

## AGREEMENT

**THIS AGREEMENT** ("Agreement") is made this \_\_\_\_ day of April, 2019, by and between the **COUNTY OF MIDDLESEX**, a corporate and body politic of the State of New Jersey, with offices at the County Administration Building, John F. Kennedy Square, 75 Bayard Street, 3<sup>rd</sup> Floor, New Brunswick, New Jersey 08901 (the "County"), the **MIDDLESEX COUNTY IMPROVEMENT AUTHORITY**, a corporate and body politic of the State of New Jersey, with offices at 101 Interchange Plaza, Cranbury, New Jersey 08512 (the "Authority" and together with the County, the "County Parties"), and **RWJBARNABAS HEALTH, INC. D/B/A RWJBARNABAS HEALTH** ("RWJBarnabas"). The County, the Authority and RWJBarnabas may individually be referred to herein as a "Party," and collectively as, the "Parties."

### WITNESSETH:

**WHEREAS**, the County is the owner of the 180-bed long term care facility known as the Roosevelt Care Center at Old Bridge located at 1133 Marlboro Road, Old Bridge, New Jersey 08857 (the "Old Bridge Facility"); and

**WHEREAS**, the Authority is the owner of the 180-bed long term care facility known as the Roosevelt Care Center at Edison located at 118 Parsonage Road, Edison, New Jersey 08837 (the "Edison Facility" and collectively with the Old Bridge Facility, the "Facilities"); and

**WHEREAS**, the County created the Authority pursuant to a duly adopted resolution of the Middlesex County Board of Chosen Freeholders on September 6, 1990, and in accordance with the County Improvement Authorities Law, N.J.S.A. 40:37A-44 et seq. (the "Act"), constituting chapter 183 of the Pamphlet Laws of 1960 of the State of New Jersey, and the acts amendatory thereof and supplemental thereto; and

**WHEREAS**, pursuant to that certain Lease and Management Agreement for Roosevelt Care Center – Old Bridge dated September 1, 2011 by and between the County and the Authority, the Authority leases the Old Bridge Facility from the County and provides management, administration, operation and maintenance services for the Old Bridge Facility; and

**WHEREAS**, RWJBarnabas is one of the largest health care systems in New Jersey with a track record of operating health care facilities in an efficient manner that meets the highest standards of quality, patient safety and patient satisfaction; and

**WHEREAS**, the County Parties desire to sell and RWJBarnabas desires to purchase the Facilities subsequent to a transition period during which RWJBarnabas will conduct a formal assessment and operate and manage the Facilities in accordance with an agreed upon Operating Plan (as defined herein); and

**WHEREAS**, in order to effectuate the contemplated sale of the Facilities, RWJBarnabas will have the option to purchase the Facilities and the County will have the option to compel the purchase of the Facilities by RWJBarnabas within an agreed upon timeframe; and

**WHEREAS**, upon the exercise of either Party's option, prior to closing, the County will convey the Old Bridge Facility to the Authority, and the Authority will sell the Facilities to RWJBarnabas pursuant to a negotiated purchase and sale agreement; and

**WHEREAS**, pursuant to N.J.S.A. 40A:12-13(b) of the Local Lands and Buildings Law, the County is authorized to sell any real property, not needed for public use, to any political subdivision or body corporate and politic of the State of New Jersey pursuant to a duly adopted resolution of the County; and

**WHEREAS**, pursuant to N.J.S.A. 40:37A-55 of the Act, the Authority is authorized to acquire and convey real property no longer necessary for the purposes of the Authority; and

**WHEREAS**, pursuant to Resolution \_\_\_\_ duly adopted on April 10, 2019, the Board of Commissioners of the Authority approved the execution of this Agreement; and

**WHEREAS**, pursuant to Resolution \_\_\_\_ duly adopted on April 4, 2019, the Middlesex County Board of Chosen Freeholders approved the execution of this Agreement; and

**WHEREAS**, the Parties desire to enter into this Agreement to set forth each Party's respective obligations and the terms and conditions for the operation and management of the Facilities in furtherance of the contemplated sale of the Facilities to RWJBarnabas.

**NOW, THEREFORE**, for and in consideration of the mutual covenants contained herein and for other good and valuable consideration, the Parties hereto, intending to be legally bound, agree as follows:

## **ARTICLE I**

### **GENERAL**

**Section 1.1. Definitions.** Words and terms that are used herein as defined terms shall (unless otherwise defined herein or unless the context clearly requires otherwise) have the following meanings:

**"Act"** shall have the meaning set forth in the recitals.

**"Act of Bankruptcy"** shall mean the Parties, as the case may be, (a) shall have commenced a voluntary case under any bankruptcy law, applied for or consented to the appointment of, or the taking of possession by, a receiver, trustee, assignee, custodian or liquidator of all or a substantial part of its assets, (b) shall have failed, or admitted in writing its inability generally, to pay its debts as such debts become due, (c) shall have made a general assignment for the benefit of creditors, (d) shall have been adjudicated bankrupt, or shall have filed a petition or an answer seeking an arrangement with creditors, (e) shall have taken advantage of any insolvency law, or shall have submitted an answer admitting the material allegations of a petition in bankruptcy or insolvency proceeding, (f) is subject of an order, judgment or decree for relief by any court of competent jurisdiction appointing a receiver, trustee, assignee, custodian or liquidator, of any of the Parties,

as the case may be, or for a substantial part of any of their respective assets and such order, judgment or decree shall continue unstayed and in effect for any period of one hundred eighty (180) consecutive days, (g) shall have filed a voluntary petition in bankruptcy, (h) shall have failed to remove any involuntary petition in bankruptcy filed against it within one hundred eighty (180) days of the filing thereof, or (i) is a subject of an order for relief entered against any of the Parties, as the case may be, under the provision of the United States Bankruptcy Act, 11 U.S.C. § 301.

“Agreement” shall have the meaning set for in the Preamble.

“Applicable Laws” shall mean any statute, law, constitution, ordinance, resolution, judgment, order, decree, rule, regulation, directive, interpretation, standard or similarly binding authority, which shall be enacted, adopted, promulgated, issued or enforced by a Governmental Body relating to the County, the Authority or RWJBarnabas.

“Authority” shall have the meaning set forth in the recitals.

“Capital Improvement” shall mean any addition, extension, construction or reconstruction of or to a permanent structure of the Facilities that (a) has a useful life greater than five (5) years, (b) constitutes a permanent part of the Facilities, and (c) does not constitute a Maintenance, Repair or Replacement Item.

“Commencement Date” shall have the meaning set forth in Section 2.5. B. hereunder.

“County” shall have the meaning set forth in the recitals.

“County Parties” shall have the meaning set forth in the recitals.

“County Parties Option” shall have the meaning set forth in Section 2.5.C.(ii) hereunder.

“Event of Default” shall mean any event which is specified as such under the terms of Article V hereof.

“Facilities” shall have the meaning set forth in the recitals.

“Governmental Body” shall mean, as appropriate, any one of several of the United States of America, the State, the County, or any court of competent jurisdiction, agency, authority, regulatory body or political subdivision of the United States of America, the State or the County, that may have jurisdiction over, or power and authority to regulate the County, the Authority RWJBarnabas or the Facilities (in each case to the extent related to the provision of the Operations and Management Services).

