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VIA OVERNIGHT MAIL

March 23, 2015

Mike Constantino  
Illinois Health Facilities and Services Review Board  
525 W. Jefferson, 2nd Floor  
Springfield, IL 62761

**RECEIVED**

**MAR 24 2015**

**HEALTH FACILITIES &  
SERVICES REVIEW BOARD**

Re: Monroe County Surgery Center (14-068)

Dear Mike:

Enclosed is a copy of the executed Purchase Agreement that was previously sent via e-mail.

Thank you.

Very truly yours,

*Clare Ranalli am*

Clare Connor Ranalli

Encs.

DM\_US 59654733-1.T13706.0010

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## MEMBERSHIP INTEREST PURCHASE AGREEMENT

**THIS MEMBERSHIP INTEREST PURCHASE AGREEMENT** (this "Agreement") is made and entered into as of March 20, 2015, by and among Red Bud Illinois Hospital Company, LLC, an Illinois limited liability company ("Buyer"), Monroe County Surgical Center, LLC, an Illinois limited liability company (the "Company"), the members of the Company listed on Exhibit A of this Agreement (each, a "Member"; collectively, the "Members") and MCSC Rep, LLC, a Missouri limited liability company ("Members' Representative").

### RECITALS

**WHEREAS**, the Company owns and operates an ambulatory surgical center business known as Monroe County Surgical Center, located at 501 Hamacher Street in Waterloo, Illinois (the "Center").

**WHEREAS**, the Members own one hundred percent (100%) of the membership interests in the Company.

**WHEREAS**, the Members desire to sell to Buyer and Buyer desires to purchase from the Members sixty percent (60%) of the membership interests of the Company (the "Transferred Interests").

**WHEREAS**, Buyer, or an Affiliate (as defined in Section 3.9 below) of Buyer, will provide management services to the Center under the terms of a management agreement with the Company.

**NOW THEREFORE**, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

### ARTICLE 1 PURCHASE AND SALE

**1.1 Sale and Transfer of the Transferred Interests.** Upon the terms and subject to the conditions hereof, the Members shall transfer, sell, convey and deliver to Buyer the Transferred Interests, including, without limitation, all governance and financial rights associated with the Transferred Interests, and Buyer shall purchase and accept from the Members the Transferred Interests.

**1.2 Purchase Price.**

**1.2.1 Transferred Interests Purchase Price.** Upon the terms and subject to the conditions hereof, Buyer shall pay to the Members, in full consideration for the Transferred Interests, an aggregate amount equal to \$2,574,000.00 (the "Purchase Price"), subject to adjustment as set forth in Section 1.3.

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1.2.2 Payment of the Purchase Price. Subject to the terms and conditions of this Agreement, Buyer shall pay the Purchase Price to the Members at the Closing as follows:

(i) Buyer shall pay to SunTrust Bank (the "Escrow Agent"), by wire transfer of immediately available funds fifteen percent (15%) of the Purchase Price (\$386,100.00) to be held and distributed pursuant to the terms of an Escrow Agreement in a form and substance mutually agreeable to the parties (the "Escrow Agreement"). Buyer, the Members' Representative, and the Escrow Agent shall enter into the Escrow Agreement at or prior to the Closing. The amount held from time to time by the Escrow Agent pursuant to the Escrow Agreement shall be referred to herein as the "Escrow Funds." On the date that is one (1) year after the Closing Date, the Escrow Agent shall disburse one half (1/2) of the Escrow Funds then remaining on deposit with the Escrow Agent to the Members, and on the date that is two (2) years after the Closing Date, the Escrow Agent shall disburse the Escrow Funds then remaining on deposit with the Escrow Agent to the Members; provided, however, that if on or prior to either disbursement date hereunder, Buyer has in good faith given notice of any claim for indemnification under Section 11.1 hereof, which claims remain unresolved, there shall remain on deposit with the Escrow Agent, and not disbursed to the Members, the aggregate amount that would be payable to Buyer pursuant to Section 11.1 were Buyer to prevail in respect of any such claim, and such amount shall not be considered on deposit with the Escrow Agent for the purposes of the first disbursement hereunder. If at any time any such claim or liability shall be resolved, either by mutual agreement of the parties or pursuant to a final non-appealable order of a court of competent jurisdiction, Buyer and the Members' Representative shall instruct the Escrow Agent to disburse the funds being held in respect of any such claim or liability in accordance with such agreement or court order.

(ii) Buyer shall pay the Purchase Price, less the amount paid to the Escrow Agent pursuant to Section 1.2.2(i), to the Members at Closing, in immediately available funds by wire transfer to an account or accounts designated by the Members' Representative.

### 1.3 **Working Capital Adjustment.**

1.3.1 The amount of the Purchase Price assumes that the Company will have a total of \$290,000.00 of Working Capital as of the Closing Date (the "Required Working Capital"), and is subject to adjustment if the Actual Working Capital is greater than or less than the Required Working Capital, calculated in accordance with this Section 1.3.

1.3.2 For purposes of this Agreement, "Working Capital" means an amount equal to (i) the sum of the current assets of the Company, including, without limitation, the following items: (A) cash, (B) net accounts receivable, (C) inventories and supplies, and (D) prepaid expenses, minus (ii) the sum of the current liabilities of the Company,

including: (A) accrued employee benefits (e.g., paid time off and related taxes, etc.), (B) accounts payable, and (C) accrued expenses, all consistent with the method of calculation set forth on Schedule 1.3.2.

#### 1.3.3 Working Capital Adjustment Procedure.

(i) Buyer shall determine the Working Capital of the Company as of the Closing Date (the "Actual Working Capital"). Buyer shall deliver its determination of the Actual Working Capital to the Members within sixty (60) days after the Closing Date.

(ii) If, within thirty (30) days after delivery of the Actual Working Capital calculation, the Members' Representative has not given Buyer written notice of its objection as to the Actual Working Capital calculation (which notice shall state the basis of the objection), then the Actual Working Capital calculated by Buyer shall be binding and conclusive on the parties and shall be used in computing the Working Capital Adjustment Amount.

(iii) If within thirty (30) days after Buyer's delivery of the Actual Working Capital calculation, the Members' Representative provides Buyer written notice of objection, and if Buyer fails to resolve the issues outstanding with respect to the calculation of the Actual Working Capital to the Members' Representative's reasonable satisfaction within thirty (30) days of Buyer's receipt of the Members' Representative's objection notice, the Members and Buyer shall submit the issues remaining in dispute to BKD, LLP, or, if BKD, LLP is not independent of both the Buyer and the Company at the time the determination is to be made, to an independent certified public accounting firm as mutually agreed upon by the parties (the "Independent Accountants"). If the determination of Actual Working Capital is submitted to the Independent Accountants for resolution, (i) the Members and Buyer shall furnish, or cause to be furnished, to the Independent Accountants such work papers and other documents and information relating to the disputed issues as the Independent Accountants may request and are reasonably available to that party or its agents, and each shall be afforded the opportunity to present to the Independent Accountants any material relating to the disputed issues and to discuss the issues with the Independent Accountants; (ii) the determination by the Independent Accountants, as set forth in a written notice to be delivered to both the Members and Buyer within sixty (60) days of the submission of the dispute to the Independent Accountants, shall be final, binding and conclusive on the parties and shall be used in the calculation of the Actual Working Capital; and (iii) the Members and Buyer will each bear fifty percent (50%) of the fees and costs of the Independent Accountants for such determination.

1.3.4 The "Working Capital Adjustment Amount" shall be calculated as follows:

(i) If the Actual Working Capital is less than the Required Working Capital, the Members' Representative and the Buyer shall instruct the Escrow Agent to pay by wire transfer to Buyer out of the Escrow Funds, to an account specified

by Buyer, an amount equal to sixty percent (60%) of the difference between the Actual Working Capital and the Required Working Capital.

(ii) If the Actual Working Capital is greater than the Required Working Capital, Buyer shall pay by wire transfer to the Members, to an account or accounts specified by the Members' Representative, an amount equal to sixty percent (60%) of the difference between the Actual Working Capital and the Required Working Capital.

(iii) Within three (3) business days after the calculation of the Actual Working Capital becomes binding and conclusive on the parties pursuant to Section 1.3.3, Buyer or the Members, as the case may be, shall make, or cause to be made, the wire transfer payment provided for in this Section 1.3.4.

## **ARTICLE 2** **CLOSING**

**2.1 Closing.** The closing of the transactions contemplated by and described in this Agreement (the "Closing") shall take place and be effective as of 11:59:59 p.m. on May 31, 2015, or at such other time as shall be agreed upon by all the parties hereto in writing (the "Closing Date").

### **2.2 Instruments of Conveyance and Transfer.**

**2.2.1 The Members.** At the Closing, the Members shall execute and/or deliver or cause to be delivered to Buyer and Escrow Agent, as applicable, the following:

(i) The Second Amended and Restated Operating Agreement of the Company, duly authorized, approved and executed by those Members who will be members of the Company following the Closing, in a form and substance mutually agreeable by the parties (the "New Operating Agreement").

(ii) An Assignment of Membership Interest, duly authorized, approved and executed by each of Members, in a form and substance mutually agreeable to the parties, with accompanying certificates representing the Transferred Interests (the "Assignments of Membership Interest").

(iii) Copies of resolutions duly adopted by the board of managers and the Members of the Company, authorizing and approving the sale of the Transferred Interests, certified as true and in full force as of the Closing, by the appropriate officers of the Company.

(iv) The certificate required to be delivered pursuant to Section 8.1 hereof, if applicable.

(v) Certificates of existence and good standing of the Company from the State of Illinois, dated the most recent practicable date prior to Closing.

(vi) The Escrow Agreement duly authorized, approved and executed by the Members.

(vii) Resignations of each of the officers of the Company, effective as of the Closing Date.

(viii) A new management agreement, by and between the Company and Buyer or its Affiliate, duly authorized, approved and executed by the Company, in a form and substance mutually agreeable to the parties hereto (the "New Management Agreement").

(ix) A new lease agreement, by and between the Company and Medical Development Company of America, LLC, an Illinois limited liability company (the "Landlord"), duly authorized, approved and executed by the Company, in a form and substance mutually agreeable to the parties hereto (the "New Lease").

(x) Such other instruments of title, certificates, consents, endorsements, assignments, assumptions and other documents or instruments, in a form reasonably satisfactory to the Buyer and its counsel, as may be reasonably requested by the Buyer in order to carry out the transactions contemplated by this Agreement and to comply with the terms hereof.

2.2.2 Buyer. At the Closing, Buyer shall execute and/or deliver or cause to be delivered to the Members and the Escrow Agent, as applicable, the following:

(i) Buyer shall deliver to the Escrow Agent the Escrow Funds in accordance with Section 1.2.2(i).

(ii) The Purchase Price, less the amount transferred to the Escrow Agent in accordance with Section 1.2.2(i), will be paid to the Members in immediately available funds by wire transfer, to an account or accounts designated by the Members.

(iii) The New Operating Agreement, duly authorized, approved and executed by Buyer.

