the fair rental value of the leased premises;

(d) No party is in default under any CDH Lease, nor, to CDH Parent's Knowledge, has any event occurred which, with notice or the passage of time, or both, would give rise to such a default by any party;

(e) There are no pending renegotiations, or outstanding rights to negotiate any amount to be paid or payable to the landlord under any CDH Lease, and, to the Knowledge of CDH Parent, no landlord intends to not renew any CDH Lease on substantially similar terms;

(f) The CDH Entities have not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in any leasehold or subleasehold under any CDH Lease; and

(g) The CDH Entities have used and operated the properties under the CDH Leases in compliance with all Environmental Laws.

**10.12 Title to Assets.** Except as disclosed on Schedule 10.12, apart from the CDH Owned Real Property, each of the CDH Entities has good and defensible title to all of its assets of every kind, character and description, whether personal, tangible or intangible, used in connection with the operation of the businesses of the respective CDH Entities, free and clear of all liens, mortgages, security interests, options, pledges, charges, covenants, conditions, restrictions and other encumbrances and claims of any kind or character whatsoever, other than Permitted Encumbrances.

**10.13 CDH Affiliates and CDH Joint Ventures.**

(a) Exhibit A sets forth an accurate and complete list of all CDH Affiliates.

(b) Exhibit I sets forth an accurate and complete list of all CDH Joint Ventures, together with an accurate description of all of the issued and outstanding membership or other equity interests in the Joint Ventures and the owners thereof.

**10.14 Tax Exempt Status.** The IRS has not taken, or, to the Knowledge of CDH Parent, proposed to take, any action to revoke the tax-exemption of any of the tax-exempt CDH Entities, has not notified any tax-exempt CDH Entity of any inquiry concerning such Entity's tax-exempt status, and has not determined in writing or, to the Knowledge of CDH Parent, proposed to announce, that any of the CDH Entities is a "private foundation" within the meaning of Section 509(a) of the Code. CDH Parent has no Knowledge of any change in the organization or operation of any of the tax-exempt CDH Entities that would result in a loss of a CDH Entity's status as an organization described in Section 501(c)(3) of the Code or that could cause an CDH Entity to be treated as a "private foundation" within the meaning of Section 509(a) of the Code.

**10.15 Insurance.** The CDH Entities maintain insurance policies and programs sufficient to insure them against risks, losses and liabilities which similarly-situated health care companies within the health care industry customarily insure against (the "CDH Coverage"). Except as set forth on Schedule 10.15, the CDH Coverage is in full force and effect and shall remain in full force and effect through the Closing Date. The CDH Entities have not received notice that any CDH Coverage will be cancelled or not renewed.

**10.16 Taxes.** The CDH Entities timely have filed, or timely shall file with the appropriate taxing authority, all returns, declarations, and reports and all information returns and statements required to be filed or sent with respect to all taxes for all periods preceding the Closing Date (collectively, the "CDH Returns"). Except as set forth on Schedule 10.16, as of the time of filing, the CDH Returns correctly reflected, and CDH Returns prepared or being prepared but not yet filed as of the Execution Date, shall correctly reflect, the income, business, assets, operations, activities and status of the CDH Entities and any other information required to be shown therein. Each CDH Entity has timely paid all taxes due and payable and has made provision for timely payment of all taxes that shall be shown as due and payable on the CDH Returns and are required to be filed or sent by it after the Execution Date and relating to any period prior to the Closing Date.

**10.17 Labor and Employment Matters.**

(a) The CDH Entities are, and to the Knowledge of CDH Parent, the CDH Joint Ventures are, in compliance in all material respects with all Applicable Laws respecting employment and employment practices, terms and conditions of employment, nondiscrimination, equal opportunity, immigration, benefits, payment of employment, social security and similar taxes, occupational safety and health, plant closings, wages and hours.

(b) There has not been within the last three (3) years, and there is not presently pending or, to the Knowledge of CDH Parent, threatened, any strike, slowdown, picketing, work stoppage, or employee grievance process, or any proceeding against or affecting the CDH Entities or the CDH Joint Ventures relating to an alleged violation of any Applicable Laws pertaining to labor relations, including any charge, complaint or unfair labor practices claim filed by an employee, union, or other person with the National Labor Relations Board or any governmental authority, organizational activity, or other labor dispute against or affecting the CDH Entities, the CDH Joint Ventures or their operations or assets. With respect to the employees of the CDH Entities and, to the Knowledge of CDH Parent, with respect to the employees of the CDH Joint Ventures, no collective bargaining agreement exists or is currently

being negotiated; no application for certification of a collective bargaining agent is pending; no demand has been made for recognition by a labor organization; and, to the Knowledge of CDH Parent, no union representation question exists, no union organizing activities are taking place, and none of the employees of the CDH Entities or the CDH Joint Ventures are represented by any labor union or organization.

(c) There has been no "mass layoff" or "plant closing" within the meaning of the Worker Adjustment and Retraining Notification Act of 1988, as amended ("WARN Act"), and any similar state or local "mass layoff" or "plant closing" law with respect to the CDH Entities within the six (6) months prior to Closing and there are no employees who had an "employment loss," as such term is defined in the WARN Act or any similar state or local legal requirements within the ninety (90) days preceding the Closing Date.

**10.18 Employee Benefits.** With respect to all "employee welfare benefit plans" (as defined in Section 3(1) of ERISA), "employee pension benefit plans" (as defined in Section 3(2) of ERISA), and all other employee benefit plan agreements and arrangements and employee benefit policies, whether funded or unfunded, qualified or nonqualified, subject to ERISA or not, maintained or contributed to (or required to be contributed to) by CDH Entities for the benefit of any of its officers, employees or other persons (all the foregoing being herein referred to as "CDH Benefit Plans"):

(a) All contributions to, and payments from, the CDH Benefit Plans required to be made in accordance with the terms of the CDH Benefit Plans and Applicable Laws have been timely made. Except for those CDH Benefit Plans disclosed on Schedule 10.18(a), no CDH Benefit Plan is subject to the funding rules of Section 302 of ERISA or Section 412 of the Code.

(b) All CDH Benefit Plans (and all related trust agreements or annuity contracts or any funding instruments) have been administered in accordance with their terms and comply currently, both as to form and operation, with the provisions of applicable tax laws, the Code and Applicable Laws in all material respects. To the extent that any CDH Benefit Plan is a tax qualified retirement plan, it has been maintained and administered in material accordance with its terms and the provisions of applicable tax laws and the Code, where required for the CDH Benefit Plan to be tax qualified under Sections 401(a) and 501(a) of the Code, and all other Applicable Laws. Except as set forth on Schedule 10.18(b), the CDH Benefit Plans that are pension benefit plans have received determination letters or private letter rulings from the IRS to the effect that such CDH Benefit Plans are qualified and exempt from Federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and no such determination letter or private letter ruling has been revoked nor, to the Knowledge of CDH Parent, has revocation been threatened, nor has any such CDH Benefit Plan been amended or experienced any change in facts or circumstances since the date of its most recent determination letter or private letter ruling or application therefor in any respect that would adversely affect its qualification or materially increase its cost.

(c) All reports, returns and similar documents with respect to the CDH Benefit Plans required to be filed with any government agency or distributed to any CDH Benefit Plan participant have been duly and timely filed or distributed. To the Knowledge of CDH

Parent, there are no threatened or pending investigations by any governmental agency, termination proceedings or other claims (except claims for benefits payable in the normal operation of the CDH Benefit Plans), suits or proceedings against or involving any CDH Benefit Plan or asserting any rights or claims to benefits under any CDH Benefit Plan that could reasonably be expected to give rise to any material liability, nor are there any facts that could reasonably be expected to give rise to any material liability in the event of any such investigation, claim, suit or proceeding.

(d) No "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA) has occurred that involves the assets of any CDH Benefit Plan and that could reasonably be expected to subject any of the CDH Entities, or any of their respective employees, or a director, administrator or other fiduciary of any trust created under any CDH Benefit Plan, to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code or the sanctions imposed under Title I of ERISA. No CDH Benefit Plan that has been terminated has or, to the Knowledge of CDH Parent, may cause liability to any of the CDH Entities.

**10.19 Payment Programs.** With respect to all of the private, commercial and governmental payment and procurement programs with which the CDH Entities are participating providers (including, without limitation, Medicare and Medicaid) (the "CDH Payment Programs"), except as set forth on Schedule 10.19:

(a) No CDH Entity is engaged in termination proceedings as to its respective participation in any CDH Payment Program, nor has any CDH Entity received notice that its current participation in any CDH Payment Program is subject to any contest, termination or suspension as a result of alleged violations or any noncompliance with participation requirements;

(b) No CDH Entity has taken or committed to any action, entered into any agreement, contract or undertaking, or taken or omitted to take any other action of any nature whatsoever that was or is in violation of any applicable CDH Payment Program condition of participation, contract, standard, policy, rule, regulation, procedure or other requirement, that individually or in the aggregate would result in a Material Adverse Change in the CDH Entities' business and operations;

(c) All billing and collection practices of each CDH Entity and, to the Knowledge of CDH Parent, of any billing and/or collection agent acting on behalf of any CDH Entity, have been in compliance with all Health Care Laws and the conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements of all CDH Payment Programs, except for noncompliance that would not result in a Material Adverse Change in its business and operations;

(d) All cost reports and cost statements submitted by the CDH Entities to any CDH Payment Program are true, accurate and complete in all material respects and have been prepared and submitted in accordance with cost and accounting principles consistently applied that comply with all applicable CDH Payment Program conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements

(collectively, "**regulations**"), including, without limitation, CDH Payment Program interpretations and guidance, except to the extent that such non-compliance with regulations is not likely to result in a Material Adverse Change;

(e) No CDH Entity has taken any of the following actions, if any such action would result in a Material Adverse Change in its business and operations: submitted to any CDH Payment Program any false, fraudulent, abusive or improper claim for payment, billed any CDH Payment Program for any service not rendered or not rendered as claimed, or received and retained any payment or reimbursement from any CDH Payment Program in excess of the proper amount allowed by Applicable Laws and applicable contracts or agreements with the CDH Payment Programs;

(f) There is no audit, investigation, adverse action, or civil, administrative, or criminal proceeding pending or, to the Knowledge of CDH Parent, threatened relating to participation in any CDH Payment Program by any CDH Entity; and, to the Knowledge of CDH Parent, there is no basis for any such adverse action by the CDH Payment Program against any CDH Entity;

(g) No CDH Payment Program has requested nor, to the Knowledge of CDH Parent, has threatened any recoupment, refund, or set off from any CDH Entity, or imposed any fine, penalty or other sanction on any CDH Entity, which, in any such case, is likely to result in a Material Adverse Change in the CDH Entities; and

(h) The CDH Entities have complied, or will comply, in a timely manner with any notice, approval, application, submission, filing or other requirements of the CDH Payment Programs with respect to the transactions contemplated by this Agreement, including, without limitation, any change of control requirements.

**10.20 Accreditation.** With respect to the CDH Entities' current accreditations by various accreditation organizations, including, without limitation, Joint Commission (collectively, the "**CDH Accreditations**"), except as set forth on Schedule 10.20: (a) all of the CDH Accreditations of the CDH Entities have been duly obtained, are held by the respective CDH Entities, are current and valid, and are in full force and effect; (b) to the Knowledge of CDH Parent, no event has occurred or other fact exists with respect to the CDH Accreditations that allows, or after notice or lapse of time or both would allow, revocation, suspension, restriction, limitation or termination of any of the CDH Accreditations or would result in any other impairment of the rights of the holder of any of the CDH Accreditations that individually or in the aggregate is likely to result in a Material Adverse Change; and (c) no notice or threatened notice from any accreditation organization with respect to the revocation, suspension, restriction, limitation or termination of any CDH Accreditations has been issued, received or, to the Knowledge of CDH Parent, proposed or threatened.

**10.21 Compliance Program.** Except as set forth on Schedule 10.21, within the past three (3) years, no CDH Entity: (a) is or was a party to a Corporate Integrity Agreement with the Office of Inspector General of the United States Department of Health and Human Services; (b) has any reporting obligations pursuant to any settlement agreement entered into with any federal, state or local government entity; (c) has been the subject of any government payer

program investigation conducted by any federal or state enforcement agency; (d) has been a defendant in any unsealed qui tam/False Claims Act litigation; (e) has been served with or received, or been subject to, any search warrant, subpoena, civil investigative demand, contact letter, or, to CDH Parent's Knowledge, telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the health care businesses conducted by the CDH Entities); and (f) has not received any complaints from employees, independent contractors, vendors, physicians, or any other person that resulted or may result in a claim being filed with a federal, state or local government entity alleging that a CDH Entity has violated any law or regulation. For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

**10.22 Exclusion from Health Care Programs.** Each CDH Entity has a program in place to determine whether any of its employees, agents or independent contractors has been: (a) excluded from participating in any Federal Health Care Program (as defined in 42 U.S.C. § 1320a 7b(f)); (b) subject to sanction or been indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Federal Health Care Program requirement or Health Care Law; (c) debarred or suspended from any federal or state procurement or nonprocurement program by any government agency; or (d) designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

**10.23 Medical Staff Matters.** CDH Parent has provided to Delnor Parent true, correct, and complete copies of the bylaws and rules and regulations of the CDH Medical Staff, as well as a list of all current members of the CDH Medical Staff. Except as set forth in Schedule 10.23: (a) there are no pending adverse actions with respect to any medical staff members of Central DuPage Hospital or any applicant thereto for which a medical staff member or applicant has requested an appellate review under the CDH Medical Staff bylaws that has not been scheduled or has been scheduled but has not been completed; (b) there are no pending or, to the Knowledge of CDH Parent, threatened disputes with applicants, staff members, or health professional affiliates, and CDH Parent knows of no basis therefor; and (c) all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Notwithstanding the foregoing provisions of this Section 10.23, CDH Parent shall not be required to disclose any information pursuant to this Section 10.23 where such disclosure is prohibited by state law or where such disclosure would, in CDH Parent's reasonable discretion, potentially jeopardize any applicable privilege that would protect the disclosure of such information to third parties.

**10.24 Experimental Procedures.** The CDH Entities have not performed or permitted the performance of any experimental or research procedures or studies involving their patients not authorized and conducted in accordance with the procedures of the applicable Institutional Review Board.

**10.25 Intellectual Property; Computer Software.** The CDH Entities own (or possesses adequate and enforceable licenses or other rights to use) all Intellectual Property and all computer software programs and similar systems used in the conduct of their businesses.

**10.26 Disclosure; No Material Omissions.**

(a) The representations and warranties of CDH Parent contained in this Agreement (including each exhibit, schedule, certificate or other written statement delivered pursuant to this Agreement) or made in connection with the transactions contemplated or required hereby are accurate, correct and complete and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained therein not misleading.

(b) The CDH Entities have responded (or are continuing to respond as of the date hereof) in all material respects to Delnor Parent's requests for information and documentation as part of Delnor Parent's due diligence review of the business, operations, assets and liabilities of the CDH Entities. CDH Parent has not knowingly omitted any material information relating to the businesses, operations, assets or liabilities of CDH Entities in its responses to Delnor Parent's requests.

**ARTICLE 11**

**REPRESENTATIONS AND WARRANTIES OF DELNOR PARTIES**

Delnor Parent hereby makes to CDH Parent the representations and warranties set forth in this Article 11.

**11.1 Due Organization; Good Standing; Power.**

(a) Each of Delnor Parent, Delnor-Community Hospital, and Delnor Foundation, is an Illinois not-for-profit corporation, exempt from federal income taxation under the Code, as an organization described in Section 501(c)(3) of the Code and is not a "private foundation" within the meaning of Section 509(a) of the Code. Each of the Delnor Affiliates and Delnor Joint Ventures is organized and has the tax status set forth on Schedule 11.1(a).

(b) Except as set forth on Schedule 11.1(b), each of Delnor Entities, and to the Knowledge of Delnor Parent, each of the Delnor Joint Ventures, is duly formed, validly existing and in good standing under the laws of its respective state of formation, and has the corporate power and authority to own, operate or hold under lease its properties and assets and to carry on its business and operations as presently conducted. Each of the Delnor Entities and to the Knowledge of Delnor Parent, each of the Delnor Joint Ventures, has registered with the proper governmental authorities all assumed names under which it operates its businesses and has continuously maintained all such filings in good standing.

**11.2 Corporate Authority.**

(a) Delnor Parent has the full corporate power and authority to enter into and to perform its obligations under the Transaction Documents. The Delnor Entities and, to the

Knowledge of Delnor Parent, the Delnor Joint Ventures have full corporate power and authority to enter into and to perform their respective obligations under any Transaction Documents to which they are parties.

(b) The execution, delivery and performance of the Transaction Documents by Delnor Parent and the Delnor Entities have been duly and properly authorized by all necessary corporate action in accordance with their respective articles of incorporation and bylaws.

(c) Assuming the valid authorization, execution and delivery of the same by the parties to the Transaction Documents other than the Delnor Entities and the Delnor Joint Ventures, the Transaction Documents constitute the valid and legally binding obligation of Delnor Parent and the Delnor Entities and, to the Knowledge of Delnor Parent, the Delnor Joint Ventures, enforceable against them in accordance with their terms, except as enforceability may be limited by: (i) general principles of equity, regardless of whether enforcement is sought in a proceeding in equity or at law; and (ii) bankruptcy, insolvency, reorganization, moratorium or other similar laws of general application now or hereafter in effect relating to or affecting the enforcement of creditors' rights generally.

#### **11.3 No Violation; Approvals.**

(a) Except as set forth in Schedule 11.3(a), the execution, delivery and performance of the Transaction Documents by Delnor Parent and the Delnor Entities and, to the Knowledge of Delnor Parent, the Delnor Joint Ventures, shall not result in the creation of any lien, charge, or encumbrance of any kind or the termination or acceleration of any indebtedness or other obligation of any Delnor Entity (and to the Knowledge of Delnor Parent, any Delnor Joint Venture), and is not prohibited by, does not constitute a material default under or material breach of any Material Contract, indenture, mortgage, material permit or license or approval to which any Delnor Entity (and to the Knowledge of Delnor Parent any Delnor Joint Venture), is a party or is subject or by which it is bound, or any Applicable Laws, except to the extent any of the foregoing is not likely to result in a Material Adverse Change.

(b) Except to the extent specified in Schedule 11.3(b), no approval, authorization, registration, consent, order, filing or other action that has not occurred or been obtained with or from any person, including any court, administrative agency or other governmental authority, is required for the execution and delivery by Delnor Parent and the Delnor Entities, or to the Knowledge of Delnor Parent, any Delnor Joint Venture, of the Transaction Documents or the consummation of the transactions contemplated or required hereby, except for filings required pursuant to the HSR Act and the Illinois Health Facilities Planning Act.

#### **11.4 Financial Statements.**

(a) Delnor Parent has delivered to CDH Parent true and correct copies of (a) its audited financial statements and the audited financial statements of Delnor Community Hospital for the two (2) years ended August 31, 2010 and 2009 (collectively, the "Delnor Audited Financial Statements"); and (b) its unaudited financial statements and the unaudited

financial statements of Delnor Community Hospital for the interim period from August 31, 2010, through the most recent month end date for which financial statements were available prior to the Execution Date (collectively, the "**Delnor Unaudited Financial Statements**" and together with the Delnor Audited Financial Statements, the "**Delnor Financial Statements**").

(b) The Delnor Financial Statements are: (i) true and correct in all material respects and present fairly the financial position of the Delnor Parent and Delnor Community Hospital (and, to the extent consolidated, present fairly the financial position of the other Delnor Entities) and the results of their operations as of the dates and for the periods indicated; and (ii) are in conformity with GAAP, applied consistently for the periods specified, including the consistent use of assumptions, practices, procedures and terminology, except: (A) as otherwise disclosed on Schedule 11.4(b); and (B) that the Delnor Unaudited Financial Statements do not contain footnotes and other year-end adjustments required to comply with GAAP.

(c) Except as set forth in Schedule 11.4(c), from and after the most recent month-end date of the Delnor Unaudited Financial Statements, Delnor Parent has not made any material changes to its accounting methods or practices, including methods or practices used to:

- (i) Establish reserves on any patient, notes and accounts receivable;
- (ii) Establish estimates of any third-party settlements;
- (iii) Determine the value of any other accounts that require subjective determinations; and
- (iv) Establish malpractice, general liability or other self-insurance reserves, including claims incurred but not reported

(d) Except as disclosed on Schedule 11.4(d), Delnor Parent and the Delnor Entities have no non-ordinary course liabilities or obligations of any kind, whether contingent or absolute, direct or indirect, or matured or unmatured, that are not disclosed or reserved on the Delnor Financial Statements.

**11.5 Interim Changes.** Since the most recent month-end date of the Delnor Unaudited Financial Statements, the Delnor Entities have conducted their businesses in the ordinary course and consistent with past practices. Except for matters expressly permitted or authorized by this Agreement and except as set forth on Schedule 11.5, there has not been, after the date of the most recent month-end of the Delnor Unaudited Financial Statements:

- (a) Any Material Adverse Change in the Delnor Entities in the aggregate;
- (b) Any material disposition by the Delnor Entities of any property, rights or other assets owned by or employed in the operation of the Delnor Entities, except for dispositions in the usual and ordinary course of business;
- (c) Any amendment or termination of any Material Contract that has had or could reasonably be expected to result in a Material Adverse Change in the Delnor Entities in the aggregate;

(d) Any material damage, destruction or other casualty loss affecting the tangible assets of the Delnor Entities; or

(e) Any adoption or material amendment of any bonus, profit-sharing, incentive, retention or severance agreement or arrangement, or any Delnor Benefit Plan applicable to officers, directors or employees of the Delnor Entities (collectively, "**Delnor Compensation Relationships**"), other than: (i) amendments required by Applicable Laws; and (ii) new Delnor Compensation Relationships or amendments of existing Delnor Compensation Relationships designed to retain key employees and which have been disclosed to CDH Parent.

**11.6 Material Contracts.** No Delnor Entity is in breach or default under any term or provision of any Material Contract to which it is a party or by which it is bound, nor, to Delnor Parent's Knowledge, is any other party thereto in breach or default thereunder. All Material Contracts to which a Delnor Entity is a party or by which it is bound are in full force and effect and are valid and enforceable obligations of the Delnor Entities which are parties thereto. Except as set forth on Schedule 11.6, no contract to which a Delnor Entity is a party or by which it is bound requires the consent of, or notice to, a third party in order for the Delnor Entities to enter into or to consummate the transactions contemplated by the Transaction Documents or in order to avoid a Material Adverse Change.

**11.7 Legal Proceedings.** Except as disclosed on Schedule 11.7, none of the Delnor Entities is a defendant in, or, to the Knowledge of Delnor Parent, has been threatened with any action, suit, proceeding, complaint, charge, hearing or arbitration that could reasonably be expected to, if resolved adversely to such person, result in a Material Adverse Change in the Delnor Entities in the aggregate or adversely affect ability of the Delnor Entities to perform their respective obligations under the Transaction Documents. Except as disclosed on Schedule 11.7, none of the Delnor Entities has received notice of any investigation or threatened investigation by any Federal, state or local governmental or regulatory agency, including those involving its business practices and policies, that could result in a Material Adverse Change in the Delnor Entities in the aggregate.

**11.8 Licenses and Permits.**

(a) Each of the Delnor Entities (and to the Knowledge of Delnor Parent, each of the Delnor Joint Ventures) holds and is in compliance with all governmental licenses, permits, certificates, consents and approvals, noncompliance with which could result in a Material Adverse Change in its business and operations (the "**Delnor Licenses and Permits**"). The Delnor Licenses and Permits held by the Delnor Entities are current, unrestricted and valid, and to Delnor Parent's Knowledge, the Delnor Licenses and Permits held by the Delnor Joint Ventures are current, unrestricted and valid.

(b) Except as set forth on Schedule 11.8(b), no Application has been made by a Delnor Entity, and to the Knowledge of Delnor Parent, by a Delnor Joint Venture, with the IHFSRB which is currently pending or open. Except as set forth on Schedule 11.8(b), neither a Delnor Entity, nor to the Knowledge of Delnor Parent, a Delnor Joint Venture, has any approved Applications which relate to projects not yet completed. The Delnor Entities and, to the Knowledge of Delnor Parent, the Delnor Joint Ventures have properly filed all required

Applications (all of which are complete and correct in all material respects) with respect to any and all material improvements, projects, changes in services, zoning requirements, construction and equipment purchases, and other changes for which approval is required under Applicable Laws.

#### **11.9 Compliance with Law.**

(a) Except as set forth on Schedule 11.9, each of the Delnor Entities is in material compliance with, and to the Knowledge of Delnor Parent, each of the Delnor Joint Ventures is in material compliance with, all Applicable Laws, including, without limitation, all Health Care Laws.

(b) Except as set forth on Schedule 11.9, no Delnor Entity has, nor to the Knowledge of Delnor Parent has any Delnor Joint Venture:

(i) knowingly or willfully offered, paid, solicited or received any remuneration (including any kickback, bribe or rebate, but excluding any legally permissible copayment or other payment), directly or indirectly, overtly or covertly, in cash or in kind: (A) in return for referring an individual to a person for the furnishing, or arranging for the furnishing, of any item or service for which payment may be made in whole or in part by Medicare, Medicaid, or a state healthcare program; or (B) in return for purchasing, leasing, ordering or arranging for or recommending purchasing, leasing or ordering any good, facility, service or item for which payment may be made in whole or in part by Medicare, Medicaid or a state healthcare program;

(ii) knowingly or willfully made a payment, directly or indirectly, to a physician as an inducement to reduce or limit necessary services to individuals who are under the direct care of the physician and who are entitled to benefits under Medicare, Medicaid or a state healthcare program, in a manner that would violate Applicable Laws;

(iii) knowingly or willfully made or caused to be made or induced or sought to induce the making of any false statement or representation (or omitted to state a material fact) required to be stated therein (or necessary to make the statement contained therein not misleading) of a material fact with respect to: (i) the conditions or operations of a Delnor Entity or Delnor Joint Venture in order that such entity would qualify for Medicare, Medicaid, or a state healthcare program certification; or (ii) information required to be provided under Section 1124A of the Social Security Act (42 U.S.C. Section 1320a-3a); or

(iv) knowingly or willfully: (i) charged for any Medicaid service money or other consideration at a rate in excess of the rates established by Applicable Laws; or (ii) charged, solicited, accepted or received, in addition to amounts paid by Medicaid, any gift money, donation or other consideration (other than a charitable, religious, or other philanthropic contribution from an organization or from a person unrelated to the patient) (A) as a precondition of admitting the patient; or (B) as a requirement for the patient's continued stay in a facility operated by the Delnor Entities or Delnor Joint Ventures in a manner that violates Applicable Laws.

