

MERGER AGREEMENT

This Agreement, is made between Olean General Hospital ("OGH"), a New York not-for-profit corporation located in Olean, New York, and Bradford Hospital, doing business as Bradford Regional Medical Center ("BRMC"), a Pennsylvania non-profit corporation located in Bradford, Pennsylvania.

RECITALS

WHEREAS, the parties desire to merge OGH and BRMC with OGH being the surviving entity; and

WHEREAS, the parties intend that the merger between OGH and BRMC will promote quality and cost-effective health care in the full continuum of care to the members of their communities.

NOW THEREFORE, in consideration of the mutual covenants herein contained, and intending to be legally bound hereby, the parties agree as follows:

Section 1. Merger of OGH and BRMC:

This Agreement is subject to the approval of the boards of OGH, BRMC and Upper Allegheny Health System ("UAHS"), the member of both parties; by the member of UAHS, if any; and to other approvals required by law. The Certificate of Merger and Plan of Merger annexed hereto as Attachments A and B, respectively, will be filed as required in connection with the merger.

Section 2. Terms of Merger:

- 2.1 Subject to the terms and conditions set forth herein, the parties shall take such actions as may be necessary or desirable to achieve the merger. As of the effective date of the merger, the BRMC site or campus shall be operated as a division and campus of OGH.
- 2.2 An acute care hospital will continue at the BRMC site so long as that facility remains financially viable so as to allow it to continue to provide an acceptable overall level of clinical quality and patient safety.
 - 2.2.1 "Financial viability" is defined as:

(a) the BRMC site has a positive contribution margin of at least \$1.00 annually. "Contribution margin" is defined as the net gain/loss from operations of the BRMC site, as determined from the Pennsylvania Medical Assistance cost report for the BRMC site. It is anticipated that Pennsylvania and New York will each require separate Medicaid provider agreements and cost reports for each site; and

(b) beginning in the fiscal year during which the merger occurs,

(1) if BRMC has a negative contribution margin (i) as averaged as \$250,000 a year or greater over a rolling three-year period, or (ii) in the amount of \$1,000,000 in any one fiscal year, all service offerings would potentially be subject to modification or elimination to promote forward moving financial viability; and

(2) Before taking any such actions, OGH will notify the Pennsylvania Office of the Attorney General ("AG") in writing of the financial situation and OGH's intentions as to its service offerings. Should the AG disagree with OGH's intentions, and OGH and the AG are not able to resolve this disagreement, the AG's remedy is to file a court action in Smethport, PA, the county seat for McKean County, to prevent OGH from taking such actions. If the AG has not taken this remedy within 45 days of OGH's notice to the AG, OGH is free to implement its services intentions with no objection from the AG.

2.3 If services are reduced or curtailed at the BRMC site, OGH will use good faith efforts to continue to provide those health care services that meet the needs of the people in the BRMC service area, as determined by OGH's federally required community health needs assessment.

2.4 Should the time ever come that the BRMC site would be closed, OGH and UAHS will work diligently to retain the highest level of ambulatory services that are financially sustainable.

2.5 If the BRMC site is ever closed and its facilities sold due to lack of financial sustainability, the net proceeds will be placed into the Bradford Hospital Foundation to continue to be used to support health care services in the community.

2.6 OGH and UAHS will continue to have significant numbers of Pennsylvania residents on their Boards of Directors.

Section 3. Effective Date:

The merger shall take effect as of a date to be mutually agreed upon by the parties (the "Effective Date"). The parties shall exchange all documents and instruments required by this Agreement.

Section 4. Contingencies:

4.1 Notwithstanding any other provision contained herein, this Agreement will be null and void and of no force and effect unless the following events have occurred on or before the Effective Date:

4.1.1 No indication of opposition to the transactions described herein by the Attorney General of Pennsylvania, or that any such opposition has been withdrawn in writing.

4.1.2 No indication of opposition to the transactions described herein by the Attorney General of New York, or that any such opposition has been withdrawn in writing.

4.1.3 Approval by the New York Department of Health and the New York Public Health and Health Planning Council of the Certificate of Need requested by OGH.

4.1.4 Notice to the Pennsylvania Department of Health and/or other applicable regulatory agencies of the merger, and no indication of opposition or any impediment to the merger as of the Effective Date.

