

ASSET PURCHASE AGREEMENT

THIS ASSET PURCHASE AGREEMENT (this “**Agreement**”) is made and entered into as of _____, by and among _____ Texas limited liability company (“**Purchaser**”), _____, a Texas professional corporation (“**Seller**”), and the undersigned shareholders of Seller (the “**Shareholders**”).

WHEREAS, Seller owns and operates a professional medical practice which provides professional medical and related services (the “**Practice**”) at _____ and _____ (the “**Practice Locations**”);

WHEREAS, Purchaser desires to purchase from Seller substantially all of the assets of Seller utilized in the Practice, and Seller wishes to sell all of such assets to Purchaser (the “**Transaction**”).

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

ARTICLE 1. DEFINITIONS

1.1 Definitions. In addition to the other definitions contained in this Agreement, the following terms will, when used in this Agreement, have the following respective meanings:

“**Affiliates**” means, with respect to any Person, any Persons directly or indirectly controlling, controlled by, or under common control with, such other Person at any time during the period for which the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“**Closing**” means the consummation of the transactions contemplated by and described in Article 2.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, Section 4980B of the Internal Revenue Code of 1986, as amended, and Title I, Part 6 of the Employee Retirement Income Security Act of 1974, as amended, together with all regulations and proposed regulations promulgated thereunder.

“**Code**” means the Internal Revenue Code of 1986, as amended.

“**Confidential Information**” means information, to the extent not considered a Trade Secret under applicable law, that: (a) relates to the business of the New Practice, (b) possesses an element of value to the New Practice, (c) is not generally known to the New Practice’s competitors, and (d) would damage the New Practice if disclosed. Confidential Information shall also include information of any third party provided to the New Practice which the New

Practice is obligated to treat as confidential, including, but not limited to, information provided to the New Practice by its referral sources or patients. Confidential Information includes, but is not limited to, (e) future business plans, (f) financial statements, (g) information pertaining to agreements with third-party payers, (h) contracts with any payer or payee of medical services, preferred provider organizations, health maintenance organizations, or any other managed care entities or arrangements, (i) information regarding independent contractors, referral sources, and patients of the New Practice, including, but not limited to, patient names, patient charts, lists or records, test results and reports, nurses' notes, operative notes, diagnoses or treatment plans, case histories, x-rays, and patients' financial information, and (j) information concerning the New Practice's or a third party's financial structure and methods and procedures of operation. Confidential Information shall not include any information that: (k) is or becomes generally available to the public other than as a result of an unauthorized disclosure, (l) has been independently developed and disclosed by others without violating this Agreement or the legal rights of any party, or (m) otherwise enters the public domain through lawful means.

"Encumbrances" means liens (including deed of trust liens, mechanic's or materialmen's liens and judgment liens), charges, encumbrances, security interests, options, judgments or any other restrictions or third party rights.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended.

"Financial Statements" means the the unaudited balance sheets of the Seller as of December 31, 2011, 2012, and 2014 and the related unaudited statements of operations for the years then ended.

"Governmental Authorizations" means all licenses, permits, certificates, authorizations, certificates-of-need, consents and approvals which are required to consummate any of the transactions contemplated hereby or to operate the Practice as currently operated under any Law, including provider agreements with the Medicare and Medicaid programs.

"Governmental Entity" means any local, state or federal government, including each of their respective branches, departments, agencies, commissions, boards, bureaus, courts, instrumentalities or other subdivisions, including, but not limited to, carriers and fiscal intermediaries and any body exercising or purporting to exercise, any administrative, executive, judicial legislative, police, regulatory or taxing authority or power over the Medicare and Medicaid programs or CHAMPUS/TRICARE.

"Intellectual Property" means software, firmware, embedded microcontrollers in non-computer equipment and other information technology, patents, applications for patents, copyrights, licenses, assumed names, trade names, trademark and/or service mark registrations and applications therefor, trademarks, service marks, procedures, instructions, inventions, trade secrets, know-how and all other proprietary information.

"Knowledge of Seller" (or words of like effect) shall mean the actual knowledge, after due inquiry (unless otherwise indicated herein), of [redacted] [list Seller's Administrator] and actual knowledge of the Shareholders. "Knowledge" as it relates to a party other than Seller, shall mean the actual knowledge of such party, after due inquiry (unless

otherwise indicated herein). In the absence of due inquiry, a person shall be deemed to have knowledge of information that would have been discovered by a reasonable inquiry.

“Law” means any applicable law, statute, ordinance, rule, regulation, directive, requirement, code, order, judgment, injunction, decree or judicial or administrative doctrine that is legally promulgated or issued by any Governmental Entity.

“Liability” shall mean any liability or obligation whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated and whether due or to become due.

“Losses” means damages, claims, losses, charges, actions, suits, Proceedings, deficiencies, interest, penalties and reasonable costs and expenses associated therewith (including reasonable attorneys’ fees, Proceeding costs, fines, penalties and expenses of investigation), whether asserted by a party to this Agreement or by a third party.