(iv) The New Management Agreement, duly authorized, approved and executed by Buyer or its Affiliate.

(v) The Escrow Agreement, duly authorized, approved and executed by Buyer.

(vi) The certificate required to be delivered pursuant to Section 7.1 hereof, if applicable.

(vii) Such certificates, consents, assumption agreements and other documents, in a form reasonably satisfactory to the Company and its counsel, as may be reasonably requested by the Company to carry out the terms of and transactions contemplated by this Agreement.

**ARTICLE 3**  
**REPRESENTATIONS AND WARRANTIES OF THE COMPANY AND THE**  
**MEMBERS**

The Company and the Members, as applicable, represent and warrant to Buyer as follows:

3.1 **Authority.** The Company and each of the Members have full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The Company has taken all action required by law and by its organizational documents, or otherwise, to authorize the transactions contemplated hereby.

3.2 **Binding Effect.** This Agreement constitutes the valid and binding obligations of the Company and the Members, enforceable in accordance with its terms except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally or by equitable principles and except as to the remedy of specific performance which may not be available under the laws of various jurisdictions.

3.3 **No Violations.** Except as set forth in Schedule 3.3, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereunder will not (a) violate any provision of, result in the breach of, or constitute a default under, any law or any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal; (b) constitute a violation of or a default under, or a conflict with, any term or provision of the Company's certificate of formation/organization or operating agreement; (c) constitute a violation of or a default under any contract, commitment, indenture, lease, instrument or other agreement, or any other restriction of any kind to which either the Company or a Member is a party or is bound; (d) result in the creation of any encumbrance, claim, or obligation under any security agreement, indenture, mortgage, lien or other agreement to which the Company or a Member is a party or by which the assets of the Company are bound; or (e) cause, or give any party grounds to cause (with or without notice, the passage of time or both) the maturity of any material liability or obligation of the Company or a Member to be accelerated, or increase any such liability or obligation.

3.4 **Transferred Interests.** Except as set forth on Schedule 3.4, the Transferred Interests are owned by the Members, free and clear of any and all liens, pledges, security interests, rights of first refusal, options, restrictions, encumbrances and liabilities of any kind whatsoever. Except as set forth on Schedule 3.4, there are no outstanding rights, contracts, rights to subscribe, or other agreements or commitments of any character relating to the Transferred Interests, and there are no agreements or understandings with respect to the voting of the Transferred Interests on any matter. Immediately after the Closing, Buyer will own the Transferred Interests, free and clear of any liens, charges, encumbrances or other claims, other

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than those (if any) created (a) pursuant to the New Operating Agreement, or (b) by or through Buyer or any of Buyer's representatives.

**3.5 Organization of the Company.**

3.5.1 The Company is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois. The Company has full power and authority necessary to carry on the business in which it is engaged, and to own and use the properties owned and used by it.

3.5.2 The Members are the sole members of the Company and collectively own one hundred percent (100%) of the outstanding membership interests of the Company. All of the issued and outstanding membership interests in the Company have been duly authorized and are validly issued, fully paid, and nonassessable.

3.5.3 There is no outstanding subscription, option, convertible or exchangeable security, preemptive right, warrant, call or agreement (other than this Agreement) relating to the membership interests in the Company or other obligation or commitment of the Company to issue any membership interests, and there are no voting trusts or other agreements, arrangements or understandings applicable to the exercise of voting or any other rights with respect to any membership interests in the Company.

3.5.4 A true and correct copy of the Amended and Restated Operating Agreement of the Company, as amended, (the "Current Operating Agreement") is attached hereto as Schedule 3.5.4. The Current Operating Agreement is in full force and effect and is valid and enforceable in accordance with its terms.

3.5.5 The Company has no direct or indirect ownership interest in, by way of stock ownership or otherwise, any other limited partnership, limited liability company, corporation, association or business enterprise.

**3.6 Real Property.** The Company does not own any real property. The premises leased by the Landlord to the Company under the lease described in Schedule 3.6 (the "Leased Premises") constitute all real properties used or occupied by the Company in connection with the operation of the Center (the "Current Lease"). The Company has provided Buyer with true, complete and accurate copies of the Current Lease, including any amendments or addenda thereto and any master lease to which the Current Lease is subject. The Company has a valid leasehold interest in the Leased Premises, free and clear of all liens, security interests or encumbrances of any nature, other than (a) zoning and other similar restrictions, (b) easements, covenants, rights of way or other restrictions of record or that do not have a material adverse effect on the operation of the Center, (c) mechanics', carriers', workmen's, repairmen's or other

like liens arising or incurred in the ordinary course of business, (d) liens for taxes, assessments and other governmental charges that are not due and payable, (e) other immaterial liens, imperfections of title or encumbrances, (f) statutory or common law liens to secure sums not yet due to landlords, sublandlords, licensors or sublicensors under leases or rental agreements, and (g) any other liens, security interests, or encumbrances as set forth on Schedule 3.6. The Company has not assigned, transferred, conveyed, encumbered, mortgaged or conveyed in trust any interest in the leasehold established by the Current Lease. The Company is not (with or without the lapse of time or the giving of notice, or both) in material breach or default under the terms of the Current Lease. No portion of the Center is subject to any pending or, to the knowledge of Company, threatened condemnation proceeding. There are no leases, subleases, licenses, concessions or other agreements, written or oral, granting to any party or parties the right of use or occupancy of any portion of the Center. The Center is supplied with utilities and other services necessary for the operation of such facilities. To the extent obligated to do so pursuant to the terms of the Current Lease, the Company has paid all property taxes that are due and owing with respect to the Leased Premises.

### **3.7 Assets of the Company.**

3.7.1 Except as set forth on Schedule 3.7.1, Company has good title to, or the right to use pursuant to valid leases or licenses, all of the assets necessary or appropriate for the continued operation of the Center, free and clear of all liens, charges, encumbrances or other claims.

3.7.2 The assets owned, leased or licensed by the Company constitute all of the assets used or held for use by the Company in the operations of the Center and such assets are adequate in all material respects to carry on the operations of the Center as they are presently conducted. The inventory of goods and supplies used or maintained in connection with or located in the Center, including, but not limited to, cleaning materials, disposables, linens, consumables, office supplies, and drugs and medical supplies, consists of a quality and quantity usable and saleable in the ordinary course of business as currently conducted. Except as described in Schedule 3.7.2, all of the properties and assets of the Company are in good operating condition and repair, ordinary wear and tear excepted, and are available for use in the conduct of the operations of the Center.

3.8 **Contracts.** Schedule 3.8 contains a list: (i) of all of the written contracts, leases, instruments and commitments to which the Company is a party or by which it is bound; and (ii) all of the written and oral contracts with referral sources to which the Company is a party or by which it is bound (collectively, the "Contracts"). The Company has made available to Buyer a copy of each Contract. Each Contract constitutes the valid and legally binding obligations of the Company and is enforceable in all material respects by and against the Company in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, or similar laws affecting the enforcement of creditors rights generally and subject to general principles of equity (regardless of whether such enforcement is considered

in a proceeding at law or in equity). Each Contract constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter thereof. No act or omission by the Company has occurred or failed to occur which, with the giving of notice, the lapse of time or both would constitute a default under the Contracts. Except as set forth on Schedule 3.8, none of the Contracts (i) require consent; (ii) will be breached; or (iii) result in any penalty or premium, or variation of the rights, remedies, benefits or obligations of any party thereto, as a result of the transactions contemplated by this Agreement.

**3.9 Related Party Transactions.** Except as set forth in Schedule 3.9, no Member, owner, officer, manager or Affiliate of the Company has any material direct or indirect financial or economic interest in any competitor or supplier of the Company, and the Company is not a party to any transaction or proposed transaction (including, without limitation, the leasing of property or the purchase or sale of materials or goods) with any Member, owner, officer, manager or Affiliate of the Company or any person or entity Affiliated with a Member, owner, officer, manager or Affiliate of the Company, including, without limitation, any family member of any of the foregoing. "Affiliate" of a party means any entity that directly or indirectly controls, is controlled by, or is under common control with, such party, and the term "control" means possession, directly or indirectly, of the power to cause the direction of management and policies, whether through ownership of voting securities, by contract, or otherwise.

### **3.10 Compliance with Law.**

3.10.1 The Company is in material compliance with all applicable federal, state and local laws, regulations, and administrative orders, including, but not limited to, the false claims, false representations, anti-kickback and all other provisions of the Medicare/Medicaid fraud and abuse laws (42 U.S.C. Section 1320a-7 et seq.). The Company timely filed all reports, returns, data, and other information required by all governmental authorities which control, directly or indirectly, Company's activities to be filed therewith. No such report or return to any government agency has been misleading, and no such report or return has been inaccurate or incomplete in any material respect. The Center is in material compliance with the administrative simplification provisions (including the provisions addressing the privacy and security of protected health information) required under the Health Insurance Portability and Accountability Act of 1996 and any regulations promulgated thereto and the Health Information and Technology for Economic Clinical Health Act of 2009 and any regulations promulgated thereto.

3.10.2 The Center is licensed by the Illinois Department of Public Health as an ambulatory surgery treatment center, and the Company possesses all other permits, licenses, certificates of occupancy, certificates of completion, environmental and utility permits and approvals, and all other authorizations from each governmental authority necessary with respect to the ownership and operation by the Company of

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the Center (collectively, the "Permits"), a list of which is attached hereto as Schedule 3.10.2. None of the Permits is subject to any conditions or requirements other than those that are generally imposed on the holders of similar permits, licenses or other approvals; all of the Permits are valid and in full force and effect; and no proceeding is pending or, to the knowledge of the Company, threatened, to revoke, suspend, cancel, terminate or otherwise adversely modify any of the Permits. The Company is in material compliance with the terms of all of the Permits.

3.10.3 The Center is certified for participation or enrollment in the Medicare, Illinois Medicaid and CHAMPUS/TRICARE programs, has a current and valid provider contract with each of the Medicare, Illinois Medicaid and CHAMPUS/TRICARE programs, is in compliance with the conditions of participation of such programs, and has received all approvals or qualifications necessary for reimbursement from such programs. The Company has not received a written notice from any governmental authority which enforces the statutory or regulatory provisions in respect to any of the Medicare, Medicaid or CHAMPUS/TRICARE programs of any pending or threatened investigations with respect to the Center.

3.10.4 Neither the U.S. Department of Health and Human Services nor any state agency has conducted or given the Company written notice that it intends to conduct any audit or other review of the Company's participation in the Medicare or Medicaid programs.

3.10.5 The Center is duly accredited, with no contingencies, by Accreditation Association for Ambulatory Health Care, Inc. A copy of the most recent accreditation letter from Accreditation Association for Ambulatory Health Care, Inc. pertaining to the Center has been made available to Buyer.