### **11.10 Owned Real Property.**

(a) Except as set forth on Schedule 11.10(a), one or more of the Delnor Entities is the sole and exclusive owner of all right, title and interest in and has good and marketable fee simple title to the real property owned by such Delnor Entity (collectively, the "Delnor Owned Real Property") free and clear of all liens, mortgages, security interests, options, pledges, charges, covenants, conditions, restrictions and other encumbrances and claims of any kind or character whatsoever, other than Permitted Encumbrances. There are no outstanding options, rights of first refusal or rights of first offer to purchase any Delnor Owned Real Property or any portion thereof or interest therein. Except as described on Schedule 11.10(a), with respect to the Delnor Owned Real Property:

(i) No Delnor Entity has received during the past three (3) years notice of a violation of any Applicable Laws with respect to the Delnor Owned Real Property, and no Delnor Entity has received notice of condemnation, lien, assessment or the like relating to any part of the Delnor Owned Real Property or the operation thereof;

(ii) Except for the Delnor Entities, there are no tenants or other persons or entities occupying any space in the Delnor Owned Real Property, or claiming any possession, adverse or not, to any portion of the Delnor Owned Real Property, other than pursuant to tenant leases which: (A) are in writing and are fully executed by the parties thereto; (B) are upon terms that are commercially reasonable and fair from a financial perspective; (C) are consistent with Applicable Laws; (D) are not in default; (E) have not expired; and (F) have been entered into by a Delnor Entity (or in the case of a sublease, a tenant of a Delnor Entity, pursuant to a sublease approved by a Delnor Entity);

(iii) Each parcel of Delnor Owned Real Property is either: (i) exempt from real property or ad valorem taxation pursuant to Section 15-65 of the Property Tax Code (35 ILCS 200/15-65); or (ii) separately assessed for real estate tax purposes and is not combined with any land or real estate that is not a part of the Delnor Owned Real Property for real estate tax assessment purposes.

(iv) None of the Delnor Entities have received notice that the status of any Delnor Owned Real Property will change from exempt to taxable;

(v) All permanent certificates of occupancy and all other licenses, permits, authorizations, consents, certificates and approvals required by all governmental authorities having jurisdiction and the requisite certificates of the local board of fire underwriters (or other body exercising similar functions), which, if not obtained, would result in a Material Adverse Change in any Delnor Entity, have been issued for the Delnor Owned Real Property, have been paid for, are in full force and effect, and, to the Knowledge of Delnor Parent, will not be invalidated, violated or otherwise adversely affected by the transactions contemplated by the Transaction Documents;

(vi) No Delnor Entity has received any notice of any existing, proposed or contemplated plans to modify or realign any street or highway or any existing, proposed or contemplated eminent domain proceeding that would result in the taking of all or

any part of the Delnor Owned Real Property or that would materially and adversely affect the current use of any part of the Delnor Owned Real Property;

(vii) Upon consummation of the transactions contemplated by this Agreement, the current owners of the Delnor Owned Real Property will be entitled to continue to use any Delnor Owned Real Property that is currently employed by the Delnor Entities in the conduct of their operations as currently conducted; and

(viii) The Delnor Owned Real Property is subject to no easements, conditions, restrictions, ordinances, or other limitations that would make such property unusable for its current use or the title to such property unmarketable or materially restrict or impair the current use or operation of the business in a manner consistent with the current use, or that would require the removal of any improvements, except for Permitted Encumbrances.

(b) Except as set forth on Schedule 11.10(b): (i) the Delnor Owned Real Property is not in material violation of any Environmental Laws; (ii) the Delnor Entities have not received any notice within the past three (3) years alleging or asserting either a material violation of any Environmental Law or a legal obligation to investigate, assess, remove, or remediate any part or all of the Delnor Owned Real Property under or pursuant to any Environmental Law; (iii) the Delnor Entities have not possessed, managed, processed, released, handled or disposed of or discharged Hazardous Substances at, on or from the Delnor Owned Real Property (including groundwater), except in material compliance with applicable Environmental Law; (iv) Delnor Parent has no Knowledge that any prior owners, operators or occupants of the Delnor Owned Real Property have caused or allowed any Hazardous Substances to be discharged, possessed, managed, processed, released, or otherwise handled on the Delnor Owned Real Property in violation of any Environmental Law; (v) the Delnor Entities are, and for the past three (3) years have been, in material compliance with all applicable Environmental Law; (vi) to the Knowledge of Delnor Parent, the Delnor Owned Real Property does not contain asbestos containing material in such form or condition for which abatement, repair or removal is required by applicable Environmental Law; and (vii) there are no, nor to the Knowledge of Delnor Parent have there ever been any, dumps, pits, or surface impoundments located on the Delnor Owned Real Property for the disposal or containment of Hazardous Substances. Delnor Parent promptly shall notify CDH Parent if it obtains Knowledge, prior to the Closing Date, of any lien, written notice, litigation, or threat of litigation relating to any alleged or actual unauthorized release of any Hazardous Substance with respect to any part of the Delnor Owned Real Property. Except as set forth on Schedule 11.10(b), to the Knowledge of Delnor Parent, none of the Delnor Entities has sent, arranged for disposal or treatment, arranged with a transporter for transport for disposal or treatment, transported, or accepted for transport any Hazardous Substances, to a facility, site or location, that, pursuant to CERCLA or any similar state or local law: (i) has been placed or has been publicly proposed by authorities having jurisdiction to be placed, on the National Priorities List or its state equivalent; or (ii) is subject to a claim, administrative order or other demand to take removal or remedial action by any person having jurisdiction and authority in the matter. Except as set forth on Schedule 11.10(b), none of the Delnor Entities has received any written requests for information, potentially responsible party letters or general or special notices alleging that any of the Delnor Entities is or may be liable under CERCLA. Without in any way limiting the generality of the foregoing, all existing underground storage tanks used by

the Delnor Entities to store Hazardous Substances are in compliance in all material respects with applicable Environmental Law.

**11.11 Leased Real Property.** With respect to leases of real property as to which a Delnor Entity is the tenant (each a "Delnor Lease" and collectively, the "Delnor Leases"):

(a) Each Delnor Entity has valid and enforceable leasehold interests to the leasehold estate in the leased real property, subject to applicable bankruptcy, insolvency, moratorium or other similar laws relating to creditors' rights and general principles of equity;

(b) Each Delnor Lease has been duly authorized and executed by the Delnor Entity, and to the Knowledge of Delnor Parent, the other parties thereto;

(c) To the Knowledge of Delnor Parent, all rents and other amounts payable by the Delnor Entity pursuant to the Delnor Leases are based upon the fair rental value of the leased premises;

(d) No party is in default under any Delnor Lease, nor, to Delnor Parent's Knowledge, has any event occurred which, with notice or the passage of time, or both, would give rise to such a default by any party;

(e) There are no pending renegotiations or outstanding rights to negotiate any amount to be paid or payable to the landlord under any Delnor Lease, and, to the Knowledge of Delnor Parent, no landlord intends to not renew any Delnor Lease on substantially similar terms;

(f) The Delnor Entities have not assigned, transferred, conveyed, mortgaged, deeded in trust, or encumbered any interest in any leasehold or subleasehold under any Delnor Lease; and

(g) The Delnor Entities have used and operated the properties under the Delnor Leases in compliance with all Environmental Laws.

**11.12 Title to Assets.** Except as disclosed on Schedule 11.12, apart from the Delnor Owned Real Property, each of the Delnor Entities has good and defensible title to all of its assets of every kind, character and description, whether personal, tangible or intangible, used in connection with the operation of the businesses of the respective Delnor Entities, free and clear of all liens, mortgages, security interests, options, pledges, charges, covenants, conditions, restrictions and other encumbrances and claims of any kind or character whatsoever, other than Permitted Encumbrances.

**11.13 Delnor Affiliates and Delnor Joint Ventures.**

(a) Exhibit B sets forth an accurate and complete list of all Delnor Affiliates.

(b) Exhibit J sets forth an accurate and complete list of all Delnor Joint Ventures, together with an accurate description of all of the issued and outstanding membership or other equity interests in the Joint Ventures and the owners thereof.

**11.14 Tax Exempt Status.** The IRS has not taken, or, to the Knowledge of Delnor Parent, proposed to take, any action to revoke the tax-exemption of any of the tax-exempt Delnor Entities, has not notified any tax-exempt Delnor Entity of any inquiry concerning such Entity's tax-exempt status, and has not determined in writing or, to the Knowledge of Delnor Parent, proposed to announce, that any of the Delnor Entities is a "private foundation" within the meaning of Section 509(a) of the Code. Delnor Parent has no Knowledge of any change in the organization or operation of any of the tax-exempt Delnor Entities that would result in a loss of a Delnor Entity's status as an organization described in Section 501(c)(3) of the Code or that could cause an Delnor Entity to be treated as a "private foundation" within the meaning of Section 509(a) of the Code.

**11.15 Insurance.** The Delnor Entities maintain insurance policies and programs sufficient to insure them against risks, losses and liabilities which similarly-situated health care companies within the health care industry customarily insure against (the "Delnor Coverage"). Except as set forth on Schedule 11.15, the Delnor Coverage is in full force and effect and shall remain in full force and effect through the Closing Date. The Delnor Entities have not received notice that any Delnor Coverage will be cancelled or not renewed.

**11.16 Taxes.** The Delnor Entities timely have filed, or timely shall file with the appropriate taxing authority, all returns, declarations, and reports and all information returns and statements required to be filed or sent with respect to all taxes for all periods preceding the Closing Date (collectively, the "Delnor Returns"). Except as set forth on Schedule 11.16, as of the time of filing, the Delnor Returns correctly reflected, and Delnor Returns prepared or being prepared but not yet filed as of the Execution Date, shall correctly reflect, the income, business, assets, operations, activities and status of the Delnor Entities and any other information required to be shown therein. Each Delnor Entity has timely paid all taxes due and payable and has made provision for timely payment of all taxes that shall be shown as due and payable on the Delnor Returns and are required to be filed or sent by it after the Execution Date and relating to any period prior to the Closing Date.

**11.17 Labor and Employment Matters.**

(a) The Delnor Entities are, and to the Knowledge of Delnor Parent, the Delnor Joint Ventures are, in compliance in all material respects with all Applicable Laws respecting employment and employment practices, terms and conditions of employment, nondiscrimination, equal opportunity, immigration, benefits, payment of employment, social security, and similar taxes, occupational safety and health, plant closings, wages and hours.

(b) There has not been within the last three (3) years, and there is not presently pending or, to the Knowledge of Delnor Parent, threatened, any strike, slowdown, picketing, work stoppage, or employee grievance process, or any proceeding against or affecting the Delnor Entities or the Delnor Joint Ventures relating to an alleged violation of any Applicable Laws pertaining to labor relations, including any charge, complaint or unfair labor

practices claim filed by an employee, union, or other person with the National Labor Relations Board or any governmental authority, organizational activity, or other labor dispute against or affecting the Delnor Entities, the Delnor Joint Ventures or their operations or assets. With respect to the employees of the Delnor Entities and, to the Knowledge of Delnor Parent, with respect to the employees of the Delnor Joint Ventures, no collective bargaining agreement exists or is currently being negotiated; no application for certification of a collective bargaining agent is pending; no demand has been made for recognition by a labor organization; and, to the Knowledge of Delnor Parent, no union representation question exists, no union organizing activities are taking place, and none of the employees of the Delnor Entities or the Delnor Joint Ventures are represented by any labor union or organization.

(c) There has been no "mass layoff" or "plant closing" within the meaning of the WARN Act, and any similar state or local "mass layoff" or "plant closing" law with respect to the Delnor Entities within the six (6) months prior to Closing and there are no employees who had an "employment loss," as such term is defined in WARN or any similar state or local legal requirements within the ninety (90) days preceding the Closing Date.

**11.18 Employee Benefits.** With respect to all "employee welfare benefit plans" (as defined in Section 3(1) of ERISA), "employee pension benefit plans" (as defined in Section 3(2) of ERISA), and all other employee benefit plan agreements and arrangements and employee benefit policies, whether funded or unfunded, qualified or nonqualified, subject to ERISA or not, maintained or contributed to (or required to be contributed to) by Delnor Entities for the benefit of any of its officers, employees or other persons (all the foregoing being herein referred to as "Delnor Benefit Plans")

(a) All contributions to, and payments from, the Delnor Benefit Plans required to be made in accordance with the terms of the Delnor Benefit Plans and Applicable Laws have been timely made. Except for those Delnor Benefit Plans disclosed on Schedule 11.18(a), no Delnor Benefit Plan is subject to the funding rules of Section 302 of ERISA or Section 412 of the Code.

(b) All Delnor Benefit Plans (and all related trust agreements or annuity contracts or any funding instruments) have been administered in accordance with their terms and comply currently both as to form and operation, with the provisions of applicable tax laws, the Code and Applicable Laws in all material respects. To the extent that any Delnor Benefit Plan is a tax qualified retirement plan, it has been maintained and administered in material accordance with its terms and the provisions of applicable tax laws and the Code, where required for the Delnor Benefit Plan to be tax qualified under Sections 401(a) and 501(a) of the Code, and all other Applicable Laws. Except as set forth on Schedule 11.18(b), the Delnor Benefit Plans that are pension benefit plans have received determination letters or private letter rulings from the IRS to the effect that such Delnor Benefit Plans are qualified and exempt from Federal income taxes under Sections 401(a) and 501(a), respectively, of the Code, and no such determination letter or private letter ruling has been revoked nor, to the Knowledge of Delnor Parent, has revocation been threatened, nor has any such Delnor Benefit Plan been amended or experienced any change in facts or circumstances since the date of its most recent determination letter or private letter ruling or application therefor in any respect that would adversely affect its qualification or materially increase its cost.

(c) All reports, returns and similar documents with respect to the Delnor Benefit Plans required to be filed with any government agency or distributed to any Delnor Benefit Plan participant have been duly and timely filed or distributed. To the Knowledge of Delnor Parent, there are no threatened or pending investigations by any governmental agency, termination proceedings or other claims (except claims for benefits payable in the normal operation of the Delnor Benefit Plans), suits or proceedings against or involving any Delnor Benefit Plan or asserting any rights or claims to benefits under any Delnor Benefit Plan that could reasonably be expected to give rise to any material liability, nor are there any facts that could reasonably be expected to give rise to any material liability in the event of any such investigation, claim, suit or proceeding.

(d) No "prohibited transaction" (as defined in Section 4975 of the Code or Section 406 of ERISA) has occurred that involves the assets of any Delnor Benefit Plan and that could reasonably be expected to subject any of the Delnor Entities, or any of their respective employees, or a director, administrator or other fiduciary of any trust created under any Delnor Benefit Plan, to the tax or penalty on prohibited transactions imposed by Section 4975 of the Code or the sanctions imposed under Title I of ERISA. No Delnor Benefit Plan that has been terminated has or, to the Knowledge of Delnor Parent, may cause liability to any of the Delnor Entities.

**11.19 Payment Programs.** With respect to all of the private, commercial and governmental payment and procurement programs with which the Delnor Entities are participating providers (including, without limitation, Medicare and Medicaid) (the "**Delnor Payment Programs**"), except as set forth on Schedule 11.19:

(a) No Delnor Entity is engaged in termination proceedings as to its respective participation in any Delnor Payment Program, nor has any Delnor Entity received notice that its current participation in any Delnor Payment Program is subject to any contest, termination or suspension as a result of alleged violations or any noncompliance with participation requirements;

(b) No Delnor Entity has taken or committed to any action, entered into any agreement, contract or undertaking, or taken or omitted to take any other action of any nature whatsoever that was or is in violation of any applicable Delnor Payment Program condition of participation, contract, standard, policy, rule, regulation, procedure or other requirement, that individually or in the aggregate would result in a Material Adverse Change in the Delnor Entities' business and operations;

(c) All billing and collection practices of each Delnor Entity and, to the Knowledge of Delnor Parent, of any billing and/or collection agent acting on behalf of any Delnor Entity, have been in compliance with all Health Care Laws and the conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements of all Delnor Payment Programs, except for noncompliance that would not result in a Material Adverse Change in its business and operations;

(d) All cost reports and cost statements submitted by the Delnor Entities to any Delnor Payment Program are true, accurate and complete in all material respects and have

been prepared and submitted in accordance with cost and accounting principles consistently applied that comply with all applicable Delnor Payment Program conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements (collectively, "**regulations**"), including, without limitation, Delnor Payment Program interpretations and guidance, except to the extent that such non-compliance with regulations is not likely to result in a Material Adverse Change;

(e) No Delnor Entity has taken any of the following actions, if any such action would result in a Material Adverse Change in its business and operations: submitted to any Delnor Payment Program any false, fraudulent, abusive or improper claim for payment, billed any Delnor Payment Program for any service not rendered or not rendered as claimed, or received and retained any payment or reimbursement from any Delnor Payment Program in excess of the proper amount allowed by Applicable Laws and applicable contracts or agreements with the Delnor Payment Programs;

(f) There is no audit, investigation, adverse action, or civil, administrative, or criminal proceeding pending or, to the Knowledge of Delnor Parent, threatened relating to participation in any Delnor Payment Program by any Delnor Entity; and, to the Knowledge of Delnor Parent, there is no basis for any such adverse action by the Delnor Payment Program against any Delnor Entity;

(g) No Delnor Payment Program has requested nor, to the Knowledge of Delnor Parent, has threatened any recoupment, refund, or set off from any Delnor Entity, or imposed any fine, penalty or other sanction on any Delnor Entity which, in any such case, is likely to result in a Material Adverse Change in the Delnor Entities; and

(h) The Delnor Entities have complied, or will comply, in a timely manner with any notice, approval, application, submission, filing or other requirements of the Delnor Payment Programs with respect to the transactions contemplated by this Agreement, including, without limitation, any change of control requirements.

**11.20 Accreditation.** With respect to the Delnor Entities' current accreditations by various accreditation organizations, including, without limitation, Joint Commission (collectively, the "**Delnor Accreditations**"), except as set forth on Schedule 11.20: (a) all of the Delnor Accreditations of the Delnor Entities have been duly obtained, are held by the respective Delnor Entities, are current and valid, and are in full force and effect; (b) to the Knowledge of Delnor Parent, no event has occurred or other fact exists with respect to the Delnor Accreditations that allows, or after notice or lapse of time or both would allow, revocation, suspension, restriction, limitation or termination of any of the Delnor Accreditations or would result in any other impairment of the rights of the holder of any of the Delnor Accreditations that individually or in the aggregate is likely to result in a Material Adverse Change; and (c) no notice or threatened notice from any accreditation organization with respect to the revocation, suspension, restriction, limitation or termination of any Delnor Accreditations has been issued, received or, to the Knowledge of Delnor Parent, proposed or threatened.

**11.21 Compliance Program.** Except as set forth on Schedule 11.21, within the past three (3) years, no Delnor Entity: (a) is or was a party to a Corporate Integrity Agreement with

the Office of Inspector General of the United States Department of Health and Human Services; (b) has any reporting obligations pursuant to any settlement agreement entered into with any federal, state or local government entity; (c) has been the subject of any government payer program investigation conducted by any federal or state enforcement agency; (d) has been a defendant in any unsealed qui tam/False Claims Act litigation; (e) has been served with or received, or been subject to, any search warrant, subpoena, civil investigative demand, contact letter, or, to Delnor Parent's Knowledge, telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the health care businesses conducted by the Delnor Entities); and (f) has not received any complaints from employees, independent contractors, vendors, physicians, or any other person that resulted or may result in a claim being filed with a federal, state or local government entity alleging that a Delnor Entity has violated any law or regulation. For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

**11.22 Exclusion from Health Care Programs.** Each Delnor Entity has a program in place to determine whether any of its employees, agents or independent contractors has been: (a) excluded from participating in any Federal Health Care Program (as defined in 42 U.S.C. § 1320a 7b(f)); (b) subject to sanction or been indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Federal Health Care Program requirement or Health Care Law; (c) debarred or suspended from any federal or state procurement or nonprocurement program by any government agency; or (d) designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

**11.23 Medical Staff Matters.** Delnor Parent has provided to CDH Parent true, correct, and complete copies of the bylaws and rules and regulations of the Delnor Medical Staff, as well as a list of all current members of the Delnor Medical Staff. Except as set forth in Schedule 11.23: (a) there are no pending adverse actions with respect to any medical staff members of Delnor Community Hospital or any applicant thereto for which a medical staff member or applicant has requested an appellate review under the Delnor Medical Staff bylaws that has not been scheduled or has been scheduled but has not been completed; (b) there are no pending or, to the Knowledge of Delnor Parent, threatened disputes with applicants, staff members, or health professional affiliates, and Delnor Parent knows of no basis therefor; and (c) all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Notwithstanding the foregoing provisions of this Section 11.23, Delnor Parent shall not be required to disclose any information pursuant to this Section 11.23 where such disclosure is prohibited by state law or where such disclosure would, in Delnor Parent's reasonable discretion, potentially jeopardize any applicable privilege that would protect the disclosure of such information to third parties.

**11.24 Experimental Procedures.** The Delnor Entities have not performed or permitted the performance of any experimental or research procedures or studies involving their patients not authorized and conducted in accordance with the procedures of the applicable Institutional Review Board.

**11.25 Intellectual Property; Computer Software.** The Delnor Entities own (or possesses adequate and enforceable licenses or other rights to use) all Intellectual Property and all computer software programs and similar systems used in the conduct of their businesses.

**11.26 Disclosure; No Material Omissions.**

(a) The representations and warranties of Delnor Parent contained in this Agreement (including each exhibit, schedule, certificate or other written statement delivered pursuant to this Agreement) or made in connection with the transactions contemplated or required hereby are accurate, correct and complete and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained therein not misleading.

(b) The Delnor Entities have responded (or are continuing to respond as of the date hereof) in all material respects to CDH Parent's requests for information and documentation as part of CDH Parent's due diligence review of the business, operations, assets and liabilities of the Delnor Entities. Delnor Parent has not knowingly omitted any material information relating to the businesses, operations, assets or liabilities of Delnor Entities in its responses to CDH Parent's requests.

## ARTICLE 12

### PRE CLOSING COVENANTS

**12.1 Pre-Closing Covenants of the CDH Entities.** CDH Parent hereby agrees to keep, perform and fully discharge, and to cause the other CDH Entities to keep, perform and fully discharge, the following covenants and agreements from the Execution Date until the Closing Date (or thereafter, as specifically noted below):

(a) **Interim Conduct of Business.** CDH Parent shall provide Delnor Parent promptly with monthly unaudited financial statements of CDH Parent and Central DuPage Hospital for the immediately preceding month. CDH Parent shall not, without providing to Delnor Parent prior written notification, (A) make any changes, or permit any changes to be made, in the governing documents of any CDH Entity, except for changes expressly authorized by this Agreement; (B) enter into any transaction which could result in a Material Adverse Change to the business of any CDH Entity; or (C) cease to operate the CDH Parent or the CDH Entities as going concerns generally consistent with prior practices in the ordinary course of business.

(b) **Preserve Accuracy of Representations and Warranties.** Unless permitted by the terms of this Agreement, CDH Parent shall not take, or allow to be taken by any other CDH Entity, any action that would render any representation or warranty contained in Article 10 materially inaccurate or untrue. Upon gaining actual Knowledge, CDH Parent shall promptly notify Delnor Parent of any lawsuits, claims, administrative actions or other proceedings credibly asserted or actually commenced against any CDH Entities, or any of their respective officers, directors or members which could result in a Material Adverse Change to the business of any CDH Entity. CDH Parent shall promptly notify Delnor Parent in writing of any

facts or circumstances that come to its attention after the Execution Date and that cause, or through the passage of time might cause, any of the representations and warranties contained in Article 10 to be materially untrue or misleading.

(c) **Access to Information.** To the extent permitted by Applicable Law, CDH Parent shall give to Delnor Parent and/or to its representatives full and free access, during normal business hours, to all properties, books, records and contracts pertaining to the businesses, properties and assets of CDH Parent, Central DuPage Hospital, and the other CDH Entities, as may be reasonably requested with reasonable prior notice.

(d) **Maintenance of Books and Accounting Practices.** CDH Parent shall (i) maintain the books of account and records of CDH Parent and cause the books and records of account of each other CDH Entity to be maintained in the usual, regular and ordinary manner in accordance with generally accepted accounting principles consistently applied and on a basis consistent with prior years; and (ii) make no material changes in its accounting methods or practices or cause any CDH Entity to make any material change in its accounting methods or practices.

(e) **Compliance with Applicable Laws.** CDH Parent shall: (i) comply, and cause each other CDH Entity to comply, in all material respects with all Applicable Laws; and (ii) keep, hold and maintain all certificates, accreditations, licenses and other permits necessary for the conduct and operation of the business of each CDH Entity.

(f) **No Conflicting Transactions.** CDH Parent shall ensure that none of the CDH Entities, without the prior written consent of Delnor Parent, shall: (i) merge, consolidate or enter into a member substitution or joint operating agreement with any other entity, business or person for the operation of a hospital; (ii) sell, lease or acquire substantially all of the assets of a hospital; (iii) enter into any other change of control or other transaction involving substantially all of the operations of a hospital; and (iv) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to any of the foregoing.