“Non-Shareholder Physicians” means the following physicians employed by Seller:

“Permitted Encumbrance” means (a) any liens evidenced by an Assumed Contract, and (b) any liens which are not material, which do not interfere with the use of any of the Practice Assets and which do not secure the obligation to pay amounts; provided, however, that liens or encumbrances arising out of any capital debt, capital lease or other long-term liabilities of Seller or the Practice are not Permitted Encumbrances, except to the extent expressly included in the Assumed Liabilities.

“Person” means an individual, a corporation, a partnership, a joint venture, a limited liability company, an association, a foundation, a trust or any other entity or organization.

“Physicians” means the Shareholders and Non-Shareholder Physicians.

“Proceeding” means any claim, action, arbitration, audit, hearing, investigation, litigation or suit (whether civil, criminal, administrative, judicial or investigative, whether formal or informal, whether public or private).

“Required Consents” means all consents and waivers, if any, which are referenced on Schedule 4.2.

“Taxes” means any tax, fee, assessment, levy, tariff, charge or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereon imposed, assessed or collected, whether disputed or not, by or under the authority of any Governmental Entity or payable under any tax-sharing agreement or any other agreement or contract.

“Tax Return” means any return (including any information return), report, statement, schedule, notice, form, declaration, claim for refund or other document or information (including any amendment thereof) filed with or submitted to, or required to be filed with or submitted to, any Governmental Entity in connection with the determination, assessment, collection or

payment of any Tax or in connection with the administration, implementation or enforcement of or compliance with any Law relating to any Tax.

“*Trade Secrets*” shall have the meaning set forth in Tex. Civ. Prac. & Rem. Code § 134A.002(6).

ARTICLE 2. PURCHASE OF ASSETS; ASSUMPTION OF LIABILITIES

2.1 Purchase of Assets. Subject to the terms and conditions contained in this Agreement, at Closing Seller will sell, convey, assign, transfer and deliver to Purchaser all of its right, title and interest in and to all of the Seller’s property and assets, real, personal or mixed, tangible and intangible, of every kind and description, wherever located and utilized in the Practice, in each case as the same exists on the Closing Date, including, but not limited to the following (collectively, the “*Assets*”):

(a) all equipment and furnishings (including all medical equipment, computers, and other data processing equipment) used or usable by Seller in the operation of the Practice and which is either owned by Seller or leased by Seller under a capital lease, including, but not limited to, those items set forth on the Current Asset List, and any warranties related thereto;

(b) all commitments, contracts, agreements, operating leases, lease purchase arrangements and license agreements in respect of the Practice which are set forth on Schedule 2.1(b), together with each commitment, contract, agreement, lease arrangement and license agreement which are individually valued at less than Five Thousand and No/100 Dollars (\$5,000.00) annually and which may be terminated by Seller or its assignee without cause on not more than 30 days notice (collectively, the “*Assumed Contracts*”);

(c) to the extent transferable, all Intellectual Property used in the operations of the Practice, including the name “_____” and those items set forth on Schedule 2.1(c);

(d) all other personal property, tangible or intangible, rights, privileges or interests owned by Seller and employed in the operations of the Practice which Seller is not required by Law to retain in its possession, including: (i) all financial, patient, medical staff and Employee records (including all medical and/or administrative libraries, medical records of patients, documents, catalogs, books, files and operating manuals); (ii) phone numbers; and (iii) those items (if any) set forth in Schedule 2.1(d);

(e) all insurance proceeds relating to damage to the Assets occurring between the date hereof and Closing to the extent not expended prior to Closing on the repair of the Assets;

(f) Seller’s prepaid expenses, deposits and other similar items, including those items listed on Schedule 2.1(f);

(g) all inventories, supplies, other current assets and other assets located at or used in connection with the operation of the Practice, including pharmaceuticals;

(h) to the extent transferable, all Governmental Authorizations heretofore issued which are necessary to operate the Practice or Practice Locations, and all other rights, privileges, franchises, certificates and applications relating exclusively to the operations or development of the Practice, including, but not limited to, those Governmental Authorizations set forth on Schedule 2.1(h); and

(i) copies of all books and records of the Seller directly and exclusively related to the operation of the Practice, including (to the extent same may be separately transferred) computer data files.

2.2 Excluded Assets. Notwithstanding the provisions of Section 2.1, the Assets shall not include any of the following items, all of which are specifically excluded from the Assets (collectively, the “***Excluded Assets***”):

(a) all cash, cash equivalents, short term investments and marketable securities;

(b) all of the Seller’s accounts receivable (whether receivable from patients or from third party payors) (the “***Practice Receivables***”); and

(c) any other assets specifically identified on Schedule 2.2(c).