“Maintenance, Repair or Replacement Item” shall mean any repair, renewal, fixing, predictive or preventative maintenance, emergency or replacement of or to the Facilities.

“Operating Plan” shall have the meaning set forth in Section 2.4 hereunder.

“Operations and Management Services” shall have the meaning set forth in Section 2.2 hereunder.

“Permitted Encumbrances” shall mean any of the following encumbrances to the extent that such encumbrances do not materially impair the ability of RWJBarnabas to perform the Operations and Management Services for the Facilities in the manner contemplate by the terms of this Agreement:

- (a) Minor defects or irregularities in the title to the Facilities that do not in the aggregate materially impair the operations and management of the Facilities in the manner contemplated by the terms of this Agreement;
- (b) Easements, exceptions or reservations for the purpose of pipelines, telephone lines, telegraph lines, power lines and substations, roads, streets, highways, railroad purposes, drainage and sewerage purposes, or canals, laterals, ditches and other like purposes, or for the joint and common use of the Facilities that do not materially impair the operations and management of the Facilities in the manner contemplated by the terms of this Agreement;
- (c) Rights reserved to or vested in any municipality or governmental or other authority to control or regulate or use in any manner any portion of the Facilities that do not materially impair the operations and management of the Facilities in the manner contemplated by the terms of this Agreement;
- (d) Any obligations or duties affecting any portion of the Facilities of any municipality or governmental or other public authority with respect to any right, power, franchise, grant, license or permit; or
- (e) Present or future valid zoning laws and ordinances.

“Purchase Option” shall have the meaning set forth in Section 2.5.C.(b) hereunder.

“Roosevelt Care Center at Edison” or “Edison Facility” shall have the meaning set forth in the recitals.

“Roosevelt Care Center at Old Bridge” or “Old Bridge Facility” shall have the meaning set forth in the recitals.

“RWJBarnabas” shall have the meaning set forth in the recitals.

“RWJBarnabas Option” shall have the meaning set forth in Section 2.7 hereunder.

“Sale Notice” shall have the meaning set forth in Section 2.11 hereunder.

“State” shall mean the State of New Jersey.

“Term” shall have the meaning set forth in Section 2.1 hereunder.

**Section 1.2. Incorporation of Recitals.** The recitals set forth above are hereby incorporated by reference as if set forth in full in the body of this Agreement.

**Section 1.3. Interpretation.** The terms “herein”, “hereunder”, “hereby”, “hereto”, “hereof” and similar terms, refer to this Agreement. The term “heretofore” means before the date of this Agreement and the term “hereafter” means after the date of this Agreement.

Unless otherwise noted, the words “include”, “includes” and “including” that are used in this Agreement shall be deemed to be followed by the phrase “without limitation.”

Words importing the masculine gender include the feminine gender or the neuter and vice versa, as the case may be.

Words importing the singular number include the plural number and vice versa.

**Section 1.4. Rights and Obligations of the Parties.** The rights granted and obligations of the Parties hereto shall be only as expressly stated herein and shall not be expanded, modified, extended or in any way changed by any subsequent change in circumstances or federal, State or local statutory or common law, except as expressly provided for herein.

**Section 1.5. Conditions Precedent to Effective Date of Agreement.** This Agreement shall take effect and the rights and obligations and liabilities of the Parties hereunder shall take effect on the date that each of the conditions set forth below has been satisfied or waived by the Parties (to the extent permitted by applicable law):

(a) The terms of this Agreement (or approval of this Agreement) shall have been approved by the Board of Chosen Freeholders of the County. Such approval shall be evidenced by a copy of a resolution of the Board of Chosen Freeholders, as certified by the Clerk of the Board.

(b) The terms of this Agreement (or approval of this Agreement) shall have been approved by the Board of Commissioners of the Authority. Such approval shall be evidenced by a copy of a resolution of the Board of Commissioners, as certified by the Secretary of the Authority.

(c) The terms of this Agreement (or approval of this Agreement) shall have been approved by the appropriate board or parties of RWJBarnabas.

## ARTICLE II

### OPERATIONS AND MANAGEMENT OF THE FACILITIES

**Section 2.1. Term.** The term of this Agreement (the "Term") shall commence on April 15, 2019 and shall continue for a period three (3) years thereafter, unless sooner terminated in accordance with the terms and conditions set forth hereunder.

**Section 2.2. Transition of Operations and Management Services.** In order to successfully manage the transition of all Operations and Management Services from the County Parties to RWJBarnabas, the Parties shall adhere to the following phased process:

A. **PHASE ONE:** Assessment and Operating Plan (3 to 6 months)

(i) **Assessment.** RWJBarnabas shall conduct an assessment of the Operations and Management Services for the Facilities taking into account certain key elements including, without limitation, operations, staffing, financial management and operations, shared services, human resources, technology, third-party providers, and legal representation, which elements are set forth in further detail in Attachment A, appended hereto. During the assessment, RWJBarnabas may make recommendations to the County Parties to implement changes as needed prior to completion of the formal assessment. The County Parties may implement these changes in their sole discretion. Upon completion of the formal assessment, RWJBarnabas shall submit the same to County Parties for their review and approval.

(ii) **Operating Plan**

(a) RWJBarnabas shall develop a plan to efficiently and effectively perform the Operations and Management Services for the Facilities (the "Operating Plan") in coordination with the County Parties during the Term. In developing the Operating Plan, RWJBarnabas shall focus on determining how best to operate and manage the Facilities in a manner that will minimize the operational losses of the Facilities, with an ultimate goal of eliminating all operating losses, while providing high quality health care services that meet patient safety and patient satisfaction objectives.

(b) In developing the Operating Plan, RWJBarnabas shall consider, without limitation, all of the Operations and Management Services. The Operating Plan shall be formulated to take advantage of the strengths of RWJBarnabas, such as, for example, its efficient provision of centralized services, for the benefit of the Facilities. The Operating Plan also will address the needs of the surrounding community and include appropriate marketing and outreach to the greater Middlesex community.

(c) The County Parties shall cooperate with RWJBarnabas in good faith to the extent reasonably required by RWJBarnabas during the preparation of the Operating Plan. The County Parties agree to provide RWJBarnabas and its representatives with immediate and reasonable access to financial information, contracts, minute books and other information relating to the Facilities' business operations and financial condition as required by RWJBarnabas in order to develop the Operating Plan.

(d) As part of the Operating Plan, it is contemplated that RWJBarnabas will take complete operational responsibility over the Facilities once the Operating Plan is approved by the County Parties.

(e) Under the proposed Operating Plan, the County Parties will retain responsibility for all legal obligations arising prior to the Commencement Date (as defined herein).

(f) Under the Operating Plan, upon the Commencement Date, the County Parties agree to be responsible for actual operating losses (as defined in the Operating Plan) and will receive an equivalent share of any operating profits in accordance with the following schedule:

(i) During the first year of the Term: 80%

(ii) During the second year of the Term: 60%

(iii) During the third year of the Term: 40%

(g) The Operating Plan shall be subject to the written approval of the County Parties.