(g) **Third Party Authorizations.** CDH Parent shall use commercially reasonable efforts and cooperate fully with Delnor Parent to obtain all consents, approvals, exemptions and authorizations of third parties, whether governmental or private, make all filings, and give all notices which may be necessary or desirable on the part of each CDH Entity in order to consummate the transactions contemplated or required by the Transaction Documents.

(h) **Confidentiality.** CDH Parent shall, and shall cause the other CDH Entities and their respective agents, servants, employees and all other persons who will be allowed access to the Delnor Confidential Information (the "CDH Representatives") to hold in confidence all Delnor Confidential Information, and shall not divulge to third parties or use in a manner detrimental to the Delnor Entities such Delnor Confidential Information. For purposes of this Agreement, "Delnor Confidential Information" means all tangible and intangible information related in any way to the Transaction (including but not limited to the existence of the Transaction and this Agreement, the terms or potential terms thereof, and the documents and

instruments related thereto) and any Delnor Entity's business and operations, now or hereafter furnished or made available by a Delnor Entity in connection the evaluation of the Transaction, including but not limited to analyses, business or strategic plans, compilations, draft agreements, financial statements, proposals, studies, patient revenue, gross charges, payor mix, market data, employment or compensation models or other information relating to the business of a Delnor Entity. Delnor Confidential Information shall not include information that is generally available to the public prior to its disclosure to a CDH Entity, was available to a CDH Entity on a non-confidential basis prior to the disclosure, or was lawfully obtained from a third party who was not under an obligation to maintain the confidentiality of such information. CDH Parent shall, and shall cause the other CDH Entities and the CDH Representatives to: (i) keep, strictly confidential the Delnor Confidential Information; (ii) use the Delnor Confidential Information solely in connection with the Transaction and for no other purpose; (iii) reveal the Delnor Confidential Information only to those of its Representatives who need to know the Delnor Confidential Information for the purposes set forth above, have been informed of the confidential nature of the Delnor Confidential Information, and have agreed to maintain the confidentiality of the Delnor Confidential Information. If a CDH Entity or a CDH Representative is requested or required (by oral questions, written interrogatories, requests for information or documents, subpoena, civil investigatory demands or similar process) to disclose any of the Delnor Confidential Information, CDH Parent shall provide Delnor Parent with prompt notice of such request or requirement so that Delnor Parent may seek an appropriate protective order or selectively waive compliance with the provisions of this Agreement. Further, if in the absence of a protective order or receipt of a waiver hereunder, a CDH Entity or a CDH Representative is nonetheless, in the opinion of its counsel, compelled to disclose any of the Delnor Confidential Information to any tribunal or agency, or else stand liable for contempt or suffer other censure or penalty, the CDH Entity or CDH Representative may disclose the minimum amount of Delnor Confidential Information that is necessary to prevent it from being held liable for contempt of court or similar censure or penalty. In such event, CDH Parent shall have no liability hereunder for the disclosure of such Delnor Confidential Information unless such disclosure was caused by or resulted from a previous disclosure by it or by the CDH Representatives in breach of this Agreement. CDH Parent shall return or destroy all documents, notes, memoranda, other materials containing the Delnor Confidential Information and all copies to Delnor Parent upon termination of the Agreement.

**(f) Performance of Undertakings.**

(i) CDH Parent shall perform faithfully at all times any and all covenants, undertakings, stipulations and provisions applicable to it contained in this Agreement and in any and every document executed, authenticated and delivered hereunder.

(ii) CDH Parent shall use reasonable commercial efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with its obligations hereunder or which could hinder or delay the consummation of the transactions contemplated or required hereby.

**12.2 Pre-Closing Covenants of the Delnor Entities.** Delnor Parent hereby agrees to keep, perform and fully discharge, and to cause the other Delnor Entities to keep,

perform and fully discharge, the following covenants and agreements from the Execution Date until the Closing Date (or thereafter, as specifically noted below):

(a) **Interim Conduct of Business.** Delnor Parent shall provide CDH Parent promptly with monthly unaudited financial statements of Delnor Parent and Delnor Community Hospital for the immediately preceding month. Delnor Parent shall not, without providing to CDH Parent prior written notification, (A) make any changes, or permit any changes to be made, in the governing documents of any Delnor Entity, except for changes expressly authorized by this Agreement; (B) enter into any transaction which could result in a Material Adverse Change to the business of any Delnor Entity; or (C) cease to operate the Delnor Parent or the Delnor Entities as going concerns generally consistent with prior practices in the ordinary course of business.

(b) **Preserve Accuracy of Representations and Warranties.** Unless permitted by the terms of this Agreement, Delnor Parent shall not take, or allow to be taken by any other Delnor Entity, any action that would render any representation or warranty contained in Article 11 materially inaccurate or untrue. Upon gaining actual Knowledge, Delnor Parent shall promptly notify CDH Parent of any lawsuits, claims, administrative actions or other proceedings credibly asserted or actually commenced against any Delnor Entities, or any of their respective officers, directors or members which could result in a Material Adverse Change to the business of any Delnor Entity. Delnor Parent shall promptly notify CDH Parent in writing of any facts or circumstances that come to its attention after the Execution Date and that cause, or through the passage of time might cause, any of the representations and warranties contained in Article 11 to be materially untrue or misleading.

(c) **Access to Information.** To the extent permitted by Applicable Law, Delnor Parent shall give to CDH Parent and/or to its representatives full and free access, during normal business hours, to all properties, books, records and contracts pertaining to the businesses, properties and assets of Delnor Parent, Delnor-Community Hospital and the other Delnor Entities, as may be reasonably requested with reasonable prior notice.

(d) **Maintenance of Books and Accounting Practices.** Delnor Parent shall (i) maintain the books of account and records of Delnor Parent and cause the books and records of account of each other Delnor Entity to be maintained in the usual, regular and ordinary manner in accordance with generally accepted accounting principles consistently applied and on a basis consistent with prior years; and (ii) make no material changes in its accounting methods or practices or cause any Delnor Entity to make any material change in its accounting methods or practices.

(e) **Compliance with Applicable Laws.** Delnor Parent shall: (i) comply, and cause each other Delnor Entity to comply, in all material respects with all Applicable Laws; and (ii) keep, hold and maintain all certificates, accreditations, licenses and other permits necessary for the conduct and operation of the business of each Delnor Entity.

(f) **No Conflicting Transactions.** Delnor Parent shall ensure that none of the Delnor Entities, without the prior written consent of CDH Parent, shall: (i) merge, consolidate or enter into a member substitution or joint operating agreement with any other entity, business or

person for the operation of a hospital; (ii) sell, lease or acquire substantially all of the assets of a hospital; (iii) enter into any other change of control or other transaction involving substantially all of the operations of a hospital; and (iv) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to any of the foregoing.

(g) **Third Party Authorizations.** Delnor Parent shall use commercially reasonable efforts and cooperate fully with CDH Parent to obtain all consents, approvals, exemptions and authorizations of third parties, whether governmental or private, make all filings, and give all notices which may be necessary or desirable on the part of each Delnor Entity in order to consummate the transactions contemplated or required by the Transaction Documents.

(h) **Confidentiality.** Delnor Parent shall, and shall cause the other Delnor Entities and their respective agents, servants, employees and all other persons who will be allowed access to the CDH Confidential Information (the "**Delnor Representatives**") to hold in confidence all CDH Confidential Information, and shall not divulge to third parties or use in a manner detrimental to the CDH Entities such CDH Confidential Information. For purposes of this Agreement, "**CDH Confidential Information**" means all tangible and intangible information related in any way to the Transaction (including but not limited to the existence of the Transaction and this Agreement, the terms or potential terms thereof, and the documents and instruments related thereto) and any CDH Entity's business and operations, now or hereafter furnished or made available by a CDH Entity in connection the evaluation of the Transaction, including but not limited to analyses, business or strategic plans, compilations, draft agreements, financial statements, proposals, studies, patient revenue, gross charges, payor mix, market data, employment or compensation models or other information relating to the business of a CDH Entity. CDH Confidential Information shall not include information that is generally available to the public prior to its disclosure to a Delnor Entity, was available to a Delnor Entity on a non-confidential basis prior to the disclosure, or was lawfully obtained from a third party who was not under an obligation to maintain the confidentiality of such information. Delnor Parent shall, and shall cause the other Delnor Entities and the Delnor Representatives to: (i) keep, strictly confidential the CDH Confidential Information; (ii) use the CDH Confidential Information solely in connection with the Transaction and for no other purpose; (iii) reveal the CDH Confidential Information only to those of its Representatives who need to know the CDH Confidential Information for the purposes set forth above, have been informed of the confidential nature of the CDH Confidential Information, and have agreed to maintain the confidentiality of the CDH Confidential Information. If a Delnor Entity or a Delnor Representative is requested or required (by oral questions, written interrogatories, requests for information or documents, subpoena, civil investigatory demands or similar process) to disclose any of the CDH Confidential Information, Delnor Parent shall provide CDH Parent with prompt notice of such request or requirement so that CDH Parent may seek an appropriate protective order or selectively waive compliance with the provisions of this Agreement. Further, if in the absence of a protective order or receipt of a waiver hereunder, a Delnor Entity or a Delnor Representative is nonetheless, in the opinion of its counsel, compelled to disclose any of the CDH Confidential Information to any tribunal or agency, or else stand liable for contempt or suffer other censure or penalty, the Delnor Entity or Delnor Representative may disclose the minimum amount of CDH Confidential Information that is necessary to prevent it from being held liable for contempt of court or similar censure or

penalty. In such event, Delnor Parent shall have no liability hereunder for the disclosure of such CDH Confidential Information unless such disclosure was caused by or resulted from a previous disclosure by it or by the Delnor Representatives in breach of this Agreement. Delnor Parent shall return or destroy all documents, notes, memoranda, other materials containing the CDH Confidential Information and all copies to CDH Parent upon termination of the Agreement.

**(i) Performance of Undertakings.**

(i) Delnor Parent shall perform faithfully at all times any and all covenants, undertakings, stipulations and provisions applicable to it contained in this Agreement and in any and every document executed, authenticated and delivered hereunder.

(ii) Delnor Parent shall use reasonable commercial efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with its obligations hereunder or which could hinder or delay the consummation of the transactions contemplated or required hereby.

**12.3 Pre-Closing Commitments of Both Parties.** Each of CDH Parent and Delnor Parent hereby agree to keep, perform and fully discharge, the following commitments between the Execution Date until the Closing Date:

(a) The Parties shall convene one or more meetings of the individuals identified in Exhibit G as initial New Parent Board members (or an agreed to subcommittee thereof) for the purpose of resolving certain matters relating to governance of the New Health System, which shall include:

(i) The designation of officers of the Board of Directors of the New System Parent;

(ii) The composition of standing committees of the New System Parent, Central DuPage Hospital and Delnor-Community Hospital;

(iii) The articles of incorporation and bylaws of New System Parent, including but not limited to, resolution of the following matters:

(A) The scope of the entities to which assets may be distributed upon dissolution;

(B) Voting requirements for material decisions; and

(C) The purpose, membership, authority and responsibilities of standing committees;

(iv) The content of charters for the standing committees of the New System Parent, Central DuPage Hospital and Delnor-Community Hospital;

(v) The articles of incorporation and bylaws of all other CDH Entities and Delnor Entities;

(vi) The role and authority of the Parent CEO, including but not limited to, the Parent CEO's ability to appoint and remove the most senior executive officer of Central DuPage Hospital and Delnor-Community Hospital; and

(vii) Such additional documents or matters as either Party reasonably believes are necessary or appropriate to be resolved prior to Closing in connection with the New Health System's governance or operations.

(b) The Parties shall convene one or more meetings of the individuals identified in Exhibit G as initial New Parent Board members (or an agreed to subcommittee thereof) at which the New Health System Executive Leadership will present and discuss certain financial and operational plans to be implemented on and after Closing Date by the New Health System. As used herein, the governance matters described in Section 12.3(a) and 12.3(b) shall be referred to collectively as the "Governance Matters";

(c) The Parties shall use good faith efforts to resolve the Governance Matters in a manner mutually acceptable to both Parties; and

(d) All Governance Matters agreed to by the New Parent Board members (or subcommittee thereof) shall be set forth in the Initial Resolution and adopted by the New Parent Board at its first meeting.

## ARTICLE 13

### CONDITIONS PRECEDENT

**13.1 Conditions Precedent to All Parties' Obligations.** The obligations of CDH Parent, on the one hand, and Delnor Parent, on the other hand, to consummate the transactions contemplated by this Agreement are, at the option of the such Parties, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Hart Scott Rodino.** The Parties shall have submitted their respective filings under the HSR Act and all required waiting periods under the HSR Act shall have expired;

(b) **Certificate of Exemption/Need.** The Parties shall have obtained any and all necessary approvals from the IHFSRB to consummate the transactions contemplated by this Agreement;

(c) **Regulatory Approvals.** All other regulatory consents and approvals required for the consummation of the transactions contemplated or required by this Agreement shall have been obtained on or before the Closing Date;

(d) **No Pending Action.** No action or proceeding before any court or governmental body shall be pending or threatened wherein an unfavorable judgment, decree or order would prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded.

(e) **Bond Consents and Instruments.** The Illinois Finance Authority shall have executed a certificate acknowledging receipt of all documents, information and materials required by the loan agreements to which the CDH Entities are parties.

(f) **Joint Venture Consents.** The Parties shall have obtained any required Joint Venture Consents;

(g) **Contract Consents.** The Parties shall have obtained the consents of the third parties identified on Schedule 10.6 and Schedule 11.6;

(h) **Non-Ordinary Course Actions.** Each Party shall have accepted the activities of the other Party requiring notice pursuant to Section 12.1(a) or Section 12.2(a), as applicable; and

(i) **Governance Matters.** The Parties shall have resolved the Governance Matters in a manner acceptable to each Party.

**13.2 Conditions Precedent to the Obligations of CDH Parent.** The obligations of CDH Parent to consummate the transactions contemplated by this Agreement are, at the option of the such Parties, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Accuracy of Delnor Parent's Representations and Warranties.** The representations of Delnor Parent contained in Article 11 shall be true and accurate in all material respects as if made on and as of the Closing Date;

(b) **Performance of Covenants by Delnor Parent.** Delnor Parent shall have performed all of the obligations and covenants required to be performed or complied with by them on or prior to the Closing Date;

(c) **No Bankruptcy of a Delnor Entity.** No Delnor Entity shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against any such party; and

(d) **Delivery of Delnor Closing Documents.** Delnor Parent shall have delivered to CDH Parent the Delnor Closing Documents.

**13.3 Conditions Precedent to the Obligations of Delnor Parent.** The obligations of Delnor Parent, to consummate the transactions contemplated by this Agreement are, at the option of the such Parties, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Accuracy of CDH Parent's Representations and Warranties.** The representations of CDH Parent contained in Article 10 shall be true and accurate in all material respects as if made on and as of the Closing Date;

(b) **Performance of Covenants by CDH Parent.** CDH Parent shall have performed all of the obligations and covenants required to be performed or complied with by them on or prior to the Closing Date;

(c) **No Bankruptcy of a CDH Entity.** No CDH Entity shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against any such party; and

(d) **Delivery of CDH Closing Documents.** CDH Parent shall have delivered to Delnor Parent the CDH Closing Documents.

## ARTICLE 14

### CLOSING

**14.1 Closing and Closing Date.** The Parties shall consummate and close the Transaction and the other transactions contemplated by the Agreement (the "Closing") on: (a) the first business day of the month immediately following receipt of all regulatory approvals and satisfaction of all conditions precedent to Closing set forth herein, at 12:01 a.m., Central Standard Time; or (b) such other date agreed to by the Parties following the receipt of all regulatory approvals and satisfaction of all conditions precedent to Closing set forth herein (the "Closing Date"). The Closing shall occur at the offices of McDermott Will & Emery LLP, 227 W. Monroe Street, Chicago, Illinois, or such other location agreed to by the Parties. All documents to be executed and actions to be taken pursuant to this Agreement at the Closing shall be deemed to have been executed and to have been taken substantially concurrently, and no action shall be deemed to be complete until all are completed.

**14.2 CDH Closing Documents.** At the Closing, CDH Parent shall deliver to Delnor Parent the following documents (the "CDH Closing Documents"):

(a) A certificate of the President and Chief Executive Officer of CDH Parent, dated as of the Closing Date, certifying the continued accuracy and completeness of representations and warranties of CDH Parent and the performance of the covenants and conditions precedent applicable to CDH Parent;

(b) A certificate of the Secretary of CDH Parent, dated as of the Closing Date, certifying: (i) the incumbency of the officers of CDH Parent who have executed CDH Closing Documents; and (ii) the due adoption and continued effectiveness of attached resolutions of CDH Parent Board approving: (A) this Agreement, the agreements and instruments referenced herein, and the transactions contemplated hereby; (B) the Articles of Merger, the Plan of Merger

and the transactions contemplated thereby; (C) the amended and restated articles of incorporation and bylaws of the New Health System Parent and the CDH Entities, effective as of the Closing Date; (D) the Proforma Financial Statements; and (E) the appointment of eight (8) At-Large Directors and the CDH Medical Staff Director to the New Parent Board, effective as of the Closing Date;

(c) The legal opinion of McDermott, Will & Emery, LLP, special counsel to CDH Parent, opining as to the good standing of CDH Parent and the due authorization and execution of this Agreement;

(d) Any Joint Venture Consents required in order to consummate the transactions contemplated hereby, applicable to Joint Ventures in which a CDH Entity currently owns an interest;

(e) Any third-party consents required in order to consummate the transactions contemplated hereby pursuant to Material Contracts to which a CDH Entity is a Party;

(f) An officer's certificate from an officer of CDH Parent attesting to the fact that, immediately following the transactions contemplated by the Transaction Documents, no member of CDH Parent's obligated group (the "**CDH Obligated Group**") will be in default in the performance or observance of any covenant or condition of any loan document pursuant to which the proceeds of any bonds were advanced to a CDH Entity;

(g) An opinion of bond counsel to CDH Parent opining that: (i) the transactions contemplated by the Transaction Documents and any assumption and supplement to the original Master Indenture to which CDH Parent is a party (the "**Master Indenture**") delivered in connection therewith comply with the requirements of the Master Indenture, (ii) all conditions precedent to the transaction have been complied with; (iii) the New System Parent meets the conditions contained in the Master Indenture and is liable on all Obligations (as such term is defined in the Master Indenture) outstanding thereunder, and (iv) the merger will not subject any Obligations to the registration of the Securities Act of 1933, as amended (or that such Obligations have been so registered if registration is required);

(h) An opinion of bond counsel to CDH Parent opining that the consummation of the transactions contemplated by the Transaction Documents does not adversely affect the validity of any outstanding bonds issued by the CDH Obligated Group ("**Outstanding Bonds**") or any exemption from federal or state income taxation related to the interest payable on its outstanding bonds;

(i) A certificate of CDH Parent directed to the Illinois Finance Authority ("IFA") and the applicable bond trustee, in form and substance satisfactory to such parties, attesting to the fact that no event of default exists under the loan agreements or under the related bond indentures, and that no event of default will be caused by the transactions contemplated by the Transaction Documents;

(j) An assumption or reaffirmation by CDH Parent, as surviving entity in the merger transaction contemplated hereby, without condition or qualification, of the obligations under the Master Indenture and certain related agreements;

(k) Evidence that no rating on CDH Parent's bonds will be reduced or withdrawn as a result of the transactions contemplated by the Transaction Documents; and

(l) Such other instruments and documents as may be reasonably requested by Delnor Parent in order to carry out the transactions contemplated or required by this Agreement and to comply with the terms hereof.

**14.3 Delnor Closing Documents.** At the Closing, Delnor Parent deliver to CDH Parent the following documents (the "**Delnor Closing Documents**");

(a) A certificate of the President and Chief Executive Officer of Delnor Parent, dated as of the Closing Date, certifying the continued accuracy and completeness of representations and warranties of Delnor Parent and the performance of the covenants and conditions precedent applicable to Delnor Parent;

(b) A certificate of the Secretary of Delnor Parent, dated as of the Closing Date, certifying: (i) the incumbency of the officers of Delnor Parent who have executed Delnor Closing Documents; and (ii) the due adoption and continued effectiveness of the attached resolutions of Delnor Parent Board approving: (A) this Agreement, the agreements and instruments referenced herein, and the transactions contemplated hereby; (B) the Articles of Merger, the Plan of Merger and the transactions contemplated thereby; (C) the amended and restated articles of incorporation and bylaws of the New Health System Parent and the Delnor Entities, effective as of the Closing Date; (D) the Proforma Financial Statements; and (E) the appointment of eight (8) At-Large Directors and the Delnor Medical Staff Director to the New Parent Board, effective as of the Closing Date;

(c) The legal opinion of Drinker Biddle & Reath LLP, special counsel to Delnor Parent, opining as to the good standing of Delnor Parent and the due authorization and execution of this Agreement;

(d) Any Joint Venture Consents required in order to consummate the transactions contemplated hereby, applicable to Joint Ventures in which a Delnor Entity currently owns an interest;

(e) Any third-party consents required in order to consummate the transactions contemplated hereby pursuant to Material Contracts to which a Delnor Entity is a Party; and

(f) Such other instruments and documents as may be reasonably requested by CDH Parent in order to carry out the transactions contemplated or required by this Agreement and to comply with the terms hereof.

## ARTICLE 15

### TERMINATION

**15.1 Termination Prior to Closing.** Notwithstanding anything herein to the contrary, this Agreement and the Transaction contemplated by this Agreement may be terminated at any time prior to Closing under any one of the following circumstances:

(a) **Mutual Consent.** By mutual written consent of the Parties, acting through their respective boards of directors;

(b) **Legal Proceedings.** By either Party, if at the time of Closing: (a) a bona fide action or proceeding shall be pending against any Party wherein an unfavorable judgment, decree or order would prevent or make unlawful the carrying out of the transactions contemplated by this Agreement; or (b) any governmental agency shall have notified any Party that the consummation of the transactions contemplated herein would constitute a violation of Applicable Laws and that it has commenced or intends to commence proceedings to restrain the consummation of the transactions contemplated herein, and such agency has not withdrawn such notice prior to such termination;

(c) **Conditions Precedent to Closing.** By either Party if the conditions of this Agreement to be satisfied or performed by the other Party at or before Closing become incapable of satisfaction or performance other than as a result of a breach of this Agreement by the terminating party;

(d) **Material Adverse Change.** By either Party if at any time prior to the Closing, there has been a Material Adverse Change to the businesses of the other Party or its affiliate Entities and such Material Adverse Change is not or cannot be remedied to the reasonable satisfaction of the terminating Party prior the Termination Date;

(e) **Breach.** By either Party if at any time prior to the Closing, there has been a material breach by the other Party of any representation, warranty, covenant or agreement contained in this Agreement which cannot be or is not cured prior to the Termination Date; or

(f) **Expiration.** If the Closing shall not have occurred on or before June 30, 2011 (the "**Termination Date**"), provided that the right to terminate this Agreement under this Section 15.1(f) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such Termination Date.

### **15.2 Effect of Termination.**

(a) Except as set forth in Section 15.2(b), a termination of this Agreement by a Party pursuant to Section 15.1 shall:

(i) Terminate all further obligations of the Parties hereunder; and

(ii) Be the sole and exclusive remedy for breach of any representation, warranty or covenant made by another Party under this Agreement prior to Closing.

(b) Notwithstanding Section 15.2(a):

(i) A termination of this Agreement pursuant to Section 15.1 shall not be the exclusive remedy to redress a breach or threatened breach of Section 12.1(c), Section 12.1(f), Section 12.1(g), Section 12.1(i)(ii), Section 12.2(c), Section 12.2(f), Section 12.2(g) or Section 12.2(i)(ii) which occurred prior to termination and was not cured pursuant to Section 15.1(e). All remedies available at law or in equity to redress such a breach (including those described in Section 16.2) shall survive the termination of this Agreement.

(ii) A termination of this Agreement pursuant to Section 15.1 shall not be the exclusive remedy to redress a breach or threatened breach of Section 12.1(h) or Section 12.2(h) which occurs prior to or following termination that is not cured pursuant to Section 15.1(e). The rights and obligations of the Parties pursuant to Section 12.1(h) and Section 12.2(h) shall survive termination, as will all remedies available at law or in equity to redress a breach thereof (including those described in Section 16.2).

(iii) Nothing herein shall be deemed to prejudice or limit a Party's right to obtain equitable relief as described in Section 16.2 to redress a breach or threatened breach of any covenant in this Agreement prior to termination pursuant to Section 15.1.

## ARTICLE 16

### GENERAL PROVISIONS

#### 16.1 Modification of Schedules and Exhibits.

(a) During the period from the Execution Date to the date that is fifteen (15) business days prior to the Closing Date, the CDH Entities, on the one hand, and the Delnor Entities, on the other hand (each an "Amending Party"), may amend any one or more of the Schedules and Exhibits they delivered at the Execution Date by delivering one or more amended Schedules or Exhibits (each, an "Amended Document" and, collectively, the "Amended Documents") to the other (a "Receiving Party").

(b) Upon receipt of an Amended Document, the Receiving Party shall have fifteen (15) business days either to approve information contained in such document or to notify the Amending Party that it disapproves of information in such document (a "Disapproved Item"); provided, however, that no Receiving Party shall object to (and Disapproved Items shall not include) liabilities incurred in the ordinary course of business of a CDH Entity or a Delnor Entity and arising during the period between the Execution Date and the Closing Date. Any items disclosed in an Amended Document to which the Receiving Party does not timely object in accordance with this Section 16.1(b) shall be added to, and shall update, the Schedules and Exhibits.

(c) Either Party shall have the right to terminate this Agreement upon written notice to the other if: (i) a Disapproved Item is likely to result in a Material Adverse Change; or (ii) a Disapproved Item is likely to materially and adversely impact a Parties' operations or prospects or its ability to perform its obligations under this Agreement and the Disapproved Item is not or cannot be cured or resolved on or before the Termination Date.