2.3 Assumption of Certain Liabilities of Seller.

(a) Except for the Assumed Liabilities (which shall not include any obligation or Liability arising from any default, breach, misfeasance, malfeasance or nonfeasance by Seller), Purchaser shall not assume any Liability of Seller of any kind, and Seller shall pay, satisfy and perform all of its Liabilities (other than the Assumed Liabilities), which may affect in any way the Assets or the Practice (collectively, the “***Retained Liabilities***”). Without limiting the generality of the foregoing, the Retained Liabilities shall include, and under no circumstances shall Purchaser be deemed to assume any Liability of Seller arising out of or relating to: (a) any actual or alleged tortious conduct of Seller or any of its employees or agents; (b) any actual or alleged violation of any Law; (c) any Liability for Taxes; (d) any Liability of Seller to present or former employees for vacation, sick leave, holiday or severance obligations, except to the extent specifically assumed under Section 2.3(b)(ii) below; or (e) any Liability relating to Seller’s employee benefit plan(s), within the meaning of Section 3(3) of ERISA, maintained by Seller or to which Seller contributes or is required to contribute for employees of Seller.

(b) Notwithstanding the foregoing, at Closing Purchaser will assume and agree to satisfy only the following liabilities, and no others (collectively, the “***Assumed Liabilities***”):

(i) the obligations arising under and related to the Assumed Contracts to the extent first arising after the Effective Time;

(ii) accrued paid time off of the Hired Employees up to forty (40) hours per Hired Employee, but only to the extent shown on Schedule 2.3(b)(ii) (to be attached hereto at Closing) and only to the extent that Purchaser receives a

credit for the cost thereof against the Purchase Price or Seller otherwise pays Purchaser such amount at Closing; and

(iii) any liabilities specifically identified on Schedule 2.3(b)(iii).

2.4 Purchase Price.

(a) In consideration of the transfer of Assets to Purchaser, Purchaser agrees to pay to Seller _____ and No/100 Dollars (\$_____) for the purchase of the Assets (the "**Purchase Price**"), subject to following adjustments and prorations:

(i) If Seller shall acquire any Asset after the execution of this Agreement but prior to the Closing in the ordinary course of business and with the prior written consent of the Purchaser that costs in excess of Five Thousand Dollars (\$5,000.00), the Purchase Price shall be increased by an amount equal to such cost upon provision of substantiating receipts for such item.

(ii) Customary prorations relating to the Assets and Assumed Liabilities will be made at Closing or thereafter when same are determined, with Seller liable to the extent such items relate to any time period up to the Effective Time and Purchaser liable to the extent such items relate to periods subsequent to the Effective Time. To the extent that such prorations are estimated or not made at Closing, the parties agree to cooperate with each other in good faith to determine the amount of such prorations and to promptly remit the amount of such items to the appropriate party as and when same are determined.

(b) Purchaser shall pay the Purchase Price, as adjusted as provided above, on the Closing Date by wire transfer to an account designated in writing by Seller; provided, however, that if the Closing Date falls on a banking holiday, Purchaser shall pay the Purchase Price on the next business day which is not a banking holiday.

(c) The Purchase Price shall be allocated among the acquired Assets as set forth on Schedule 2.4 attached hereto. The parties shall use such allocation for purpose of complying with Section 1060(b) of the Code and for filing Form 8954 with the Internal Revenue Service, and the parties agree that they will not take or cause to be taken any action that would be inconsistent with such allocation.

2.5 Assignment of Contracts. Notwithstanding any provision of this Agreement to the contrary, to the extent that any contract to be assigned to Purchaser hereunder requires the waiver or consent of any other party, Seller shall not be deemed to have assigned any such contract, and Purchaser shall not be deemed to have assumed or received any such contract, unless and until such waiver or consent shall have been obtained. In the event that the Closing occurs without obtaining such waiver or consent, Seller and Purchaser agree to use their reasonable best efforts to obtain the necessary waiver or consent to the assignment of any such contract; provided, however, that neither party shall be required to make any payment (unless such payment is due and owing under the respective contract) in order to obtain any such waiver or consent. Until any necessary waiver or consent to the assignment of an Assigned Contract is

obtained, Seller and Purchaser shall each, at no cost to each such party, cooperate with the other party in any reasonable arrangement which provides Purchaser with the benefits under such contract. All liabilities and expenses arising on and after the Closing Date under any such contract or license as to which the necessary consent has not been obtained and whose benefits are being enjoyed by Purchaser shall be for the account of Purchaser, and Seller shall be promptly reimbursed by Purchaser for any such liabilities or expenses which Seller may be required to pay or incur thereunder.

ARTICLE 3. CLOSING

3.1 Closing. Closing will take place at the offices of the Purchaser on December 31, 2014 or such other date as the parties may agree upon (the “**Closing Date**”), subject to the satisfaction or waiver of all of the conditions precedent to Closing specified in Articles 8 and 9. Closing will be deemed to have become effective at 12:01 a.m., local time, on the Closing Date (the “**Effective Time**”).