3.10.6 All billing practices of the Company with respect to the Center to all third party payors, including the Medicare, Medicaid and CHAMPUS/TRICARE programs and private insurance companies, have been in material compliance with all applicable laws, regulations and policies of such third party payors and the Medicare, Medicaid and CHAMPUS/TRICARE programs. Neither the Company nor the Center has billed for or received any payment or reimbursement from the Medicare, Medicaid and CHAMPUS/TRICARE programs in excess of amounts allowed by law, except for amounts already refunded to the applicable payor or as set forth on Schedule 3.10.6.

3.10.7 Neither the Company nor any Member has been excluded from participation in the Medicare, Medicaid or CHAMPUS/TRICARE programs, nor to the knowledge of the Company, is any such exclusion threatened. None of the officers, directors, or

employees of the Company has been excluded from participation in the Medicare, Medicaid or CHAMPUS/TRICARE programs.

**3.11 Government Imposed Compliance Obligations, Etc.** None of the Members, the Company, nor the Center (a) is a party to a Corporate Integrity Agreement with the Office of Inspector General of the Department of Health and Human Services, (b) has any reporting obligations pursuant to any settlement agreement entered into with any governmental authority, (c) has been the subject of any government payor program investigation conducted by any federal or state enforcement agency (other than routine payor audits), (d) has been a defendant in any qui tam/False Claims Act or similar litigation, or (e) has received written notice of any investigation by a governmental authority with respect to the Center, and to the Company's knowledge, no governmental authority is currently conducting an investigation of the Company and no such investigation is being threatened.

**3.12 Litigation, Court Orders, Decrees.** Except as set forth in Schedule 3.12, there is no outstanding or, to the knowledge of Company, threatened litigation, claim, investigation, proceeding, order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting the Company or its assets. The Company has provided or made available to Buyer a complete list of all general liability incidents, incident reports and malpractice claims that have occurred at the Center during the three (3) year period prior to the Effective Date.

**3.13 Taxes.** All federal, state and other tax returns of the Company required by law to be prepared and/or filed have been timely (subject to all permitted exceptions) prepared and/or filed; the Company has paid or provided for all taxes (including, without limitation, taxes on properties, income, franchises, licenses, sales and payrolls) which have become due and payable by the Company pursuant to such returns or pursuant to any assessment, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings, as described on Schedule 3.13; and all such tax returns have been prepared in compliance with all applicable laws and regulations and are true, correct and complete in all material respects. The Company has not requested any extension of time within which to file any tax return. The Company has withheld or collected and paid to the proper governmental body all taxes required to be withheld, collected, or paid by it. No claim has ever been made by any governmental body in any jurisdiction where the Company does not file tax returns that it is or could be subject to taxation by that jurisdiction, nor, to the knowledge of Company, is there any reasonable basis for such a claim.

**3.14 Employees; Independent Contractors.**

**3.14.1** Schedule 3.14.1 sets forth the names and titles of all employees and leased employees (including, without limitation, any physicians) who are currently performing services on behalf of the Company or the Center, the rate of compensation (including bonuses) paid or being paid to or for each such individual as of the most recent practicable date, the full or part-time status of each such employee or leased employee of the Center, and the following information for each employee: date of hiring, date of commencement of employment, details

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of leave of absence or layoff, rate of compensation, bonus arrangement, any change in compensation or bonus since September 10, 2014, and vacation, sick time and personal leave accrued as of September 10, 2014. The employees and other individuals listed on Schedule 3.14.1 include all of the persons who are currently employed by the Company, perform services at the Center through a leased employee arrangement, or are necessary to the continued operation of the Center as it is now being conducted.

3.14.2 Schedule 3.14.2 contains a list of (i) all written employment agreements to which the Company is a part; (ii) all leased employee agreements, and (iii) all other agreements that entitle any employee to compensation or other consideration as a result of the acquisition by any person or entity of control of the Company.

3.14.3 The Company is not a party to any collective bargaining agreement or other labor contract. The Company is not subject to any (i) unfair labor practice complaint pending before the National Labor Relations Board or any other federal, state, local or foreign agency; (ii) pending or, to the knowledge of the Company, threatened labor strike, slowdown, work stoppage, lockout, or other organized labor disturbance; (iii) pending grievance proceeding; (iv) pending representation question; or (v) to the knowledge of the Company, attempt by any union to represent employees as a collective bargaining agent.

3.14.4 Except as set forth on Schedule 3.14.4, there are no pending or, to the knowledge of the Company, threatened EEOC claims, OSHA complaints, wage and hour claims, unemployment compensation claims, workers' compensation claims or the like with respect to the Center.

3.14.5 Schedule 3.14.5 lists all current qualified beneficiaries electing or eligible to elect continuation coverage in any group health plan sponsored by the Company or any of its Affiliates pursuant to the provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended ("COBRA").

3.14.6 Except as set forth on Schedule 3.14.6, to the knowledge of the Company, no key employee or key independent contractor of the Company intends to terminate his or her employment or contractual relationship with the Company.

**3.15 Employee Benefit Plans.** Except as set forth on Schedule 3.15, the Company does not provide any employee benefit plans for employees of the Center. The Company has made available to Buyer a true and complete copy of the underlying plan materials related to each employee benefit plan of the Company. Except as set forth on Schedule 3.15, the Company

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presently does not have, nor has it had within the last five (5) years, any pension, profit sharing, deferred compensation, or other employee pension plan or arrangement in which employees of the Center participate or have participated; and all of the Company's employee benefit plans have been administered in material compliance with all applicable laws including, without limitation, the applicable provisions of the Internal Revenue Code of 1986 (the "Code"), and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). With respect to any of the Company's employee benefit plans, there are no unpaid "accumulated funding deficiencies" within the meaning of the Code, and no reportable events (within the meaning of ERISA) or prohibited transactions (within the meaning of the Code) have occurred. There are no pending or, to the knowledge of the Company, threatened claims by or on behalf of the Company's employee benefit plans or by any employee of the Company alleging a breach or breaches of fiduciary duties or violations of other applicable state or federal law which could result in liability on the part of the Company's employee benefit plans under any law. All returns, reports, disclosure statements, and premium payments required to be made under the Code or ERISA with respect to the Company's employee benefit plans have been timely filed or delivered. The Company's employee benefit plans have not been audited or investigated by the Internal Revenue Service, the Department of Labor or the Pension Benefit Guaranty Corporation within the last five (5) years, and there are no outstanding issues with reference to the Company's employee benefit plans pending before any governmental agency.

### **3.16 Environmental Conditions; Medical Waste.**

3.16.1 The Company and the Center are currently in material compliance with all Environmental Laws, including, but not limited to, the possession by the Company of all permits and other governmental authorizations required under applicable Environmental Laws to operate the Center as currently operated and is in compliance with the terms and conditions thereof.

3.16.2 The Company has not stored any Hazardous Substances at the Center except in compliance with applicable Environmental Laws.

3.16.3 Neither the Company nor the Center has disposed of or released any Hazardous Substances except in compliance with applicable Environmental Laws.

3.16.4 Neither the Company, nor the Center has utilized any transporters or disposal facilities for the transport or disposal of Hazardous Substances, other than Medical Waste.

3.16.5 With respect to the generation, transportation, treatment, storage, and disposal, or other handling of Medical Waste, the Company has complied in all material respects with all Medical Waste Laws.

3.16.6 The following terms shall have the following meanings:

(i) "Environmental Laws" means the federal, state, regional, county or local environmental, health or safety Laws in effect on the date hereof relating to the use, refinement, handling, treatment, removal, storage, production, manufacture, transportation or disposal, emissions, discharges, releases or threatened releases of Hazardous Substances, or otherwise relating to protection of human health or the environment (including, but not limited to, ambient air, surface water, ground water, land surface or subsurface strata).

(ii) "Hazardous Substances" means any toxic or hazardous waste, pollutants or substances, including, without limitation, asbestos containing materials, polychlorinated biphenyls, petroleum products, byproducts, or other hydrocarbon substances, substances defined or listed as a "hazardous substance," "toxic substance," "toxic pollutant" or similarly identified substance or mixture, in or pursuant to any Environmental Law.

(iii) "Medical Waste" means (A) pathological waste; (B) blood; (C) sharps; (D) waste from surgery or autopsy; (E) dialysis waste, including contaminated disposable equipment and supplies; (F) cultures and stocks of infectious agents and associated biological agents; (G) contaminated animals; (H) isolation waste; (I) contaminated equipment; (J) laboratory waste; (K) various other biological waste and discarded materials contaminated with or exposed to blood, excretion or secretions from human beings or animals; and (L) any substance, pollutant, material or contaminant listed or regulated under the Medical Waste Tracking Act of 1988, 42 U.S.C. Sections 6992, et seq.

(iv) "Medical Waste Law" means any Laws that regulate Medical Waste, or impose requirements relating to Medical Waste, including, without limitation, the Medical Waste Tracking Act of 1988, 42 U.S.C. Sections 6992, et seq.; the U.S. Public Vessel Medical Waste Anti-Dumping Act of 1988, 33 USCA Sections 2501 et seq., the Marine Protection, Research, and Sanctuaries Act of 1972, 33 USCA Sections 1401 et seq., the Occupational Safety and Health Act, 29 USCA Sections 651 et seq., the United States Department of Health and Human Services, National Institute for Occupational Self Safety and Health Infectious Waste Disposal Guidelines, Publication No. 88 119.

3.17 **Medical Staff Matters.** Schedule 3.17 contains a list of all providers in good standing on the medical staff of the Center. There are no pending or, to the knowledge of the Company, threatened disputes with staff members or allied health professionals who practice at the Center.

3.18 **No Brokers.** Except as set forth on Schedule 3.18, none of the Company, the Members, or any person acting on any of their behalves has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

**3.19 Insurance Coverage.** The Company maintains in full force and effect, with no premium arrearages, the insurance policies, including, but not limited to, the liability and hazard, medical malpractice, and workers' compensation insurance policies, as set forth in Schedule 3.19. True and correct copies of all such policies and all endorsements thereto have been made available to Buyer. Schedule 3.19 sets forth a list of all current claims, and any claims filed within the past three (3) years, for any claimed loss in excess of Five Thousand Dollars (\$5,000.00) per occurrence filed by or against the Company, any employee of the Company or any leased employees providing services at the Center, including workers' compensation, general liability and professional malpractice liability claims.

**3.20 Financial Statements.** The Company has delivered to Buyer copies of the following financial statements of or pertaining to the Company and its operations ("Financial Statements"), which Financial Statements are maintained on a modified cash basis, and copies of which are attached hereto as Schedule 3.20:

3.20.1 Unaudited Balance Sheet (Cash Basis) dated as of September 30, 2014 (the "Balance Sheet Date");

3.20.2 Unaudited Comparison of Budget vs. Actual Performance for the nine (9)-month period ended on the Balance Sheet Date; and

3.20.3 Audited Statements of (i) Assets, Liabilities, and Member's Equity (Modified Cash Basis); (ii) Revenues, Expenses, and Changes in Member's Equity (Modified Cash Basis); and (iii) Cash Flows, for the fiscal year ended December 31, 2013;

3.20.4 Unaudited Statements of (i) Assets, Liabilities, and Equity- Income Tax Basis; (ii) Revenues and Expenses- Income Tax Basis; and (iii) Cash Flows, for the fiscal year ended December 31, 2012.