(h) RWJBarnabas may propose Capital Expenditures for the Facilities, provided that neither RWJBarnabas nor the County Parties shall make any Capital Expenditures with respect to the Facilities without the prior written approval of the other Party. The cost of all Capital Expenditures shall be shared equally by the County Parties and RWJBarnabas.

**B. PHASE TWO: Operations and Management Services (6 to 30 months)**

(i) Commencement. As of the date the County Parties provide to RWJBarnabas written approval of the Operating Plan (the "Commencement Date"), RWJBarnabas shall immediately commence the performance of all Operations and Management Services for the Facilities. The Operations and Management Services to be provided by RWJBarnabas shall align with the approved Operating Plan and include all operational and administrative functions based upon the organizational structure of the Facilities.

(ii) Engagement. The County Parties shall engage RWJBarnabas as the exclusive provider of all management, administrative and operational services for the Facilities which shall include, without limitation, the physical premises, equipment, staffing, salaries and benefits, laundry, medical staff, policies and procedures, human resources, supplies procurement, utilities procurement, revenue cycle management, billing and collections, contracts and agreements (including payor contracts), management information systems, communications, vendor management, accounting and finance, procurement of insurance, retention of accounting, financial, legal and other professionals and management of expenses (the "Operations and Management Services"). The revenues and expenses for the Operations and Management Services shall belong to RWJBarnabas, provided that the County Parties shall be responsible for all costs and expenses relating to the Facilities that arose prior to the Commencement Date. All costs and expenses incurred with respect to the provision of the Operations and Management Services, including, without limitation, any costs related to RWJBarnabas's retention of a third party to serve as the Manager (as defined herein), shall be included in the operating budgets for the Facilities

developed in connection with the Operating Plan, with operating losses and profits allocated between the County Parties and RWJBarnabas as set forth in the Operating Plan. Subject to approval by the County Parties, which approval shall not be unreasonably withheld, RWJBarnabas shall be entitled to subcontract certain of the Operations and Management Services, provided that RWJBarnabas shall remain ultimately responsible to the County Parties for the provision of the Operations and Management Services. RWJBarnabas and any subcontractor retained by RWJBarnabas to provide the Operations and Management Services shall be referred to collectively as the “Manager.” The County Parties shall not hire or engage any other person or entity to provide any of the Operations and Management Services for the Facilities during the Term without RWJBarnabas’s prior written consent, which consent RWJBarnabas may withhold in its sole discretion.

(iii) Oversight Committee. The Parties shall establish an oversight committee composed of members jointly selected by the County Parties and RWJBarnabas (the “Oversight Committee”) to provide general approval and oversight over the Operating Plan and the Operations and Management Services, and to provide a forum for the Parties to discuss any issues that arise from the operations and management of the Facilities. RWJBarnabas shall make all decisions regarding the operations of the Facilities subject to review and agreement by the Oversight Committee. The Oversight Committee shall provide such oversight only during the Term of this Agreement.

(iv) Operational Support. As of the Commencement Date, and as outlined in the Operating Plan, the County shall provide operational support to RWJBarnabas.

C. **PHASE THREE**: Sale of the Facilities

(i) RWJBarnabas Option. Subject to applicable provisions of the Local Lands and Buildings Law, RWJBarnabas shall have the option to purchase the Facilities (the “RWJBarnabas Option”) at any time during the Term, which option shall be exercised by RWJBarnabas upon written notice to the County Parties that is received by the County Parties no later than three (3) calendar months prior to the last day of the Term. RWJBarnabas acknowledges and agrees that it will honor all existing labor agreements during the full Term of this Agreement. Should any such labor agreements expire prior to the end of the Term, the County Parties reserve the right to negotiate with the labor unions for an extension of time of such labor agreements or for replacement agreements covering the full Term hereunder. RWJBarnabas further acknowledges and agrees that it will honor all labor agreements for a minimum of three (3) years from the transfer of title to RWJBarnabas.

(ii) County Parties Option. Upon the expiration of the Term, the County Parties shall have the option to require RWJBarnabas to purchase the Facilities (the “County Parties Option” and collectively with the RWJBarnabas Option, the “Purchase Option”), which option shall be exercised by the County upon written notice to RWJBarnabas that is received by RWJBarnabas no later than three (3) calendar months prior to the last day of the Term. Upon the execution of the County Parties Option, RWJBarnabas acknowledges and agrees that it will honor all labor agreements for a minimum of three (3) years from the transfer of title to RWJBarnabas.

(iii) Terms and Conditions of Exercise of Purchase Option. Upon either Party's exercise of a Purchase Option, subject to negotiation of a mutually agreed upon definitive purchase and sale agreement and obtaining required third party approvals, if any, RWJBarnabas shall purchase the Facilities for a purchase price (the "Option Purchase Price") in the amount of the fair market value as determined by the methodology set forth in the purchase and sale agreement.

(a) RWJBarnabas shall pay the Option Purchase Price either at the closing or as the Parties otherwise agree.

(b) Upon either Party's exercise of a Purchase Option, the closing of RWJBarnabas's purchase of the Facilities shall take place on the later of (A) one hundred twenty (120) days following a Party's exercise of a Purchase Option, (B) thirty (30) days after the execution of the purchase and sale agreement, or (C) thirty (30) days after the New Jersey Department of Health approves of the sale of the Facilities to RWJBarnabas.

(c) Upon either Party's exercise of a Purchase Option, the Parties shall negotiate in good faith regarding the terms and conditions a definitive purchase and sale agreement, which shall be subject to mutual agreement of the Parties, provided that such definitive purchase and sale agreement shall include the terms and conditions set forth in subparagraphs (i) through (iii) herein.

(d) During the Term and during any period thereafter that a Purchase Option may be exercised by a Party, in the event that the County Parties receive a bona fide offer from a third party, in writing, to purchase a Facility, the County Parties may not sell such Facility to such third party without first offering such Facility to RWJBarnabas by written notice to RWJBarnabas (the "Sale Notice"), in which case, RWJBarnabas shall have the option of purchasing the Facility based upon the fair market value of the Facility as agreed upon by the Parties, which option shall be exercisable by RWJBarnabas by written notice to the County Parties that is received by the County Parties within ninety (90) days following RWJBarnabas's receipt of the Sale Notice.

(e) Upon the exercise of a Purchase Option by either Party, prior to closing of the sale of the Facilities to RWJBarnabas, the County shall convey the Old Bridge Facility to the Authority in accordance with N.J.S.A. 40A:12-13(b) of the Local Lands and Buildings Law. Upon the closing of the sale of the Facilities to RWJBarnabas, the Authority shall convey the Facilities to RWJBarnabas pursuant to a purchase and sale agreement that will be negotiated by the Authority and RWJBarnabas.