(d) Disapproved Items shall be deemed added to the Schedules and Exhibits if: (i) the Parties agree in writing to add them; or (ii) the Transaction is consummated prior to the Termination Date.

(e) Upon agreement of the Parties, any Party may make any disclosures that are required to be made in a Schedule hereto in a separate writing delivered to the other Parties that specifically makes reference to the applicable section of this Agreement and the required Schedule. The Parties hereby agree that information to be disclosed pursuant to Subsections 10.20(c) or 11.20(c) may be disclosed in a separate writing.

**16.2 Equitable Relief.** The Parties acknowledge that a breach or threatened breach of this Agreement by a Party would cause the non-breaching Parties to suffer immediate and irreparable harm which could not be fully remedied with the payment of monetary damages. As such, in addition to any other remedies available, a non-breaching Party shall be entitled to specific performance, preliminary and permanent injunctive relief, and other available equitable remedies to restrain a breach or threatened breach of this Agreement by another Party, either pending or following a trial on the merits, and without the need to post bond or other security.

**16.3 Survival.**

(a) Article 1, Article 2, Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Section 12.1(h), Section 12.2(h), and Article 16 shall survive the Closing and consummation of the transaction, but all other provisions hereof shall be extinguished upon the Closing and consummation of the transactions contemplated by this Agreement and shall not survive such Closing and consummation. Without limiting the generality of the foregoing, the representations and warranties of the Parties set forth in Article 10 and Article 11 shall be extinguished upon the Closing and consummation of the transactions contemplated by this Agreement and shall not survive such Closing and consummation.

(b) Section 12.1(h), Section 12.2(h), Section 15.2(b) and Article 16 shall survive the termination of this Agreement prior to Closing. All other representations, warranties and covenants shall be extinguished upon termination of this Agreement and shall not survive such termination.

**16.4 Performance of Undertakings.** The Parties agree that the standard that shall apply to the Parties' performance of all covenants and undertakings contained in this Agreement and in any and every document executed and delivered hereunder is a commercially reasonable standard.

**16.5 Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon

receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express, UPS or DHL), one (1) business day after sending; or (c) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the addresses set forth below, or to such other address as any Party shall provide by like notice to the other Parties:

If to CDH Parent:

Central DuPage Health  
25 North Winfield Road  
Winfield, Illinois 60190  
Attention: Luke McGuinness  
Michael Holzhuetter, Esq.

With a simultaneous copy to:

McDermott Will & Emery LLP  
227 West Monroe Street, Suite 4400  
Chicago, Illinois 60606  
Attention: John Callahan, Esq.

If to Delnor Parent

Delnor-Community Health System  
300 Randall Road  
Geneva, Illinois 60134  
Attention: Thomas Wright  
John Hubbe, Esq.

With a simultaneous copy to:

Drinker Biddle, LLP  
191 North Wacker Drive, Suite 3700  
Chicago, IL 60606  
Attention: Jennifer Breuer, Esq.  
Robert W. McCann, Esq.

**16.6 Accounting.** The Parties shall undertake to effectuate the Transaction in such a manner as to achieve FASB merger accounting.

**16.7 Cost of Transaction.** Whether or not the transactions contemplated hereby shall be consummated, the Parties agree as follows: (a) the CDH Entities shall pay the fees, expenses, and disbursements of the CDH Entities and their agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto; and (b) the Delnor Entities shall pay the fees, expenses, and disbursements of the Delnor Entities and their agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto. Delnor Parent and CDH Parent shall share equally the filing fees associated with filings required to be made by the Parties under the HSR Act and the fees and expenses of any consultant or expert mutually retained by them.

**16.8 No Brokerage.** The Parties represent to each other that no broker has in any way been contacted in connection with the transactions herein contemplated. Each Party agrees to indemnify the other Parties from and against all loss, cost, damage or expense arising out of

claims for fees or commissions of brokers employed or alleged to have been employed by such indemnifying Party.

**16.9 Entire Agreement; Amendment.** This Agreement, including all Schedules and Exhibits required hereunder, supersedes all previous agreements, oral or written, and constitutes the entire agreement among the Parties respecting the subject matter of this Agreement, and no Party shall be entitled to benefits other than those specified herein. Each Exhibit and Schedule referenced in this Agreement shall be considered a part hereof as if set forth herein in full. As among the Parties, oral statements or prior written material which are not specifically incorporated herein shall not be of any force and effect. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations and agreements contained in this Agreement and no others. This Agreement may be amended or modified only by an agreement in writing signed by all of the Parties.

**16.10 No Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives, but no Party may, by operation of law or otherwise, assign its rights in this Agreement or delegate its duties under this Agreement without first obtaining the prior written consent of the other Parties.

**16.11 No Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person or other third party other than the Parties and their respective successors and permitted assigns.

**16.12 Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of any remaining provision of this Agreement, which shall be and remain in full force and effect, and binding and enforceable in accordance with its terms.

**16.13 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois; provided, however, that the conflicts of law principles of the State of Illinois shall not apply to the extent they would operate to apply the laws of another state. The Parties hereby consent to the jurisdiction of Illinois courts over all matters relating to this Agreement.

**16.14 Headings; Cross References.** Headings of Articles and Sections in this Agreement and the table of contents hereof are solely for convenience or reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof. Unless indicated otherwise, references in this Agreement to Articles, Sections, Schedules and Exhibits are to articles, sections, schedules and exhibits of this Agreement.

**16.15 Construction.** Each Party has engaged separate independent legal counsel and independent advisors to provide advice and guidance to such Party. This Agreement and all documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge

and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

**16.16 Waiver of Terms.** The failure of any Party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or thereunder or of the future performance of any such term, covenant or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect. A waiver by one Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

**16.17 Counterparts; Signatures.** The Parties agree that this Agreement may be executed in multiple originals, each of which shall be considered an original for all purposes and, collectively, shall be considered to constitute this Agreement. The Parties further agree that signatures transmitted by facsimile or in Portable Document Format (pdf) may be considered an original for all purposes, including, without limitation, the execution of this Agreement and enforcement of this Agreement.

**16.18 Time is of the Essence.** Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement and any other agreements determined by the Parties to be necessary or appropriate to be entered into in connection with the transactions contemplated by this Agreement.

**16.19 Access to Records and Information.** If and to the extent applicable to this Agreement and to any agreement contemplated hereunder or entered into pursuant hereto between or among the Parties, the Parties agree to comply with the requirements of Public Law 96 499, Section 952 (Section 1861(v)(1)(I) of the Social Security Act) and regulations promulgated thereunder.

## ARTICLE 17

### GLOSSARY

**17.1 Glossary.** Capitalized terms not otherwise defined in the body of this Agreement shall have the following meanings:

(a) "Applicable Laws" shall mean all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and any judgment, decree, order, writ or injunction of any court, governmental or regulatory authority.

(b) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

(c) "Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity whether through

ownership of voting securities, the power to appoint or remove a majority of the members of the governing board of an entity, by contract or otherwise.

(d) **"Environmental Law"** means federal, state or local statutes and ordinances, and all rules and regulations promulgated thereunder, common law, orders, consent decrees, permits, and binding judicial and administrative interpretations thereof, pertaining or relating to: (a) natural resources and the environment; (b) public and worker health and safety; and (c) the identification, reporting, generation, manufacture, processing, distribution, use, treatment, storage, disposal, emission, discharge, release, transport or other handling of any Hazardous Substances, including, without limitation, CERCLA and RCRA.

(e) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

(f) **"GAAP"** shall mean Generally Accepted Accounting Principles.

(g) **"Hazardous Substances"** shall mean petroleum or petroleum products, polychlorinated biphenyls, asbestos containing materials, lead based paint, radioactive materials, toxic mold or fungus of any kind or species, medical wastes, and any substances, materials, chemicals, pollutants, constituents, wastes or noxious substances regulated by any Environmental Law.

(h) **"Health Care Laws"** shall mean all federal, state and local laws, statutes, rules, regulations, ordinances and codes applicable to health care providers and facilities; federal and state health care program conditions of participation, standards, policies, rules, procedures and other requirements; and accreditation standards of any applicable accrediting organization. Health Care Laws include, without limitation, the following laws: the federal (Title XIX of the Social Security Act) and state Medicaid programs and their implementing regulations, the Medicare Program (Title XVIII of the Social Security Act) and its implementing regulations, the federal False Claims Act (31 U.S.C. §§3729 et seq.), the Federal Health Care Program Anti Kickback Statute (42 U.S.C. §1320a 7b(b)), the Federal Physician Self Referral Law (42 U.S.C. §1395nn), the Federal Administrative False Claims Law (42 U.S.C. §1320a 7b(a)), the Beneficiary Inducement Statute (42 U.S.C. §1320a-7a(a)(5)), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Standards for Transactions and Code Sets (42 U.S.C. 1320d 1329d 8; 45 CFR Parts 160 and 164), the Health Information Technology for Economic and Clinical Health ("HITECH") Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009)), the federal Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 U.S.C. 290ee 3), the Rehabilitation Act, the Americans with Disabilities Act, the Occupational Safety and Health Administration statutes and regulations for blood borne pathogens and workplace risks, and any state and local laws and the regulations promulgated pursuant to such laws, that address the same or similar subject matter. Health Care Laws also include federal, state and local laws applicable to health care providers and facilities, including, without limitation, laws related to: federal and state health care program billing, cost reporting, revenue reporting, payment and reimbursement; federal and state health care program fraud, abuse, theft or embezzlement; procurement of health care services, human and social services, and other health related services; employee background

checks and credentialing of employees; credentialing and licensure of facilities or providers of such services; zoning, maintenance, safety and operations of group homes, residential facilities and day programs, and other building health and safety codes and ordinances; health facility planning laws; state law restrictions on the corporate practice of medicine (and the corporate practice of any other health related profession); eligibility for federal and state health care program contracting, including any requirements limiting contracting to nonprofit or tax exempt entities; patient information and medical record confidentiality, including psychotherapy and mental health records; splitting of health care fees; patient brokering, patient solicitation, patient capping, and/or payment of inducements to recommend or refer, or to arrange for the recommendation or referral of, patients to health care providers or facilities; standards of care, quality assurance, risk management, utilization review, peer review, and/or mandated reporting of incidents, occurrences, diseases and events; advertising or marketing of health care services; and the enforceability of restrictive covenants on health care providers.

(i) **"IHFSRB"** means the Illinois Health Facilities and Services Review Board.

(j) **"Intellectual Property"** means any material trademarks, service marks, trade names, patents, copyrights, and applications therefore (whether registered or common law) currently owned or used by any of the CDH Entities or Delnor Entities.

(k) **"IRS"** means the Internal Revenue Service.

(l) **"Joint Commission"** shall mean The Joint Commission, f/k/a The Joint Commission on Accreditation of Healthcare Organizations.

(m) **"Knowledge", "known", "knowingly", "to the knowledge"** or any variant thereof shall, when qualifying any representation, warranty or other statement in this Agreement, mean and refers to:

(i) with respect to CDH Parent: (i) all matters with respect to which the CDH Entities have received written notice; or (ii) the actual knowledge of the persons serving as President and Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Nursing Officer, General Counsel and Chief Compliance Officer of CDH Parent and Central DuPage Hospital; or

(ii) with respect to Delnor Parent: (i) all matters with respect to which the Delnor Entities have received written notice; or (ii) the actual knowledge of the persons serving as President and Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Nursing Officer, General Counsel and Chief Compliance Officer of Delnor Parent and Delnor Community Hospital.

(n) **"Material Adverse Change"** means any condition, change, event, violation, inaccuracy, circumstance or effect that individually or in the aggregate, could reasonably be expected to result in: (i) uninsured liabilities or losses (including, without limitation, lost revenues and asset values) exceeding Twenty Million Dollars (\$20,000,000); (ii) the inability of any of the Parties to maintain their respective Section 501(c)(3) status or the tax exempt status of their respective real property or bonds; (iii) the inability of any of the CDH

Entities or Delnor Entities that operate as licensed health care facilities to continue to operate as such licensed health care facilities; (iv) the debarment or exclusion of any CDH Entity or Delnor Entity from participation in the Medicare or Medicaid programs; (v) the imposition of criminal sanctions or penalties; (vi) the cancellation or revocation of CDH Coverage or Delnor Coverage; (vii) final loss of accreditation by either of Central DuPage Hospital or Delnor-Community Hospital from the Joint Commission; (viii) an inability of a CDH Entity or a Delnor Entity to materially perform their respective obligations under the Transaction Documents; (ix) the insolvency of a CDH Entity or Delnor Entity; (x) the downgrading of the credit rating of a CDH Entity or Delnor Entity, as applicable; or (xi) the acceleration of obligations under tax-except bond indebtedness of the CDH Entities or the Delnor Entities. Notwithstanding anything to the contrary, "Material Adverse Change" shall not include: (A) changes in the financial or operating performance due to or caused by seasonal changes; (B) changes or proposed changes to any Applicable Laws, reimbursement rates or policies of governmental agencies or bodies that are generally applicable to hospitals or healthcare facilities and that do not disproportionately affect the applicable entities; (C) requirements, reimbursement rates, policies or procedures of third party payors or accreditation commissions or organizations that are generally applicable to hospitals or healthcare facilities and that do not disproportionately affect the applicable entities; (D) general business, industry or economic conditions, including such conditions related to the business of the CDH Entities, taken as a whole, or the Delnor Entities, taken as a whole, that do not disproportionately affect the applicable entities; (E) local, regional, national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, that do not disproportionately affect the applicable entities; (F) changes in financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) that do not disproportionately affect the applicable entities taken as a whole and as compared to other similar health care businesses; or (G) changes in GAAP.

(o) "Material Contracts" shall mean the following categories of contracts, leases (capital and operating), and other agreements entered into by or on behalf of any one or more of the CDH Entities or Delnor Entities which are currently in effect:

(i) all debt, bond, credit, mortgage, pledge, or other lien or encumbrance agreements and all documents evidencing negative pledges or other covenant or transfer restrictions on the assets of any CDH Entity or any Delnor Entity, as applicable;

(ii) all joint venture agreements or shareholder agreements to which any CDH Entity or Delnor Entity is a party;

(iii) all agreements with physicians or any source of patient referrals, including allied health professionals or other professional personnel, corporations or partnerships comprised of or owned by them or the relatives of any of them, including, without limitation, all employment agreements, contracts to provide administrative or professional services, recruitment, retention, relocation or income guarantee agreements, loans and guarantees, and acquisitions of private professional practices or their assets;

(iv) all agreements for employment, indemnity, retention, severance, change-in-control and employee lease with, and agreements regarding loans or advances to officers, directors, members, shareholders, employees or advisory board members;

(v) all Payment Program contracts which individually account for payments in excess of Five Million Dollars (\$5,000,000.00) annually;

(vi) all insurance policies, trust agreements and other related agreements, including, without limitation, stop-loss and self insurance arrangements;

(vii) corporate integrity agreements to which a CDH Entity or a Delnor Entity is a party;

(viii) agreements which contain executory non-competition covenants binding upon or running in favor of, a CDH Entity or a Delnor Entity;

(ix) agreements or commitments affecting ownership of, title to, or any interest in real property; and

(x) any other agreement that (A) involves an obligation in excess (or expected to be in excess) of Five Million Dollars (\$5,000,000) in any one year; (B) involves an obligation in excess of Twenty Million Dollars (\$20,000,000) over the remaining term of the agreement; or (C) the cancellation or termination of which would be reasonably likely to result in a Material Adverse Change.

(p) **"Permitted Encumbrances"** means (i) encumbrances for taxes not yet due and payable or being diligently contested in good faith and for which appropriate reserves have been established in accordance with GAAP (provided that Permitted Encumbrances shall not apply to omitted or reassessed taxes imposed due to incorrect, false or misleading real estate tax exemption applications or annual exemption certifications filed pursuant to 35 ILCS 200/15-10); (ii) liens for inchoate mechanics' and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of business; (iii) easements, restrictive covenants, rights of way and other similar restrictions of record that do not impair in any material respect the value of the assets or the continued conduct of the business of any CDH Entity or Delnor Entity or such party's continued use of its assets in the manner currently used; (iv) zoning, building and other similar restrictions that do not impair in any material respect the value the asset or the continued conduct of the business of any CDH Entity or Delnor Entity or such party's continued use of its assets in the manner currently used; (v) encumbrances, encroachments and other imperfections of title, licenses or encumbrances, if any, of record that do not impair in any material respect the value of the asset or the continued conduct of the business of any CDH Entity or Delnor Entity or such party's continued use of its assets in the manner currently used; (vi) encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; and (vii) in the case of leased property, all matters, whether or not of record, affecting the title of the lessor (and any underlying lessor) of the leased property do not impair in any material respect the value of its assets or the continued conduct of the business of any CDH Entity or Delnor Entity, or such party's continued use of its assets in the manner currently used.

amended. (q) "RCRA" means the Resource Conservation and Recovery Act, as

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have executed this Agreement of Merger as of the Execution Date.

**CENTRAL DUPAGE HEALTH:**

By: \_\_\_\_\_  
Name: Luke McGuinness  
Title: President and CEO

**DELNOR-COMMUNITY HEALTH SYSTEM:**

By: \_\_\_\_\_  
Name: Thomas L. Wright  
Title: President and CEO

been prepared and submitted in accordance with cost and accounting principles consistently applied that comply with all applicable Delnor Payment Program conditions for participation, contracts, standards, policies, rules, regulations, manuals, procedures and requirements (collectively, "**regulations**"), including, without limitation, Delnor Payment Program interpretations and guidance, except to the extent that such non-compliance with regulations is not likely to result in a Material Adverse Change;

(e) No Delnor Entity has taken any of the following actions, if any such action would result in a Material Adverse Change in its business and operations: submitted to any Delnor Payment Program any false, fraudulent, abusive or improper claim for payment, billed any Delnor Payment Program for any service not rendered or not rendered as claimed, or received and retained any payment or reimbursement from any Delnor Payment Program in

the Office of Inspector General of the United States Department of Health and Human Services; (b) has any reporting obligations pursuant to any settlement agreement entered into with any federal, state or local government entity; (c) has been the subject of any government payer program investigation conducted by any federal or state enforcement agency; (d) has been a defendant in any unsealed qui tam/False Claims Act litigation; (e) has been served with or received, or been subject to, any search warrant, subpoena, civil investigative demand, contact letter, or, to Delnor Parent's Knowledge, telephone or personal contact by or from any federal or state enforcement agency (except in connection with medical services provided to third parties who may be defendants or the subject of investigation into conduct unrelated to the operation of the health care businesses conducted by the Delnor Entities); and (f) has not received any complaints from employees, independent contractors, vendors, physicians, or any other person that resulted or may result in a claim being filed with a federal, state or local government entity alleging that a Delnor Entity has violated any law or regulation. For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in the compliance guidance published by the Office of Inspector General of the Department of Health and Human Services.

**11.22 Exclusion from Health Care Programs.** Each Delnor Entity has a program in place to determine whether any of its employees, agents or independent contractors has been: (a) excluded from participating in any Federal Health Care Program (as defined in 42 U.S.C. § 1320a 7b(f)); (b) subject to sanction or been indicted or convicted of a crime, or pled nolo contendere or to sufficient facts, in connection with any allegation of violation of any Federal Health Care Program requirement or Health Care Law; (c) debarred or suspended from any federal or state procurement or nonprocurement program by any government agency; or (d) designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury.

**11.23 Medical Staff Matters.** Delnor Parent has provided to CDH Parent true, correct, and complete copies of the bylaws and rules and regulations of the Delnor Medical Staff, as well as a list of all current members of the Delnor Medical Staff. Except as set forth in Schedule 11.23: (a) there are no pending adverse actions with respect to any medical staff members of Delnor Community Hospital or any applicant thereto for which a medical staff member or applicant has requested an appellate review under the Delnor Medical Staff bylaws that has not been scheduled or has been scheduled but has not been completed; (b) there are no pending or, to the Knowledge of Delnor Parent, threatened disputes with applicants, staff members, or health professional affiliates, and Delnor Parent knows of no basis therefor; and (c) all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired. Notwithstanding the foregoing provisions of this Section 11.23, Delnor Parent shall not be required to disclose any information pursuant to this Section 11.23 where such disclosure is prohibited by state law or where such disclosure would, in Delnor Parent's reasonable discretion, potentially jeopardize any applicable privilege that would protect the disclosure of such information to third parties.

**11.24 Experimental Procedures.** The Delnor Entities have not performed or permitted the performance of any experimental or research procedures or studies involving their patients not authorized and conducted in accordance with the procedures of the applicable Institutional Review Board.

**11.25 Intellectual Property; Computer Software.** The Delnor Entities own (or possesses adequate and enforceable licenses or other rights to use) all Intellectual Property and all computer software programs and similar systems used in the conduct of their businesses.

**11.26 Disclosure; No Material Omissions.**

(a) The representations and warranties of Delnor Parent contained in this Agreement (including each exhibit, schedule, certificate or other written statement delivered pursuant to this Agreement) or made in connection with the transactions contemplated or required hereby are accurate, correct and complete and do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements and information contained therein not misleading.

(b) The Delnor Entities have responded (or are continuing to respond as of the date hereof) in all material respects to CDH Parent's requests for information and documentation as part of CDH Parent's due diligence review of the business, operations, assets and liabilities of the Delnor Entities. Delnor Parent has not knowingly omitted any material information relating to the businesses, operations, assets or liabilities of Delnor Entities in its responses to CDH Parent's requests.

## ARTICLE 12

### PRE CLOSING COVENANTS

**12.1 Pre-Closing Covenants of the CDH Entities.** CDH Parent hereby agrees to keep, perform and fully discharge, and to cause the other CDH Entities to keep, perform and fully discharge, the following covenants and agreements from the Execution Date until the Closing Date (or thereafter, as specifically noted below):

(a) **Interim Conduct of Business.** CDH Parent shall provide Delnor Parent promptly with monthly unaudited financial statements of CDH Parent and Central DuPage Hospital for the immediately preceding month. CDH Parent shall not, without providing to Delnor Parent prior written notification, (A) make any changes, or permit any changes to be made, in the governing documents of any CDH Entity, except for changes expressly authorized by this Agreement; (B) enter into any transaction which could result in a Material Adverse Change to the business of any CDH Entity; or (C) cease to operate the CDH Parent or the CDH Entities as going concerns generally consistent with prior practices in the ordinary course of business.

(b) **Preserve Accuracy of Representations and Warranties.** Unless permitted by the terms of this Agreement, CDH Parent shall not take, or allow to be taken by any other CDH Entity, any action that would render any representation or warranty contained in Article 10 materially inaccurate or untrue. Upon gaining actual Knowledge, CDH Parent shall promptly notify Delnor Parent of any lawsuits, claims, administrative actions or other proceedings credibly asserted or actually commenced against any CDH Entities, or any of their respective officers, directors or members which could result in a Material Adverse Change to the business of any CDH Entity. CDH Parent shall promptly notify Delnor Parent in writing of any

facts or circumstances that come to its attention after the Execution Date and that cause, or through the passage of time might cause, any of the representations and warranties contained in Article 10 to be materially untrue or misleading.

(c) **Access to Information.** To the extent permitted by Applicable Law, CDH Parent shall give to Delnor Parent and/or to its representatives full and free access, during normal business hours, to all properties, books, records and contracts pertaining to the businesses, properties and assets of CDH Parent, Central DuPage Hospital, and the other CDH Entities, as may be reasonably requested with reasonable prior notice.

(d) **Maintenance of Books and Accounting Practices.** CDH Parent shall (i) maintain the books of account and records of CDH Parent and cause the books and records of account of each other CDH Entity to be maintained in the usual, regular and ordinary manner in accordance with generally accepted accounting principles consistently applied and on a basis consistent with prior years; and (ii) make no material changes in its accounting methods or practices or cause any CDH Entity to make any material change in its accounting methods or practices.

(e) **Compliance with Applicable Laws.** CDH Parent shall: (i) comply, and cause each other CDH Entity to comply, in all material respects with all Applicable Laws; and (ii) keep, hold and maintain all certificates, accreditations, licenses and other permits necessary for the conduct and operation of the business of each CDH Entity.

(f) **No Conflicting Transactions.** CDH Parent shall ensure that none of the CDH Entities, without the prior written consent of Delnor Parent, shall: (i) merge, consolidate or enter into a member substitution or joint operating agreement with any other entity, business or person for the operation of a hospital; (ii) sell, lease or acquire substantially all of the assets of a hospital; (iii) enter into any other change of control or other transaction involving substantially all of the operations of a hospital; and (iv) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to any of the foregoing.

(g) **Third Party Authorizations.** CDH Parent shall use commercially reasonable efforts and cooperate fully with Delnor Parent to obtain all consents, approvals, exemptions and authorizations of third parties, whether governmental or private, make all filings, and give all notices which may be necessary or desirable on the part of each CDH Entity in order to consummate the transactions contemplated or required by the Transaction Documents.

