

## **RIGHT OF FIRST REFUSAL**

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_ 2019, by and between ADVENTIST HEALTH TULARE, a California nonprofit religious corporation and ADVENTIST HEALTH SYSTEM/WEST, a California nonprofit religious organization doing business as ADVENTIST HEALTH (collectively “Adventist Health”) on the one hand and TULARE LOCAL HEALTHCARE DISTRICT, a local health care district of the State of California, doing business as TULARE REGIONAL MEDICAL CENTER (“District”). Adventist Health and the District are sometimes referred to herein collectively as “Parties” and individually as a “Party.”

WHEREAS, District is the owner of various parcels of real property located in and throughout the geographic area legally defined as the Tulare Local Healthcare District, a political subdivision of the State of California (collectively “District Real Property”);

WHEREAS, District and Adventist Health entered into that certain Lease between Tulare Local Healthcare District, as Landlord, and Adventist Health Tulare, as Tenant (“Lease”), dated February 12, 2019 and amended on April 1, 2019, whereby Adventist Health agreed to lease from District that certain real property commonly known as the campus of Tulare Regional Medical Center (APN 170-323-010) (“Hospital Campus”);

WHEREAS, the District is the debtor in a bankruptcy case filed before the United States Bankruptcy Court at Fresno in the Eastern District of California in September 2017, with a plan for the adjustment of debts confirmed by the Bankruptcy Court on August 16, 2019 (“Bankruptcy Plan”);

WHEREAS, the Hospital Campus was improved and constructed in part with funds from \$15,000,000 Tulare Local Health Care District (Tulare County, California) General Obligation Bonds, Election of 2005, Series A (2007); \$8,595,000 Tulare Local Health Care District (Tulare County, California) General Obligation Bonds, Election of 2005, Series B-1 (2009) (Tax-Exempt); \$61,405,000 Tulare Local Health Care District (Tulare County, California) General Obligation Bonds, Election of 2005, Series B-2 (2009); and \$17,850,000 Tulare Local Healthcare District (Tulare County, California) Refunding Revenue Bonds, Series 2007 (collectively “Bonds”);

WHEREAS, as a condition of the holders of the Bonds (collectively “Bond Holders”) approval of the Bankruptcy Plan, the District granted, from the effective date of the Bankruptcy Plan until the District pays the Bonds in full, the Bond Holders a security interest in the District Real Property subject to release by the Bondholders on terms and conditions set forth in the Bankruptcy Plan; and

WHEREAS, District may from time to time desire to sell portions of the District Real Property not subject to the Lease (“Remaining Real Property”) and Adventist Health is interested in having a Right of First Refusal to purchase the Remaining Real Property;

NOW, THEREFORE, for good and valuable consideration the receipt of which is hereby acknowledged, it is agreed:

1. Right of First Refusal. District hereby grants Adventist Health a Right of First Refusal on the Remaining Real Property in accordance with the terms below (“Right of First Refusal”).

2. Term. This Right of First Refusal shall be effective and commence on the date set forth above (“Effective Date”) and continue conterminous with the Lease, including any extensions or renewals thereof (“Term”). The Right of First Refusal shall terminate immediately upon termination of the Lease, regardless of the cause of the termination, without further action by either Party.

3. Notice of Bona Fide Offer. If during the Term, District receives either a bona fide written offer by a willing third party to purchase any or all of the parcels of the Remaining Real Property which District intends to accept, or a purchase agreement which District intends to enter into (collectively “Offer”), District shall, within five (5) business days of such Offer, give written notice to Adventist Health (“Notice”) at the address provided below, which notice shall include a copy of the Offer.

4. Exercise of Right of First Refusal. Adventist Health shall have thirty (30) business days from receipt of the Notice to exercise its Right of First Refusal (“Notice Period”) by agreeing to purchase the Remaining Real Property subject to the Offer at the price and on the terms and conditions set forth in the Offer. Adventist Health shall, within the Notice Period, notify the District of Adventist Health’s intent to exercise the Right of First Refusal by sending the District, at the address set forth below, written notice of Adventist Health’s intent to exercise the Right of First Refusal (“Exercise Notice”). The Exercise Notice shall expressly set forth Adventist Health’s acceptance of the price, terms, and conditions set forth in the Offer.

5. Purchase Sale Agreement. Upon receipt of the Exercise Notice, the District shall draft, or cause to be drafted, a purchase sale agreement (“Purchase Sale Agreement”) containing the price, terms, and conditions set forth in the Offer and Exercise Notice as well as all other provisions typical of a commercial real property agreement in the County of Tulare, State of California, including all terms required by law and regulation. The closing of the sale shall be in accordance with the commercially reasonable closing practices found within Tulare County, State of California. The Parties shall have thirty (30) business days to finalize and execute the Purchase Sale Agreement (“Agreement Period”). If the Parties do not execute the Purchase Sale Agreement within the Agreement Period, the District shall have the right, in its sole and absolute discretion to, upon written notice to Adventist Health, terminate negotiates regarding the Purchase Sale Agreement and Adventist Health’s Right of First Refusal with respect to Offer shall, without further action, automatically terminate.