The Financial Statements are true, correct and complete in all material respects and have been prepared in accordance with the Company's historic accounting practices, subject to year-end adjustments and reconciliations of interim estimates. The Financial Statements present fairly the financial position of the Company, as of the respective dates thereof and the results of operations for the periods indicated. The Company maintains proper and adequate internal accounting controls and accurate books of account and other financial records of the Center which (a) reflect all items of income and expense and all assets and liabilities required to be reflected therein in accordance with the cash basis of accounting applied on a basis consistent with the past practices of the Company; and (b) are accurate and complete in all material respects.

**3.21 Intentionally Omitted.**

**3.22 Certain Post-Balance Sheet Results.** Except as set forth in Schedule 3.22 hereto, since the Balance Sheet Date there has not been any:

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3.22.1 material damage, destruction, or loss (whether or not covered by insurance) affecting the Center or the Company's assets;

3.22.2 material adverse changes in the condition, financial or otherwise, of the Company, the business or prospects of, or in the results of operations of, the Center;

3.22.3 sale, assignment, transfer or disposition of any item of property or equipment included in the Company's assets (other than supplies) with a book value greater than Ten Thousand Dollars (\$10,000), except in the ordinary course of business with comparable replacement thereof;

3.22.4 disposal of any of the Company's assets, writing down of the value of any of the Company's assets which are capital assets, or writing off as uncollectible any account receivable (excluding contractual adjustments and charity care) in excess of Ten Thousand Dollars (\$10,000);

3.22.5 increases in the compensation payable to any employees or independent contractors at the Center, except in the ordinary course of business and consistent with past practices, or any increase in, or institution of, any bonus, insurance, pension, profit-sharing or other employee benefit plan, remuneration or arrangements made to, for or with such employees;

3.22.6 changes in the rates charged by the Center for its services, other than those made in the ordinary course of business;

3.22.7 changes in the accounting methods or practices employed by the Company or changes in depreciation or amortization policies;

3.22.8 other than in the ordinary course of business, incurrences of any indebtedness or material liabilities of the Company;

3.22.9 capital expenditures by the Company in excess of Ten Thousand Dollars (\$10,000) in the aggregate;

3.22.10 other than in the ordinary course of business, incidences wherein the Company paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise);

3.22.11 canceled debts or waived claims or rights by the Company, other than any accounts receivables written off in the ordinary course of its business;

3.22.12 any redemption of any of the ownership in the Company or any declared, made or paid special bonuses, dividends or distributions to any of the owners or members of the Company;

3.22.13 amendments to or terminations of any Contract except in the ordinary course of business; or

3.22.14 transaction pertaining to the Center by the Company outside the ordinary course of business.

**3.23 Receivables.** Schedule 3.23 provides an accurate list and aging of all accounts receivable, notes receivable, and other receivables of the Company arising from the operation of the Center in the ordinary course of business, consistent with past practice, as of January 31, 2015 (the "Receivables"). The Receivables (i) represent valid obligations of customers of the Company (subject to repricing in accordance with the Company's agreements with various third party payors) arising from bona fide transactions entered into in the ordinary course of business, consistent with past practice; and (ii) are current and collectible (after application of payor repricing) in the ordinary course of business. On the Closing Date, the Company will provide to Buyer an accurate list and aging of all accounts receivable, notes receivable, and other receivables of the Company arising from the operation of the Center in the ordinary course of business, consistent with past practice, as of the most recent month end (as of the Closing Date) that is available (the "Updated Receivables"). The Updated Receivables: will represent valid obligations of customers of the Company (subject to repricing in accordance with the Company's agreements with various third party payors) arising from bona fide transactions entered into in the ordinary course of business, consistent with past practice; and (ii) will be current and collectible (after application of payor repricing) in the ordinary course of business. Notwithstanding the foregoing, to the extent the Receivables relate to beneficiaries of Blue Cross Blue Shield, such Receivables are subject to routine post-payment adjustment in favor of Blue Cross Blue Shield.

**3.24 Trademarks.** Schedule 3.24 contains a complete and accurate list of all fictional business names, trade names, registered and unregistered trademarks, service marks and applications of the Company (collectively, the "Marks"). For each registered Mark, Schedule 3.24 lists the registration number and the jurisdiction of registration beside each Mark. No Mark has been or is now involved in any opposition, invalidation or cancellation.

**3.25 Compounding Pharmacies.** Except as set forth on Schedule 3.25, during the past five (5) years, all of the pharmaceutical products purchased by the Center, stored by the Center, and used in the provision of services at the Center have been manufactured by pharmaceutical manufacturers subject to regulation and enforcement by the U.S. Food and Drug Administration. Schedule 3.25 sets forth the name of any compounding pharmacy or vendor from which the Center purchased pharmaceutical products during the past five (5) years, the date of each purchase made, the specific drug purchased, the number of doses or units purchased, and for each drug, whether the drug was administered to a patient at the Center and whether a patient suffered any adverse effects from the administration of said drug during the course of his or her treatment and recovery.

3.26 **No Untrue or Inaccurate Representation or Warranty.** This Agreement and schedules hereto furnished and to be furnished to Buyer and its representatives by the Company and the Members pursuant hereto do not and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made and to be made not misleading. Copies of all documents referred to in any Schedule hereto have been delivered or made available to Buyer and constitute true, correct and complete copies thereof and include all amendments, exhibits, schedules, appendices, supplements or modifications thereto or waivers thereunder.

**ARTICLE 4**  
**REPRESENTATIONS AND WARRANTIES OF BUYER**

Buyer represents and warrants to the Company and the Members as follows:

4.1 **Organization and Corporate Power.** Buyer is duly organized, validly existing and in good standing under the laws the State of Illinois. Buyer has full power and authority necessary to carry on the businesses in which it is engaged and in which it presently proposes to engage and to own and use the properties owned and used by it.

4.2 **Authority.** Buyer has all requisite power and authority to enter into this Agreement and consummate the transactions contemplated hereby. All action on the part of Buyer and its officers necessary for the authorization, execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby shall have been taken prior to Closing.

4.3 **Binding Effect.** This Agreement constitutes the legal, valid and binding obligation of Buyer, enforceable in accordance with its terms except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally or by equitable principles and except as to the remedy of specific performance which may not be available under the laws of various jurisdictions.

4.4 **No Violations.** Except as set forth in Schedule 4.4, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby will not (a) violate any provision of, result in the breach of, or constitute a default under, any law or any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal; (b) constitute a violation of or a default under any material contract, commitment, indenture, lease, instrument or other agreement, or any other restriction of any kind to which Buyer is a party or bound; or (c) result in the creation of any encumbrance, lien, or obligation under any security agreement, indenture, mortgage, lien or other agreement to which Buyer is a party or by which Buyer's assets are bound.

4.5 **No Brokers.** Neither Buyer nor any person acting on behalf of Buyer has paid or become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

**ARTICLE 5**  
**COVENANTS AND AGREEMENTS OF THE COMPANY AND THE MEMBERS**

The Company and the Members covenant and agree that from the date of this Agreement through the Closing, and thereafter if so specified, the Company and the Members, as applicable, will fulfill the following covenants and agreements unless otherwise consented to by Buyer in writing:

**5.1 Consents.** The Company and the Members shall use best efforts to obtain all consents, authorizations and approvals (in form and substance acceptable to Buyer) required to be obtained from any person, entity or governmental agency as a result of the transactions contemplated under this Agreement; provided, however, that neither the Company nor the Members shall have any obligation to incur any fees associated with the modification of the Company's certificate of need (other than fees charged by Polsinelli PC in connection with review of materials prepared by or on behalf of Buyer).

**5.2 Access to Information.** The Company and the Members shall (i) afford to Buyer reasonable access, during normal business hours, upon reasonable advance notice to an officer of the Company, to the offices, properties, executive employees and business, tax and accounting records (including computer files, retrieval programs and similar documentation) of the Company to the extent Buyer shall reasonably deem such access necessary or desirable; and (ii) furnish to Buyer such additional information concerning the Company as shall be reasonably requested. Buyer agrees that its investigation shall be conducted in such a manner as not to interfere unreasonably with the operations of the Center. Notwithstanding the foregoing, Buyer and its representatives shall not be permitted to review or have access to any documents, the disclosure of which would violate applicable laws or result in a breach of attorney client work product or similar privilege

**5.3 Operations Prior to the Closing Date.** Except as otherwise contemplated herein, the Company shall operate and carry on its business in the ordinary course and not make any material change in personnel, operations, finance, accounting policies, or real or personal property pertaining to the Center without the express written consent of Buyer. The Company shall continue to perform all of its obligations under the agreements relating to or affecting the Center consistent with past practice and shall use its best efforts to maintain and preserve the business organization intact, retain the present employees at the Center and maintain its relationships with physicians, suppliers, customers, and others having business relations with the Center. Without limiting the provisions of this Section 5.3, except as otherwise contemplated by this Agreement, or with the written approval of Buyer (which Buyer agrees shall not be unreasonably withheld or delayed), between the date hereof and the Closing, the Company shall not take any action that, if taken between the Balance Sheet Date and the Closing Date would render the representations contained in Section 3.22 inaccurate.

**5.4 No-Shop Clause.** From and after the date of the execution and delivery of this Agreement by the Company and the Members until the Closing or the termination of this Agreement, without the prior written consent of Buyer or except as otherwise permitted by this Agreement: (i) neither the Company nor any Member will sell or offer for sale any portion of its membership interest in the Company; (ii) the Company will not offer for sale or lease all or any

material portion of the assets of the Company or any ownership interest in the Company (in connection with a merger or consolidation of the Company or otherwise), (iii) neither the Members nor the Company will solicit offers, initiate, encourage or provide any documents or information to any third party in connection with, discuss or negotiate with any person regarding any inquires, proposals or offers relating to any such transaction; and (iv) none of the Members nor the Company will enter into any agreement or discussions with any party (other than Buyer) with respect to any such transaction. The Company shall promptly communicate to Buyer the substance of any inquiry or proposal concerning any such transaction.

**5.5 Tail Insurance.** The Company shall obtain "tail" insurance to insure the Company and the Center against professional and general liabilities of the Center relating to all periods prior to the Closing. Such insurance shall have coverage levels equal to the current policies insuring the Company and shall be for the longest tail period offered by the Company's insurers. Such insurance shall name the Buyer as an additional insured. Within thirty (30) days of the Closing Date, Buyer shall reimburse the Company for (i) Buyer's pro rata share of the cost of such policy plus (ii) one half of the Members' pro rata share of the cost of such policy. For the avoidance of doubt, Buyer shall reimburse the Company for seventy-five and one-half percent (75 ½%) of the cost of such policy.

**5.6 Update of Schedules.** Subject to Section 12.4.2, the Company and the Members shall periodically update the schedules contemplated by this Agreement for which it or they are responsible as needed between the date hereof and the Closing Date.