- 4.1.5 No commencement of any suit by any person or entity to enjoin the transactions described herein or any such suit has been dismissed.
- 4.1.6 Approval of the transactions described herein by any and all persons required to approve the transactions pursuant to any outstanding bond and/or loan covenants of either OGH or BRMC.
- 4.1.7 Approval of the merger by the Orphan's Court of Pennsylvania, the Pennsylvania court that has jurisdiction over charitable assets.
- 4.1.8 Approval of the merger by such other persons as may be required by law, contract, or the bylaws or articles of incorporation of either party.
- 4.2 The member of UAHS, if any, shall have approved the merger.
- 4.3 The parties may agree in writing to waive any of the above contingencies, in which case the non-occurrence of the contingency in question will not affect performance of the parties' obligations, or to extend the time limit within which the contingencies must be satisfied.
- 4.4 The parties shall diligently pursue and use their best efforts in cooperation with one another to cause all of the contingencies set forth in this Section 4 to be satisfied.

Section 5. Warranties and Representations of BRMC: As a material inducement to OGH to enter into this Agreement, BRMC hereby makes the following warranties and representations to OGH:

- 5.1 BRMC is a non-profit, non-stock corporation duly organized, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania and has all requisite corporate power and authority to carry on its business as it is presently being conducted, to enter into this Agreement, and to carry out and perform the terms and provisions of this Agreement. BRMC has no subsidiaries or affiliated organizations except as has been disclosed to OGH, and has no direct or indirect interest (other than as a creditor) in the ordinary course of business either by way of stock ownership, corporate membership or otherwise, in any other firm, corporation or business enterprise.
- 5.2 BRMC is not in violation of any material term or provision of any charter, bylaw, mortgage, indenture, contract, agreement or instrument.

- 5.3 The execution and delivery of and performance and compliance with this Agreement will not result in the violation of or be in conflict with or constitute a default under any such term or provision or result in the creation of any mortgage, lien, encumbrance, or charge on any of the properties or assets of BRMC. BRMC has no reason to believe that it will not be able to obtain (without additional payment or expense) all consents and waivers necessary to avoid any such violation, conflict, default, or creation of a lien, encumbrance or charge.
- 5.4 All action required by any applicable law or otherwise has been appropriately authorized.
- 5.5 BRMC is not in default in any material respect under any of the contracts, agreements, leases, documents, or other commitments to which it is a party or otherwise bound.
- 5.6 BRMC is recognized by the Internal Revenue Service as an organization exempt from federal income taxation under Section 501(a) as described in Section 501(c)(3) of the Internal Revenue Code.
- 5.7 BRMC has maintained minute books which are up to date and in which are recorded accurately all actions taken by its Board of Directors to the extent that such actions are required by law to be approved by its Board of Directors and members.
- 5.8 BRMC is not subject to any judgment, order, writ, injunction or decree of a court of competent jurisdiction which materially adversely affects or may in the future materially adversely affect its business, operation, prospects, properties, assets or condition, financial or otherwise.
- 5.9 BRMC has received no notice of any material violation of any law, ordinance, rule, regulation or order applicable to its operations, business or properties as presently constituted.
- 5.10 BRMC has filed or caused to be filed all federal, state and local tax returns and reports through its most recent fiscal year which are due and required to be filed and has paid or caused to be paid all taxes due from BRMC through the date of execution of this Agreement and any assessment of taxes received, except taxes or

assessments that are being contested in good faith and have been adequately reserved against.

5.11 Except as disclosed to OGH prior hereto.

5.11.1 there is no material dispute, claim, action, suit, proceeding, arbitration or governmental investigation, either administrative or judicial, pending, or, to the knowledge of BRMC, threatened against or related to BRMC or its properties or business; and

5.11.2 BRMC is not in default with respect to any order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, which involves the possibility of any judgment or liability which may result in any material adverse change in its financial condition, assets, liabilities, properties or business; and

5.11.3 BRMC knows of no facts which would provide a basis for any such action, suit, proceeding or default.

5.12 Except as set forth on BRMC's audited financial statements ("the Financial Statements"), BRMC is not a party to any debenture, note, conditional sale, loan or other borrowing agreement, or any lease required to be capitalized in accordance with generally accepted accounting principles, any one of which involves a total funded financial obligation of \$10,000 or more.

5.13 BRMC has no material liabilities or obligations accrued, absolute, contingent or otherwise, except as disclosed in this Agreement or the Appendices hereto or as incurred, consistent with past business practice, in the normal and ordinary course of its business since the date of the Financial Statements.