3.2 Actions by Seller at Closing. At Closing and unless otherwise waived by Purchaser, Seller and the Shareholders will deliver or shall cause to be delivered to Purchaser the following:

(a) a Bill of Sale in substantially the form attached hereto as **Exhibit A**, duly executed by Seller and all shareholders of Seller (including shareholders not signing Employment Agreements with Purchaser), conveying to Purchaser good and marketable title to all of the Assets, subject only to Permitted Encumbrances;

(b) an Assignment and Assumption Agreement in substantially the form attached hereto as **Exhibit B**, duly executed by Seller, conveying to Purchaser all right, title and interest of Seller in and to the Assumed Contracts (the Bill of Sale, Assignment and Assumption Agreement, and this Agreement collectively the “**Transaction Documents**”);

(c) an Employment Agreement for the Shareholders in substantially the form attached hereto as **Exhibit C-1**, duly executed by at least ____ of the Shareholders, with an effective date of the Closing Date;

(d) an Employment Agreement for the Non-Shareholder Physicians in substantially the form attached hereto as **Exhibit C-2**, duly executed by each of the Non-Shareholder Physicians, with an effective date of the Closing Date;

(e) the Collection Agreement (defined in Section 10.11), duly executed by Seller;

(f) each of the Required Consents;

(g) copies of resolutions duly adopted by the Board of Directors and Shareholders of the Seller, authorizing and approving consummation of the transactions contemplated hereby and the execution and delivery of this Agreement and the other documents described herein by Seller, certified as true, complete and in full force and effect as of Closing by an appropriate officer of Seller;

(h) a certificate of incumbency of the officers of Seller executing this Agreement and the other documents described herein, dated as of the Closing Date;

(i) a certificate executed by Seller and Shareholders as to the accuracy of their representations and warranties as of the date of this Agreement and as of the Closing and as to their compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing, each in accordance with Section 8.1;

(j) a certificate of existence of Seller from the State of Texas dated a date reasonably proximate to Closing; and

(k) such other instruments and documents as are reasonably requested by Purchaser in connection with the consummation of the Transaction or to satisfy the conditions precedent to Purchaser's obligations hereunder.

3.3 Actions by Purchaser at Closing. At Closing and unless otherwise waived by Seller, Purchaser will deliver, or cause to be delivered, to Seller the following:

(a) the Assignment and Assumption Agreement, duly executed by Purchaser, pursuant to which Purchaser assumes the performance of the Assumed Contracts as of the Effective Time;

(b) the Employment Agreement for each of the Physicians who executed an Employment Agreement, duly executed by Purchaser;

(c) the Collection Agreement, duly executed by Purchaser;

(d) a certificate of incumbency of the officers of the Purchaser executing this Agreement and the other documents described herein, dated as of the Closing Date;

(e) a certificate executed by the Purchaser as to the accuracy of its representations and warranties as of the date of this Agreement and as of the Closing and as to its compliance with and performance of their covenants and obligations to be performed or complied with at or before the Closing, each in accordance with Section 9.1; and

(f) such other instruments and documents as are reasonably requested by Seller in connection with the consummation of the Transaction or to satisfy the conditions precedent to Seller's obligations hereunder.

ARTICLE 4. REPRESENTATIONS AND WARRANTIES OF SELLER AND SHAREHOLDERS

As of the date hereof and (except as otherwise expressly stated herein) as of the Closing Date, Seller hereby makes the representations and warranties to Purchaser set forth below. In addition, as of the date hereof and (except as otherwise expressly stated herein) as of the Closing Date, each Shareholder hereby makes the representations and warranties to Purchaser set forth below.

4.1 Capacity and Authority. Seller is a professional corporation, duly organized and validly existing under the laws of the State of Texas. Seller has the requisite corporate power and authority to enter into this Agreement and the other documents contemplated hereby, to perform its obligations hereunder and thereunder, and to conduct its business as now being conducted. Seller's execution, delivery and performance of this Agreement and the other documents contemplated hereby, and the consummation by Seller of the transactions contemplated hereby and thereby, are within Seller's powers and have been duly authorized by all appropriate action. This Agreement and the other documents to be executed and delivered by Seller have been or will be duly executed and delivered by Seller, as the case may be. Shareholders own all of the outstanding capital stock of Seller.

4.2 Consents; Absence of Conflicts with Other Agreements, Etc. Except as set forth on Schedule 4.2, the execution, delivery and performance by Seller of the Agreement and the other documents contemplated hereby: (a) will not conflict with any provision of Seller's organizational documents; (b) will not violate, conflict with or constitute on the part of Seller a breach of or a default under, or require approval or consent of any Person under, any Law, Governmental Authorization, material contract, agreement, indenture, mortgage or lease to which Seller, the Practice, or any of the Assets may be subject; and (c) will not create any Encumbrance on any of the Assets.

4.3 Binding Effect. This Agreement is and will constitute the valid and legally binding obligation of Seller and Shareholders, and is and will be enforceable against Seller and Shareholders in accordance with the terms hereof, except as set forth on Schedule 4.3.

4.4 Financial Statements. Seller has heretofore delivered to Purchaser copies of the Financial Statements. Except as set forth on Schedule 4.4, the Financial Statements conform to and have been prepared on a cash basis in accordance with the books and records of Seller, applied on a consistent basis throughout the periods indicated, except that the Year to Date Financials are subject to normal year end adjustments. The balance sheets comprising the Financial Statements present fairly in all material respects the financial condition of the Seller at the dates indicated thereon, and the statements of revenue and expenses comprising the Financial Statements present fairly in all material respects the results of operations of the Seller for the periods indicated thereon. Except as disclosed in the Financial Statements, Seller has no material Liabilities of any nature.