## **ARTICLE 6**

### **COVENANTS AND AGREEMENTS OF BUYER**

Buyer covenants and agrees that from the date hereof through the Closing, unless otherwise consented to by the Company in writing, it will fulfill the following covenants and agreements:

**6.1 Consents.** Buyer shall use best efforts to obtain all consents, authorizations and approvals (in form and substance acceptable to the Company) required to be obtained from any person, entity or governmental agency as a result of the transactions contemplated under this Agreement.

**6.1 Contribution.** If, and to the extent that, any creditor of the Company identified on Schedule 6.2 proceeds against any personal guarantee made by any Member on behalf of the Company and identified on Schedule 6.2, Buyer shall contribute its pro rata share (based on its ownership of the Company at the time of the creditor's exercise of its rights under the guarantee) of the amount sought by the creditor based on the Company's unfulfilled obligation. Such amount shall be payable promptly to the creditor or to the affected Member at such Member's discretion.

**6.2 Update of Schedules.** Subject to Section 12.4.2, Buyer shall periodically update the schedules contemplated by this Agreement for which it is responsible as needed between the date hereof and the Closing Date.

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**ARTICLE 7**  
**CLOSING CONDITIONS OF THE COMPANY AND THE MEMBERS**

Neither the Company nor the Members shall be obligated to consummate the transactions contemplated hereby, unless each of the following conditions is fulfilled or performed (unless expressly waived in writing) prior to or at Closing:

**7.1 Representations and Warranties True.** All of the representations and warranties made by Buyer in this Agreement shall be true as of the date of Closing; Buyer shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing; and Buyer shall have delivered to the Company and the Members a certificate dated as of the Closing Date, certifying to the truth of such representations and warranties as of the Closing and to the fulfillment of such covenants and conditions.

**7.2 No Obstructive Proceeding.** No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against the Company or the Members which seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages by reason of the transactions contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

**7.3 Consents and Approvals.** Each of the parties to any agreement or any instrument under which the transactions contemplated hereby would constitute or result in a default or acceleration of obligations shall have given such consent as may be necessary to permit the consummation of the transactions contemplated hereby without constituting or resulting in a default or acceleration under such agreement or instrument, and any consents or approvals required from any public or regulatory agency or organization having jurisdiction over the Center or the transactions contemplated hereby shall have been given.

**7.4 New Operating Agreement.** The New Operating Agreement shall have been approved, authorized, and executed by the Buyer.

**7.5 New Management Agreement.** The New Management Agreement shall have been approved, authorized, and executed by the Buyer.

**7.6 Escrow Agreement.** The Escrow Agreement shall have been approved, authorized, and executed by the Buyer.

**7.7 Lease.** The New Lease shall have been approved, authorized, and executed by the Company and Landlord.

**7.8 Certificate of Need.** Company shall have obtained a certificate of need or exemption from the Illinois Health Facilities and Services Review Board concerning the operation of the Center after the Closing.

**7.9 Proceedings and Documents Satisfactory.** All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to the Company and the Members pursuant to this Agreement shall be satisfactory in form and substance to the Company, the Members, and their counsel acting reasonably and in good faith.

**7.10 Consummation of Related Transactions.** Each of the transactions contemplated in the following agreements shall have consummated on or prior to the Closing Date: (i) that certain asset purchase agreement by and among Red Bud Regional Clinic Company, LLC, Progressive Family Care, Ltd. and its owners, (ii) that certain asset purchase agreement by and among Granite City Illinois Hospital Company, LLC, Southern Illinois Imaging Associates, LLC and its owner, (iii) that certain asset purchase agreement by and among Red Bud Regional Clinic Company, LLC, William R. Reilly, Inc. and its owner, and (iv) that certain asset purchase agreement by and among Red Bud Clinic Corp., Family Practice Associates, P.C., and its owner.

## **ARTICLE 8**

### **CLOSING CONDITIONS OF BUYER**

Buyer shall not be obligated to consummate the transactions contemplated hereby, unless each of the following conditions is fulfilled or performed (unless expressly waived in writing by Buyer) prior to or at Closing:

**8.1 Representations and Warranties True.** All of the representations and warranties contained in Article 3 of this Agreement shall be true as of the date of Closing; the Company and the Members shall have performed or complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by them prior to or at the Closing; and, if the Closing Date is a date other than the date of this Agreement, the Company and the Members shall have delivered to Buyer a certificate dated as of the Closing Date, certifying to the truth of such representations and warranties as of the Closing and to the fulfillment of such covenants and conditions.

**8.2 No Obstructive Proceeding.** No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against Buyer which seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transactions contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

**8.3 Consents and Approvals.** Each of the parties to any agreement or any instrument under which the transactions contemplated hereby would constitute or result in a default or acceleration of obligations shall have given such consent as may be necessary to permit the consummation of the transactions contemplated hereby without constituting or resulting in a default or acceleration under such agreement or instrument, and any consents or approvals required from any public or regulatory agency or organization having jurisdiction over the Center or the transactions contemplated hereby shall have been given.

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**8.4 Proceedings and Documents Satisfactory.** All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to Buyer pursuant to this Agreement shall be satisfactory in form and substance to Buyer and its counsel acting reasonably and in good faith.

**8.5 Due Diligence.** Buyer shall have completed its own due diligence investigation of the business of the Center and the operations of the Company by 5:00 p.m. (Central Time) on the date that is six (6) weeks from the date of this Agreement (the "Due Diligence Review Period"), the results of which shall have been deemed satisfactory in the reasonable discretion of the Buyer, its agents, employees and representatives. Buyer shall have the right, in its reasonable discretion, to terminate this Agreement at any time on or before the end of the Due Diligence Review Period based on Buyer's dissatisfaction with the due diligence by written notice to the Members' Representative (the "Due Diligence Termination Notice"). In the event that Buyer does not provide such Due Diligence Termination Notice to the Members' Representative on or before the end of the Due Diligence Review Period, the conditions set forth in this Section 8.5 shall be deemed satisfied for all purposes.

**8.6 Adverse Change.** The Company shall not have suffered any material loss or damage to the Center or the Company's assets, whether or not covered by insurance.

**8.7 New Operating Agreement.** The New Operating Agreement shall have been approved, authorized, and executed by the Company and the Members.

**8.8 New Management Agreement.** The New Management Agreement shall have been approved, authorized, and executed by the Company.

**8.9 Assignments of Membership Interest.** The Assignments of Membership Interest shall have been approved, authorized, and executed by each of the Members.

**8.10 Escrow Agreement.** The Escrow Agreement shall have been approved, authorized, and executed by the Members' Representative.

**8.11 Lease.** The New Lease shall have been approved, authorized, and executed by the Company and Landlord.

**8.12 Certificate of Need.** Company shall have obtained a certificate of need or exemption from the Illinois Health Facilities and Services Review Board concerning the operation of the Center after the Closing.

**8.13 Tail Insurance.** The Company shall have obtained tail insurance as contemplated in Section 5.5 hereto.

**8.14 Consummation of Related Transactions.** Each of the transactions contemplated in the following agreements shall have consummated on or prior to the Closing Date: (i) that certain asset purchase agreement by and among Red Bud Regional Clinic Company, LLC, Progressive Family Care, Ltd. and its owners, (ii) that certain asset purchase agreement by and among Granite City Illinois Hospital Company, LLC, Southern Illinois Imaging Associates, LLC

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and its owner, (iii) that certain asset purchase agreement by and among Red Bud Regional Clinic Company, LLC, William R. Reilly, Inc. and its owner, and (iv) that certain asset purchase agreement by and among Red Bud Clinic Corp., Family Practice Associates, P.C., and its owner.

**ARTICLE 9**  
**RESTRICTIVE COVENANT**

9.1 **Covenant Not to Compete.** Except as provided on Schedule 9.1, no Member shall, either directly or indirectly (by way of a spouse or child of the Member or otherwise), except as a consultant to or contractor of, or in collaboration with, Buyer (or any Affiliate of Buyer), own, lease, manage, operate, control, develop, participate, or have any financial interest in any manner in the ownership, leasing, management, operation, control, or development of an Illinois state-licensed, Medicare-certified, or accredited surgery center, hospital, or surgical facility (including an ambulatory surgical center, hospital, or office-based or practice-based facility or operating site or room) that provides outpatient surgical services of any of the same specialties that were provided by the Center immediately prior to the Closing Date without Buyer's prior written consent within twenty (20) miles of the Center (the "Restricted Area") during the five (5) year period following the Closing (the "Restricted Period"); provided, however, that no Member shall be prevented hereby from owning less than one percent (1%) of the voting stock of a publicly-held company which owns or operates one or more healthcare facilities. Breach of the covenants in this Section 9.1 could result in material damages to the Buyer and may entitle the Buyer to recover damages in addition to the other remedies and rights provided herein.

9.2 **Equitable Remedy.** Each Member acknowledges that the restrictions contained in Section 9.1 are reasonable and necessary to protect the legitimate interests of Buyer and that any violation of such restrictions could result in irreparable injury to the Company and Buyer. In addition to any other remedy or remedies to which Buyer may be entitled in law or in equity, Buyer shall be entitled to seek preliminary and permanent injunctive relief for a violation or threatened violation of Section 9.1 without having to prove actual damages or to post a bond, and Buyer shall also be entitled to an equitable accounting of all earnings, profits and other benefits arising from such violation. Each Member hereby waives any objections on the grounds of improper jurisdiction or venue to the commencement of an action in Monroe County in the State of Illinois and agrees that effective service of process may be made upon it, him or her by mail under the provisions of Section 12.7.

9.3 **Judicial Determination.** If a court should hold that the restrictions set forth in Section 9.1 are unenforceable because they are unreasonable, then to the extent permitted by law, the court may prescribe the longest duration for the Restricted Period and/or the largest radius or area for the Restricted Area that is reasonable and the parties agree to accept such determination subject to their rights of appeal. Nothing herein stated shall be construed as prohibiting Buyer from pursuing any other remedy or remedies available for such breach or threatened breach, including recovery of damages or injunctive relief.

9.4 **Extension of Restricted Period.** If any Member is in violation of Section 9.1 at any time, then the Restricted Period shall be extended with respect to such Member for a period of time equal to the period during which said violation or violations occurred.

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**ARTICLE 10**  
**TERMINATION**

**10.1 Termination.** Notwithstanding any other provision of this Agreement, this Agreement may be terminated by written notice at any time prior to the Closing:

10.1.1 by mutual agreement of the Company and Buyer;

10.1.2 by the Company, if there has been a breach by Buyer of any of the agreements, representations or warranties contained in this Agreement and, if such breach is curable, such breach shall not have been cured by Buyer or waived in writing by the Company within ten (10) business days after receipt of written notice of such breach from the Company;

10.1.3 by Buyer, if there has been a breach by the Company or any of the Members of any of the agreements, representations or warranties contained in this Agreement and, if such breach is curable, such breach shall not have been cured by the Company or the Members, as applicable, or waived in writing by Buyer within ten (10) business days after receipt of written notice of such breach from Buyer;

10.1.4 by either the Company or Buyer if the transactions contemplated by this Agreement shall not have been consummated on or before July 31, 2015;

10.1.5 by the Company or Buyer if the other makes an assignment for the benefit of creditors, files a voluntary petition in bankruptcy or seeks or consents to any reorganization or similar relief under any present or future bankruptcy act or similar law, or is adjudicated a bankrupt or insolvent, or if a third party commences any bankruptcy, insolvency, reorganization or similar proceeding involving the other;

10.1.6 by the Company or Buyer pursuant to Section 12.4.2; or

10.1.7 by Buyer pursuant to Section 8.5.