(h) **Confidentiality.** CDH Parent shall, and shall cause the other CDH Entities and their respective agents, servants, employees and all other persons who will be allowed access to the Delnor Confidential Information (the "CDH Representatives") to hold in confidence all Delnor Confidential Information, and shall not divulge to third parties or use in a manner detrimental to the Delnor Entities such Delnor Confidential Information. For purposes of this Agreement, "Delnor Confidential Information" means all tangible and intangible information related in any way to the Transaction (including but not limited to the existence of the Transaction and this Agreement, the terms or potential terms thereof, and the documents and

instruments related thereto) and any Delnor Entity's business and operations, now or hereafter furnished or made available by a Delnor Entity in connection the evaluation of the Transaction, including but not limited to analyses, business or strategic plans, compilations, draft agreements, financial statements, proposals, studies, patient revenue, gross charges, payor mix, market data, employment or compensation models or other information relating to the business of a Delnor Entity. Delnor Confidential Information shall not include information that is generally available to the public prior to its disclosure to a CDH Entity, was available to a CDH Entity on a non-confidential basis prior to the disclosure, or was lawfully obtained from a third party who was not under an obligation to maintain the confidentiality of such information. CDH Parent shall, and shall cause the other CDH Entities and the CDH Representatives to: (i) keep, strictly confidential the Delnor Confidential Information; (ii) use the Delnor Confidential Information solely in connection with the Transaction and for no other purpose; (iii) reveal the Delnor Confidential Information only to those of its Representatives who need to know the Delnor Confidential Information for the purposes set forth above, have been informed of the confidential nature of the Delnor Confidential Information, and have agreed to maintain the confidentiality of the Delnor Confidential Information. If a CDH Entity or a CDH Representative is requested or required (by oral questions, written interrogatories, requests for information or documents, subpoena, civil investigatory demands or similar process) to disclose any of the Delnor Confidential Information, CDH Parent shall provide Delnor Parent with prompt notice of such request or requirement so that Delnor Parent may seek an appropriate protective order or selectively waive compliance with the provisions of this Agreement. Further, if in the absence of a protective order or receipt of a waiver hereunder, a CDH Entity or a CDH Representative is nonetheless, in the opinion of its counsel, compelled to disclose any of the Delnor Confidential Information to any tribunal or agency, or else stand liable for contempt or suffer other censure or penalty, the CDH Entity or CDH Representative may disclose the minimum amount of Delnor Confidential Information that is necessary to prevent it from being held liable for contempt of court or similar censure or penalty. In such event, CDH Parent shall have no liability hereunder for the disclosure of such Delnor Confidential Information unless such disclosure was caused by or resulted from a previous disclosure by it or by the CDH Representatives in breach of this Agreement. CDH Parent shall return or destroy all documents, notes, memoranda, other materials containing the Delnor Confidential Information and all copies to Delnor Parent upon termination of the Agreement.

**(i) Performance of Undertakings.**

(i) CDH Parent shall perform faithfully at all times any and all covenants, undertakings, stipulations and provisions applicable to it contained in this Agreement and in any and every document executed, authenticated and delivered hereunder.

(ii) CDH Parent shall use reasonable commercial efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with its obligations hereunder or which could hinder or delay the consummation of the transactions contemplated or required hereby.

**12.2 Pre-Closing Covenants of the Delnor Entities.** Delnor Parent hereby agrees to keep, perform and fully discharge, and to cause the other Delnor Entities to keep,

perform and fully discharge, the following covenants and agreements from the Execution Date until the Closing Date (or thereafter, as specifically noted below):

(a) **Interim Conduct of Business.** Delnor Parent shall provide CDH Parent promptly with monthly unaudited financial statements of Delnor Parent and Delnor Community Hospital for the immediately preceding month. Delnor Parent shall not, without providing to CDH Parent prior written notification, (A) make any changes, or permit any changes to be made, in the governing documents of any Delnor Entity, except for changes expressly authorized by this Agreement; (B) enter into any transaction which could result in a Material Adverse Change to the business of any Delnor Entity; or (C) cease to operate the Delnor Parent or the Delnor Entities as going concerns generally consistent with prior practices in the ordinary course of business.

(b) **Preserve Accuracy of Representations and Warranties.** Unless permitted by the terms of this Agreement, Delnor Parent shall not take, or allow to be taken by any other Delnor Entity, any action that would render any representation or warranty contained in Article 11 materially inaccurate or untrue. Upon gaining actual Knowledge, Delnor Parent shall promptly notify CDH Parent of any lawsuits, claims, administrative actions or other proceedings credibly asserted or actually commenced against any Delnor Entities, or any of their respective officers, directors or members which could result in a Material Adverse Change to the business of any Delnor Entity. Delnor Parent shall promptly notify CDH Parent in writing of any facts or circumstances that come to its attention after the Execution Date and that cause, or through the passage of time might cause, any of the representations and warranties contained in Article 11 to be materially untrue or misleading.

(c) **Access to Information.** To the extent permitted by Applicable Law, Delnor Parent shall give to CDH Parent and/or to its representatives full and free access, during normal business hours, to all properties, books, records and contracts pertaining to the businesses, properties and assets of Delnor Parent, Delnor-Community Hospital and the other Delnor Entities, as may be reasonably requested with reasonable prior notice.

(d) **Maintenance of Books and Accounting Practices.** Delnor Parent shall (i) maintain the books of account and records of Delnor Parent and cause the books and records of account of each other Delnor Entity to be maintained in the usual, regular and ordinary manner in accordance with generally accepted accounting principles consistently applied and on a basis consistent with prior years; and (ii) make no material changes in its accounting methods or practices or cause any Delnor Entity to make any material change in its accounting methods or practices.

(e) **Compliance with Applicable Laws.** Delnor Parent shall: (i) comply, and cause each other Delnor Entity to comply, in all material respects with all Applicable Laws; and (ii) keep, hold and maintain all certificates, accreditations, licenses and other permits necessary for the conduct and operation of the business of each Delnor Entity.

(f) **No Conflicting Transactions.** Delnor Parent shall ensure that none of the Delnor Entities, without the prior written consent of CDH Parent, shall: (i) merge, consolidate or enter into a member substitution or joint operating agreement with any other entity, business or

person for the operation of a hospital; (ii) sell, lease or acquire substantially all of the assets of a hospital; (iii) enter into any other change of control or other transaction involving substantially all of the operations of a hospital; and (iv) explore, meet, discuss, negotiate, directly or indirectly, or enter into an agreement with any third party for the purpose of discussing, organizing, formulating, designing, developing, investing in or implementing an arrangement that could lead to any of the foregoing.

(g) **Third Party Authorizations.** Delnor Parent shall use commercially reasonable efforts and cooperate fully with CDH Parent to obtain all consents, approvals, exemptions and authorizations of third parties, whether governmental or private, make all filings, and give all notices which may be necessary or desirable on the part of each Delnor Entity in order to consummate the transactions contemplated or required by the Transaction Documents.

(h) **Confidentiality.** Delnor Parent shall, and shall cause the other Delnor Entities and their respective agents, servants, employees and all other persons who will be allowed access to the CDH Confidential Information (the "**Delnor Representatives**") to hold in confidence all CDH Confidential Information, and shall not divulge to third parties or use in a manner detrimental to the CDH Entities such CDH Confidential Information. For purposes of this Agreement, "**CDH Confidential Information**" means all tangible and intangible information related in any way to the Transaction (including but not limited to the existence of the Transaction and this Agreement, the terms or potential terms thereof, and the documents and instruments related thereto) and any CDH Entity's business and operations, now or hereafter furnished or made available by a CDH Entity in connection the evaluation of the Transaction, including but not limited to analyses, business or strategic plans, compilations, draft agreements, financial statements, proposals, studies, patient revenue, gross charges, payor mix, market data, employment or compensation models or other information relating to the business of a CDH Entity. CDH Confidential Information shall not include information that is generally available to the public prior to its disclosure to a Delnor Entity, was available to a Delnor Entity on a non-confidential basis prior to the disclosure, or was lawfully obtained from a third party who was not under an obligation to maintain the confidentiality of such information. Delnor Parent shall, and shall cause the other Delnor Entities and the Delnor Representatives to: (i) keep, strictly confidential the CDH Confidential Information; (ii) use the CDH Confidential Information solely in connection with the Transaction and for no other purpose; (iii) reveal the CDH Confidential Information only to those of its Representatives who need to know the CDH Confidential Information for the purposes set forth above, have been informed of the confidential nature of the CDH Confidential Information, and have agreed to maintain the confidentiality of the CDH Confidential Information. If a Delnor Entity or a Delnor Representative is requested or required (by oral questions, written interrogatories, requests for information or documents, subpoena, civil investigatory demands or similar process) to disclose any of the CDH Confidential Information, Delnor Parent shall provide CDH Parent with prompt notice of such request or requirement so that CDH Parent may seek an appropriate protective order or selectively waive compliance with the provisions of this Agreement. Further, if in the absence of a protective order or receipt of a waiver hereunder, a Delnor Entity or a Delnor Representative is nonetheless, in the opinion of its counsel, compelled to disclose any of the CDH Confidential Information to any tribunal or agency, or else stand liable for contempt or suffer other censure or penalty, the Delnor Entity or Delnor Representative may disclose the minimum amount of CDH Confidential Information that is necessary to prevent it from being held liable for contempt of court or similar censure or

penalty. In such event, Delnor Parent shall have no liability hereunder for the disclosure of such CDH Confidential Information unless such disclosure was caused by or resulted from a previous disclosure by it or by the Delnor Representatives in breach of this Agreement. Delnor Parent shall return or destroy all documents, notes, memoranda, other materials containing the CDH Confidential Information and all copies to CDH Parent upon termination of the Agreement.

(i) **Performance of Undertakings.**

(i) Delnor Parent shall perform faithfully at all times any and all covenants, undertakings, stipulations and provisions applicable to it contained in this Agreement and in any and every document executed, authenticated and delivered hereunder.

(ii) Delnor Parent shall use reasonable commercial efforts to consummate the transactions contemplated by this Agreement and shall not take any other action inconsistent with its obligations hereunder or which could hinder or delay the consummation of the transactions contemplated or required hereby.

12.3 **Pre-Closing Commitments of Both Parties.** Each of CDH Parent and Delnor Parent hereby agree to keep, perform and fully discharge, the following commitments between the Execution Date until the Closing Date:

(a) The Parties shall convene one or more meetings of the individuals identified in Exhibit G as initial New Parent Board members (or an agreed to subcommittee thereof) for the purpose of resolving certain matters relating to governance of the New Health System, which shall include:

(i) The designation of officers of the Board of Directors of the New System Parent;

(ii) The composition of standing committees of the New System Parent, Central DuPage Hospital and Delnor-Community Hospital;

(iii) The articles of incorporation and bylaws of New System Parent, including but not limited to, resolution of the following matters:

(A) The scope of the entities to which assets may be distributed upon dissolution;

(B) Voting requirements for material decisions; and

(C) The purpose, membership, authority and responsibilities of standing committees;

(iv) The content of charters for the standing committees of the New System Parent, Central DuPage Hospital and Delnor-Community Hospital;

(v) The articles of incorporation and bylaws of all other CDH Entities and Delnor Entities;

(vi) The role and authority of the Parent CEO, including but not limited to, the Parent CEO's ability to appoint and remove the most senior executive officer of Central DuPage Hospital and Delnor-Community Hospital; and

(vii) Such additional documents or matters as either Party reasonably believes are necessary or appropriate to be resolved prior to Closing in connection with the New Health System's governance or operations.

(b) The Parties shall convene one or more meetings of the individuals identified in Exhibit G as initial New Parent Board members (or an agreed to subcommittee thereof) at which the New Health System Executive Leadership will present and discuss certain financial and operational plans to be implemented on and after Closing Date by the New Health System. As used herein, the governance matters described in Section 12.3(a) and 12.3(b) shall be referred to collectively as the "Governance Matters";

(c) The Parties shall use good faith efforts to resolve the Governance Matters in a manner mutually acceptable to both Parties; and

(d) All Governance Matters agreed to by the New Parent Board members (or subcommittee thereof) shall be set forth in the Initial Resolution and adopted by the New Parent Board at its first meeting.

## ARTICLE 13

### CONDITIONS PRECEDENT

**13.1 Conditions Precedent to All Parties' Obligations.** The obligations of CDH Parent, on the one hand, and Delnor Parent, on the other hand, to consummate the transactions contemplated by this Agreement are, at the option of the such Parties, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Hart Scott Rodino.** The Parties shall have submitted their respective filings under the HSR Act and all required waiting periods under the HSR Act shall have expired;

(b) **Certificate of Exemption/Need.** The Parties shall have obtained any and all necessary approvals from the IHFSRB to consummate the transactions contemplated by this Agreement;

(c) **Regulatory Approvals.** All other regulatory consents and approvals required for the consummation of the transactions contemplated or required by this Agreement shall have been obtained on or before the Closing Date;

(d) **No Pending Action.** No action or proceeding before any court or governmental body shall be pending or threatened wherein an unfavorable judgment, decree or order would prevent the carrying out of this Agreement or any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement or cause such transactions to be rescinded.

(e) **Bond Consents and Instruments.** The Illinois Finance Authority shall have executed a certificate acknowledging receipt of all documents, information and materials required by the loan agreements to which the CDH Entities are parties.

(f) **Joint Venture Consents.** The Parties shall have obtained any required Joint Venture Consents;

(g) **Contract Consents.** The Parties shall have obtained the consents of the third parties identified on Schedule 10.6 and Schedule 11.6;

(h) **Non-Ordinary Course Actions.** Each Party shall have accepted the activities of the other Party requiring notice pursuant to Section 12.1(a) or Section 12.2(a), as applicable; and

(i) **Governance Matters.** The Parties shall have resolved the Governance Matters in a manner acceptable to each Party.

**13.2 Conditions Precedent to the Obligations of CDH Parent.** The obligations of CDH Parent to consummate the transactions contemplated by this Agreement are, at the option of the such Parties, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Accuracy of Delnor Parent's Representations and Warranties.** The representations of Delnor Parent contained in Article 11 shall be true and accurate in all material respects as if made on and as of the Closing Date;

(b) **Performance of Covenants by Delnor Parent.** Delnor Parent shall have performed all of the obligations and covenants required to be performed or complied with by them on or prior to the Closing Date;

(c) **No Bankruptcy of a Delnor Entity.** No Delnor Entity shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against any such party; and

(d) **Delivery of Delnor Closing Documents.** Delnor Parent shall have delivered to CDH Parent the Delnor Closing Documents.

**13.3 Conditions Precedent to the Obligations of Delnor Parent.** The obligations of Delnor Parent, to consummate the transactions contemplated by this Agreement are, at the option of the such Parties, subject to the satisfaction, on or prior to the Closing Date, of the following conditions:

(a) **Accuracy of CDH Parent's Representations and Warranties.** The representations of CDH Parent contained in Article 10 shall be true and accurate in all material respects as if made on and as of the Closing Date;

(b) **Performance of Covenants by CDH Parent.** CDH Parent shall have performed all of the obligations and covenants required to be performed or complied with by them on or prior to the Closing Date;

(c) **No Bankruptcy of a CDH Entity.** No CDH Entity shall: (i) be in receivership or dissolution; (ii) have made any assignment for the benefit of creditors; (iii) have admitted in writing its inability to pay its debts as they mature; (iv) have been adjudicated bankrupt; or (v) have filed a petition in voluntary bankruptcy, a petition or answer seeking reorganization or an arrangement with creditors under the federal bankruptcy law or any other similar law or statute of the United States or any state, nor shall any such petition have been filed against any such party; and

(d) **Delivery of CDH Closing Documents.** CDH Parent shall have delivered to Delnor Parent the CDH Closing Documents.

## ARTICLE 14

### CLOSING

**14.1 Closing and Closing Date.** The Parties shall consummate and close the Transaction and the other transactions contemplated by the Agreement (the "Closing") on: (a) the first business day of the month immediately following receipt of all regulatory approvals and satisfaction of all conditions precedent to Closing set forth herein, at 12:01 a.m., Central Standard Time; or (b) such other date agreed to by the Parties following the receipt of all regulatory approvals and satisfaction of all conditions precedent to Closing set forth herein (the "Closing Date"). The Closing shall occur at the offices of McDermott Will & Emery LLP, 227 W. Monroe Street, Chicago, Illinois, or such other location agreed to by the Parties. All documents to be executed and actions to be taken pursuant to this Agreement at the Closing shall be deemed to have been executed and to have been taken substantially concurrently, and no action shall be deemed to be complete until all are completed.

**14.2 CDH Closing Documents.** At the Closing, CDH Parent shall deliver to Delnor Parent the following documents (the "CDH Closing Documents"):

(a) A certificate of the President and Chief Executive Officer of CDH Parent, dated as of the Closing Date, certifying the continued accuracy and completeness of representations and warranties of CDH Parent and the performance of the covenants and conditions precedent applicable to CDH Parent;

(b) A certificate of the Secretary of CDH Parent, dated as of the Closing Date, certifying: (i) the incumbency of the officers of CDH Parent who have executed CDH Closing Documents; and (ii) the due adoption and continued effectiveness of attached resolutions of CDH Parent Board approving: (A) this Agreement, the agreements and instruments referenced herein, and the transactions contemplated hereby; (B) the Articles of Merger, the Plan of Merger

and the transactions contemplated thereby; (C) the amended and restated articles of incorporation and bylaws of the New Health System Parent and the CDH Entities, effective as of the Closing Date; (D) the Proforma Financial Statements; and (E) the appointment of eight (8) At-Large Directors and the CDH Medical Staff Director to the New Parent Board, effective as of the Closing Date;

(c) The legal opinion of McDermott, Will & Emery, LLP, special counsel to CDH Parent, opining as to the good standing of CDH Parent and the due authorization and execution of this Agreement;

(d) Any Joint Venture Consents required in order to consummate the transactions contemplated hereby, applicable to Joint Ventures in which a CDH Entity currently owns an interest;

(e) Any third-party consents required in order to consummate the transactions contemplated hereby pursuant to Material Contracts to which a CDH Entity is a Party;

(f) An officer's certificate from an officer of CDH Parent attesting to the fact that, immediately following the transactions contemplated by the Transaction Documents, no member of CDH Parent's obligated group (the "**CDH Obligated Group**") will be in default in the performance or observance of any covenant or condition of any loan document pursuant to which the proceeds of any bonds were advanced to a CDH Entity;

(g) An opinion of bond counsel to CDH Parent opining that: (i) the transactions contemplated by the Transaction Documents and any assumption and supplement to the original Master Indenture to which CDH Parent is a party (the "**Master Indenture**") delivered in connection therewith comply with the requirements of the Master Indenture, (ii) all conditions precedent to the transaction have been complied with; (iii) the New System Parent meets the conditions contained in the Master Indenture and is liable on all Obligations (as such term is defined in the Master Indenture) outstanding thereunder, and (iv) the merger will not subject any Obligations to the registration of the Securities Act of 1933, as amended (or that such Obligations have been so registered if registration is required);

(h) An opinion of bond counsel to CDH Parent opining that the consummation of the transactions contemplated by the Transaction Documents does not adversely affect the validity of any outstanding bonds issued by the CDH Obligated Group ("**Outstanding Bonds**") or any exemption from federal or state income taxation related to the interest payable on its outstanding bonds;

(i) A certificate of CDH Parent directed to the Illinois Finance Authority ("**IFA**") and the applicable bond trustee, in form and substance satisfactory to such parties, attesting to the fact that no event of default exists under the loan agreements or under the related bond indentures, and that no event of default will be caused by the transactions contemplated by the Transaction Documents;

(j) An assumption or reaffirmation by CDH Parent, as surviving entity in the merger transaction contemplated hereby, without condition or qualification, of the obligations under the Master Indenture and certain related agreements;

(k) Evidence that no rating on CDH Parent's bonds will be reduced or withdrawn as a result of the transactions contemplated by the Transaction Documents; and

(l) Such other instruments and documents as may be reasonably requested by Delnor Parent in order to carry out the transactions contemplated or required by this Agreement and to comply with the terms hereof.

**14.3 Delnor Closing Documents.** At the Closing, Delnor Parent deliver to CDH Parent the following documents (the "**Delnor Closing Documents**");

(a) A certificate of the President and Chief Executive Officer of Delnor Parent, dated as of the Closing Date, certifying the continued accuracy and completeness of representations and warranties of Delnor Parent and the performance of the covenants and conditions precedent applicable to Delnor Parent;

(b) A certificate of the Secretary of Delnor Parent, dated as of the Closing Date, certifying: (i) the incumbency of the officers of Delnor Parent who have executed Delnor Closing Documents; and (ii) the due adoption and continued effectiveness of the attached resolutions of Delnor Parent Board approving: (A) this Agreement, the agreements and instruments referenced herein, and the transactions contemplated hereby; (B) the Articles of Merger, the Plan of Merger and the transactions contemplated thereby; (C) the amended and restated articles of incorporation and bylaws of the New Health System Parent and the Delnor Entities, effective as of the Closing Date; (D) the Proforma Financial Statements; and (E) the appointment of eight (8) At-Large Directors and the Delnor Medical Staff Director to the New Parent Board, effective as of the Closing Date;

(c) The legal opinion of Drinker Biddle & Reath LLP, special counsel to Delnor Parent, opining as to the good standing of Delnor Parent and the due authorization and execution of this Agreement;

(d) Any Joint Venture Consents required in order to consummate the transactions contemplated hereby, applicable to Joint Ventures in which a Delnor Entity currently owns an interest;

(e) Any third-party consents required in order to consummate the transactions contemplated hereby pursuant to Material Contracts to which a Delnor Entity is a Party; and

(f) Such other instruments and documents as may be reasonably requested by CDH Parent in order to carry out the transactions contemplated or required by this Agreement and to comply with the terms hereof.

## ARTICLE 15

### TERMINATION

**15.1 Termination Prior to Closing.** Notwithstanding anything herein to the contrary, this Agreement and the Transaction contemplated by this Agreement may be terminated at any time prior to Closing under any one of the following circumstances:

(a) **Mutual Consent.** By mutual written consent of the Parties, acting through their respective boards of directors;

(b) **Legal Proceedings.** By either Party, if at the time of Closing: (a) a bona fide action or proceeding shall be pending against any Party wherein an unfavorable judgment, decree or order would prevent or make unlawful the carrying out of the transactions contemplated by this Agreement; or (b) any governmental agency shall have notified any Party that the consummation of the transactions contemplated herein would constitute a violation of Applicable Laws and that it has commenced or intends to commence proceedings to restrain the consummation of the transactions contemplated herein, and such agency has not withdrawn such notice prior to such termination;

(c) **Conditions Precedent to Closing.** By either Party if the conditions of this Agreement to be satisfied or performed by the other Party at or before Closing become incapable of satisfaction or performance other than as a result of a breach of this Agreement by the terminating party;

(d) **Material Adverse Change.** By either Party if at any time prior to the Closing, there has been a Material Adverse Change to the businesses of the other Party or its affiliate Entities and such Material Adverse Change is not or cannot be remedied to the reasonable satisfaction of the terminating Party prior the Termination Date;

(e) **Breach.** By either Party if at any time prior to the Closing, there has been a material breach by the other Party of any representation, warranty, covenant or agreement contained in this Agreement which cannot be or is not cured prior to the Termination Date; or

(f) **Expiration.** If the Closing shall not have occurred on or before June 30, 2011 (the "**Termination Date**"), provided that the right to terminate this Agreement under this Section 15.1(f) shall not be available to any Party whose failure to fulfill any obligation under this Agreement has been the cause of, or resulted in, the failure of the Closing to occur by such Termination Date.

### **15.2 Effect of Termination.**

(a) Except as set forth in Section 15.2(b), a termination of this Agreement by a Party pursuant to Section 15.1 shall:

(i) Terminate all further obligations of the Parties hereunder; and

(ii) Be the sole and exclusive remedy for breach of any representation, warranty or covenant made by another Party under this Agreement prior to Closing.

(b) Notwithstanding Section 15.2(a):

(i) A termination of this Agreement pursuant to Section 15.1 shall not be the exclusive remedy to redress a breach or threatened breach of Section 12.1(c), Section 12.1(f), Section 12.1(g), Section 12.1(i)(ii), Section 12.2(c), Section 12.2(f), Section 12.2(g) or Section 12.2(i)(ii) which occurred prior to termination and was not cured pursuant to Section 15.1(e). All remedies available at law or in equity to redress such a breach (including those described in Section 16.2) shall survive the termination of this Agreement.

(ii) A termination of this Agreement pursuant to Section 15.1 shall not be the exclusive remedy to redress a breach or threatened breach of Section 12.1(h) or Section 12.2(h) which occurs prior to or following termination that is not cured pursuant to Section 15.1(e). The rights and obligations of the Parties pursuant to Section 12.1(h) and Section 12.2(h) shall survive termination, as will all remedies available at law or in equity to redress a breach thereof (including those described in Section 16.2).

(iii) Nothing herein shall be deemed to prejudice or limit a Party's right to obtain equitable relief as described in Section 16.2 to redress a breach or threatened breach of any covenant in this Agreement prior to termination pursuant to Section 15.1.

## ARTICLE 16

### GENERAL PROVISIONS

#### 16.1 Modification of Schedules and Exhibits.

(a) During the period from the Execution Date to the date that is fifteen (15) business days prior to the Closing Date, the CDH Entities, on the one hand, and the Delnor Entities, on the other hand (each an "Amending Party"), may amend any one or more of the Schedules and Exhibits they delivered at the Execution Date by delivering one or more amended Schedules or Exhibits (each, an "Amended Document" and, collectively, the "Amended Documents") to the other (a "Receiving Party").

(b) Upon receipt of an Amended Document, the Receiving Party shall have fifteen (15) business days either to approve information contained in such document or to notify the Amending Party that it disapproves of information in such document (a "Disapproved Item"); provided, however, that no Receiving Party shall object to (and Disapproved Items shall not include) liabilities incurred in the ordinary course of business of a CDH Entity or a Delnor Entity and arising during the period between the Execution Date and the Closing Date. Any items disclosed in an Amended Document to which the Receiving Party does not timely object in accordance with this Section 16.1(b) shall be added to, and shall update, the Schedules and Exhibits.

(c) Either Party shall have the right to terminate this Agreement upon written notice to the other if: (i) a Disapproved Item is likely to result in a Material Adverse Change; or (ii) a Disapproved Item is likely to materially and adversely impact a Parties' operations or prospects or its ability to perform its obligations under this Agreement and the Disapproved Item is not or cannot be cured or resolved on or before the Termination Date.

(d) Disapproved Items shall be deemed added to the Schedules and Exhibits if: (i) the Parties agree in writing to add them; or (ii) the Transaction is consummated prior to the Termination Date.

(e) Upon agreement of the Parties, any Party may make any disclosures that are required to be made in a Schedule hereto in a separate writing delivered to the other Parties that specifically makes reference to the applicable section of this Agreement and the required Schedule. The Parties hereby agree that information to be disclosed pursuant to Subsections 10.20(c) or 11.20(c) may be disclosed in a separate writing.