### **ARTICLE III**

#### **INDEMNIFICATION**

##### **Section 3.1. RWJBarnabas Indemnification.**

(a) RWJBarnabas agrees that it shall protect, indemnify, defend and hold harmless the County, including its permitted successors and assigns, officials, officers, employees, agents and representatives (the "County Indemnified Parties") and the Authority, including its permitted successors and assigns, officials, officers, employees, agents and representatives (the

“Authority Indemnified Parties” and for the purposes of this subsection (a), collectively, the “County Indemnified Parties”) from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and all reasonable attorney’s fees (collectively, a “Claim”) imposed on, incurred by or asserted against the County Indemnified Parties for any losses of whatever kind, resulting from any acts, omissions or willful misconduct of RWJBarnabas, its officers, agents, employees, contractors or subcontractors, during the provision of the Operations and Management Services. RWJBarnabas shall not, however, be required to indemnify, defend or hold harmless any County Indemnified Party for any Claims to the extent such loss or claim is due to the gross negligence or willful misconduct of such County Indemnified Party.

(b) In any situation in which a County Indemnified Party is entitled to receive and desires indemnification by RWJBarnabas, the County Indemnified Party shall give prompt notice of such situation to RWJBarnabas. Failure to give prompt notice to RWJBarnabas shall not relieve RWJBarnabas of any liability to indemnify or defend the County Indemnified Party, unless such failure to give prompt notice materially impairs RWJBarnabas’s ability to defend such party. Upon receipt of such notice, RWJBarnabas shall resist and defend any action or proceeding on behalf of the County Indemnified Party, including the employment of counsel reasonably acceptable to the County Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the County Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such County Indemnified Party. RWJBarnabas shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of RWJBarnabas or if there is a final judgment against the County Indemnified Party in any such action, RWJBarnabas agrees to indemnify and hold harmless the County Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the County Indemnified Party is entitled to indemnification hereunder. RWJBarnabas shall have the right to settle any such action on terms it deems appropriate provided that a full release of the County Indemnified Party is obtained and no admission of liability by the County Indemnified Party is required.

### **Section 3.2. The County Indemnification.**

(a) To the extent permitted under Applicable Laws, the County agrees that it shall protect, indemnify, defend and hold harmless RWJBarnabas, including its permitted successors and assigns, officers, employees, agents and representatives (collectively, the “RWJBarnabas Indemnified Parties”) and the Authority Indemnified Parties (as defined herein) from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and all reasonable attorney’s fees (collectively, a “Claim”) imposed on, incurred by or asserted against the RWJBarnabas Indemnified Parties or the Authority Indemnified Parties for any losses of whatever kind, resulting from any acts, omissions or willful misconduct of County, its officials, officers, agents, employees and representatives during the County’s performance of this Agreement. The County shall not, however, be required to indemnify, defend or hold harmless any RWJBarnabas Indemnified Party or Authority Indemnified Party for any Claims to the extent such loss or claim is due to the gross negligence or willful misconduct of such RWJBarnabas Indemnified Party or Authority Indemnified Party. The County shall be liable to the RWJBarnabas Indemnified Parties and Authority Indemnified Parties

to the extent permitted under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

(b) In any situation in which a RWJBarnabas Indemnified Party or Authority Indemnified Party is entitled to receive and desires indemnification by the County, the RWJBarnabas Indemnified Party or Authority Indemnified Party shall give prompt notice of such situation to the County. Failure to give prompt notice to the County shall not relieve the County of any liability to indemnify or defend the RWJBarnabas Indemnified Party or Authority Indemnified Party, unless such failure to give prompt notice materially impairs the County's ability to defend such party. Upon receipt of such notice, the County shall resist and defend any action or proceeding on behalf of the RWJBarnabas Indemnified Party or Authority Indemnified Party, including the employment of counsel reasonably acceptable to the RWJBarnabas Indemnified Party or Authority Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the RWJBarnabas Indemnified Parties and Authority Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such RWJBarnabas Indemnified Party or Authority Indemnified Party. The County shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the County or if there is a final judgment against the RWJBarnabas Indemnified Party or Authority Indemnified Party in any such action, the County agrees to indemnify and hold harmless the RWJBarnabas Indemnified Party or Authority Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the RWJBarnabas Indemnified Party or Authority Indemnified Party is entitled to indemnification hereunder. The County shall have the right to settle any such action on terms it deems appropriate provided that a full release of the RWJBarnabas Indemnified Party or Authority Indemnified Party is obtained and no admission of liability by the RWJBarnabas Indemnified Party or Authority Indemnified Party is required.

### **Section 3.3. The Authority Indemnification.**

(a) To the extent permitted under Applicable Laws, the Authority agrees that it shall protect, indemnify, defend and hold harmless RWJBarnabas, including its permitted successors and assigns, officials, officers, employees, agents and representatives (collectively, the "RWJBarnabas Indemnified Parties") and the County Indemnified Parties from and against any and all liabilities, damages, claims, demands, judgments, losses, costs, expenses, suits, actions or proceedings and all reasonable attorney's fees (collectively, a "Claim") imposed on, incurred by or asserted against the RWJBarnabas Indemnified Parties or County Indemnified Parties for any losses of whatever kind, resulting from any acts, omissions or willful misconduct of the Authority, its officials, officers, agents, employees and representatives, during the Authority's performance of this Agreement. The Authority shall not, however, be required to indemnify, defend or hold harmless any RWJBarnabas Indemnified Party or County Indemnified Party for any Claims to the extent such loss or claim is due to the gross negligence or willful misconduct of such RWJBarnabas Indemnified Party or County Indemnified Party. The Authority shall be liable to the RWJBarnabas Indemnified Parties and County Indemnified Parties to the extent permitted under the New Jersey Tort Claims Act, N.J.S.A. 59:1-1 et seq. and the New Jersey Contractual Liability Act, N.J.S.A. 59:13-1 et seq.

(b) In any situation in which a RWJBarnabas Indemnified Party or County Indemnified Party is entitled to receive and desires indemnification by the Authority, the RWJBarnabas Indemnified Party or County Indemnified Party shall give prompt notice of such situation to the Authority. Failure to give prompt notice to the Authority shall not relieve the Authority of any liability to indemnify or defend the RWJBarnabas Indemnified Party or County Indemnified Party, unless such failure to give prompt notice materially impairs the Authority's ability to defend such party. Upon receipt of such notice, the Authority shall resist and defend any action or proceeding on behalf of the RWJBarnabas Indemnified Party or County Indemnified Party, including the employment of counsel reasonably acceptable to the RWJBarnabas Indemnified Party or County Indemnified Party, the payment of all expenses and the right to negotiate and consent to settlement. All of the RWJBarnabas Indemnified Parties or County Indemnified Parties shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such separate counsel shall be at the expense of such RWJBarnabas Indemnified Party or County Indemnified Party. The Authority shall not be liable for any settlement of any such action effected without its consent, but if settled with the consent of the Authority or if there is a final judgment against the RWJBarnabas Indemnified Party or County Indemnified Party in any such action, the Authority agrees to indemnify and hold harmless the RWJBarnabas Indemnified Party or County Indemnified Party from and against any loss or liability by reason of such settlement or judgment for which the RWJBarnabas Indemnified Party or County Indemnified Party is entitled to indemnification hereunder. The Authority shall have the right to settle any such action on terms it deems appropriate provided that a full release of the RWJBarnabas Indemnified Party or County Indemnified Party is obtained and no admission of liability by the RWJBarnabas Indemnified Party or County Indemnified Party is required.