5.14 No representation or warranty by BRMC in this Agreement or in any writing attached hereto contains any untrue statement of material fact or omits to state any material fact required to make the statements herein or therein contained not misleading.

Section 6. Warranties and Representations of OGH:

As a material inducement to BRMC to enter into this Agreement and the Attached Agreements, OGH hereby makes the following warranties and representations to BRMC:

- 6.1 OGH is a not-for-profit corporation duly organized, validly existing, and in good standing under the laws of the State of New York and has all requisite corporate power and authority to carry on its business as it is presently being conducted, to enter into this Agreement, and to carry out and perform the terms and provisions of this Agreement. OGH has no direct or indirect interest (other than as a creditor) in the ordinary course of business either by way of stock ownership, corporate membership or otherwise, in any firm, corporation or business enterprise other than those already disclosed by OGH to BRMC.
- 6.2 OGH is not in violation of any material term or provision of any charter, bylaw, mortgage, indenture, contract, agreement or instrument.
- 6.3 The execution and delivery of and performance and compliance with this Agreement will not result in the violation of, or be in conflict with, or constitute a default under any such term or provision, or result in the creation of any mortgage, lien, encumbrance, or charge on any of the properties or assets of OGH. OGH has no reason to believe that it will not be able to obtain (without additional payment or expense) all consents and waivers necessary to avoid any such violation, conflict, default, or creation of a lien, encumbrance or charge.
- 6.4 All action required by any applicable law or otherwise has been appropriately authorized.
- 6.5 OGH is not in default in any material respect under any of the contracts, agreements, leases, documents, or other commitments to which it is a party or otherwise bound.
- 6.6 OGH is recognized by the Internal Revenue Service as an organization exempt from federal income taxation under Section 501(a) as described in Section 501(c)(3) of the Code.
- 6.7 OGH has maintained minute books which are up to date and in which are recorded accurately all actions material to this merger taken by its Board of Directors to the extent that such actions are required by law to be approved by Directors.
- 6.8 OGH is not subject to any judgment, order, writ, injunction or decree of a court of competent jurisdiction which materially adversely affects or may in the future

- materially adversely affect its business, operation, prospects, properties, assets or condition, financial or otherwise.
- 6.9 OGH has received no notice of any material violation of any law, ordinance, rule, regulation or order applicable to its operations, business or properties as presently constituted.
- 6.10 OGH has filed or caused to be filed all federal, state and local tax returns and reports through its most recent fiscal year which are due and required to be filed and has paid or caused to be paid all taxes due from OGH through the date of execution of this Agreement and any assessment of taxes received, except taxes or assessments that are being contested in good faith and have been adequately reserved against.
- 6.11 Except as disclosed to BRMC prior hereto:
- 6.11.1 there is no material dispute, claim, action, suit, proceeding, arbitration or governmental investigation, either administrative or judicial, pending, or, to the knowledge of OGH, threatened against or related to OGH or its properties or business; and
- 6.11.2 OGH is not in default with respect to any order, writ, injunction or decree of any court or governmental department, commission, board, bureau, agency or instrumentality, which involves the possibility of any judgment or liability which may result in any material adverse change in its financial condition, assets, liabilities, properties or business; and
- 6.11.3 OGH knows of no facts which would provide a basis for any such action, suit, proceeding or default.
- 6.12 Except as set forth on OGH's audited financial statements ("the Financial Statements"), OGH is not a party to any debenture, note, conditional sale, loan or other borrowing agreement, or any lease required to be capitalized in accordance with generally accepted accounting principles, which would materially affect this merger.
- 6.13 OGH has no material liabilities or obligations accrued, absolute, contingent or otherwise, except as disclosed in this Agreement or the Appendices hereto or as

incurred, consistent with past business practice, in the normal and ordinary course of its business since the date of the Financial Statements.

- 6.14 No representation or warranty by OGH in this Agreement or in any writing attached hereto contains any untrue statement of material fact or omits to state any material fact required to make the statements herein or therein contained not misleading.

Section 7. Notice:

Any notice or other communication required or permitted to be given hereunder shall be given in writing by personal delivery, first class mail postage prepaid, or overnight mail delivery service or by telecopy with acknowledgment of receipt of receiving party addressed to the other party at the address set forth in this Section 7 or to such other address as the party may designate.