**16.2 Equitable Relief.** The Parties acknowledge that a breach or threatened breach of this Agreement by a Party would cause the non-breaching Parties to suffer immediate and irreparable harm which could not be fully remedied with the payment of monetary damages. As such, in addition to any other remedies available, a non-breaching Party shall be entitled to specific performance, preliminary and permanent injunctive relief, and other available equitable remedies to restrain a breach or threatened breach of this Agreement by another Party, either pending or following a trial on the merits, and without the need to post bond or other security.

### **16.3 Survival.**

(a) Article 1, Article 2, Article 3, Article 4, Article 5, Article 6, Article 7, Article 8, Article 9, Section 12.1(h), Section 12.2(h), and Article 16 shall survive the Closing and consummation of the transaction, but all other provisions hereof shall be extinguished upon the Closing and consummation of the transactions contemplated by this Agreement and shall not survive such Closing and consummation. Without limiting the generality of the foregoing, the representations and warranties of the Parties set forth in Article 10 and Article 11 shall be extinguished upon the Closing and consummation of the transactions contemplated by this Agreement and shall not survive such Closing and consummation.

(b) Section 12.1(h), Section 12.2(h), Section 15.2(b) and Article 16 shall survive the termination of this Agreement prior to Closing. All other representations, warranties and covenants shall be extinguished upon termination of this Agreement and shall not survive such termination.

**16.4 Performance of Undertakings.** The Parties agree that the standard that shall apply to the Parties' performance of all covenants and undertakings contained in this Agreement and in any and every document executed and delivered hereunder is a commercially reasonable standard.

**16.5 Notices.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given or made as follows: (a) if sent by registered or certified mail in the United States return receipt requested, upon

receipt; (b) if sent designated for overnight delivery by nationally recognized overnight air courier (such as Federal Express, UPS or DHL), one (1) business day after sending; or (c) if otherwise actually personally delivered, when delivered, provided that such notices, requests, demands and other communications are delivered to the addresses set forth below, or to such other address as any Party shall provide by like notice to the other Parties:

If to CDH Parent:

Central DuPage Health  
25 North Winfield Road  
Winfield, Illinois 60190  
Attention: Luke McGuinness  
Michael Holzhuetter, Esq.

With a simultaneous copy to:

McDermott Will & Emery LLP  
227 West Monroe Street, Suite 4400  
Chicago, Illinois 60606  
Attention: John Callahan, Esq.

If to Delnor Parent

Delnor-Community Health System  
300 Randall Road  
Geneva, Illinois 60134  
Attention: Thomas Wright  
John Hubbe, Esq.

With a simultaneous copy to:

Drinker Biddle, LLP  
191 North Wacker Drive, Suite 3700  
Chicago, IL 60606  
Attention: Jennifer Breuer, Esq.  
Robert W. McCann, Esq.

**16.6 Accounting.** The Parties shall undertake to effectuate the Transaction in such a manner as to achieve FASB merger accounting.

**16.7 Cost of Transaction.** Whether or not the transactions contemplated hereby shall be consummated, the Parties agree as follows: (a) the CDH Entities shall pay the fees, expenses, and disbursements of the CDH Entities and their agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto; and (b) the Delnor Entities shall pay the fees, expenses, and disbursements of the Delnor Entities and their agents, representatives, accountants, and legal counsel incurred in connection with the subject matter hereof and any amendments hereto. Delnor Parent and CDH Parent shall share equally the filing fees associated with filings required to be made by the Parties under the HSR Act and the fees and expenses of any consultant or expert mutually retained by them.

**16.8 No Brokerage.** The Parties represent to each other that no broker has in any way been contacted in connection with the transactions herein contemplated. Each Party agrees to indemnify the other Parties from and against all loss, cost, damage or expense arising out of

claims for fees or commissions of brokers employed or alleged to have been employed by such indemnifying Party.

**16.9 Entire Agreement; Amendment.** This Agreement, including all Schedules and Exhibits required hereunder, supersedes all previous agreements, oral or written, and constitutes the entire agreement among the Parties respecting the subject matter of this Agreement, and no Party shall be entitled to benefits other than those specified herein. Each Exhibit and Schedule referenced in this Agreement shall be considered a part hereof as if set forth herein in full. As among the Parties, oral statements or prior written material which are not specifically incorporated herein shall not be of any force and effect. The Parties specifically acknowledge that in entering into and executing this Agreement, the Parties rely solely upon the representations and agreements contained in this Agreement and no others. This Agreement may be amended or modified only by an agreement in writing signed by all of the Parties.

**16.10 No Assignment.** This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors, assigns and legal representatives, but no Party may, by operation of law or otherwise, assign its rights in this Agreement or delegate its duties under this Agreement without first obtaining the prior written consent of the other Parties.

**16.11 No Third Party Beneficiaries.** This Agreement shall not confer any rights or remedies upon any person or other third party other than the Parties and their respective successors and permitted assigns.

**16.12 Severability.** In the event any provision of this Agreement is held to be invalid, illegal or unenforceable, in whole or in part, for any reason and in any respect, such invalidity, illegality, or unenforceability shall in no event affect, prejudice or disturb the validity of any remaining provision of this Agreement, which shall be and remain in full force and effect, and binding and enforceable in accordance with its terms.

**16.13 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois; provided, however, that the conflicts of law principles of the State of Illinois shall not apply to the extent they would operate to apply the laws of another state. The Parties hereby consent to the jurisdiction of Illinois courts over all matters relating to this Agreement.

**16.14 Headings; Cross References.** Headings of Articles and Sections in this Agreement and the table of contents hereof are solely for convenience or reference, do not constitute a part hereof and shall not affect the meaning, construction or effect hereof. Unless indicated otherwise, references in this Agreement to Articles, Sections, Schedules and Exhibits are to articles, sections, schedules and exhibits of this Agreement.

**16.15 Construction.** Each Party has engaged separate independent legal counsel and independent advisors to provide advice and guidance to such Party. This Agreement and all documents or instruments delivered pursuant hereto shall be construed without regard to the identity of the person who drafted the various provisions of the same. Each and every provision of this Agreement and such other documents and instruments shall be construed as though the Parties participated equally in the drafting of the same. Consequently, the Parties acknowledge

and agree that any rule of construction that a document is to be construed against the drafting Party shall not be applicable to this Agreement.

**16.16 Waiver of Terms.** The failure of any Party to insist, in any one or more instances, on performance of any of the terms, covenants and conditions of this Agreement shall not be construed as a waiver or relinquishment of any rights granted hereunder or thereunder or of the future performance of any such term, covenant or condition, but the obligations of the Parties with respect thereto shall continue in full force and effect. A waiver by one Party of the performance of any covenant, condition, representation or warranty of the other Party shall not invalidate this Agreement, nor shall such waiver be construed as a waiver of any other covenant, condition, representation or warranty. A waiver by any Party of the time for performing any act shall not constitute a waiver of the time for performing any other act or the time for performing an identical act required to be performed at a later time.

**16.17 Counterparts; Signatures.** The Parties agree that this Agreement may be executed in multiple originals, each of which shall be considered an original for all purposes and, collectively, shall be considered to constitute this Agreement. The Parties further agree that signatures transmitted by facsimile or in Portable Document Format (pdf) may be considered an original for all purposes, including, without limitation, the execution of this Agreement and enforcement of this Agreement.

**16.18 Time is of the Essence.** Time is hereby expressly made of the essence with respect to each and every term and provision of this Agreement and any other agreements determined by the Parties to be necessary or appropriate to be entered into in connection with the transactions contemplated by this Agreement.

**16.19 Access to Records and Information.** If and to the extent applicable to this Agreement and to any agreement contemplated hereunder or entered into pursuant hereto between or among the Parties, the Parties agree to comply with the requirements of Public Law 96 499, Section 952 (Section 1861(v)(1)(I) of the Social Security Act) and regulations promulgated thereunder.

## ARTICLE 17

### GLOSSARY

**17.1 Glossary.** Capitalized terms not otherwise defined in the body of this Agreement shall have the following meanings:

(a) "Applicable Laws" shall mean all applicable federal, state and local laws, statutes, ordinances, rules, regulations, codes and any judgment, decree, order, writ or injunction of any court, governmental or regulatory authority.

(b) "CERCLA" means the Comprehensive Environmental Response, Compensation and Liability Act, as amended.

(c) "Control" means possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity whether through

ownership of voting securities, the power to appoint or remove a majority of the members of the governing board of an entity, by contract or otherwise.

(d) **"Environmental Law"** means federal, state or local statutes and ordinances, and all rules and regulations promulgated thereunder, common law, orders, consent decrees, permits, and binding judicial and administrative interpretations thereof, pertaining or relating to: (a) natural resources and the environment; (b) public and worker health and safety; and (c) the identification, reporting, generation, manufacture, processing, distribution, use, treatment, storage, disposal, emission, discharge, release, transport or other handling of any Hazardous Substances, including, without limitation, CERCLA and RCRA.

(e) **"ERISA"** means the Employee Retirement Income Security Act of 1974, as amended.

(f) **"GAAP"** shall mean Generally Accepted Accounting Principles.

(g) **"Hazardous Substances"** shall mean petroleum or petroleum products, polychlorinated biphenyls, asbestos containing materials, lead based paint, radioactive materials, toxic mold or fungus of any kind or species, medical wastes, and any substances, materials, chemicals, pollutants, constituents, wastes or noxious substances regulated by any Environmental Law.

(h) **"Health Care Laws"** shall mean all federal, state and local laws, statutes, rules, regulations, ordinances and codes applicable to health care providers and facilities; federal and state health care program conditions of participation, standards, policies, rules, procedures and other requirements; and accreditation standards of any applicable accrediting organization. Health Care Laws include, without limitation, the following laws: the federal (Title XIX of the Social Security Act) and state Medicaid programs and their implementing regulations, the Medicare Program (Title XVIII of the Social Security Act) and its implementing regulations, the federal False Claims Act (31 U.S.C. §§3729 et seq.), the Federal Health Care Program Anti Kickback Statute (42 U.S.C. §1320a 7b(b)), the Federal Physician Self Referral Law (42 U.S.C. §1395nn), the Federal Administrative False Claims Law (42 U.S.C. §1320a 7b(a)), the Beneficiary Inducement Statute (42 U.S.C. §1320a-7a(a)(5)), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA Privacy Rule, the HIPAA Security Rule and the HIPAA Standards for Transactions and Code Sets (42 U.S.C. 1320d 1329d 8; 45 CFR Parts 160 and 164), the Health Information Technology for Economic and Clinical Health ("HITECH") Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009)), the federal Confidentiality of Alcohol and Drug Abuse Patient Records Act (42 U.S.C. 290ee 3), the Rehabilitation Act, the Americans with Disabilities Act, the Occupational Safety and Health Administration statutes and regulations for blood borne pathogens and workplace risks, and any state and local laws and the regulations promulgated pursuant to such laws, that address the same or similar subject matter. Health Care Laws also include federal, state and local laws applicable to health care providers and facilities, including, without limitation, laws related to: federal and state health care program billing, cost reporting, revenue reporting, payment and reimbursement; federal and state health care program fraud, abuse, theft or embezzlement; procurement of health care services, human and social services, and other health related services; employee background

checks and credentialing of employees; credentialing and licensure of facilities or providers of such services; zoning, maintenance, safety and operations of group homes, residential facilities and day programs, and other building health and safety codes and ordinances; health facility planning laws; state law restrictions on the corporate practice of medicine (and the corporate practice of any other health related profession); eligibility for federal and state health care program contracting, including any requirements limiting contracting to nonprofit or tax exempt entities; patient information and medical record confidentiality, including psychotherapy and mental health records; splitting of health care fees; patient brokering, patient solicitation, patient capping, and/or payment of inducements to recommend or refer, or to arrange for the recommendation or referral of, patients to health care providers or facilities; standards of care, quality assurance, risk management, utilization review, peer review, and/or mandated reporting of incidents, occurrences, diseases and events; advertising or marketing of health care services; and the enforceability of restrictive covenants on health care providers.

(i) **"IHFSRB"** means the Illinois Health Facilities and Services Review Board.

(j) **"Intellectual Property"** means any material trademarks, service marks, trade names, patents, copyrights, and applications therefore (whether registered or common law) currently owned or used by any of the CDH Entities or Delnor Entities.

(k) **"IRS"** means the Internal Revenue Service.

(l) **"Joint Commission"** shall mean The Joint Commission, f/k/a The Joint Commission on Accreditation of Healthcare Organizations.

(m) **"Knowledge", "known", "knowingly", "to the knowledge"** or any variant thereof shall, when qualifying any representation, warranty or other statement in this Agreement, mean and refers to:

(i) with respect to CDH Parent: (i) all matters with respect to which the CDH Entities have received written notice; or (ii) the actual knowledge of the persons serving as President and Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Nursing Officer, General Counsel and Chief Compliance Officer of CDH Parent and Central DuPage Hospital; or

(ii) with respect to Delnor Parent: (i) all matters with respect to which the Delnor Entities have received written notice; or (ii) the actual knowledge of the persons serving as President and Chief Executive Officer, Chief Financial Officer, Chief Operating Officer, Chief Nursing Officer, General Counsel and Chief Compliance Officer of Delnor Parent and Delnor Community Hospital.

(n) **"Material Adverse Change"** means any condition, change, event, violation, inaccuracy, circumstance or effect that individually or in the aggregate, could reasonably be expected to result in: (i) uninsured liabilities or losses (including, without limitation, lost revenues and asset values) exceeding Twenty Million Dollars (\$20,000,000); (ii) the inability of any of the Parties to maintain their respective Section 501(c)(3) status or the tax exempt status of their respective real property or bonds; (iii) the inability of any of the CDH

Entities or Delnor Entities that operate as licensed health care facilities to continue to operate as such licensed health care facilities; (iv) the debarment or exclusion of any CDH Entity or Delnor Entity from participation in the Medicare or Medicaid programs; (v) the imposition of criminal sanctions or penalties; (vi) the cancellation or revocation of CDH Coverage or Delnor Coverage; (vii) final loss of accreditation by either of Central DuPage Hospital or Delnor-Community Hospital from the Joint Commission; (viii) an inability of a CDH Entity or a Delnor Entity to materially perform their respective obligations under the Transaction Documents; (ix) the insolvency of a CDH Entity or Delnor Entity; (x) the downgrading of the credit rating of a CDH Entity or Delnor Entity, as applicable; or (xi) the acceleration of obligations under tax-except bond indebtedness of the CDH Entities or the Delnor Entities. Notwithstanding anything to the contrary, "Material Adverse Change" shall not include: (A) changes in the financial or operating performance due to or caused by seasonal changes; (B) changes or proposed changes to any Applicable Laws, reimbursement rates or policies of governmental agencies or bodies that are generally applicable to hospitals or healthcare facilities and that do not disproportionately affect the applicable entities; (C) requirements, reimbursement rates, policies or procedures of third party payors or accreditation commissions or organizations that are generally applicable to hospitals or healthcare facilities and that do not disproportionately affect the applicable entities; (D) general business, industry or economic conditions, including such conditions related to the business of the CDH Entities, taken as a whole, or the Delnor Entities, taken as a whole, that do not disproportionately affect the applicable entities; (E) local, regional, national or international political or social conditions, including the engagement by the United States in hostilities, whether or not pursuant to the declaration of a national emergency or war, or the occurrence of any military or terrorist attack, that do not disproportionately affect the applicable entities; (F) changes in financial, banking or securities markets (including any disruption thereof and any decline in the price of any security or any market index) that do not disproportionately affect the applicable entities taken as a whole and as compared to other similar health care businesses; or (G) changes in GAAP.

(o) "Material Contracts" shall mean the following categories of contracts, leases (capital and operating), and other agreements entered into by or on behalf of any one or more of the CDH Entities or Delnor Entities which are currently in effect:

(i) all debt, bond, credit, mortgage, pledge, or other lien or encumbrance agreements and all documents evidencing negative pledges or other covenant or transfer restrictions on the assets of any CDH Entity or any Delnor Entity, as applicable;

(ii) all joint venture agreements or shareholder agreements to which any CDH Entity or Delnor Entity is a party;

(iii) all agreements with physicians or any source of patient referrals, including allied health professionals or other professional personnel, corporations or partnerships comprised of or owned by them or the relatives of any of them, including, without limitation, all employment agreements, contracts to provide administrative or professional services, recruitment, retention, relocation or income guarantee agreements, loans and guarantees, and acquisitions of private professional practices or their assets;

(iv) all agreements for employment, indemnity, retention, severance, change-in-control and employee lease with, and agreements regarding loans or advances to officers, directors, members, shareholders, employees or advisory board members;

(v) all Payment Program contracts which individually account for payments in excess of Five Million Dollars (\$5,000,000.00) annually;

(vi) all insurance policies, trust agreements and other related agreements, including, without limitation, stop-loss and self insurance arrangements;

(vii) corporate integrity agreements to which a CDH Entity or a Delnor Entity is a party;

(viii) agreements which contain executory non-competition covenants binding upon or running in favor of, a CDH Entity or a Delnor Entity;

(ix) agreements or commitments affecting ownership of, title to, or any interest in real property; and

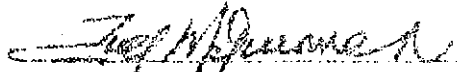
(x) any other agreement that (A) involves an obligation in excess (or expected to be in excess) of Five Million Dollars (\$5,000,000) in any one year, (B) involves an obligation in excess of Twenty Million Dollars (\$20,000,000) over the remaining term of the agreement; or (C) the cancellation or termination of which would be reasonably likely to result in a Material Adverse Change.

(p) **"Permitted Encumbrances"** means (i) encumbrances for taxes not yet due and payable or being diligently contested in good faith and for which appropriate reserves have been established in accordance with GAAP (provided that Permitted Encumbrances shall not apply to omitted or reassessed taxes imposed due to incorrect, false or misleading real estate tax exemption applications or annual exemption certifications filed pursuant to 35 ILCS 200/15-10); (ii) liens for inchoate mechanics' and materialmen's liens for construction in progress and workmen's, repairmen's, warehousemen's and carriers' liens arising in the ordinary course of business; (iii) easements, restrictive covenants, rights of way and other similar restrictions of record that do not impair in any material respect the value of the assets or the continued conduct of the business of any CDH Entity or Delnor Entity or such party's continued use of its assets in the manner currently used; (iv) zoning, building and other similar restrictions that do not impair in any material respect the value the asset or the continued conduct of the business of any CDH Entity or Delnor Entity or such party's continued use of its assets in the manner currently used; (v) encumbrances, encroachments and other imperfections of title, licenses or encumbrances, if any, of record that do not impair in any material respect the value of the asset or the continued conduct of the business of any CDH Entity or Delnor Entity or such party's continued use of its assets in the manner currently used; (vi) encumbrances arising under original purchase price conditional sales contracts and equipment leases with third parties entered into in the ordinary course of business; and (vii) in the case of leased property, all matters, whether or not of record, affecting the title of the lessor (and any underlying lessor) of the leased property do not impair in any material respect the value of its assets or the continued conduct of the business of any CDH Entity or Delnor Entity, or such party's continued use of its assets in the manner currently used.

amended. (q) "RCRA" means the Resource Conservation and Recovery Act, as

IN WITNESS WHEREOF, the Parties, acting through their duly authorized representatives, have executed this Agreement of Merger as of the Execution Date.

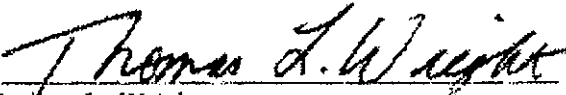
**CENTRAL DUPAGE HEALTH:**

By: 

Name: Luke McGuinness

Title: President and CEO

**DELNOR-COMMUNITY HEALTH SYSTEM:**

By: 

Name: Thomas L. Wright

Title: President and CEO

# STANDARD & POOR'S

130 East Randolph Street  
Suite 2900  
Chicago, IL 60601  
tel 312 233-7001  
reference no.: 40142166

November 4, 2009

Delnor Community Hospital  
300 Randall Road  
Geneva, IL 60134-4200  
Attention: Mr. Michael E. Kittoe, Chief Financial Officer

**Re: \$72,175,000 Illinois Health Facility Authority (Delnor Community Hospital) (FSA)**

Dear Mr. Kittoe:

Standard & Poor's has reviewed the Standard & Poor's underlying rating (SPUR) on the above-referenced obligations. After such review, we have affirmed the "A" rating and stable outlook. A copy of the rationale supporting the rating and outlook is enclosed.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you or by your agents but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

Standard & Poor's relies on the issuer/obligor and its counsel, accountants, and other experts for the accuracy and completeness of the information submitted in connection with the rating. To maintain the rating, Standard & Poor's must receive all relevant financial information as soon as such information is available. Placing us on a distribution list for this information would facilitate the process. You must promptly notify us of all material changes in the financial information and the documents. Standard & Poor's may change, suspend, withdraw, or place on CreditWatch the rating as a result of changes in, or unavailability of, such information. Standard & Poor's reserves the right to request additional information if necessary to maintain the rating.

Mr. Michael E. Kittoe

Page 2

November 4, 2009

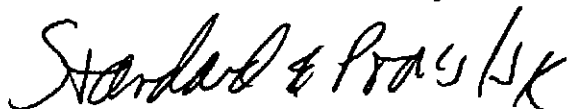
Please send all information to:

Standard & Poor's Ratings Services  
Public Finance Department  
55 Water Street  
New York, NY 10041-0003

If you have any questions, or if we can be of help in any other way, please feel free to call or contact us at [nypublicfinance@standardandpoors.com](mailto:nypublicfinance@standardandpoors.com). For more information on Standard & Poor's, please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). We appreciate the opportunity to work with you and we look forward to working with you again.

Sincerely yours,

Standard & Poor's Ratings Services  
a division of The McGraw-Hill Companies, Inc.



gr  
enclosure

cc: Mr. Andrew J. Majka  
Ms. Pamela A. Lenane  
Ms. Sheelagh Flanagan

# **STANDARD & POOR'S**

130 East Randolph Street  
Suite 2900  
Chicago, IL 60601  
tel 312 233-7001  
reference no.: 40233811

November 4, 2009

Delnor Community Hospital  
300 Randall Road  
Geneva, IL 60134-4200  
Attention: Mr. Michael E. Kittoe, Chief Financial Officer

**Re: \$58,810,000 Illinois Finance Authority (Delnor Community Hospital) Hospital Variable  
Rate Demand Obligations, Series 2008A**

Dear Mr. Kittoe:

Standard & Poor's has reviewed the rating on the above-referenced obligations. After such review, we have changed the rating to "AA+/A-2" from "AAA/A-1+" while affirming the not meaningful outlook. A copy of the rationale supporting the rating and outlook is enclosed.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you or by your agents but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

Standard & Poor's relies on the issuer/obligor and its counsel, accountants, and other experts for the accuracy and completeness of the information submitted in connection with the rating. To maintain the rating, Standard & Poor's must receive all relevant financial information as soon as such information is available. Placing us on a distribution list for this information would facilitate the process. You must promptly notify us of all material changes in the financial information and the documents. Standard & Poor's may change, suspend, withdraw, or place on CreditWatch the rating as a result of changes in, or unavailability of, such information. Standard & Poor's reserves the right to request additional information if necessary to maintain the rating.

ATTACHMENT 6

Mr. Michael E. Kittoe  
Page 2  
November 4, 2009

Please send all information to:

Standard & Poor's Ratings Services  
Public Finance Department  
55 Water Street  
New York, NY 10041-0003

If you have any questions, or if we can be of help in any other way, please feel free to call or contact us at [nypublicfinance@standardandpoors.com](mailto:nypublicfinance@standardandpoors.com). For more information on Standard & Poor's, please visit our website at [www.standardandpoors.com](http://www.standardandpoors.com). We appreciate the opportunity to work with you and we look forward to working with you again.

Sincerely yours,

Standard & Poor's Ratings Services  
a division of The McGraw-Hill Companies, Inc.

A handwritten signature in black ink that reads "Standard & Poor's UK". The signature is written in a cursive, stylized font.

gr  
enclosure

# STANDARD & POOR'S

130 East Randolph Street  
Suite 2900  
Chicago, IL 60601  
tel 312 233-7001  
reference no.: 40233811

November 4, 2009

Delnor Community Hospital  
300 Randall Road  
Geneva, IL 60134-4200  
Attention: Mr. Michael E. Kittoe, Chief Financial Officer

Re: ***\$58,810,000 Illinois Finance Authority (Delnor Community Hospital) Hospital, Variable Rate Demand Obligations, Series 2008A***

Dear Mr. Kittoe:

Standard & Poor's has reviewed the Standard & Poor's underlying rating (SPUR) on the above-referenced obligations. After such review, we have affirmed the "A" rating and stable outlook. A copy of the rationale supporting the rating and outlook is enclosed.

The rating is not investment, financial, or other advice and you should not and cannot rely upon the rating as such. The rating is based on information supplied to us by you or by your agents but does not represent an audit. We undertake no duty of due diligence or independent verification of any information. The assignment of a rating does not create a fiduciary relationship between us and you or between us and other recipients of the rating. We have not consented to and will not consent to being named an "expert" under the applicable securities laws, including without limitation, Section 7 of the Securities Act of 1933. The rating is not a "market rating" nor is it a recommendation to buy, hold, or sell the obligations.

This letter constitutes Standard & Poor's permission to you to disseminate the above-assigned rating to interested parties. Standard & Poor's reserves the right to inform its own clients, subscribers, and the public of the rating.