## **ARTICLE IV**

### **COVENANTS AND REPRESENTATIONS**

**Section 4.1. Representations and Covenants of the County.** The County hereby represents and covenants to RWJBarnabas as follows:

(a) The County is duly qualified and has the power, authority and legal right to enter into and perform the obligations in this Agreement.

(b) The execution, delivery and performance of this Agreement (i) has been duly authorized by the Board of Chosen Freeholders of the County, (ii) does not require any consent, approval or referendum of voters, and (iii) will not violate any judgement, order, law or regulation applicable to the County.

(c) The execution of this Agreement and the performance of all obligations set forth hereunder do not conflict with and do not constitute a breach or event of default under any agreement, indenture, mortgage, contract or instrument to which the County is a party or by which the County is bound so that, upon execution hereof and upon satisfaction of the conditions hereunder, this Agreement, as of the date hereof, constitutes the valid, legally binding obligations of the County and is enforceable against the County in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization,

moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(d) To the best knowledge of the County (after reasonable inquiry), there is no action, suit or proceeding, at law or in equity, before or by any Governmental Body wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the County of its obligations hereunder, or that, in any way would materially adversely affect the validity or enforceability of this Agreement.

(e) As long as RWJBarnabas is performing its obligations in the manner contemplated under the terms of this Agreement and termination has not occurred, including specifically (and without limitation) the performance of the Operations and Management Services provide herein, RWJBarnabas may peaceably and quietly have, hold and enjoy the ability to operate and manage the Facilities as provided hereunder.

(f) Other than for Permitted Encumbrances, the County will not sell, assign or otherwise dispose of or encumber all or any portion of its interest in the Old Bridge Facility except as provided in Section 2.5.B. herein.

(g) Subject to receipt of any approvals required to be obtained by any Applicable Law, the County has the power, authority and legal right under Applicable Laws to convey the Old Bridge Facility to the Authority and permit RWJBarnabas to perform the Operations and Managements Services therein in the manner contemplated by the terms of this Agreement.

(h) There are no restrictions, prohibitions or encumbrances (or relating to) the Old Bridge Facility that would inhibit, prohibit or in any way affect the ability of RWJBarnabas to make use of the Old Bridge Facility in the manner contemplated by the terms of this Agreement.

(i) The foregoing representations by the County are true and complete as of the date of this Agreement. The representations and covenants in this Section shall survive the expiration of the Term.

(j) To the best knowledge, information and belief of the County, the Old Bridge Facility has been constructed in accordance with all applicable codes and requirements and is fit for its intended purposes. Upon the effective date of this Agreement, the Old Bridge Facility will be serviced by all required utilities so that it may be operated for its intended purpose.

**Section 4.2. Representations and Covenants of the Authority.** The Authority hereby represents and covenants to RWJBarnabas as follows:

(a) The Authority is duly qualified and has the power, authority and legal right to enter into and perform the obligations in this Agreement.

(b) The execution, delivery and performance of this Agreement (i) has been duly authorized by the Board of Commissioners of the Authority, (ii) does not require any consent, approval or referendum of voters, and (iii) will not violate any judgement, order, law or regulation applicable to the Authority.

(c) The execution of this Agreement and the performance of all obligations set forth hereunder do not conflict with and do not constitute a breach or event of default under any agreement, indenture, mortgage, contract or instrument to which the Authority is a party or by which the Authority is bound so that, upon execution hereof and upon satisfaction of the conditions hereunder, this Agreement, as of the date hereof, constitutes the valid, legally binding obligations of the Authority and is enforceable against the Authority in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(d) To the best knowledge of the Authority (after reasonable inquiry), there is no action, suit or proceeding, at law or in equity, before or by any Governmental Body wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Authority of its obligations hereunder, or that, in any way would materially adversely affect the validity or enforceability of this Agreement.

(e) As long RWJBarnabas is performing its obligations in the manner contemplated under the terms of this Agreement and termination has not occurred, including specifically (and without limitation) the performance of the Operations and Management Services provide herein, RWJBarnabas may peaceably and quietly have, hold and enjoy the ability to operate and manage the Facilities as provided hereunder.

(f) Other than for Permitted Encumbrances, the Authority will not sell, assign or otherwise dispose of or encumber all or any portion of its interest in the Edison Facility except as provided in Section 2.5.B. herein.

(g) Subject to receipt of any approvals required to be obtained by any Applicable Law, the Authority has the power, authority and legal right under Applicable Laws to convey the Edison Facility to the Authority and permit RWJBarnabas to perform the Operations and Managements Services therein in the manner contemplated by the terms of this Agreement.

(h) There are no restrictions, prohibitions or encumbrances (or relating to) the Edison Facility that would inhibit, prohibit or in any way affect the ability of RWJBarnabas to make use of the Edison Facility in the manner contemplated by the terms of this Agreement.

(i) The foregoing representations by the Authority are true and complete as of the date of this Agreement. The representations and covenants in this Section shall survive the expiration of the Term.

(j) To the best knowledge, information and belief of the Authority, the Edison Facility has been constructed in accordance with all applicable codes and requirements and is fit for its intended purposes. Upon the effective date of this Agreement, the Edison Facility will be serviced by all required utilities so that it may be operated for its intended purpose.

**Section 4.3. Representations and Covenants of the RWJBarnabas.** RWJBarnabas hereby represents and covenants to the County Parties as follows:

(k) RWJBarnabas is duly qualified and has the power, authority and legal right to enter into and perform the obligations in this Agreement.

(l) The execution, delivery and performance of this Agreement has been duly authorized by the appropriate parties of RWJBarnabas, and (ii) will not violate any judgement, order, law or regulation applicable to RWJBarnabas.

(m) The execution of this Agreement and the performance of all obligations set forth hereunder do not conflict with and do not constitute a breach or event of default under any agreement, indenture, mortgage, contract or instrument to which RWJBarnabas is a party or by which RWJBarnabas is bound so that, upon execution hereof and upon satisfaction of the conditions hereunder, this Agreement, as of the date hereof, constitutes the valid, legally binding obligations of RWJBarnabas and is enforceable against RWJBarnabas in accordance with its terms, except to the extent that enforcement thereof is limited by applicable bankruptcy, insolvency, reorganization, moratorium or other laws relating to or limiting creditors' rights generally and the application of the general principles of equity.

(n) To the best knowledge of RWJBarnabas (after reasonable inquiry), there is no action, suit or proceeding, at law or in equity, before or by any Governmental Body wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by RWJBarnabas of its obligations hereunder, or that, in any way would materially adversely affect the validity or enforceability of this Agreement.

(o) Subject to receipt of any approvals required to be obtained by any Applicable Law, RWJBarnabas has the power, authority and legal right under Applicable Laws to purchase the Facilities and perform the Operations and Managements Services therein in the manner contemplated by the terms of this Agreement.

(p) The foregoing representations by RWJBarnabas are true and complete as of the date of this Agreement. The representations and covenants in this Section shall survive the expiration of the Term.

## ARTICLE V

### BREACHES; DEFAULTS; TERMINATION

**Section 5.1. Breach of Obligations, Representations or Covenants by RWJBarnabas.** If at any time during the Term of this Agreement, (a) RWJBarnabas shall breach any material obligation or covenant made by it herein, or (b) any representation made by RWJBarnabas herein shall be, or proves to be, false in any material respect, then, upon the County Parties providing written notice thereof to RWJBarnabas, RWJBarnabas shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach.