4.5 Regulatory Compliance. Seller and Shareholders are in compliance with all Laws of all Governmental Entities having jurisdiction over the Practice and its operations, including, but not limited to, all Laws applicable to the Medicare and Medicaid programs and CHAMPUS/TRICARE. Seller has timely filed all material reports, data and other information required to be filed with such Governmental Entities. Neither Seller, the Practice, nor any Shareholder has received notice of a violation of any Law or notice of condemnation, Encumbrance, assessment or the like, relating to any part of the Assets or the operation of the Practice. Neither Seller nor the Shareholders have (a) been excluded from any Medicare or state Medicaid program, (b) been convicted or pled guilty or nolo contendere to any alleged violation of, or paid any fines or settlements in connection with any alleged violation of any Law (other than minor traffic offenses), (c) become aware of any pending investigation or enforcement action by any Governmental Entity with respect to any alleged violation of any Law, or (d)

violated or been charged or threatened with the charge of violation, or placed under any investigation with respect to a possible violation, of any provision of any Law relating to the Assets.

4.6 Contracts. Seller has made available to Purchaser true and complete copies of each Assumed Contract. Together the Assumed Contracts and any commitments, contracts or agreements set forth as an Excluded Asset constitute each material instrument to which the Seller is a party. Each of the Assumed Contracts constitutes the valid and legally binding obligation of Seller and is enforceable against Seller in accordance with its terms. Each of the Assumed Contracts constitutes the valid and legally binding obligation of the other party thereto and is enforceable against such party in accordance with its terms. With respect to the Assumed Contracts, (i) all material obligations required to be performed by Seller have been performed, (ii) all material obligations required to be performed by third parties have been performed, (iii) no act or omission has occurred or failed to occur which, with the giving of notice, the lapse of time or both would constitute a default under any of the Assumed Contracts by Seller or any other party thereto, and (iv) each of the Assumed Contracts is in full force and effect without default thereunder on the part of Seller or any other party thereto.

4.7 Equipment and Other Assets.

(a) Attached hereto as Schedule 4.7 is an accurate list as of the date indicated therein of the equipment, furniture, fixtures and furnishings included in the Assets (the “**Current Asset List**”). At or prior to Closing, Seller will provide Purchaser with an updated Current Asset List as of the last day of the month immediately prior to the Closing Date.

(b) The Assets constitute all assets, properties and leasehold estates, real, personal and mixed, tangible and intangible, of every kind and nature, comprising or employed in the operation of the Practice, except for the Excluded Assets. All of the personal property owned or leased by Seller under an Assigned Contract is in good operating condition and repair, free from any defects (except such minor defects as do not interfere with the use thereof in the conduct of the normal operations), ordinary wear and tear excepted, have been maintained consistent with the standards generally followed in the industry.

(c) All inventories are usable and saleable in a manner consistent with past practices and industry standards and are at levels sufficient to operate the Seller’s Business in the ordinary course.

(d) Except as set forth on Schedule 4.7, Seller has good and marketable fee or leasehold title to all of the Assets, free and clear of all claims and encumbrances, subject only to Permitted Encumbrances. On the Closing Date, Seller and Shareholders will transfer to Purchaser good and marketable title to the Assets, subject only to Permitted Encumbrances.

4.8 Insurance. Annexed hereto as Schedule 4.8 is a list of the insurance policies covering the ownership and operations of the Practice Locations and the Assets. All of such policies are now and will be until the Closing in full force and effect.

4.9 Employee Benefit Plans. Schedule 4.9 sets forth each present plan, program, agreement, arrangement, commitment and/or method of compensation providing any

remuneration or benefits to, or covering, any current or former employee of Seller or any other individual who provides services to Seller (including, but not limited to, any shareholder, officer, director, employee or consultant), or any spouse, child or other dependent of such current or former employee or individual, which is sponsored, maintained, adopted or contributed to (in whole or in part) by Seller, or to which Seller could have any liability, including, but not limited to, pension, profit sharing, deferred compensation, bonus, retirement, severance, incentive or other employee pension, health, dental, life, death benefit, or welfare plan, agreements or arrangements, workers compensation, unemployment, and any nonqualified deferred compensation plan (as defined in Sections 409A(d)(1) or 3121(v)(2)(C) of the Code, any “specified fringe benefit plan” as defined in Section 6039D(d)(1) of the Code, any “multiemployer plan” as defined in Section 3(37) or 4001(a)(3) of ERISA, and any “employee benefit plan” as defined in Section 3(3) of ERISA (the “**Benefit Plans**”). Seller is not a member of a “controlled group of corporations” or under “common control” with, or a member of an “affiliated service group,” with any other Person, as defined in section 414 of the Code. Seller has complied with all of the respective obligations with respect to the Benefit Plans and has maintained the Benefit Plans in compliance with all applicable Laws and regulations. Any reporting, disclosure, funding or other obligation, whether arising by Law or contract and whether arising before or after the Effective Time of this Agreement, with respect to any Benefit Plan will be the sole responsibility of Seller, and neither Purchaser, nor any of its respective Affiliates, will have any obligation or liability with respect thereto, either before, on or after Closing.