6. Effect of Failure to Exercise Right of First Refusal. If Adventist Health fails to exercise its Right of First Refusal within the Notice Period, including as a result of the provisions of Section 5 herein, this Right of First Refusal shall have no more force and effect with respect only to the Offer. The Right of First Refusal shall remain in full force and effect with regard to the Remaining Real Property, including without limitation, the property that was the subject of the Offer if, regardless of the cause, the District fails to sell the Property at the price and on the terms and conditions set forth in the Offer.

7. Bankruptcy Matters. The Parties acknowledge the Bankruptcy Plan may impose procedural requirements upon them with regard to this Right of Refusal and any subsequent sale of the Remaining Real Property arising from Adventist Health's exercise of that right. Nothing in this Right of First Refusal is intended to abridge or alter the rights or obligations of the District, Adventist Health, or the rights of any other party pursuant to the Bankruptcy Plan.

8. Notice. Any notice, request or demand herein provided for or given hereunder, if given by the Parties hereto, shall be effective (a) when delivered in person to the recipient named below, (b) one day after timely deposit with a responsible overnight courier to the recipient named below, or (c) five days given if mailed by postage paid, certified mail return receipt requested as follows:

District: Chief Executive Officer  
Tulare Local Healthcare District  
PO Box 1136  
Tulare, CA 93275

With Copy to:  
Todd Wynkoop  
McCormick Barstow, LLP  
7647 N. Fresno Street  
Fresno, CA 93720

Purchaser: Randy Dodd  
President  
Adventist Health Tulare  
869 N. Cherry Street  
Tulare, CA 93274

With Copy to:  
Adventist Health System/West  
2100 Douglas Boulevard  
Roseville, CA 95661  
Attn: Office of General Counsel

With Copy to:  
Latham & Watkins, LLP  
355 South Grand Avenue, Suite 100  
Los Angeles, CA 90071-1560  
Attn: Daniel K. Settlmayer

The Parties may change the provisions of this Section 8 at any time. However, any such change shall be effective only upon timely written notice by the Party making the change to the other Party.

9. General Provisions

(a) Entire Agreement. This Right of First Refusal is the entire agreement between the Parties and, when executed by the Parties, supersedes all prior agreements, understandings and communications, either verbal or in writing, between the Parties with respect to the subject matter contained herein.

(b) Amendment. This Right of First Refusal may only be amended, modified or changed by written instrument signed by the Parties.

(c) Binding Effect. This Right of First Refusal shall be binding upon, and inure to the benefit of the Parties and their respective heirs, legal representatives, successors and permitted assigns.

(d) Time. Time is of the essence in this Right of First Refusal .

(e) Extensions. Nothing in this Right of First Refusal shall prohibit or otherwise preclude the Parties from mutually agreeing to extend any period proscribed herein for a Party to take an action. This provision does not apply to the Term, which the Parties may only modify in accordance with Section 8(b).

(f) Headings. All captions and headings are inserted for the convenience of the Parties and shall not be used in any way to modify, limit or otherwise affect this Right of First Refusal.

(g) Counterparts. This Right of First Refusal may be executed simultaneously or in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic signatures shall be deemed originals.

(h) Waiver. Any failure by a Party to comply with any obligation, agreement or condition herein may be expressly waived in writing by the other Party, but such waiver or failure to insist upon strict compliance with such obligation, agreement or conditions shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

(i) Governing Law. This Right of First Refusal shall be governed by, and construed in accordance with, the laws of the State of California. Venue for any legal or equitable proceeding brought under or as a result of this Right of First Refusal, including any arbitration or mediation, shall be in the County of Tulare.

(j) Severability. If any term, provision or condition of this Right of First Refusal is determined by a court or other judicial or administrative tribunal to be illegal, void or otherwise ineffective or not in accordance with public policy, the remainder of this Right of First Refusal shall not be affected thereby and shall remain in full force and effect.

(k) Interpretation. In the event of a dispute or disagreement arising under this Right of First Refusal, this Right of First Refusal shall be interpreted in accordance with its fair meaning and shall not be interpreted for or against any party on the ground that such party drafted or caused to be drafted this Right of First Refusal.

(l) Recording. Adventist Health shall have the right to record a notice of this Right of First Refusal, at Adventist Health's sole cost and the District agrees to execute such notice, in recordable form, upon request.

(m) Attorneys' Fees. If any legal action is necessary to interpret or enforce the terms of this Right of First Refusal, the prevailing party in any such action shall recover from the non-prevailing party its reasonable attorney's fees and costs.

IN WITNESS WHEREOF, this First Right of Refusal has been made the date and year written below.

ADVENTIST HEALTH:

DISTRICT:

NEED

Tulare Local Healthcare District dba  
Tulare Regional Medical Center

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

By: \_\_\_\_\_  
Kevin Northcraft  
President  
Board of Directors