**Section 5.2. Events of Default by RWJBarnabas.** Subject to the terms of Section 5.1 hereof, any one or more of the following shall constitute an Event of Default by RWJBarnabas hereunder:

(a) Failure by RWJBarnabas (within sixty (60) days of either the occurrence or notice of any event described in Section 5.1 above, whichever is later), to cure such breach; provided however that, as long as RWJBarnabas is diligently pursuing such cure, and if, in the reasonably judgement of the County Parties, there is a reasonably likelihood that such breach shall be cured within a period not exceeding ninety (90) days from the date such breach occurred (or such shorter period, if required by the terms of any order of any Governmental Body or if such shorter period is required to satisfy any RWJBarnabas obligations in the performance of the Operations and Management Services), then failure to cure such Event of Default within such ninety (60) days shall not constitute an Event of Default until the ninetieth (90<sup>th</sup>) day after such breach has occurred. Notwithstanding the above, in the event that (i) any Governmental Body having competent jurisdiction limits RWJBarnabas to a shorter period of time to cure any such "default," the sixty (60) day cure period provided hereby shall be limited to the time afforded RWJBarnabas by such Governmental Body, or (ii) a cure for the Event of Default requires such remedial action to be undertaken that cannot be reasonably completed within the cure period provided, the sixty (60) day cure period provided hereby shall be extended to the time reasonably required to complete such remedial actions (as agreed to by the Parties), assuming RWJBarnabas will implement such remedial actions in an expeditious manner and is proceeding in good faith with respect to such cure; or

(b) Any Act of Bankruptcy on the part of RWJBarnabas has occurred.

**Section 5.3. Remedies of the County Parties.** Whenever any Event of Default referred to in Section 5.2 hereof shall have occurred and shall be continuing, any one or more of the following remedial steps may be taken, provided that prior written notice of the "default" has been given to RWJBarnabas by the County Parties and the default has not been cured:

(a) To the extent the same may be permitted by Applicable Laws, the County Parties may terminate this Agreement, exclude RWJBarnabas from continuing occupancy and management of the Facilities, and/or sell or otherwise convey the Facilities to the extent possible. In the event that this Agreement is terminated by the County Parties as a result of the occurrence of an Event of Default by RWJBarnabas, RWJBarnabas shall cease the performance of all Operations and Management Services and shall vacate the Facilities at the earliest possible time, as agreed upon by the Parties, such that the cessation of the Operations and Management Services and vacation of the Facilities will neither jeopardize the health, safety and welfare of the residents of the Facilities nor jeopardize the orderly functions of the Facilities.

(b) The County Parties may take whatever action at law or in equity may appear to be necessary or desirable to enforce performance and observance of any obligation, agreement or covenant of RWJBarnabas under the terms of this Agreement.

**Section 5.4. Breach of Obligations, Warranties or Covenants by the County Parties.** In the event that the County Parties shall breach any material obligation herein, or any covenant made by them herein, or if at any time any representation made by the County Parties herein shall be, or prove to be, false in any material respect then, upon RWJBarnabas providing written notice thereof to the County Parties, the County Parties shall proceed with due diligence and dispatch to take all such actions as shall reasonably be required to cure such breach and the County Parties shall continue to take all such actions until such breach is cured.

**Section 5.5. Events of Default by the County Parties.** Subject to the terms of Section 5.4 hereof, any one or more of the following shall constitute an Event of Default by the County Parties hereunder:

(a) Failure by the County Parties (within ninety (60) days of either the occurrence or notice of any event described in Section 5.4 above, whichever is later), to cure such breach; provided however, that, if the County Parties are diligently pursuing such cure, and if in the reasonable judgement of RWJBarnabas, there is a likelihood that such breach will be cured within a period not exceeding ninety (90) days from the date such breach occurred, then failure to cure such breach within such sixty (60) days shall not be considered to be an Event of Default until the ninetieth (90<sup>th</sup>) day after such breach has occurred. Notwithstanding the foregoing, in the event that a cure for the Event of Default requires a Capital Improvement to be undertaken, the sixty (60) day period provided hereby shall be extended to the time reasonably required to complete such Capital Improvement (as agreed to by the Parties), assuming the County Parties will implement such Capital Improvement in an expeditious manner and is proceeding in good faith with respect to such cure; or

(b) Any Act of Bankruptcy on the part of the County Parties has occurred.

**Section 5.6. Remedies to RWJBarnabas.**

(f) The sole remedy for an Event of Default set forth under Section 5.5(a) hereof shall be limited to a suit seeking specific performance by the County Parties of the provisions of this Agreement (including specifically payment of amount due and owing under the terms of this Agreement), and such ancillary equitable remedies attendant to the enforcement of a decree, judgement or order for such performance. Each Party hereto agrees, with respect to actions brought by RWJBarnabas, that the award of damages at law is not solely an adequate remedy for the occurrence of an Event of Default set forth under Section 5.5(a) hereof.

(g) The remedies for the occurrence of an Event of Default set forth herein shall be, at the option of RWJBarnabas, either (i) a suit seeking specific performance by the County Parties of the provisions of this Agreement, and such ancillary equitable remedies attendant to the enforcement of a decree, judgment or order for such performance, or (ii) termination of this Agreement upon ninety (90) days' prior written notice to the County Parties. In the event that this Agreement is terminated by RWJBarnabas as a result of the occurrence of an Event of Default by the County Parties, RWJBarnabas may cease the performance of all Operations and Management Services and shall vacate the Facilities at the earliest possible time, as agreed upon by the Parties, such that the cessation of the Operations and Management Services and vacation of the Facilities will neither jeopardize the health, safety and welfare of the residents of the Facilities nor jeopardize the orderly functions of the Facilities.

**Section 5.7. Nonwaiver.** No delay or omission to exercise any right or power accruing upon the occurrence of any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such Event of Default or acquiescence therein, and every such right and power may be exercised from time to time and as often as may be deemed expedient by the non-breaching party in its sole discretion.

**Section 5.8. Pendency of Disputes.** Notwithstanding anything contained herein to the contrary, if there shall be a “dispute” concerning the right of any Party to terminate this Agreement, the Parties shall continue to perform their respective obligations hereunder as if the Agreement were in effect until such dispute is resolved and any appeals permitted hereunder are exhausted. Further, any matter that is in “dispute” under the terms of this Agreement shall not constitute an Event of Default by any of the Parties, as the case may be, with respect to the obligation to be performed or the provision of the Agreement in dispute.

**Section 5.9. Termination.** Notwithstanding anything contained herein to the contrary, in the event the operation and management of the Facilities is not financially feasible for RWJBarnabas without the assistance of the County Parties, and the County Parties have made a determination not to assist RWJBarnabas with any additional subsidy above what has been agreed to or other monetary contribution, RWJBarnabas may terminate this Agreement without penalty on one (1) years’ prior written notice to the County Parties.