4.10 Employee Relations.

(a) Schedule 4.10 sets forth a true and complete list of all employees of the Seller, including name, title, salary, category and date of last compensation adjustment and amount of such adjustment. Seller will provide Purchaser an updated Schedule 4.10 at Closing. No key employee or group of employees plans to terminate employment with Seller.

(b) Seller has complied in all respects with all Laws relating to employment practices, terms and conditions of employment, equal employment opportunity, nondiscrimination, immigration, wages, hours, benefits, collective bargaining, the payment of social security and similar Taxes and occupational safety and health. There are no controversies pending or threatened, between Seller and any of its employees, whether in the form of claims for discrimination, harassment, unfair labor practices, grievances, wage and hour violations, wrongful discharge, or otherwise.

(c) Seller has not been, and is not now, a party to any collective bargaining agreement or other labor contract.

(d) No officer, director, agent, employee, consultant, or contractor of Seller is bound by any contract or other agreement that purports to limit the ability of such officer, director, agent, employee, consultant, or contractor (i) to engage in or continue or perform any conduct, activity, duties or practice relating to the business of Seller or (ii) to assign to Seller or to any other Person any rights to any invention, improvement, or discovery. No former or current employee of Seller is a party to, or is otherwise bound by, any contract or other

agreement that in any way materially adversely affected, affects, or will affect the ability of Seller or Purchaser to conduct the business as heretofore carried on by Seller.

4.11 Proceedings. Except as set forth on Schedule 4.11, there are no Proceedings pending or threatened, against or affecting the Practice, Seller or any Shareholder with respect to the Practice or the Assets, at law or in equity.

4.12 Subsequent Results. Since the date of the Year to Date Financials, there has not been: (a) any material adverse change in the operations, financial condition, assets, liabilities (contingent or otherwise), income or business of or related to the Practice; (b) any material damage, destruction or loss (whether or not covered by insurance) adversely affecting the Practice or the Assets; (c) any labor dispute, Law or regulation or any event or condition of any character materially adversely affecting the operations of the Practice; (d) any sale, assignment, transfer or disposition of any material item of property or equipment of the Practice except in the ordinary course of business; (e) any material transaction by Seller with respect to the Practice or any of the Assets outside the ordinary course of business; (f) payment (except in the ordinary course of business) or increase by Seller of any bonuses, salaries or other compensation to any director, officer or employee or entry into any employment, severance or similar contract with any director, officer or employee; (g) amendment to or increase in the payments to or benefits under, any Benefit Plan; or (h) material change in the accounting methods used by Seller.

4.13 Taxes. Seller has filed or will file when due all Tax Returns required to be filed by Seller with respect to the Practice or the Assets for all periods ending prior to the Closing Date, and all such Tax Returns are or will be complete and accurate in all material respects. Seller has paid or will pay all Taxes imposed with respect to the Practice or the Assets for all periods prior to the Closing Date. There currently are, and as of the Effective Time will be, no liens for any such Taxes on any of the Assets other than any liens for Taxes not yet due and payable as of the Effective Time. There are no proposed or outstanding assessments or claims for any unpaid Taxes of Seller for any period with respect to the Practice or the Assets. Seller has duly withheld and paid all Taxes which it is required to withhold and pay relating to salaries and other compensation heretofore paid to the employees of Seller.

4.14 Intellectual Property. Schedule 4.14 lists all Intellectual Property that is owned or licensed by Seller and used in the operations of the Practice. Seller owns, or possesses adequate rights to use all material Intellectual Property included in the Assets and Seller's use thereof does not infringe on the rights of any other Person.

4.15 Disclosure.

(a) No representation or warranty or other statement made by Seller or Shareholders in this Agreement, any Schedule, any supplement to any Schedule, the certificates delivered pursuant to Section 3.2 or otherwise in connection with the transaction contains any untrue statement or omits to state a material fact necessary to make any of them, in light of the circumstances in which it was made, not misleading.

(b) Neither Seller nor Shareholders have Knowledge of any fact that has specific application to Seller (other than general economic or industry conditions) and that may

materially adversely affect the assets, business, prospects, financial condition or results of operations of Seller that has not been set forth in this Agreement or the Schedules delivered by Seller and the Shareholders.

ARTICLE 5. REPRESENTATIONS AND WARRANTIES OF PURCHASER

As of the date hereof and (except as otherwise expressly stated herein) as of the Closing Date, Purchaser represents and warrants to Seller as follows:

5.1 Capacity and Authority. Purchaser is a limited liability company, duly organized and validly existing in good standing under the laws of the State of Texas. Purchaser has the requisite corporate power and authority to enter into this Agreement and the other documents contemplated hereby, to perform its obligations hereunder and thereunder, and to conduct its business as now being conducted. Purchaser's execution, delivery and performance of this Agreement and the other documents contemplated hereby, and the consummation by Purchaser of the transactions contemplated hereby and thereby, are within Purchaser's powers and, subject to the receipt of approvals contemplated under Section 8.7, have been duly authorized by all appropriate action.