**10.2 Remedies for Termination.** In the event of termination under Sections 10.1.1, 10.1.4, 10.1.5 or 10.1.6, no party shall have any liabilities pursuant to this Agreement to any other party unless such party was in breach of this Agreement in which case the non-breaching party shall be entitled to pursue all of its rights and remedies. For the avoidance of doubt, the parties acknowledge and agree that the failure of the parties to agree on the forms of any document to be delivered at Closing or any schedule shall not constitute a breach of this

Agreement by any party hereto. Termination under Sections 10.1.2 or 10.1.3 shall be in addition to all other rights and remedies of the nonbreaching party.

**ARTICLE 11**  
**INDEMNIFICATION; LIMITATION OF LIABILITY**

**11.1 Indemnification by the Members.** Subject to the limitations set forth in this Article 11 and notwithstanding the Closing, the delivery of any instruments of conveyance, and regardless of any investigation at any time made by or on behalf of Buyer or of any information Buyer may have in respect thereof, the Members agree to indemnify, defend and hold Buyer harmless from and against any claim, demand, cause of action, judgment, loss, liability, cost or other expense whatsoever, including, without limitation, reasonable attorneys' fees (each such claim, demand, cause of action, judgment, loss, liability, cost or other expense, net of any recoverable insurance proceeds, is referred to herein individually as "Loss" and collectively as "Losses") which Buyer may suffer, sustain, incur or otherwise become subject to, either directly or indirectly, as a result of (a) the breach of any representation or warranty contained herein by the Company or the Members, (b) the breach of any covenant, condition or agreement contained herein by the Company or the Members, and (c) any Taxes (as defined below) with respect to the Company's activities relating to any period of time ending on or prior to the Closing Date which are not reserved against in full on the Financial Statements. For purposes of this Agreement, "Taxes" shall mean all federal, state, local and foreign income, privilege, estimated income, profits, franchise, sales, use, occupation, property, excise, and all other taxes, fees and governmental charges (including interest and penalties, if any). For purposes of this Agreement, Buyer and the Members hereby acknowledge and agree that Buyer shall be deemed to have indirectly incurred Losses equal to 51% of any Losses directly incurred by the Company as a result of, or with respect to (a) – (c) above.

**11.2 Indemnification by Buyer.** Buyer agrees to indemnify, defend and hold the Members harmless from and against any Loss which they may suffer, sustain, incur or otherwise become subject to, either directly or indirectly, as a result of: (a) the breach of any representation or warranty contained herein by Buyer, and (b) the breach of any covenant, condition or agreement contained herein by Buyer.

**11.3 Procedure.**

11.3.1 Each indemnified party agrees that, promptly after its discovery of facts giving rise to a claim for indemnity under the provisions of this Agreement ("Claim"), it will give notice thereof in writing to the indemnifying party together with a detailed statement of such information respecting any of the foregoing that it shall then have.

11.3.2 Following notice by the indemnified party to the indemnifying party of a Claim, the indemnifying party shall be entitled at its cost and expense to contest and defend by all appropriate legal proceedings such Claim; provided, however, that notice of the intention so to contest shall be delivered by the indemnifying party to the indemnified party within thirty (30) days from the date of receipt by the

indemnifying party of notice from the indemnified party of the assertion of such Claim. Any such contest of a Claim may be conducted in the name and on behalf of the indemnifying party or the indemnified party, as may be appropriate. Such contest shall be conducted by counsel engaged by the indemnifying party, provided, however, that the indemnifying party shall reasonably consider the advice of the indemnified party as to the defense and settlement of such Claim and the Indemnified Party shall have the right to participate, at its own expense, in such defense. Whether or not the indemnified party joins in any such contest, with or without separate counsel (such counsel to be at its own expense), the indemnifying party shall have full authority, after consultation with the indemnified party and its counsel, if any, to determine all action to be taken with respect thereto. Further, the indemnifying party shall not, without the prior written consent of the indemnified party, settle, compromise or offer to settle or compromise any such Claim or demand on a basis which would or could result in the imposition of a consent order, injunction or decree which would or could restrict the future activities or conduct of the indemnified party. If any Claim is asserted and the indemnifying party fails to contest and defend such claim within a reasonable period of time, then the indemnified party may take such action in connection therewith as the indemnified party deems necessary or desirable, including retention of attorneys, and the indemnified party shall be entitled to indemnification for costs incurred in connection with such defense, including, without limitation, reasonable attorneys' fees and any investigation costs.

11.3.3 If requested by the indemnifying party, the indemnified party agrees to cooperate with the indemnifying party and its counsel, including permitting reasonable access to books, records, and employees in contesting any Claim which the indemnifying party elects to contest or, if appropriate, in making any counterclaim against any person asserting the Claim, or any cross complaint against any person, but the indemnifying party will reimburse the indemnified party for reasonable out-of-pocket costs (but not the cost of employee time expended) incurred by the indemnified party in so cooperating.

11.3.4 The indemnified party agrees to afford the indemnifying party and its counsel the opportunity to be present at, and to participate in, conferences with all persons, including governmental authorities, asserting any Claim against the indemnified party.

#### **11.4 Limitation of Damages.**

11.4.1 Notwithstanding anything to the contrary set forth in this Agreement, the Members shall not be required to indemnify Buyer pursuant to Section 11.1 unless and until the aggregate amount of all

Losses incurred by Buyer pursuant to Section 11.1 exceeds \$25,000, after which the Members, subject to Section 11.7, shall be liable for all Losses in excess of such amount; provided, further, that the maximum liability of the Members pursuant to claims for indemnification under Section 11.1 shall not exceed the Purchase Price. The limitations contained in this Section 11.4.1 shall not apply to Losses arising from breaches of the representations and warranties in Sections 3.1, 3.2, 3.4, or 3.5.2. Further, the limitations contained in this Section 11.4.1 shall not apply to any indemnification claims arising as a result of the intentional misrepresentation or fraud of the Members.

11.4.2 Notwithstanding anything to the contrary set forth in this Agreement, Buyer shall not be required to indemnify the Members pursuant to Section 11.2 unless and until the aggregate amount of all Losses incurred by the Members pursuant to Section 11.2 exceeds \$25,000, after which Buyer shall be liable for all such Losses in excess of such amount; provided, further, that the maximum liability of Buyer pursuant to claims for indemnification under Section 11.2 shall not exceed the Purchase Price. The limitations contained in this Section 11.4.2 shall not apply to Losses arising from breaches of the representations and warranties in Sections 4.2 or 4.3. Further the limitations contained in this Section 11.4.2 shall not apply to any indemnification claims arising as a result of the intentional misrepresentation or fraud of Buyer.

11.4.3 Notwithstanding any other provisions of this Agreement, neither the Members nor Buyer shall have any claim for indemnification against the other unless such claim is asserted within the applicable survival period set forth in Section 11.5, in which event the party's claim for indemnification for such matter shall continue until liability is finally determined.

11.4.4 An indemnified party shall not recover, and an indemnifying party shall not be liable under this Article 11 for any Losses to the extent that the indemnified party shall have otherwise been paid for such Losses so as to avoid duplication or "double counting" of the same Losses. Without limiting the generality of the foregoing, the parties acknowledge and agree that any amounts taken into consideration in the calculation of Actual Working Capital shall not be recoverable as Losses.

11.4.5 The indemnified party shall take, and shall cause its Affiliates to take, all reasonable steps to mitigate and otherwise minimize any Losses to the maximum extent possible upon and after becoming aware of any event which would reasonably be expected to give rise to any Losses.

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11.4.6 If the indemnified party receives any payment from an indemnifying party in respect of any Losses and the indemnified party could have recovered all or a part of such Losses from a third party based on the underlying claim asserted against the indemnifying party, the indemnified party shall assign such of its rights to proceed against such third party as are reasonably necessary to permit the Indemnifying Party to recover from such third party the amount of such indemnification payment.

11.5 **Survival of Representations and Warranties.** The representations and warranties contained herein shall survive the Closing Date and any investigation made by or on behalf of any party for a period of two (2) years from the Closing, except that the representations and warranties set forth in Sections 3.1, 3.2, 3.3, 3.4, 3.5, 3.7.1, 4.1, 4.2, 4.3 and 4.4, which shall survive indefinitely, and Sections 3.10, 3.11, 3.13, 3.15, 3.16, and 3.25, which shall survive for the applicable statute of limitations.

11.6 **Exclusive Remedy.** Except as otherwise specifically provided for in this Agreement, the provisions of this Article 11 shall constitute the sole and exclusive remedy for monetary damages with respect to any Losses arising under or pursuant to this Agreement or the transactions contemplated hereunder, except in the case of intentional misrepresentation or fraud on the part of the Members or Buyer, as the case may be. The provisions of this Section 11.6 shall not limit the ability of a party to seek injunctive or other equitable relief with respect to breach, or anticipated breach, of any provision of this Agreement.

11.7 **Source of Payment; Members' Obligations.** Any indemnification pursuant to this Article 11 shall be effected (a) in the case of an indemnification claim resolved in favor of the Members, by wire transfer of immediately available funds from Buyer to an account(s) designated in writing by the Members' Representative within thirty (30) days after the determination thereof and (b) in the case of an indemnification claim resolved in favor of Buyer, by wire transfer of immediately available funds from the Members to an account designated in writing by Buyer within thirty (30) days after the determination thereof; provided that any indemnification owed by the Members to the Buyer under this Article 11 (other than as a result of a breach by a Member of Article 9) shall first be satisfied out of the Escrow Funds to the extent then available. Buyer and the Members' Representative shall promptly provide joint written instructions to the Escrow Agent directing the Escrow Agent to make payment pursuant to the preceding sentence if the Escrow Agent has not timely done so pursuant to the Escrow Agreement. In the event the Escrow Funds have been exhausted and there is an indemnification claim resolved in favor of Buyer, the Buyer shall have direct recourse, on a separate basis (and for the avoidance of doubt, not on a joint or several basis) for such Member's pro rata portion of the indemnification claim (based on the participation percentage of each Member in sale of the Transferred Interests as reflected on Exhibit B), subject to the terms and limitations contained in this Article 11. No Member shall have any liability for a breach of Article 9 by any other Member; provided, however, and notwithstanding any other provisions of this Agreement, the parties hereto agree that a Member's liability for a breach of Article 9 shall not be limited to such Member's pro rata percentage ownership of the Company and such Member's maximum liability for a breach of Article 9 shall not exceed the Purchase Price.