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ATTACHMENT 6

Mr. Michael E. Kittoe

Page 2

November 4, 2009

Please send all information to:

Standard & Poor's Ratings Services  
Public Finance Department  
55 Water Street  
New York, NY 10041-0003

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Sincerely yours,

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A handwritten signature in black ink, appearing to read "Standard & Poor's / SK", is written over the typed name of the company.

gr  
enclosure

## Illinois Finance Authority Delnor-Community Hospital

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**Credit Profile**

**Illinois Fin Auth, Illinois**

Delnor Comnty Hosp, Illinois

Illinois Finance Authority (Delnor Community Hospital) hosp VRDO ser 2008A

|                   |                |            |
|-------------------|----------------|------------|
| Long Term Rating  | AA+/A-2        | Downgraded |
| Unenhanced Rating | A(SPUR)/Stable | Affirmed   |

**Illinois Hlth Fac Auth, Illinois**

Delnor Comnty Hosp, Illinois

Illinois Hlth Fac Auth (Delnor Community Hospital)

Illinois Hlth Fac Auth (Delnor Community Hospital) (FSA)

|                   |                |          |
|-------------------|----------------|----------|
| Unenhanced Rating | A(SPUR)/Stable | Affirmed |
|-------------------|----------------|----------|

Many issues are enhanced by bond insurance

### Rationale

Standard & Poor's Ratings Services lowered its joint criteria rating to 'AA+/A-2' from its 'AAA/A-1+' on Illinois Finance Authority's (Delnor-Community Hospital) series 2008A variable-rate demand revenue refunding bonds that were issued to refinance the series 2006 auction-rate bonds due to the downgrade of the letter-of-credit (LOC) provider. This action is based on Standard & Poor's application of joint criteria assuming low correlation between Delnor-Community Hospital ('A') and the LOC provider, Fifth Third Bank ('BBB+/A-2'). The 'A-2' short-term component of the rating reflects the short-term rating on the LOC provider. Fifth Third Bank's rating was lowered on June 17, 2009. The expected expiration date of the LOC is June 4, 2011, unless otherwise terminated or extended according to its terms.

Standard & Poor's also affirmed its 'A' underlying rating (SPUR) on Illinois Health Facilities Authority's series 2002 and 2003 hospital revenue bonds, issued for Delnor-Community Hospital. These bonds are insured by Financial Security Assurance Inc.

The SPUR affirmation is based on sound operating performance, strong liquidity as well as maintenance of a solid business position in a relatively competitive environment. Despite softer volumes during the past two fiscal years, operating results have remained healthy. All financial information is based on Delnor-Community Health System.

To be more specific, the ratings reflect:

- Good operating margins of 2.3% and 2.8% in fiscal 2009 and 2008, respectively, although much weaker compared with the past few fiscal years where margins were upward of 9%;
- Sound maximum annual debt service (MADS) coverage of 3.2x in fiscal 2009;
- Strong liquidity, with 321 days' cash on hand as of Aug. 31, 2009; and
- Stable primary market share of 59% in a solid growth area.

Factors of concern include softer volumes in the past two years. Also, while Delnor is clearly the market leader in its primary service area, the market place remains competitive.

The rating is based on the Delnor-Community Health System, which is the sole corporate member of Delnor-Community Hospital (the only obligated entity); the Delnor-Community Health Care Foundation; Delnor-Community Residential Living Inc.; LivingWell Cancer Resource Center; and DelCom Corp., a for-profit health care corporation. Delnor-Community Hospital operates 159 beds and provides a full range of general acute-care and ambulatory services to patients principally in the rapidly growing corridor of the central Fox River Valley, including the cities of Geneva, St. Charles, and Batavia. Delnor's primary service area has an estimated population of 135,500. The population growth rate in the primary service area through 2014 is expected to far exceed the state and national averages.

Utilization for Delnor-Community Hospital declined in fiscal 2009 due to the weak economy, whereas it had increased in fiscal 2008. Admissions were 9,429 for fiscal 2009, down from 9,976 in fiscal 2008. However, this decline reflects a transition from inpatient beds to observation beds, as Delnor attempts to place patients in the clinically appropriate setting. As such, observation stays increased significantly by 48% to 2,840. While outpatient visits continued to grow, outpatient surgeries declined but are being partly captured in a new joint venture between Delnor and physicians for a new ambulatory surgery center, which opened in fiscal 2008. Inpatient market share remains solid at 59%, while Delnor's nearest competitor's inpatient market share is 12.9%. Delnor competes with Central DuPage Hospital ('AA'), Rush-Copley Medical Center ('A-'; as a part of Rush University Medical Center), Provena Mercy Center, and Provena St. Joseph ('BBB+'; as a part of the Provena Health System), and Sherman Hospital (SPUR; 'BBB').

For the fiscal years ended Aug 31, 2009 (unaudited), and 2008, Delnor posted operating margins of 2.3% and 2.8%, respectively. Although solid, these results have deteriorated from historical levels mainly due to weaker volumes, which management attributes to the economic crisis. However, management remains focused on improving operations and has hired a consultant to implement LEAN initiatives to control costs and enhance operation efficiencies. As part of its growth strategy, the hospital plans to hire more physicians for its internal medical staff as well as its regional clinics. Improved operations will likely be derived from better volume. The improved volume is expected to be driven by management plans to revise its recruitment model, under which Delnor will begin to employ

physicians, a strategy currently not put into effect by the organization. Furthermore, it plans to form a joint venture with its emergency physicians and continue to add doctors as necessary in the regional clinics. Delnor will also continue to build its cardiology and oncology services and has a newly constructed building factored into its capital plans. The building will house the new cancer center within the next two years. Additionally, Delnor's membership of a regional hospital group purchasing organization helps in negotiating better supply contracts. Delnor is budgeting a 2.4% operating margin for fiscal 2010.

The balance sheet remains solid with liquidity of 321 days' cash on hand, leverage of 41%, and cash to debt of 127% on Aug. 31, 2009. Although sound, weaker nonoperating income lowered the MADS coverage to 3.2x in fiscal 2009 from 4.2x in the previous year. The hospital's investment policy is relatively aggressive, with about 70% of its portfolio invested in equities with the balance in fixed-income instruments. Delnor spent about \$17 million on capital projects in 2009 and has a capital budget of \$37 million in each of the fiscals 2010 and 2011. Management has indicated that this budget can be scaled back if operating cash flows do not permit this level of spending. This rating affects \$131 million of long-term debt.

### **Outlook**

The stable outlook is based on Standard & Poor's expectation that Delnor will maintain its solid market position and healthy financial operations. Although not expected, continued operational challenges and a material deterioration in Delnor's balance sheet metrics could result in an outlook or rating change. No new debt is expected in the near future.

### **Debt Derivative Profile**

Standard & Poor's assigned Delnor a Debt Derivative Profile (DDP) score of '2' on a four-point scale, whereby '1' represents the lowest risk. Delnor has entered into two floating- to fixed-rate swaps with UBS AG with an aggregate notional amount of \$82.775 million. The DDP score of '2' indicates that the swaps are a low credit risk. The DDP score is a reflection of the counterparties' high credit ratings, the obligor's moderate-low risk of termination, the low economic viability, and long lives of the swaps over stressful economic cycles, and good management oversight of the swap plan. Delnor has variable-rate exposure after taking into account the effect of the swaps in existence of 0% of the total debt outstanding for the entire system.

### **Related Research**

- USPF Criteria: "Commercial Paper, VRDO, And Self-Liquidity," July 3, 2007
- USPF Criteria: "Debt Derivative Profile Scores," March 27, 2006
- USPF Criteria: "Not-For-Profit Health Care," June 14, 2007
- Criteria: Methodology And Assumptions: Approach To Evaluating Letter Of Credit-Supported Debt, July 6, 2009
- USPF Criteria: "Standby Bond Purchase Agreement Automatic Termination Events," April 11, 2008
- Criteria: "Joint Support Criteria Update," April 22, 2009

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**The McGraw-Hill Companies**

**Healthcare  
New Issue**

**Central DuPage Health**  
Illinois Finance Authority

**Ratings**

**New Issue**  
\$240,000,000 Illinois Finance  
Authority Revenue Bonds,  
Series 2009B (Central DuPage  
Health) **AA**

See page 2 for Outstanding Debt.

**Rating Outlook**

Stable

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**New Issue Details**

**Sale Information:** Series 2009B bonds  
expected to sell during the week of  
Nov. 2 via negotiation.

**Security:** Security interest in the  
unrestricted receivables of the  
obligated group only.

**Purpose:** To pay or reimburse the  
corporation for various capital projects,  
including the construction of a five-story,  
202-room bed pavilion, current refund an  
aggregate of \$102 million of outstanding  
series 2000B and 2000C and series 2004A-  
C bonds, fund approximately 36 months of  
capitalized interest on the series 2009B  
bonds, provide approximately \$5.3 million  
of working capital, and may pay  
associated costs of issuance.  
**Final Maturity:** Nov. 1, 2039.

**Related Research**

• 2009 Nonprofit Hospitals and  
Healthcare Systems Outlook,  
Jan. 29, 2009

**Rating Rationale**

- Central DuPage Health (CDH) has generated robust operating profitability, with operating and operating EBITDA margin in excess of 6.0% and 17.1%, respectively, in each of the past four fiscal years as a result of rising volumes and beneficial payor mix.
- Due to strong cash flow generation, CDH's balance sheet indicators are robust with 596 days cash on hand, a pro forma cushion ratio of 29.3x, and 174% cash to long-term debt as of June 30, 2009.
- In fiscal 2009, CDH increased its market share in its primary service area (PSA) to 62.1% from 61.9% in the year earlier period, with its next closest competitor having a market share of just 6.9%.
- CDH's projected five-year capital spending at \$479.0 million (from fiscal years 2009–2013) is unchanged, with the new bed tower making up nearly 45% of total projected capital spending.

**Key Rating Drivers**

- Possible impacts from national healthcare reform and an expectation of a lower reimbursement environment.

**Credit Summary**

CDH is a 313-licensed-bed acute care hospital located in Winfield, IL (approximately 30 miles west of Chicago). The corporation also owns a nursing home and a congregate care facility with 238 independent living units and 65 assisted living units. In fiscal 2009, CDH had total revenues of \$680 million.

The 'AA' rating reflects CDH's exceptionally strong balance sheet indicators buoyed by strong operating performance, outstanding cash flow, leading market position in its primary service area, and the positive service area characteristics. In fiscal 2009, CDH continued its history of robust operating performance with operating and operating EBITDA (earnings before interest, depreciation, taxes, and amortization) margins of 9.4% and 18.5%, respectively. CDH has been one of the strongest performers in Fitch Ratings' healthcare portfolio with operating margins that have exceeded 7.9% annually and operating EBITDA margins of no less than 17.9% in each of the past three fiscal years. This robust operating profitability has allowed CDH to build substantial balance sheet strength. At June 30, 2009, CDH's unrestricted cash and investments totaled \$863.5 million, which equates to 596 days of cash on hand, a cushion ratio (based on pro forma MADS) of 29.3x, and 174% of long-term debt. CDH's investment policy/asset allocation presents little volatility. At June 30, 2009, roughly 86% of CDH's investment portfolio was invested in fixed-income securities, with an average maturity of less than 30 months. As a result, CDH's liquidity position was marginally impacted by the negative investment returns in fiscal 2008.

CDH remains the clear market share leader in its PSA with a 62.1% market share in fiscal 2009. Strategically, CDH has separated itself from area competitors as it has transformed itself into a tertiary medical center with an emphasis in pediatrics, neurosciences, orthopedics, oncology, and cardiology. For example, CDH's partnership agreement with

## Rating History

| Rating | Action   | Outlook/<br>Watch | Date     |
|--------|----------|-------------------|----------|
| AA     | Affirmed | Stable            | 10/29/09 |
| AA     | Affirmed | Stable            | 4/13/09  |
| AA     | Affirmed | Stable            | 12/2/08  |
| AA     | Affirmed | Stable            | 3/19/08  |
| AA     | Upgraded | Stable            | 1/4/07   |
| AA-    | Assigned | —                 | 4/16/04  |

Children's Memorial Hospital of Chicago (revenue bonds rated 'AA-' by Fitch) has increased CDH's pediatric market share to 35.6% from 29.5% over the past three years. CDH's commitment to and investment in building its clinical services has allowed the organization to attract the specialists and subspecialists who have historically practiced at an academic medical center. CDH's financial performance and volume growth is further bolstered by a service area with above-average population trends and wealth indicators.

Fitch's primary credit concerns include the competitive market for tertiary services in greater Chicago and weak bondholder protection expected on the series 2009B bonds. The Chicago metropolitan area is highly fragmented with several highly rated academic medical centers and strong community medical centers vying for market share in the western suburbs. In addition, Fitch believes CDH is vulnerable to changes in admitting patterns and/or the acquisition of a few large physician groups. The proposed covenant and security package on the series 2009B is expected to provide minimal bondholder protection. Based on draft documents, bondholders are not expected to receive a revenue pledge, mortgage interest in any property, or a debt service reserve fund. In addition, besides a 1.10 rate covenant there is not expected to be any limitation on additional debt or disposition of property.

The Stable Rating Outlook reflects Fitch's belief that CDH's movement to tertiary medical center providing complex clinical services to the west suburban region of Chicago will allow the organization to maintain its financial performance and blunt the competitive threat posed by the community hospitals in the immediate service, as well as the large academic medical centers in Chicago.

## Plan of Finance/New Issue Details

CDH expects to issue approximately \$240 million of series 2009B bonds through the Illinois Finance Authority. The series 2009B bonds are expected to be issued as traditional fixed-rate securities that will amortize from 2013 through and including 2039.

The proceeds of the series 2009B bonds along with corporate funds will be used to: current refund approximately \$14.6 million of CDH's outstanding series 2000B bonds and \$14.6 million of the outstanding series 2000C bonds; current refund approximately \$3.2 million of the outstanding series 2004A bonds; current refund approximately \$34.8 million of the outstanding series 2004B and \$35.0 million of the outstanding series 2004C bonds; fund or reimburse the corporation for various capital projects including a portion of the costs associated with the construction of a new five-story, 202-room bed pavilion; provide \$5.3 million of working capital; fund 36 months of capitalized interest on the new money portion of the bonds; and may pay certain costs of issuance. In addition, CDH intends to use \$89.0 million of corporate equity to defease the remaining balances of the series 2000B and 2000C and series 2004A-C bonds so that within 30 days of the closing of the series 2009B issue none of the series 2000B and C and series 2004B and C bonds will remain outstanding.

## Outstanding Debt

|                                                                                                                                          |        |
|------------------------------------------------------------------------------------------------------------------------------------------|--------|
| \$90,000,000 Illinois Finance Authority Revenue Bonds (Central DuPage Health), Series 2009                                               | AA     |
| \$139,765,000 Illinois Finance Authority Revenue Bonds (Central DuPage Health), Series 2004A <sup>a</sup>                                | AA/F1+ |
| \$49,830,000 Illinois Finance Authority Variable-Rate Demand Revenue Bonds (Central DuPage Health), Series 2004B <sup>a</sup>            | AA/F1+ |
| \$49,830,000 Illinois Finance Authority Variable-Rate Demand Revenue Bonds (Central DuPage Health), Series 2004C <sup>a</sup>            | AA/F1+ |
| \$86,050,000 Illinois Health Facilities Authority Revenue Bonds (Central DuPage Health) (PARS), Series 2000A <sup>b</sup>                | AA     |
| \$41,700,000 Illinois Health Facilities Authority Variable-Rate Demand Revenue Bonds (Central DuPage Health), Series 2000B <sup>a</sup>  | AA/F1+ |
| \$41,845,000 Illinois Health Facilities Authority Variable-Rate Demand Revenue Bonds, (Central DuPage Health), Series 2000C <sup>a</sup> | AA/F1+ |

<sup>a</sup>The short-term 'F1+' rating is based on a liquidity facility provided by JP Morgan Chase Bank, N.A. <sup>b</sup>The bonds are insured by MBIA, whose insurer financial strength is not rated by Fitch.

Approximately \$129.4 million of the series 2004A are expected to remain outstanding.

CDH is currently negotiating to acquire all or a portion of its \$82.2 million series 2000A auction-rate securities issued through the Illinois Health Facilities Authority at a discount to face value and subsequently cancel the bonds. The acquisition of the series 2000A bonds would be funded from corporation cash. Currently, there is no assurance that CDH will be successful in acquiring some or all of the bonds.

### Legal Summary

The security and covenant package on the series 2009B bonds is weak and provides minimal bondholder security. However, Fitch notes that security and covenant provisions are typical for the rating category. The series 2009B bonds are issued pursuant to the provisions of a master trust indenture (MTI) dated May 1, 2000, as amended and supplemented including the eighth supplemental master indenture dated Nov. 1, 2009, pursuant to which the series 2009B are issued by the corporation. Wells Fargo Bank, N.A. is the master trustee. The series 2009B bonds are on parity with CDH's outstanding indebtedness. As long as the series 2000A bonds remain outstanding, all bondholders benefit from a security interest in the unrestricted receivables of the obligated group. However, the security interest in unrestricted receivables may be waived, modified, or terminated without the consent of the bondholders or the trustee if the corporation successfully redeems or refunds the series 2000A bonds. Bondholders are not secured by a security interest or mortgage of any property of the obligated group nor is a debt service reserve account expected to be created.

CDH is subject to various business/operating covenants. The major legal covenants, as outlined in the MTI and the eighth supplemental indenture, are listed in the table below.

### Series 2009B Major Legal Covenants

|                         |                                                                                                                                                                                                                        |
|-------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Coverage Test           | Not less than 1.10x on annual debt service requirement. If less than 1.10x, a consultant call in is required. However, coverage of less than 1.00x will not constitute an event of default.                            |
| Additional Debt         | There is no limitation on issuance of additional debt.                                                                                                                                                                 |
| Disposition of Property | There is no limitation on the sale or disposition of property.                                                                                                                                                         |
| Permitted Liens         | Limited to no more than 15% of total book value of property of the obligated group.                                                                                                                                    |
| Disclosure              | Audited financial statements disseminated within 150 days of each fiscal year end and quarterly unaudited financial statements for the first three fiscal quarters released within 60 days of each fiscal quarter end. |

### Organization and Management

CDH was incorporated in 1980 as an Illinois not-for-profit corporation and is the parent corporation of an integrated network of health care organizations (the system), which primarily serves western DuPage and Kane counties, IL. Central DuPage Hospital is a 313-bed acute care hospital that began operating at its current location in Winfield, IL in 1964. In addition, CDH has several controlled affiliates, including Wynscape Nursing and Rehabilitation (Wynscape), a 209-bed skilled nursing facility, and Wyndemere Retirement Community (Wyndemere), a congregate care facility with 238 independent living units and 65 assisted living units. CDH has entered into an agreement to sell all the assets of Wynscape and Wyndemere, which is expected to close by the end of 2009.

CDH is governed by a board of directors that consists of no less than 12 and no more than 17 directors that serve three terms without limit. In addition, the president of CDH, the chairperson of the foundation, and the president of the medical staff serve as ex-officio members with voting rights. There are five standing committees of the board:

executive, audit and finance, governance, quality, and compensation.

### **Clinical Summary**

Management has followed a dedicated strategic course focused on attaining high levels of clinical quality. Consistent operating profitability and sustained cash balances have enabled CDH to invest in state-of-the-art equipment housed in modern facilities better facilitating the education and training of nurses and other clinical staff, which have aided in the recruitment of leading physician specialists. Through these efforts, built upon each other over the last decades has allowed CDH to offer advanced acute services that were previously only available at urban academic centers. Through this focused investment in specialties such as neuroscience, advanced pediatrics, cardiac services, and orthopedics, CDH has transformed into more of an advanced referral center than a community hospital. In Fitch's opinion, this concentrated investment in developing and strengthening advanced clinical services is distinguishing credit strength for CDH.

### **Medical Staff**

Medical staff characteristics at CDH are more reflective of a regional referral center than a general community hospital. As of June 30, 2009, CDH had 930 physicians on active staff (94% currently board certified and 411 are considered active). Management reports that only 10% of the medical staff is over the age of 60, which is viewed as a positive attribute by Fitch. Over the past two years, the medical staff has grown by 68, further evidence of the effect of CDH's continued success and clinical reputation.

Management reports that its relationship with its active medical staff is cordial and cooperative. CDH's owned physician group (Central DuPage Physician Group [CDPG]) is a network of medical practices including primary care and specialized care physicians, specializing in family medicine, pediatrics, internal medicine, endocrinology, gynecology, oncology, infectious disease and wound care, interventional, interventional-neuro radiology, neurology, neurosurgery, palliative medicine, pediatric-neurology, psychiatry, rheumatology, sports medicine, and vascular surgery. CDPG employs approximately 61 physicians at 25 locations throughout DuPage and Kane counties. During fiscal years 2008 and 2009, there were 163,817 and 169,013 visits, respectively, involving the CDPG physicians.

### **Service Area and Competition**

Fitch considers CDH's service area to be a credit strength. CDH is located in the Village of Winfield, IL in the heart of DuPage County (general obligation bonds rated 'AAA' by Fitch). In 2009, more than 50% of the households in CDH's primary and secondary service areas reported average income in excess of \$75,000, compared to 34% for the state of Illinois. Although the demographics of CDH's core market are strong with high wealth indicators and steady population projections, Fitch does view the inpatient market as highly competitive, with other large providers offering comparable services (Good Samaritan Hospital, part of Advocate Health Care Network, revenue bonds rated 'AA' by Fitch; Elmhurst Memorial Hospital, revenue bonds rated 'A-' by Fitch; Alexian Brothers Health System, revenue bonds rated 'A-' by Fitch; and Edward Hospital and Delnor Hospital, neither rated by Fitch). Despite this competition, CDH has maintained a leading inpatient market share in its primary service area at or above 60% over the past three years, which is nearly 10 times the share of its nearest competitor.

### **Utilization/Payor Mix**

Despite a slight decrease in overall patient days in fiscal 2009, CDH experienced growth in inpatient admissions and strong growth in both inpatient and outpatient surgical cases. Management reports that CDH operates one of the busiest surgical practices in the state. Of

particular note, according to the Illinois Hospital Association, CDH was the eighth largest hospital in the Chicago region during the period starting July 1, 2008 and ending March 31, 2009, as measured by discharge volume. Of the seven hospitals preceding CDH, only one was a non-academic hospital.

CDH's affluent core market area results in a very favorable payor mix, which has been relatively stable over the past five fiscal years. The hospital's percentage of gross revenues from commercial and managed care payors has averaged nearly 53% annually, which is a primary driver of CDH's consistent robust operating profitability.

### Payor Mix

(As % of Gross Revenues, Fiscal Years Ended June 30)

|              | 2006  | 2007  | 2008  | 2009  |
|--------------|-------|-------|-------|-------|
| Medicare     | 35.9  | 35.3  | 35.1  | 34.3  |
| Medicaid     | 7.5   | 7.9   | 8.5   | 8.3   |
| Blue Cross   | 25.6  | 27.1  | 27.7  | 30.3  |
| Commercial   | 2.1   | 2.2   | 2.7   | 1.2   |
| Managed Care | 25.1  | 23.9  | 22.4  | 21.1  |
| Other        | 3.8   | 3.6   | 3.6   | 4.8   |
| Total        | 100.0 | 100.0 | 100.0 | 100.0 |

Note: Numbers may not add to 100% due to rounding.

### Utilization Data

(Fiscal Years Ended June 30)

|                                                          | 2006    | 2007    | 2008    | 2009    |
|----------------------------------------------------------|---------|---------|---------|---------|
| Operated Beds                                            | 317     | 322     | 313     | 313     |
| Acute Discharges/Admissions Excluding Newborn Births     | 19,765  | 21,411  | 21,749  | 22,015  |
| Acute Patient Days Excluding Newborn Days                | 74,720  | 82,195  | 84,199  | 83,537  |
| Average Length of Stay (Days)                            | 3.8     | 3.8     | 3.9     | 3.8     |
| Average Daily Census                                     | 205     | 225     | 231     | 229     |
| Occupancy (%)                                            | 65      | 70      | 74      | 73      |
| Normal Newborn Births                                    | 2,653   | 3,029   | 3,088   | 3,149   |
| Inpatient Surgeries                                      | 7,509   | 8,043   | 8,384   | 9,078   |
| Outpatient Surgeries                                     | 15,806  | 15,582  | 16,277  | 16,759  |
| Net Emergency Room (ER) Visits (Excluding ER Admissions) | 43,697  | 46,285  | 51,788  | 50,720  |
| Clinic Visits                                            | 317,212 | 377,217 | 425,673 | 489,566 |
| Full-Time Equivalents (FTEs)                             | 1,990   | 2,085   | 2,266   | 2,475   |
| FTEs / Adjusted Occupied Bed                             | 5.8     | 5.6     | 5.8     | 6.1     |
| Medicare Case Mix Index                                  | 1.50    | 1.49    | 1.57    | 1.57    |

### Treasury Review

#### Disclosure

Disclosure to Fitch has been very timely and thorough over the years. CDH covenants to disclose annual financial information within 150 days of each fiscal year-end and quarterly information within 60 days of the first three fiscal quarter ends to the nationally recognized municipal securities information repositories.

#### Investments

CDH has a board-approved investment policy that currently permits investments in various types of high-quality, investment-grade fixed income securities, equities, and limited investments in other asset classes, such as funds that invest in high yield bond, inflation protected securities, and alternative investments.

As of June 30, 2009, a majority of the

### Investment Detail

(As of June 30, 2009)

|                | Value (\$ Mil.) | Allocation (%) |
|----------------|-----------------|----------------|
| Cash           | 28              | 3.00           |
| Fixed Income   | 779             | 84.1           |
| Long-Term Fund | 119             | 12.9           |
| Total          | 926             | 100            |

Note: Numbers may not add to 100% due to rounding.

CDH's fixed income investments resided in either a short-term or medium-term fixed income portfolio. By policy, the average maturity of the short-term fund shall not exceed six months, while the average maturity of the medium-term fund shall not exceed 30 months. Securities in the short-term fund may have a maturity of up to 14 months from purchase while the maturity of investments in the medium-term fund must be five years or less at the time of purchase.