## **ARTICLE VI**

### **INSURANCE**

**Section 6.1. Insurance Requirements.** RWJBarnabas shall obtain and maintain insurance with respect to the Facilities and the provision of the Operations and Management Services in the following amounts and types:

| <b>Coverages</b>                                                                                                                                            | <b>Minimum Limits of Liability</b> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------|
| Professional Liability                                                                                                                                      | \$5,000,000                        |
| General Liability (including bodily injury, property damage and personal injury and including independent contractor, based form and fire, legal liability) | \$5,000,000 combined single limit  |
| Automobile/Truck (including all owned vehicles, non-owned vehicles and hired vehicles                                                                       | \$5,000,000 combined single limit  |

The County, the Authority and their respective officers, elected and appointed officials, commissioners, members, employees and agents shall be named as additional insured on all insurance policies. The costs of any such insurance shall be paid RWJBarnabas. In lieu of separate policies, RWJBarnabas may maintain a single policy, blanket or umbrella policies, or a combination thereof, having the coverages required therein.

## **ARTICLE VII**

### **MISCELLANEOUS**

**Section 7.1. Labor Agreements.** It is the intention of the Parties to ensure productive and effective relationships with the labor unions representing the Facilities’ employees in

connection with terms and obligations of this Agreement; provided that, RWJBarnabas shall have discretion to determine appropriate staffing levels and take all other measures that it deems necessary and proper for the efficient operation of the Facilities and provided that RWJBarnabas shall not in any event become responsible for any terminal payments for such employees related to their service as employees of the Authority. Notwithstanding anything to the contrary contained herein, RWJBarnabas acknowledges and agrees that it will honor all existing labor agreements during the full Term of this Agreement. Should any such labor agreements expire prior to the end of the Term, the County Parties reserve the right to negotiate with the labor unions for an extension of time of such labor agreements or for replacement agreements covering the full Term hereunder. RWJBarnabas further acknowledges and agrees that it will honor all labor agreements for a minimum of three (3) years from the transfer of title to RWJBarnabas.

**Section 7.2. No Restrictions.** Each Party represents and warrants that it is not bound by any restriction, contractual or otherwise, to any other individual or entity, that would prohibit or impede such Party from undertaking and performing the duties, responsibilities and obligation of this Agreement, and is free to enter into this Agreement and to perform the terms and provisions thereof.

**Section 7.3. Dispute Resolution.** Notwithstanding anything herein to the contrary, the Parties hereto may seek to resolve such disputes through use of any available equitable and/or civil procedures.

**Section 7.4. Entire Agreement.** This Agreement constitutes the entire agreement between the Parties and supersedes all prior oral or written agreements, understandings, representations and warranties and courses of conduct and dealing between the Parties on the subject matter hereof. Except as otherwise provided herein, this Agreement may be amended or modified only by a writing executed by the Parties.

**Section 7.5. Governing Law.** This Agreement shall be governed by and construed under the laws of the State of New Jersey without regard to conflicts-of-laws principles.

**Section 7.6. Jurisdiction.** Any action or proceeding seeking to enforce any provision of, or based on any right arising out of, this Agreement shall be brought against any of the Parties in the courts of the State of New Jersey, County of Middlesex, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue laid therein. Process in any action or proceeding referred to in the preceding sentence may be served on any party anywhere in the world.

**Section 7.7. Counterparts.** This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. A counterpart signed and sent by facsimile transmission or by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

**Section 7.8. Modification.** Modifications, waivers or amendments to the provisions hereunder shall be effective only if set forth in a written instrument signed by both Parties hereto after all required authorizations for such modifications, waivers or amendments have been taken.

**Section 7.9. Headings.** The captions and headings in this Agreement are for convenience and ease of reference only and in no way define, limit or describe the scope or intent of this Agreement and such headings do not in any way constitute a part of this Agreement.

**Section 7.10. Assignment.** Neither this Agreement nor any of the rights, interests or obligations hereunder shall be transferred or assigned by either Party without the prior written consent of the other Parties.

**Section 7.11. Notices.** Any notice or other communication which is required to be given hereunder shall be in writing and shall be deemed to have been validly given if faxed to the telephone number set forth below, delivered in person or mailed by certified mail or registered mails, addressed as follows:

If to the County:        John A. Pulomena, County Administrator  
County of Middlesex  
County Administration Building, 3<sup>rd</sup> Floor  
75 Bayard Street  
New Brunswick, New Jersey 08901  
Telephone No.: (732) 745-3040

with a copy to:        Thomas F. Kelso, Esq., County Counsel  
Kelso & Burgess  
132 Hamilton Street  
New Brunswick, New Jersey 08901  
Telephone No.: (732) 246-4501

If to the Authority:    H. James Polos, Executive Director  
Middlesex County Improvement Authority  
101 Interchange Plaza  
Cranbury, New Jersey 08512  
Telephone No. (609) 655-5141

with a copy to:        Louis N. Rainone, Esq., Authority Counsel  
Rainone Coughlin Minchello, LLC  
555 U.S. Highway One South, Suite 440  
Iselin, New Jersey 08830  
Telephone No. (732) 709-4182

If to RWJBarnabas:    XXXXXXXXX

with a copy to: XXXXXXXX

**Section 7.12. Confidential Information.**

(a) Each of the Parties agrees that the other Parties' Confidential Information (as hereinafter defined), as may be exchanged by the Parties in connection with this Agreement, shall be confidential and each agrees that it shall not disclose the others' Confidential Information unless such disclosure is required by law. Notwithstanding the foregoing, following the full execution of this Agreement, each of the Parties shall be permitted to disclose to its strategic partners (and/or potential strategic partners) the fact that the Parties have engaged in a contractual relationship as provided hereunder, provided that any such disclosure shall not include any of the other Party's Confidential Information and, provided further, that any written disclosures by any Party hereto concerning the fact that the Parties have engaged in a contractual relationship shall be subject to the prior review and approval of the other Parties.

(b) For purposes of this Agreement, "Confidential Information" shall mean all information that is provided, whether before, on, or after the date of this Agreement, by any of Parties to another Party, including, without limitation, all registered or unregistered intellectual property, proprietary information, registry information and protocols, methodologies, plans, procedures, processes, proposals, prospective or existing contractual relationships, payment or reimbursement information, financial information, reports, forecasts, calculations, projections, patient information and other technical, registry, or business information, in whatever form. Confidential Information shall include any of the above information of the Parties, which may be disclosed by a third party on behalf of such Party, in reliance on this Agreement. However, Confidential Information shall exclude any information that: (i) becomes generally available to the public other than as a result of a disclosure in violation of this Agreement; (ii) becomes available to a Party on a non-confidential basis from a source other than the other Parties, provided such source is not bound by any obligation to keep such information confidential by agreement or otherwise; (iii) a Party can demonstrate it knew or obtained the information on a non-confidential basis prior to receipt of such information from the other Parties hereunder; or (iv) has been independently acquired or developed by any of the Parties without violating such Party's obligations under this Agreement.

(c) In addition, each of the Parties shall: (i) take all necessary precautions to protect the other Parties' Confidential Information, including, without limitation, all precautions such Party employs with respect to its own confidential information; (ii) use the other Parties' Confidential Information only for the purposes of this Agreement; (iii) not misappropriate, duplicate, reverse engineer, or otherwise use the other Parties' Confidential Information; and (iv) restrict disclosure of the other Parties' Confidential Information solely to its personnel and advisors on a need to know basis and ensure compliance with this Agreement.