11.8 **No Punitive Damages.** Notwithstanding anything to the contrary elsewhere in this Agreement, in the absence of intentional misrepresentation or fraud, neither the Members nor Buyer (nor any of their respective Affiliates or representatives) shall, in any event, be liable to an indemnified party for any exemplary or punitive damages relating to the breach or alleged breach or nonperformance or alleged nonperformance of this Agreement, except to the extent it was awarded by a court in a third-party claim.

## **ARTICLE 12** **MISCELLANEOUS**

12.1 **Expenses.** All fees and expenses incurred by the Members and the Company, including, without limitation, legal fees and expenses, in connection with this Agreement and the transactions contemplated hereby, will be borne by the Company, and all fees and expenses incurred by Buyer, including, without limitation, legal fees and expenses, in connection with this Agreement and the transactions contemplated hereby, will be borne by Buyer. For the avoidance of doubt, the parties agree that any fees incurred by the Members or the Company that are not paid prior to the Closing shall be taken into account as a current liability for purposes of calculating the Working Capital.

12.2 **Section Headings.** The Section headings are for reference only and shall not limit or control the meaning of any provision of this Agreement.

12.3 **Waiver.** No delay or omission on the part of any party hereto in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

### 12.4 **Schedules.**

12.4.1 All schedules, exhibits and documents referred to in or attached to this Agreement are integral parts of this Agreement as if fully set forth herein and all statements appearing therein shall be deemed to be representations. All items disclosed hereunder shall be deemed disclosed only in connection with the specific representation to which they are explicitly referenced.

12.4.2 The parties hereto acknowledge that, as of the date hereof, certain of the Schedules contemplated by this Agreement have not been completed or agreed to by the parties. From the date hereof until the Closing Date, any party may update its respective Schedules, subject to the other parties' approval rights described below. Any other provision herein to the contrary notwithstanding, all Schedules, Exhibits or other instruments provided for herein and not delivered at the time of execution of this Agreement or which are incomplete at the time of execution of this Agreement shall be delivered or completed as soon as possible following the date of this Agreement but in no event later than thirty (30) days prior to the Closing. It shall be deemed a condition precedent to the obligations of the parties hereto that each of the Schedules, Exhibits, and related documents, instruments, books, and

records shall meet with the reasonable approval of such parties. If a party, in the exercise of its reasonable judgment, determines that it should not consummate the transactions contemplated by this Agreement because of any information contained in a Schedule, Exhibits, or other instrument that is delivered to such party after the execution of this Agreement and such information materially alters the business of the Center, then such party may terminate this Agreement before the Closing by giving ten (10) days written notice thereof to the other party, provided that such notice shall be given within ten (10) days following the delivery of the subject material, whereupon the parties shall promptly and continuously during such ten (10) day period make reasonable efforts to effect withdrawal of the notice.

**12.5 Assignment.** No party hereto shall assign this Agreement without first obtaining the written consent of the other party, except Buyer shall have the right to assign this Agreement to an Affiliated company, and Buyer or such Affiliated company shall have the right to collaterally assign the rights of such Buyer respecting remedies in the event of breaches of representations, warranties and covenants and rights of indemnification made by the Company or the Members hereunder to any lender to the Buyer or such Affiliated company, for its benefit and for the benefit of other financial institutions for which it acts as agent.

**12.6 Binding on Successors and Assigns.** Subject to Section 12.5, this Agreement shall inure to the benefit of and bind the respective heirs, administrators, successors and assigns of the parties hereto. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, it being the intention of the parties to this Agreement that this Agreement shall be for the sole and exclusive benefit of such parties or such successors and assigns and not for the benefit of any other person.

**12.7 Notices.** Any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to any party hereto by another party hereto shall be in writing and shall be deemed duly served when personally delivered or mailed by certified or registered mail (postage prepaid) or sent by reputable overnight courier service (charges prepaid), addressed as follows:

If to Buyer:                   Red Bud Illinois Hospital Company, LLC  
  4000 Meridian Boulevard  
  Franklin, Tennessee 37067  
  Attention: President

and:

  Community Health Systems Professional Services Corporation  
  4000 Meridian Boulevard  
  Franklin, Tennessee 37067  
  Attn: General Counsel

If to the Members: MCSC Rep, LLC  
c/o Polsinelli  
100 S. 4<sup>th</sup> St., Suite 1000  
St. Louis, MO 63102  
Attention: Jane E. Arnold

or at such other address as one party may designate by notice hereunder to the other party. Notices shall be deemed effective (i) on the actual receipt in the case of hand delivery, (ii) on the next business day in the case of notices by any nationally recognized overnight courier service, or (iii) on the third business day after the date of mailing in the manner set forth herein.

**12.8 Parties in Interest; Third Party Beneficiaries.** Nothing in this Agreement is intended to confer any right on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

**12.9 Drafting Party.** The provisions of this Agreement, and the documents and instruments referred to herein, have been examined, negotiated, drafted and revised by counsel for each party hereto and no implication shall be drawn nor made against any party hereto by virtue of the drafting of this Agreement.

**12.10 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument. In addition, the parties may execute multiple identical originals of this Agreement, each of which shall constitute an original for all purposes. In addition, the parties may execute a counterpart of this Agreement and transmit their signature via facsimile or email PDF, and such signature received via facsimile or email PDF shall have the same force and effect as an original.

**12.11 Entire Agreement.** With respect to the subject matter of this Agreement, this Agreement, together with all exhibits and schedules hereto, supersedes all previous contracts and constitutes the entire agreement between the parties. No oral statements or prior written material unless specifically incorporated herein shall be of any force and effect, and no changes in or additions to this Agreement shall be recognized unless incorporated herein by amendment as provided herein, such amendment(s) to become effective on the date stipulated in such amendment(s). The parties specifically acknowledge that in entering into and executing this Agreement, the parties relied solely upon the representations and agreements contained in this Agreement and no others.

**12.12 Further Assurances.** The Company and the Members, as applicable, shall execute and deliver such other documents and instruments, and take such other actions, as Buyer may reasonably request in order more fully to vest in Buyer and to perfect its title and interest in and to the Transferred Interests; provided, however, that no such document, instrument or action shall expand the obligations of the Company or any Member.

**12.13 Amendment.** This Agreement may not be amended other than by a written instrument executed by all parties hereto.

**12.14 Applicable Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Illinois, without regard to its conflict of laws rules.

**12.15 Knowledge Defined.** Any references to "knowledge of the Company" or words of similar import mean the actual knowledge of any of the current managers and officers of the Company, or the administrator of the Center, together with the knowledge a reasonable business person would have obtained after making reasonable inquiry and exercising reasonable diligence with respect to the matters at hand.

**12.16 Guaranty.** The Members hereby unconditionally and absolutely guarantee the prompt performance and observance by the Company of each and every obligation, covenant and agreement of the Company arising out of, connected with, or related to, this Agreement. The obligation of the Members under this Section 12.16 is a continuing guaranty and shall remain in effect, and the obligations of the Members shall not be affected, modified or impaired upon the happening from time to time of any of the following events, whether or not with notice or consent of the Members:

12.16.1 The compromise, settlement, release, change, modification, amendment (except to the extent of such compromise, settlement release, change, modification or amendment) of any or all of the obligations, duties, covenants, or agreements or any party under this Agreement or any ancillary documents hereto; or

12.16.2 The extension of the time for performance of payment of money pursuant to this Agreement, or of the time for performance of any other obligations, covenants or agreements under or arising out of this Agreement or any ancillary documents hereto or the extension or the renewal thereof.

**12.17 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY AND ALL RIGHTS IT MAY HAVE TO DEMAND THAT ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT OR THE RELATIONSHIPS OF THE PARTIES HERETO BE TRIED BY JURY. THIS WAIVER EXTENDS TO ANY AND ALL RIGHTS TO DEMAND A TRIAL BY JURY ARISING FROM ANY SOURCE, INCLUDING, BUT NOT LIMITED TO, THE CONSTITUTION OF THE UNITED STATES OR ANY STATE THEREIN, THE COMMON LAW, OR ANY APPLICABLE STATUTE OR REGULATIONS. EACH PARTY HERETO ACKNOWLEDGES THAT IT IS KNOWINGLY AND VOLUNTARILY WAIVING ITS RIGHT TO DEMAND TRIAL BY JURY.

**12.18 Code Section 754 Election.** The purchase of the Transferred Interests will result in a termination of the Company as a partnership for federal income tax purposes under Section 1.708-1(b)(2) of Title 26 of the Code of Federal Regulations (said Title, the "Treasury Regulations"), and the Company shall file federal and applicable state returns of partnership income for the tax year ending on and including the Closing Date. Buyer and the Members agree that the Company shall make an election under Section 754 of the Code ("Section 754 Election")

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effective as of the taxable year of the Company ending on the Closing Date, and will attach such Section 754 Election to the federal income tax return of the Company for the short-period taxable year that ends on the Closing Date. The Company shall prepare, execute and deliver such documents and forms as are required by applicable law for an effective Section 754 Election, including the statement required by Treasury Regulations Section 1.743-1(k)(1) (regarding the effect of the adjustment of the basis of the Company's assets).

**ARTICLE 13**  
**REPRESENTATIVE**

13.1 **Appointment of Representative.** The Members' Representative is appointed, authorized and empowered to be the exclusive proxy, representative, agent and attorney-in-fact of each of the Members, with full power of substitution, to make all decisions and determinations and to act and execute, deliver and receive all documents, instruments and consents on behalf of the Members at any time, in connection with, and that may be necessary or appropriate to accomplish the intent and implement the provisions of, this Agreement and the documents and agreements related hereto (including, without limitation, the Escrow Agreement) or reasonably necessary to give effect to the provisions hereof, and to facilitate the consummation of the transactions contemplated hereby and thereby, and in connection with the activities to be performed by or on behalf of such Members under this Agreement and such other documents and agreements (including, without limitation, in connection with any and all claims for remedies brought pursuant to this Agreement). By executing this Agreement, the Members' Representative accepts such appointment, authority and power. Without limiting the generality of the foregoing, the Members' Representative shall have the power to take any of the following actions on behalf of such Members: (a) to execute and deliver such documents and agreements (including, without limitation, the Escrow Agreement) (with such modifications or changes therein as to which the Members' Representative, in its sole discretion, shall have consented) and to agree to such amendments or modifications thereto as the Members' Representative, in its sole discretion, may deem necessary or desirable; (b) to give and receive notices, communications and consents under this Agreement and such other documents and agreements (including, without limitation, the Escrow Agreement); provided, however, the Members' Representative shall provide to each Member that is not the Members' Representative copies of all such notices and consents and of all such material communications given or received by the Members' Representative; (c) to receive and distribute payments pursuant to this Agreement and such other documents and agreements (including, without limitation, the Escrow Agreement); (d) to waive any provision of this Agreement and such other documents and agreements (including, without limitation, the Escrow Agreement) as the Members' Representative, in his sole discretion, may deem necessary or desirable; (e) to investigate, defend, contest or litigate any action initiated by any person against the Members' Representative (in his capacity as such or on behalf of the Members); (g) to receive process on behalf of any or all such Members in any such action; (h) to negotiate, enter into settlements and compromises of, resolve and comply with orders of courts and awards of arbitrators or other third party intermediaries with respect to any disputes arising under this Agreement and/or any related document or agreement as the Members' Representative, in his sole discretion, may deem necessary or desirable; and (i) to make, execute, acknowledge and deliver all such other agreements, guarantees, orders, receipts, endorsements, notices, requests, instructions, certificates, letters and other writings, and, in general, to do any

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and all things and to take any and all action that the Members' Representative, in its sole and absolute discretion, may consider necessary or proper or convenient in connection with or to carry out the activities described in this Section 13.1 and the transactions contemplated hereby and by the related documents and agreements (including, without limitation, the Escrow Agreement).