7.1 OGH: Président and CEO
 515 Main Street
 Olean, New York 14670

7.2 BRMC: President and CEO
 116 Interstate Parkway
 Bradford, Pennsylvania 16701

Section 8. Expenses:

Except for those expenses that the parties have mutually agreed to share, each party shall bear its own expenses associated with the merger. Any costs or expenses incurred prior to the Effective Date or termination of this Agreement shall be borne by the party incurring it.

Section 9. Lease or Disposition of Property:

Neither party shall sell, contract to sell, lease, encumber, or dispose of any assets used by it in connection with its operations after the date this Agreement is executed except in the ordinary course of business.

Section 10. Insurance:

Until the Effective Date, each party will continue to insure itself, its directors and officers, and its assets against such casualties and in such amounts as are in place and in force as of the date of execution of this Agreement.

Section 11. Protection of Property:

Until the Effective Date, OGH and BRMC will keep their assets in good order and repair and will not waste or destroy said assets or any part thereof, other than use in the ordinary course of business nor use said assets in violation of any statute or ordinance.

Section 12. Access to Books and Records:

Each party and its authorized representatives shall have full access during normal business hours upon prior arrangement with the other party to all properties, books, records, contracts and documents of the other party. Each party shall furnish or cause to be furnished to the other party and its authorized representatives all information with respect to its assets or operations as the other party may reasonably request. In the event of the termination of this Agreement, all such information shall remain confidential and all copies thereof shall be returned to the party from which it originated.

Section 13. Conduct and Operation of Business:

Until the Effective Date, each party shall continue to operate its business in the same manner as it has operated in the past, subject to the terms and conditions of this Agreement.

Section 14. Risk of Loss:

Each party assumes all risk of loss, damage, or destruction of its assets and operations up to the Effective Date. In the event of any loss prior to the Effective Date that in the opinion of either party substantially impairs the value of the assets or operations of the other party, the other party shall have the right to terminate this Agreement.

Section 15. Compliance with Laws:

The merger shall be conducted according to and in full compliance with all applicable federal, state and local laws, regulations and ordinances, including but not limited to,

applicable regulations pertaining to the licensure, reimbursement, and antitrust clearance that are in effect before, during and after the Effective Date.

Section 16. Confidentiality:

Any information disclosed by either party to the other party or its representatives pursuant to this Agreement shall be held in the strictest confidence and utilized only for the purposes of assessing the appropriateness of the proposed Merger. No public disclosure of this Agreement or public comment about the Merger will be made by either party without the prior written approval of the other party, except to the extent required by law, provided that disclosure of the Merger may be made to the extent necessary to such governmental authorities and other third parties whose approval or notification of the Merger may be required, to each party's professional advisors and to each party's respective trustees, officers, Medical Staff members and employees involved in consummation of the Merger.

Section 17. No Third-Party Rights:

Nothing in the Agreement shall be construed as creating or giving rise to any rights in any third parties or any persons other than the parties hereto and the Pennsylvania Office of the Attorney General as per Section 2 hereof, except as expressly provided therein.

Section 18. Construction of Terms and Headings:

Words used in this Agreement and the Attached Agreements shall be read as the masculine, feminine or neuter gender, and as the singular or plural, as the content requires. The captions or headings are for convenience only and are not intended to limit or define the scope or effect of any provision of this Agreement.

Section 19. Assignment:

Neither party may assign its rights, duties or obligations under this Agreement without the express written consent of the other party.

Section 20. Binding on Successors in Interest:

This Agreement shall be binding on and shall inure to the benefit of the successors and assigns of the parties thereto.

Section 21. Strict Performance:

No failure by any party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement or to exercise a right or remedy shall constitute a waiver. No waiver of any breach shall affect or alter this Agreement, but each and every covenant, condition, agreement and term of this Agreement shall continue in full force and effect with respect to any other existing or subsequent breach.

Section 22. Governing Law:

This Agreement shall be construed and enforced under and in accordance with the laws of the State of New York, except Section 2, which shall be construed and enforced under and in accordance with the laws of the Commonwealth of Pennsylvania.

Section 23. Survival of Obligations:

Any provision of this Agreement requiring performance of an obligation subsequent to the term of this Agreement shall survive from and after the closing or termination of the Agreement according to the terms of such provision.

IN WITNESS WHEREOF, as of March 29, 2017, each of the parties has caused this Merger Agreement to be duly executed.

OLEAN GENERAL HOSPITAL

By: 

Name: Brenda McGee

Title: Chair

BRADFORD HOSPITAL

By: 

Name: Timothy Finan

Title: President and CEO