5.2 Consents; Absence of Conflicts with Other Agreements, Etc. Purchaser's execution, delivery and performance of this Agreement and the other documents contemplated hereby, and the consummation by Purchaser of the transactions contemplated hereby and thereby: (a) except as otherwise expressly provided herein, do not require any approval or consent of, or any declaration or filing with, any Governmental Entity which is required by Law; and (b) will not violate, contravene, conflict with or constitute on the part of Purchaser a breach of or a default under the respective articles of organization and operating agreement of Purchaser, any existing Law, or any material agreement, indenture, mortgage or lease to which Purchaser is subject.

5.3 Binding Effect. This Agreement and any other agreements to which Purchaser will become a party hereunder are and will constitute the valid and legally binding obligations of Purchaser and are and will be enforceable against Purchaser in accordance with the respective terms hereof and thereof, except as set forth on Schedule 5.3.

ARTICLE 6. PRE-CLOSING COVENANTS OF SELLER

6.1 Operations. Between the date of this Agreement and the Closing Date, Seller shall:

(a) carry on the business of the Practice in substantially the same manner as has heretofore been conducted and not make any material change in any operations, finance, accounting policies or real or personal property relating to the Practice, except as otherwise expressly required by this Agreement;

(b) at Seller's expense, maintain the Assets in as good working order and condition as at present, ordinary wear and tear excepted;

(c) perform all of its obligations under agreements relating to or affecting the Assets or the Practice;

(d) take all actions necessary and appropriate to (i) vest good and marketable title to all of the Assets in Purchaser, (ii) render such title to Purchaser subject only to Permitted Encumbrances, and (iii) to the extent Seller is reasonably able to do so after diligence and reasonable efforts, obtain appropriate releases, consents, estoppels and other instruments as Purchaser may reasonably request;

(e) keep in full force and effect present insurance policies or other comparable insurance affecting the Practice and the Assets;

(f) maintain and preserve the business organization of the Practice intact, retain employees at the Practice (except for employment terminations in accordance with past practices and in the ordinary course of business), maintain relationships with suppliers, patients and others having business relations with the Practice, and take such actions as are necessary to cause the smooth, efficient and successful transition of such business operations and employee and other relations to Purchaser as of Closing;

(g) notify Purchaser of any known event or circumstance or combination of events or circumstances that is reasonably likely to have a material adverse effect on the Seller or the Practice or would cause or constitute a breach of any of the Seller's representations, warrants, or covenants contained herein; and

(h) continue to cooperate with Purchaser's ongoing diligence investigation of the Practice and Assets.

6.2 Negative Covenants. Between the date of this Agreement and the Closing Date, Seller will not, without the prior written consent of Purchaser:

(a) amend or terminate any of the Assumed Contracts or waive, release, compromise or assign any material rights or claims arising out of such Assumed Contracts, or enter into any contract or commitment, or incur or agree to incur any liability, with respect to the Practice or the Assets, except in the ordinary course of business;

(b) make offers or renewals of employment at the Practice to any Persons other than on an at-will basis and in the ordinary course of business;

(c) increase the compensation payable or to become payable or make a bonus payment to or otherwise enter into one or more bonus agreements with any employee or agent at the Practice, except in the ordinary course of business in accordance with existing personnel policies and except for distributions or bonuses paid to the shareholders of Seller (including shareholders who do not sign Employment Agreements with Purchaser);

(d) create, assume or permit to exist any Encumbrance (other than Permitted Encumbrances) upon any of the Assets, whether now owned or hereafter acquired;

(e) sell, assign or otherwise transfer or dispose of any property, plant or equipment (other than supplies) relating to the Practice;

(f) make any material change in any tax or accounting practice of the Practice;

(g) commence or settle any Proceeding that could have a material adverse effect on the Assets; or

(h) take any other action outside the ordinary course of business that would materially affect the Assets or the operation of the Practice, except as otherwise expressly required by this Agreement.

6.3 Required Consents. Between the date of this Agreement and the Closing Date, Seller will use its reasonable best efforts to obtain all Required Consents required to consummate the transactions contemplated hereby.

6.4 Closing Conditions. Between the date of this Agreement and the Closing Date, Seller and the Shareholders will cause the conditions specified in Articles 8 and 9 over which Seller or the Shareholders have control to be satisfied as soon as reasonably practicable, but in all events before Closing.

ARTICLE 7. PRE-CLOSING COVENANTS OF PURCHASER

7.1 Required Consents. Between the date of this Agreement and the Closing Date, Purchaser will cooperate with Seller in obtaining all Required Consents to consummate the transactions contemplated hereby.

7.2 Closing Conditions. Between the date of this Agreement and the Closing Date, Purchaser will cause the conditions specified in Articles 8 and 9 over which Purchaser or any of its Affiliates has control to be satisfied as soon as reasonably practicable, but in all events before the Closing Date.