(d) If any of the Parties are required by law to make any disclosure of the other Parties' Confidential Information, it must first provide to the other Party the content of the proposed disclosure, the reasons that such disclosure is required by law, and the time and place that the disclosure will be made. The Party required by law to make such disclosure will cooperate in the other Party's efforts, if any, to obtain a protective order or other protection for its Confidential Information and will disclose such Confidential Information only in accordance with this

Agreement or an order or judgment entered by a court of competent jurisdiction. In the event a protective order is not sought, the information that is furnished by the Party from whom the information is sought shall be only that portion of the Confidential Information which that Party's counsel advises is the minimum amount that is legally required to be furnished or disclosed. Notwithstanding the foregoing, none of the Parties shall be restricted from sharing this Agreement with its respective legal and/or financial advisors, as may be providing counsel to such Party with respect to this Agreement.

(e) The Parties further acknowledge and agree that in the event of a Party's breach of this Section 7.12, money damages would be inadequate to remedy any such breach. As a result, any Party that has disclosed Confidential Information in reliance on this Agreement shall be entitled to seek specific equitable relief, without bond or other security, including, without limitation, injunctive relief, temporary restraining orders on an ex parte basis, and specific performance, to prevent or terminate any breach of this Section 7.12 by the other Party, along with all costs and expenses, including reasonable attorneys' fees and disbursements, of such action. Such remedy shall be in addition to, and not in limitation of, any other remedies that may be available to such Party in law or in equity. No failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder.

(f) Neither the Parties nor any of their directors, trustees, officers, agents, or employees makes any express or implied representation or warranty as to the accuracy or completeness of the Confidential Information, and each such Party expressly disclaims any and all liability that may be in the Confidential Information, errors therein or omissions therefrom.

**Section 7.12. Severability.** In the event that any provision of this Agreement shall be determined for any reason to be invalid, illegal, or unenforceable in any respect by any court of competent jurisdiction, the Parties hereto shall negotiate in good faith and agree to such amendments, modifications or supplements of or to this Agreement or to such other appropriate actions as, to the maximum extent practicable in light of such determination, shall implement and give effect to the intentions of the Parties as reflected herein. Notwithstanding such determination, such determination by any court of competent jurisdiction shall not invalidate or render any other provision hereunder unenforceable.

**Section 7.13. Liability of Officers and Employees.** Except to the extent provided by Applicable Laws, no commissioner, member or director, elected or appointed officials, nor any officer, agent, representative or employer of any of the Parties, shall be charged personally by the other Parties or held contractually liable thereto under any term or provision of this Agreement, because of the Parties' execution or attempted execution of this Agreement, or because of any breach or alleged breach thereof.

**[SIGNATURES ON THE FOLLOWING PAGE]**



**IN WITNESS WHEREOF**, the Parties hereto have duly executed this Agreement on the day and year first above written.

**WITNESS/ATTEST:**

**COUNTY OF MIDDLESEX**

By: \_\_\_\_\_

By: \_\_\_\_\_

**WITNESS/ATTEST:**

**MIDDLESEX COUNTY IMPROVEMENT  
AUTHORITY**

By: \_\_\_\_\_

By: \_\_\_\_\_

**WITNESS/ATTEST:**

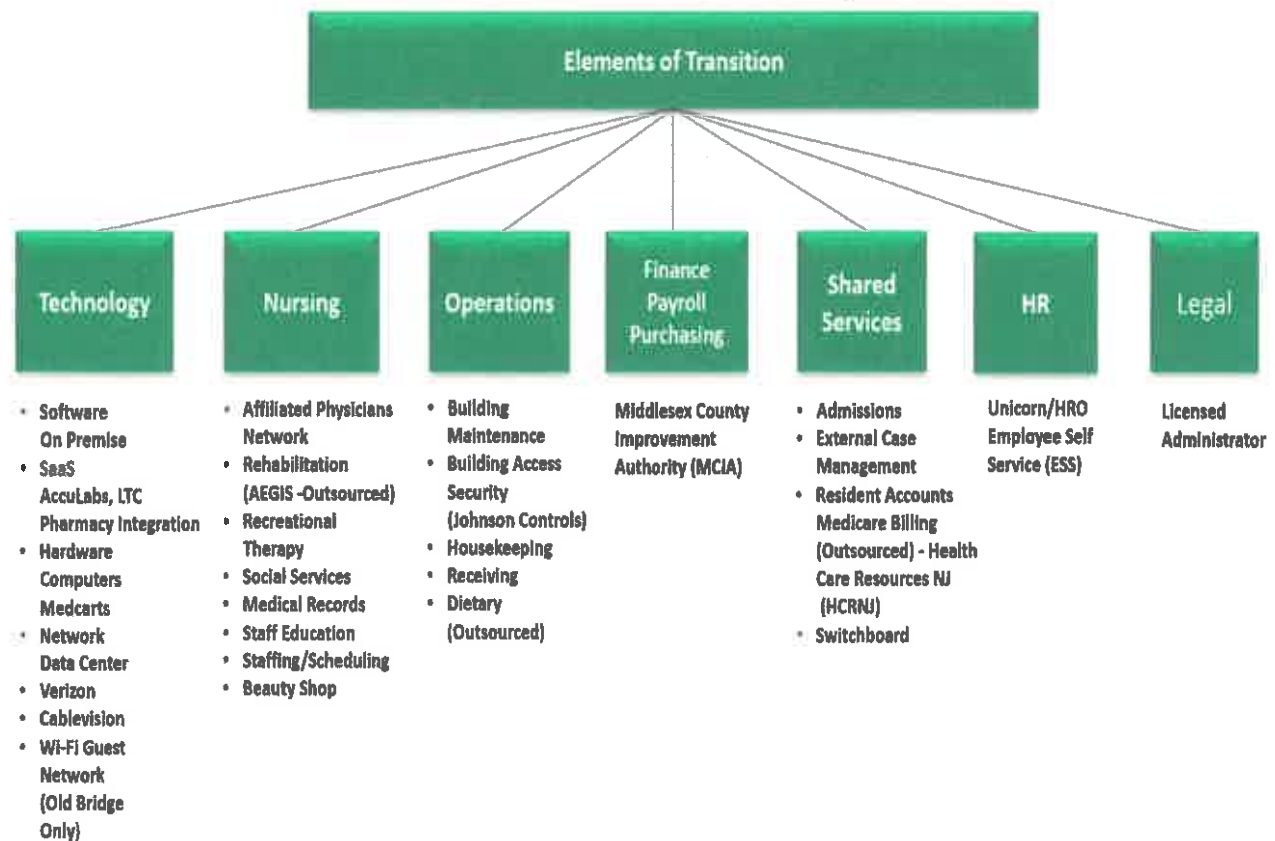
**RWJBARNABAS HEALTH**

By: \_\_\_\_\_

By: \_\_\_\_\_

## **ATTACHMENT A**

### **Elements of Transition**



## Attachment One