In addition to the fixed income funds, CDH has a long-term investment fund that maintains a diversified mix of investments that includes various fixed income, equity and alternative investment funds. As of June 30, 2009, the long-term fund totaled \$119 million, or about 13% of the system's total cash and investments. Funds using either an active and passive management style are used in the long-term fund.

### **Debt**

Currently, CDH has a total of \$499 million of debt outstanding of which \$323 million (65%) are variable-rate demand bonds (VRDB), \$90 million (18%) of traditional fixed-rate bonds, and \$86 million (17%) of auction-rate securities (ARS). The VRDBs are supported by bank liquidity facilities from JP Morgan Chase Bank, N.A., which expire on May 16, 2012 or Nov 16, 2102.

Fitch views CDH's plan of finance favorably as it reduces the corporation's capital structure risk by substantially increasing the amount of fixed-rate, fully committed debt and reducing the amount of bank supported, conditionally committed capital. Upon closing of the series 2009 bond issue and assuming successful defeasance of the series 2000A bonds, CDH's capital structure will consist of 72% traditional fixed-rate bonds and 28% VRDBs supported by bank liquidity facilities.

As provided by the underwriter, Fitch is using pro forma MADS of \$29.8 million for the purposes of this report which assumes the defeasance of the series 2000A auction-rate securities. CDH expects more than \$60.0 million of the series 2000A to be acquired and cancelled by Nov. 5, 2009. If the series 2000A bonds were to remain outstanding, pro forma MADS would increase to \$37.0 million and would not have an effect on the current rating.

### **Swaps**

CDH has two floating- to fixed-rate swaps each with a notional amount of \$65 million. Under the swaps, CDH pays a fixed rate of 3.51% or 3.81% and receives 67% of three-month LIBOR. The swap counterparty is Morgan Stanley. As of June 30, 2009, combined mark-to-market valuation was negative (\$19.0 million). CDH has no collateral posting threshold, and the counterparty termination occurs if CDH is downgraded below 'BBB-'.

### **Pension**

CDH has no defined benefit pension liability. The corporation offers a defined contribution plan with matching contributions.

### **Financial Performance**

Fitch's analysis and the various financial ratios referenced in this report are calculated using the consolidated audited financial statements of CDH, which includes certain non-obligated entities. In addition, Fitch backs out unrealized gains and losses on investments from non-operating income, which deviates from audited and interim results.

CDH's financial profile and performance is among the strongest in Fitch's healthcare portfolio and is noted for its robust operating profitability and cash flow generation and exceptionally strong liquidity. For the fiscal year ended June 30, 2009, CDH generated operating and operating EBITDA margins of 9.4% and 18.5%, respectively, reflecting growth

in outpatient admissions and strong growth in surgical volumes. In each fiscal year from 2005 through and including 2009, CDH has operating margins between 6.0% and 9.4% and operating EBITDA margins between 16.2% and 19.0%. This robust operating profitability has allowed CDH to build substantial balance sheet strength. As of June 30, 2009, CDH's unrestricted cash and investments totaled \$863.5 million, which equates to 596 days of cash on hand, a cushion ratio (based on pro forma MADS) of 29.3x, and 174% of long-term debt, all which exceed Fitch's respective 2009 'AA' medians of 209.9, 18.0x, and 144%. With its investment portfolio heavily weighted towards short-term fixed income investments, CDH's liquidity position was marginally impacted by the negative investment returns in 2008.

Many of CDH's capital-related metrics are consistent with the 'AA' rating category. Historical coverage of pro forma MADS in each of the past three fiscal year exceeds 5.0x as compared to the 2009 'AA' median of 3.8x. However, pro forma MADS as a percentage of fiscal 2009 revenue is somewhat high at 4.3% when compared to the 'AA' median of 2.8%. Furthermore, should the series 2000A remain outstanding, MADS of \$37.0 million would cause pro forma historical debt service coverage in fiscal 2009 to decline to 4.0x as compared to 5.0x using \$29.7 million while MADS as a percentage of fiscal 2009 revenues increases to a high 5.4%.

## Financial Summary

(\$000, Audited Fiscal Years Ended June 30)

|                                                           | 2005      | 2006      | 2007      | 2008      | 2009      |
|-----------------------------------------------------------|-----------|-----------|-----------|-----------|-----------|
| <b>Balance Sheet Data</b>                                 |           |           |           |           |           |
| Unrestricted Cash                                         | 569,829   | 671,005   | 800,705   | 866,421   | 863,485   |
| Restricted Cash                                           | 6,073     | 9,741     | 13,343    | 25,955    | 31,846    |
| Trustee-Held Cash                                         | 72,089    | 18,440    | 1,132     | 1,132     | 62,966    |
| Net Patient Accounts Receivable                           | 68,252    | 69,259    | 77,838    | 78,836    | 78,474    |
| Gross Property, Plant, and Equipment (PP&E)               | 706,837   | 769,197   | 798,854   | 848,419   | 907,633   |
| Accumulated Depreciation                                  | 286,645   | 322,614   | 356,829   | 395,306   | 409,754   |
| Net PP&E                                                  | 420,192   | 446,583   | 442,025   | 453,113   | 497,879   |
| Total Assets                                              | 1,195,856 | 1,270,236 | 1,398,947 | 1,477,667 | 1,649,524 |
| Current Liabilities                                       | 107,117   | 121,866   | 158,065   | 186,499   | 226,279   |
| Due to Third-Party Payors                                 | 22,360    | 30,674    | 52,954    | 47,358    | 56,536    |
| Long-Term Debt                                            | 441,098   | 433,433   | 426,584   | 417,500   | 496,949   |
| Unrestricted Net Assets                                   | 596,990   | 664,034   | 765,107   | 819,280   | 870,285   |
| <b>Income and Cash Flow Data</b>                          |           |           |           |           |           |
| Net Patient Revenue                                       | 443,763   | 457,045   | 548,261   | 594,183   | 642,444   |
| Other Revenue                                             | 27,443    | 29,762    | 31,724    | 35,243    | 37,388    |
| Total Revenue                                             | 471,206   | 486,807   | 579,985   | 629,426   | 679,832   |
| Salaries, Wages, Fees, and Benefits                       | 273,305   | 270,160   | 318,224   | 345,451   | 377,864   |
| Depreciation and Amortization                             | 30,318    | 39,073    | 46,739    | 46,847    | 51,317    |
| Interest Expense                                          | 7,238     | 14,787    | 17,244    | 16,392    | 10,350    |
| Provision for Bad Debts                                   | 22,693    | 25,263    | 32,916    | 36,125    | 35,281    |
| Total Expenses                                            | 432,543   | 457,455   | 534,035   | 579,734   | 615,823   |
| Income from Operations                                    | 38,663    | 29,352    | 45,950    | 49,692    | 64,009    |
| Operating EBITDA                                          | 76,219    | 83,212    | 109,933   | 112,931   | 125,676   |
| Non-Operating Gains/(Losses)                              | 18,207    | 32,862    | 37,960    | 33,224    | 21,222    |
| Excess Income/(Loss)                                      | 56,870    | 62,214    | 83,910    | 82,916    | 85,231    |
| Total Investment Income/(Loss)                            | 19,565    | 27,532    | 36,117    | 36,653    | 19,687    |
| Net Unrealized Gains/(Losses)                             | (846)     | 7,257     | 16,300    | (16,686)  | (36,590)  |
| Net Change in Fair Market Value of Derivative Instruments |           | (121)     | (114)     | (9,527)   | (9,214)   |
| Cash Flow from Operations                                 | 67,562    | 112,433   | 176,414   | 163,448   | 173,833   |
| Net PP&E Acquisitions                                     | 100,683   | 67,950    | 60,525    | 61,552    | 96,184    |
| EBITDA                                                    | 94,426    | 116,074   | 147,893   | 146,155   | 146,898   |
| CFFOBI                                                    | 74,800    | 127,220   | 193,658   | 179,840   | 184,183   |
| Free Cash Flow                                            | (33,121)  | 44,483    | 115,889   | 101,896   | 77,649    |
| Pre Forma Maximum Annual Debt Service (MADS)              | 29,718    | 29,718    | 29,718    | 29,718    | 29,718    |
| Actual Annual Debt Services (AADS)                        | 8,356     | 20,212    | 25,861    | 25,478    | 19,794    |

Note: Fitch Ratings may have reclassified certain financial statement items for analytical purposes.

ATTACHMENT 6

## Financial Summary (continued)

(\$'000, Audited Fiscal Years Ended June 30)

|                                                   | 2005  | 2006  | 2007  | 2008  | 2009  |
|---------------------------------------------------|-------|-------|-------|-------|-------|
| <b>Liquidity Ratios</b>                           |       |       |       |       |       |
| Days Cash on Hand                                 | 548.0 | 623.0 | 643.2 | 636.6 | 595.5 |
| Days in Accounts Receivable                       | 56.1  | 55.3  | 51.8  | 48.4  | 44.6  |
| Days in Current Liabilities                       | 103.0 | 113.1 | 127.0 | 137.0 | 156.1 |
| Cushion Ratio (x)                                 | 19.3  | 22.8  | 27.2  | 29.4  | 29.3  |
| Cash to Debt (%)                                  | 129.2 | 154.8 | 187.7 | 207.5 | 173.8 |
| <b>Profitability and Operational Ratios (%)</b>   |       |       |       |       |       |
| Operating Margin                                  | 8.2   | 6.0   | 7.9   | 7.9   | 9.4   |
| Operating EBITDA Margin                           | 16.2  | 17.1  | 19.0  | 17.9  | 18.5  |
| Excess Margin                                     | 11.6  | 13.2  | 15.8  | 12.5  | 12.2  |
| EBITDA Margin                                     | 19.3  | 22.3  | 23.9  | 22.1  | 21.0  |
| Cash Flow Margin                                  | 13.8  | 21.6  | 28.5  | 24.7  | 24.8  |
| Investment Income as % of Excess Income           | 34.4  | 44.3  | 43.0  | 44.2  | 23.1  |
| Personnel Cost as % of Revenues                   | 58.0  | 55.5  | 54.9  | 54.9  | 55.6  |
| Bad Debt Expense as % of Revenues                 | 4.8   | 5.2   | 5.7   | 5.7   | 5.2   |
| <b>Capital-Related Ratios</b>                     |       |       |       |       |       |
| MADS Coverage by EBITDA (x)                       | 3.2   | 3.9   | 5.0   | 5.0   | 5.0   |
| AADS Coverage by EBITDA (x)                       | 11.3  | 5.7   | 5.7   | 5.7   | 7.4   |
| MADS Coverage by Operating EBITDA (x)             | 2.6   | 2.8   | 3.7   | 3.8   | 4.3   |
| MADS Coverage by CFFOBI (x)                       | 2.5   | 4.3   | 6.6   | 6.1   | 6.2   |
| MADS as % of Revenue                              | 6.3   | 6.1   | 5.1   | 4.7   | 4.3   |
| Debt to EBITDA (x)                                | 4.7   | 3.7   | 2.9   | 2.9   | 3.4   |
| Debt to Capitalization (%)                        | 42.5  | 39.5  | 35.8  | 33.8  | 36.3  |
| Average Age of Plant (Years)                      | 9.5   | 8.3   | 7.6   | 8.4   | 8.0   |
| Capital Expenditures as % of Depreciation Expense | 332.1 | 173.9 | 129.5 | 131.4 | 187.4 |
| Capital Expenditures as % of Total Revenue        | 21.4  | 14.0  | 10.4  | 9.8   | 14.1  |

N.A. - Not available. Note: Fitch Ratings may have reclassified certain financial statement items for analytical purposes.

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October 30, 2009

## Illinois Finance Authority Central DuPage Health; Hospital

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Rationale

Outlook

Debt Derivative Profile: '2' -- A Low Credit Risk

Related Research

# Illinois Finance Authority Central DuPage Health; Hospital

## Credit Profile

US\$240. mil hosp rev bnds (Central Dupage Health) ser 2009

| Long Term Rating                                              | AA/Stable       | New      |
|---------------------------------------------------------------|-----------------|----------|
| <b>Illinois Fin Auth, Illinois</b>                            |                 |          |
| Central DuPage Health, Illinois                               |                 |          |
| Illinois Finance Authority (Central DuPage Health) (MBIA)     |                 |          |
| Unenhanced Rating                                             | AA(SPUR)/Stable | Affirmed |
| Illinois Fin Auth (Central DuPage Health) hosp ser 2004C      |                 |          |
| Long Term Rating                                              | AA/A-1+/Stable  | Affirmed |
| Illinois Fin Auth (Central DuPage Health) hosp VRDO ser 2004B |                 |          |
| Long Term Rating                                              | AA/A-1+/Stable  | Affirmed |

## Rationale

Standard & Poor's Ratings Services assigned its 'AA' long-term rating, with a stable outlook, to the Illinois Finance Authority's series 2009B fixed-rate revenue bonds, issued for Central DuPage Health (CDH). Standard & Poor's also affirmed its 'AA' long-term rating and underlying rating (SPUR), with a stable outlook, on the authority's series 2000A-1 and 2000A-2 periodic auction-rate bonds, insured by National Public Finance Guarantee Corp. (formerly known as MBIA Insurance Corp. of Illinois), issued for CDH. In addition, Standard & Poor's affirmed its 'AA/A-1+' rating, with a stable outlook, on the authority's series 2000B and C and 2004A, B, and C bonds, which trade as variable-rate demand obligations (VRDO) in the daily mode, issued for CDH. The rating's long-term component, based on CDH (AA), represents the likelihood that debt service will be paid over the life of the issue. The rating's short-term component represents the likelihood of full and timely payment of tenders by the standby bond purchase agreements (SBPA) that JPMorgan Chase Bank N.A. provides on the VRDOs. The expiration of the SBPAs has been extended to 2012 on all VRDOs, and no acceleration provisions exist in the event of bank bonds.

Finally, Standard & Poor's affirmed its 'AA' long-term rating, with a stable outlook, on the authority's 2009 bonds.

The rating reflects CDH's:

- Good levels of unrestricted liquidity, with one of the more conservative investment allocations in the industry;
- Continued strong profitability, with an operating margin of 9.4% as of fiscal year-end 2009 (June 30), compared with 7.9% for fiscal 2008;
- Management team that has continued to implement a strategic plan to enhance its facilities and operations; and
- Location in an economically and demographically favorable service area, with a dominant 62% market share in its primary service area (competition in the suburban Chicago marketplace exists, however).

Management expects approximately \$114 million of series 2009B fixed-rate bond proceeds to help fund various projects -- including a new bed pavilion and parking structure, as well as a buildout of the medical imaging department -- and routine capital expenditures. Also, it will use approximately \$102 million to refund portions of

the 2000B and C and 2004A, B, and C bonds. Finally, CDH plans to use its cash to take out approximately \$171 million of other debt in the next six to 12 months. Management's plan is to reduce variable risk.

CDH is the parent corporation of Central DuPage Hospital, a 313-licensed-bed acute-care facility. A number of other corporations are affiliated with CDH, such as Wyncscape Nursing and Rehabilitation Center; Wyndemere Retirement Community; Community Nursing Service of DuPage County Inc.; Central DuPage Physician Group, which employs approximately 60 physicians; and a foundation. Although these and several other affiliates are not obligated on the debt, we include them in the analysis below.

CDH, which is in a competitive service area, has maintained a strong business position. Volumes continue to appear sound; and acute-care admissions grew by 1.2% to 22,015 in 2009.

For fiscal 2009, CDH posted a strong operating margin of 9.4%, compared with 7.9% in fiscal 2008. Management attributed its strong operations to a good payor mix and continued focus on growing top-line revenues amid its keeping expense growth to a minimum. CDH continues to focus on key higher-acuity and higher-intensity service lines for its top-line growth, including women's and children's, orthopedics, cardiovascular, neurosciences, and oncology. CDH expects to keep spending funds as necessary to support these and other service lines. Excess income, excluding unrealized losses on investments and changes in swap valuation, amounted to an approximately 12% margin for fiscal 2009. This, along with strong operations, contributed to good pro forma maximum annual debt service coverage (MADS) of 4x. However, if CDH is able to accomplish its plan of taking out the additional \$171 million of debt, pro forma MADS equates to 4.9x. Debt service coverage excludes partial guarantees of approximately \$5.3 million on joint-venture debt that totals \$13.6 million. Management expects to continue this strong operating trend over the next few years.

CDH's unrestricted liquidity remained a solid 558 days' cash on hand for fiscal 2009. Days' cash will reach a low of 496 for fiscal 2009 if CDH uses cash to pay off the other debt. Management has scaled back some of its capital expenditures, but plans to build its cash position, with the funds borrowed earlier this year coupled with the proceeds of the 2009B bonds funding a large portion of planned capital expenditures. A conservative investment allocation has aided CDH with approximately 11% of investments in equities and alternative investments. Additional balance sheet measures are still adequate for the rating level with, unrestricted cash to pro forma long-term debt at about 140% and pro forma leverage at 39%, up from 34%. The aforementioned ratios all take into account that CDH will use its cash to repay the \$171 million of debt.

As part of its capital plan for construction and improvements to the hospital campus, CDH will spend about \$383 million over the next four years, down slightly from the plan provided back in fall 2008. The most significant projects include:

- A new five-story, approximately 280,000-square-foot-bed pavilion with 202 medical-surgical private rooms;
- A tiered parking structure (complete);
- The relocation and expansion of a medical imaging department;
- A new outpatient cancer center to be built in Warrenville, Ill., that is the same campus that will include the joint-venture proton beam therapy center; and
- The expansion of the emergency department.

With strong operating cash flow and EBIDA expected over the next year, management plans to maintain days' cash on hand at or above 500.

CDH is party to two variable-to-fixed-rate swaps with Morgan Stanley Capital Services Inc. (guaranteed by 'A'-rated Morgan Stanley) for a total notional amount of \$130 million. Standard & Poor's assigned CDH a Debt Derivative Profile (DDP) overall score of '2' on a four-point scale, with '1' representing the lowest risk. The score of '2' represents a low credit risk.

## Outlook

The stable outlook continues to reflect significant flexibility derived from CDH's strong cash balances and trend of strong operating performance over the past few years. A higher rating is unlikely, given CDH's growth plans. A lower rating could be possible if operations soften or if liquidity falls too far, especially in light of the heightened capital spending. However, Standard & Poor's does not expect that situation to occur, based on previous performance as well as management's and the board's historical willingness to make changes quickly to address operational weaknesses and manage the balance sheet.

## Debt Derivative Profile: '2' -- A Low Credit Risk

The overall DDP score of '2' denotes a low credit risk due to:

- The minimal counterparty and termination risk because of the strongly rated counterparty and obligor, with no collateral posting required by either party;
- The swap's average economic viability over stressful economic cycles due, in large part, to the swaps' long maturities (2038); and
- Adequate management oversight, including a formal swap management plan and disclosure practices.

CDH's pro forma net variable-rate exposure, including the swaps, series 2009B debt issuance, and other debt reduction, will be approximately 28%. There are also two swaps outstanding with shorter maturities at two of CDH's joint ventures, for a total notional amount of about \$13.6 million. Approximately \$5.3 million of that total notional amount is subject to CDH's guarantees. We have not fully incorporated these two swaps into the DDP score; but these two swaps have a combined mark-to-market value of approximately \$1.6 million with no collateral posting required, approximately \$700,000 of which is subject to CDH's guarantee with the bank.

## Related Research

- USPF Criteria: "Not-For-Profit Health Care," June 14, 2007
- USPF Criteria: "Municipal Swaps," June 27, 2007
- USPF Criteria: "Debt Derivative Profile Scores," March 27, 2006
- USPF Criteria: "Bank Liquidity Facilities," June 22, 2007

### Ratings Detail (As Of October 30, 2009)

#### Illinois Fin Auth, Illinois

Central DuPage Health, Illinois

Illinois Finance Authority (Central DuPage Health)

Long Term Rating

AA/Stable

Affirmed

Illinois Finance Authority (Central DuPage Health) hosp VRDO ser 2000B

**Ratings Detail (As Of October 30, 2009) (cont.)**

|                                                                           |                |          |
|---------------------------------------------------------------------------|----------------|----------|
| Long Term Rating                                                          | AA/A-1+/Stable | Affirmed |
| Illinois Finance Authority (Central DuPage Health) hosp VRDO ser 2004A1-2 |                |          |
| Long Term Rating                                                          | AA/A-1+/Stable | Affirmed |
| Illinois Hlth Fac Auth (Central Dupage Health) hosp VRDO ser 2000C        |                |          |
| Long Term Rating                                                          | AA/A-1+/Stable | Affirmed |
| Many issues are enhanced by bond insurance.                               |                |          |

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## APPENDIX A

Complete the following for the facility for which the change of ownership is requested. The facility's bed and dialysis station capacity must be consistent with the State Board's Inventory of Health Care Facilities.

FACILITY NAME Central DuPage Hospital CITY: Winfield

1. Indicate (by placing an "X") the type of facility for which the change of ownership is requested: **(merger)**

**X Hospital;   ☐ Long-term Care Facility;   ☐ Dialysis Facility;   ☐ Ambulatory Surgical Treatment Center.**

- 2. Provide the bed capacity by category of service:**

| SERVICE                 | # of Beds | SERVICE                 | # of Beds |
|-------------------------|-----------|-------------------------|-----------|
| Medical/Surgical        | 213       | Nursing Care            |           |
| Obstetrics              | 35        | Shelter Care            |           |
| Pediatrics              | 10        | DD Adults*              |           |
| Intensive Care          | 32***     | DD Children**           |           |
| Acute Mental Illness    | 15***     | Chronic Mental Illness  |           |
| Rehabilitation          |           | Children's Medical Care |           |
| Neonatal Intensive Care | 8         | Children's Respite Care |           |

\*Includes ICF/DD 16 and fewer bed facilities; \*\*Includes skilled pediatric 22 years and under

3. Chronic Renal Dialysis: Enter the number of ESRD stations: \_\_\_\_\_

4. Indicate (by placing an "X") those categories of service for which the facility is approved.

☒ X Cardiac Catheterization                      ☒ X Open Heart Surgery  
☐      Subacute Care Hospital Model              ☐      Kidney Transplantation  
☐      Selected Organ Transplantation              ☐      Postsurgical Recovery Care Center Model

- ## 5. Non-Hospital Based Ambulatory Surgery and Ambulatory Surgical Treatment Centers

Indicate (by placing an "X") if the facility is a ☐ limited or ☐ multi-specialty facility and indicate the surgical specialties provided.

|                                                                                                                  |                                             |
|------------------------------------------------------------------------------------------------------------------|---------------------------------------------|
| <input type="checkbox"/> Cardiovascular                                                                          | <input type="checkbox"/> Ophthalmology      |
| <input type="checkbox"/> Dermatology                                                                             | <input type="checkbox"/> Oral/Maxillofacial |
| <input type="checkbox"/> Gastroenterology                                                                        | <input type="checkbox"/> Orthopedic         |
| <input type="checkbox"/> General/Other (includes any procedure that is not<br>included in the other specialties) | <input type="checkbox"/> Otolaryngology     |
| <input type="checkbox"/> Neurological                                                                            | <input type="checkbox"/> Plastic Surgery    |
| <input type="checkbox"/> Obstetrics/Gynecology                                                                   | <input type="checkbox"/> Podiatry           |
|                                                                                                                  | <input type="checkbox"/> Thoracic           |
|                                                                                                                  | <input type="checkbox"/> Urology            |

\*\*\* On September 28, 2010 the hospital filed a letter with the IHFSRB seeking approval to add 18 ICU and 2 Acute Mental Illness beds. As of the filing of this application, approval of the additional beds is pending a survey from the IDPH's licensure division.

**APPENDIX A**  
**FACILITY BED AND DIALYSIS STATION CAPACITY AND CATEGORIES OF SERVICE**

Complete the following for the facility for which the change of ownership is requested. The facility's bed and dialysis station capacity must be consistent with the State Board's Inventory of Health Care Facilities.

FACILITY NAME Delnor-Community Hospital CITY: Geneva

1. Indicate (by placing an "X") the type of facility for which the change of ownership is requested: (**merger**)

**X Hospital;   ☐ Long-term Care Facility;   ☐ Dialysis Facility;   ☐ Ambulatory Surgical Treatment Center.**

2. Provide the bed capacity by category of service:

| SERVICE                 | # of Beds |
|-------------------------|-----------|
| Medical/Surgical        | 121       |
| Obstetrics              | 18        |
| Pediatrics              |           |
| Intensive Care          | 20        |
| Acute Mental Illness    |           |
| Rehabilitation          |           |
| Neonatal Intensive Care |           |

| SERVICE                 | # of Beds |
|-------------------------|-----------|
| Nursing Care            |           |
| Shelter Care            |           |
| DD Adults*              |           |
| DD Children**           |           |
| Chronic Mental Illness  |           |
| Children's Medical Care |           |
| Children's Respite Care |           |

\*Includes ICF/DD 16 and fewer bed facilities; \*\*Includes skilled pediatric 22 years and under

6. Chronic Renal Dialysis: Enter the number of ESRD stations: \_\_\_\_\_

7. Indicate (by placing an "X") those categories of service for which the facility is approved.

☒ **X** Cardiac Catheterization  
☐ Subacute Care Hospital Model  
☐ Selected Organ Transplantation

☐ Open Heart Surgery  
☐ Kidney Transplantation  
☐ Postsurgical Recovery Care Center Model

#### 8. Non-Hospital Based Ambulatory Surgery and Ambulatory Surgical Treatment Centers

Indicate (by placing an "X") if the facility is a ☐ limited or ☐ multi-specialty facility and indicate the surgical specialties provided.

☐ Cardiovascular  
☐ Dermatology  
☐ Gastroenterology  
☐ General/Other (includes any procedure that is not included in the other specialties)  
☐ Neurological  
☐ Obstetrics/Gynecology

☐ Ophthalmology  
☐ Oral/Maxillofacial  
☐ Orthopedic  
☐ Otolaryngology  
☐ Plastic Surgery  
☐ Podiatry  
☐ Thoracic  
☐ Urology