**13.2 Authority.**

13.2.1 The appointment of the Members' Representative by each Member is coupled with an interest and may not be revoked in whole or in part (including, without limitation, upon the death or incapacity of such Member). Such appointment shall be binding upon the heirs, executors, administrators, estates, personal representatives, officers, directors, securityholders, members, managers, successors and assigns or each such Member. All decisions of the Members' Representative shall be final and binding on all of the Members and no such Member shall have the right to object, dissent, protest or otherwise contest the same.

13.2.2 The Members' Representative has full power and authority to enter into this Agreement and to carry out the transactions contemplated hereby. The Members' Representative has taken all action required by law and by its organizational documents, or otherwise, to authorize the transactions contemplated hereby. This Agreement constitutes the valid and binding obligations of the Members' Representative, enforceable in accordance with its terms except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally or by equitable principles and except as to the remedy of specific performance which may not be available under the laws of various jurisdictions.

13.2.3 Buyer shall be entitled to rely upon, without independent investigation, any act, notice, instruction or communication from the Members' Representative and any document executed by the Members' Representative on behalf of any such Member and shall be fully protected in connection with any action or inaction taken or omitted to be taken in reliance thereon.

13.2.4 On the Closing Date, the Members' Representative shall deliver to Buyer certificates of existence and good standing of the Members' Representative from the State of Missouri, dated the most recent practicable date prior to Closing.

**13.3 Limitation on Liability.** The Members' Representative shall not be responsible for any loss suffered by, or liability of any kind to, such Members arising out of any act done or omitted by the Members' Representative in connection with the acceptance or administration of the Members' Representative's duties hereunder, unless such act or omission is found by a court of competent jurisdiction not subject to further appeal to involve gross negligence or willful

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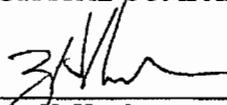
misconduct on the part of the Members' Representative. The Members shall severally (based on the percentage ownership of each Member in the Company as reflected on Exhibit A) indemnify the Members' Representative and hold it harmless against damages, debts, obligations and other liabilities (including, without limitation, expenses incurred by it in the course of its service as Members' Representative) arising out of any act done or omitted by the Members' Representative in connection with the acceptance or administration of the Members' Representative's duties hereunder; provided, that, the Members' Representative shall not be entitled to indemnification or the reimbursement of any damages, debts, obligations or other liabilities or expenses if, and to the extent, it is found by a court of competent jurisdiction, not subject to further appeal, that said damages, debts, obligations or other liabilities or expenses were a direct and primary result of the Members' Representative's gross negligence or willful misconduct.

13.4 **Resignation.** The Members' Representative may resign by providing thirty (30) days prior written notice to each Member and Buyer. Upon the resignation of the Members' Representative, the Members shall appoint a replacement Members' Representative to serve in accordance with the terms of this Agreement; provided, however, that such appointment shall be subject to such newly-appointed Members' Representative notifying Buyer in writing of his, her or its appointment and appropriate contact information for purposes of this Agreement and the related documents and agreements, and Buyer shall be entitled to rely upon, without independent investigation, the identity of such newly-appointed Members' Representative as set forth in such written notice.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

**RED BUD ILLINOIS  
HOSPITAL COMPANY, LLC**

By:   
Name: Terry H. Hendon  
Title: Vice President

**MONROE COUNTY  
SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
**William Reilly, M.D.**

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**Michael Kirk, M.D.**

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**Donald R. Unwin, M.D.**

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**Ricardo Rao, M.D.**

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**Gregory C. Randle, M.D.**

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**David J. King, M.D.**

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**Keith D. Wilkey, M.D.**

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**Christopher L. Vulin, M.D.**

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**Ketan A. Shah, M.D.**

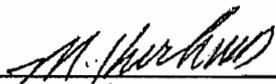
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**William J. Rebholz**

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Title: Vice President

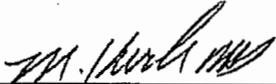
**MONROE COUNTY  
SURGICAL CENTER, LLC**

By:   
Name: MICHAEL N. KIRK  
Title: CHAIRMAN

**MCSC REP, LLC**

By:   
Name: WILLIAM J. REBOLZ  
Title: MEMBER

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William Reilly, M.D.

  
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Michael Kirk, M.D.

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SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
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SURGICAL CENTER, LLC**

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Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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Title: Vice President

**MONROE COUNTY  
SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
William Reilly, M.D.

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Donald R. Unwin, M.D.

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Gregory C. Randle, M.D.

Keith D. Wilkey, M.D.  
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Keith D. Wilkey, M.D.

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Ketan A. Shah, M.D.

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Michael Kirk, M.D.

Ricardo Rao, M.D.  
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Ricardo Rao, M.D.

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David J. King, M.D.

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Christopher L. Vulin, M.D.

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William J. Rebholz

IN WITNESS WHEREOF, this Agreement has been entered into as of the day and year first above written.

**RED BUD ILLINOIS  
HOSPITAL COMPANY, LLC**

By: \_\_\_\_\_  
Name: Terry H. Hendon  
Title: Vice President

**MONROE COUNTY  
SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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William Kelly, M.D.

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Michael Kirk, M.D.

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Donald R. Uawin, M.D.

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Ricardo Rao, M.D.

*Gregory C. Randle, MD*  
Gregory C. Randle, M.D.

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David J. King, M.D.

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Keith D. Wilkey, M.D.

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Christopher L. Vaino, M.D.

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Ketan A. Shah, M.D.

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William J. Rebholz

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HOSPITAL COMPANY, LLC**

By: \_\_\_\_\_  
Name: Terry H. Hendon  
Title: Vice President

**MONROE COUNTY  
SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

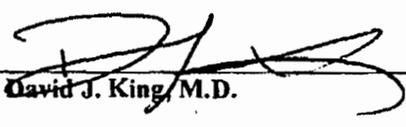
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**Michael Kirk, M.D.**

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**Donald R. Unwin, M.D.**

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**Ricardo Rao, M.D.**

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**Gregory C. Randle, M.D.**

  
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**David J. King, M.D.**

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**Keith D. Wilkey, M.D.**

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**Christopher L. Vulin, M.D.**

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**Ketan A. Shah, M.D.**

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**William J. Rebholz**

**RED BUD ILLINOIS  
HOSPITAL COMPANY, LLC**

By: \_\_\_\_\_  
Name: Terry M. Brandon  
Title: Vice President

**MONROE COUNTY  
SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MESC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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William Reddy, M.D.

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Michael Kirk, M.D.

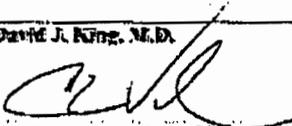
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Donald R. Erwin, M.D.

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Ricardo Rera, M.D.

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Gregory C. Randle, M.D.

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David J. King, M.D.

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Keith D. Wilkes, M.D.

  
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Christopher E. Vailin, M.D.

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Ketan A. Shah, M.D.

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William J. Rebholz

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**RED BUD ILLINOIS  
HOSPITAL COMPANY, LLC**

By: \_\_\_\_\_  
Name: Terry H. Hendon  
Title: Vice President

**MONROE COUNTY  
SURGICAL CENTER, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MCSC REP, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

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**William Reilly, M.D.**

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**Michael Kirk, M.D.**

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**Keith D. Wilkey, M.D.**

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**Christopher L. Vulin, M.D.**

  
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**Ketan A. Shah, M.D.**

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**William J. Rebbolz**

**EXHIBIT A****MEMBERS**

<u>Investor Name</u>	<u>Home Address</u>	<u>Office Address</u>	<u>Pre-Closing Ownership</u>	<u>Transferred Interests</u>	<u>Post-Closing Ownership</u>
David J. King	32 Broadview Farm Road, Creve Coeur, MO, 63141	845 North New Ballas Court, Suite 130, Creve Coeur, MO, 63141	4 / 10%	2.1	1.9/4.7%
Michael N. Kirk	5542 Wildwood Drive, Waterloo, IL, 62298	509 Hamacher Street, Suite 103, Waterloo, IL, 62298	8 / 20%	4.2	3.8/9.5%
Gregory C. Randle	12 Washington Terrace, St. Louis, MO, 63112	12 Ginger Creek Parkway, Glen Carbon, IL, 62034	2 / 5%	1.1	.9/2.2%
Ricardo Rao	121300 Crystal View Lane, St. Louis, MO, 63131	3023 North Ballas Road, Suite 210 D, St. Louis, MO, 63131	1 / 2.5%	.5	.5/1.2%
William J. Rebholz	5456 Konarcik Road, Waterloo, IL, 62298	509 Hamacher, Suite 202, Waterloo, IL, 62298	6 / 15%	6	0/0
William R. Reilly	9633 Ladue Road, Ladue, MO, 63124	509 Hamacher Street, Suite 204, Waterloo, IL, 62298	8 / 20%	4.2	3.8/9.5%
Ketan A. Shah	168 Whitwood Drive, O'Fallon, IL, 62269	509 Hamacher, Suite 205, Waterloo, IL, 62298	3 / 7.5%	1.6	1.4/3.5%
Donald R. Unwin	2 Eagle Lake, Columbia, IL, 62236	111 West Lincoln, Belleville, IL, 62220	1 / 2.5%	.5	.5/1.2%
Christopher L. Vulin	1540 Breezeridge Drive, Des Peres, MO, 63131	12855 North Forty Drive, Suite 375, St. Louis, MO, 63141	1 / 2.5%	.5	.5/1.2%
Keith D. Wilkey	115 South Gore Avenue, Webster Groves, MO, 63119	1050 Old Des Peres Road, Suite 100, Des Peres, MO, 63131	6 / 15%	3.2	2.8/7%
			40 / 100%	24	16 / 40%

EXHIBIT B  
PRO RATA SHARES OF SALE PROCEEDS

<u>Investor Name</u>	<u>Percentage of sale proceeds</u>
David J. King	8.75
Michael N. Kirk	17.675
Gregory C. Randle	4.6
Ricardo Rao	2.1
William J. Rebholz	25
William R. Reilly	17.675
Ketan A. Shah	6.7
Donald R. Unwin	2.1
Christopher L. Vulin	2.1
Keith D. Wilkey	13.3