ARTICLE 8. CONDITIONS PRECEDENT TO OBLIGATIONS OF PURCHASER

The obligations of Purchaser hereunder are, subject to the satisfaction, on or prior to the Closing Date, of the following conditions, unless waived by Purchaser:

8.1 Representations, Warranties and Covenants. The representations and warranties of Seller and the Shareholders contained in this Agreement will be true in all material respects when made and on and as of the Closing Date (or the date otherwise specified herein) as though such representations and warranties had been made on and as of such date, except for those representations and warranties qualified by materiality, which shall be true in all respects; and each and all of the terms, covenants and conditions of this Agreement to be complied with or performed by Seller and each of the Shareholders on or before the Closing Date pursuant to the terms hereof will have been duly complied with and performed in all respects, and none of the

Seller nor any of the Shareholder shall otherwise be in breach or default of any provision of this Agreement.

8.2 Actions or Proceedings. No Proceeding will have been instituted and remain in effect seeking to restrain or prohibit the transactions contemplated hereby; and no Governmental Entity will have taken any other action or made any request of Purchaser or Seller, or their respective agents, as a result of which Purchaser reasonably and in good faith deems it inadvisable to proceed with the transactions contemplated hereby.

8.3 Diligence; No Material Adverse Change. Purchaser shall be satisfied with the results of its diligence investigation of Seller, the Practice and the Assets, and between the date hereof and the Closing Date, there shall not have been any event, circumstance, change or effect that, individually or in the aggregate, had or likely will have a material adverse change or affect on the Assets, business, prospects, financial condition or results of operations of Seller or the Practice.

8.4 Fair Market Valuations. Purchaser will have obtained valuation reports from Navigant Consulting, Inc. or another independent third party valuation firm selected by Purchaser supporting the fair market value of both the Purchase Price and the compensation to be paid to each of the Physicians who execute an Employment Agreement with Purchaser in consideration for the services rendered by such Physicians thereunder.

8.5 Termination of Existing Agreements. All existing agreements between Seller or any Shareholder, on the one hand, and the Purchaser or its Affiliates, on the other hand, pursuant to which Seller or any Shareholder provided services to or for the benefit of Purchaser or its Affiliates, other than those agreements listed on Schedule 8.5, shall be terminated as of the Effective Date.

8.6 Consents. Purchaser shall have received evidence that all Required Consents have been obtained.

8.7 Approvals. The execution, delivery and performance by Purchaser and UH of this Agreement and the other documents contemplated hereby, and the consummation by Purchaser of the transactions contemplated hereby and thereby, shall be duly authorized by all appropriate action.

8.8 Other Instruments and Documents. Seller will have delivered to Purchaser all of the other instruments and documents required by Section 3.2, including such certificates as are reasonably requested by Purchaser certifying the satisfaction of the foregoing conditions.

ARTICLE 9. CONDITIONS PRECEDENT TO OBLIGATIONS OF SELLER

The obligations of Seller are, at the option of Seller, subject to the satisfaction, on or prior to the Closing Date, of the following conditions unless waived by Seller:

9.1 Representations, Warranties and Covenants. The representations and warranties of Purchaser contained in this Agreement will be true in all material respects when

made and on and as of the Closing Date (or the date otherwise specified herein) as though such representations and warranties had been made on and as of such date, except for those representations and warranties qualified by materiality, which shall be true in all respects; and each and all of the terms, covenants and conditions of this Agreement to be complied with or performed by Purchaser on or before the Closing Date pursuant to the terms hereof will have been duly complied with and performed in all respects.

9.2 Actions or Proceedings. No Proceeding before any Governmental Entity will have been instituted or threatened to restrain or prohibit the transactions contemplated hereby; and no Governmental Entity will have taken any other action or made any request of Seller or Purchaser as a result of which Seller reasonably and in good faith deems it inadvisable to proceed with the transactions contemplated hereby.

9.3 Other Instruments and Documents. Purchaser will have delivered to Seller all of the instruments and documents required by Section 3.3, including such certificates as are reasonably requested by Seller certifying the satisfaction of the foregoing conditions.

ARTICLE 10. OTHER COVENANTS AND AGREEMENTS

10.1 Employees.

(a) As used herein, the term “**Employee**” means, collectively, each Person, who on the Closing Date is an employee of Seller at the Practice Locations and any other person listed on Schedule 10.1 attached hereto who provides services for the Practice.

(b) On the Closing Date, Seller will terminate the employment of each of the Employees. Purchaser will offer employment to each Employee who meets Purchaser’s criteria for employment, effective immediately following the Closing, on an at-will basis, and in accordance with Purchaser’s customary employment practices, policies and procedures and in accordance with the other express covenants of this Section. As used herein, “**Hired Employee**” means each Employee who accepts Purchaser’s offer of employment described above. Notwithstanding the foregoing, nothing in this Agreement will be deemed to require Purchaser to employ any Hired Employee for a certain period of time after the Closing Date. Seller shall comply with the provisions of the WARN Act if applicable to the actions contemplated by this Section 10.1(b).

(c) The Hired Employees will be offered employment at a salary comparable to their current salary with Seller. The Hired Employees will be eligible to participate in the Purchaser’s employee benefit plans in accordance with the terms of such plans as amended from time to time. Hired Employees will be treated as new employees with respect to such plans, except that they will be given credit for their then-most recent continuous full-time period of employment with the Practice for purposes of determining the amount of paid time off under Purchaser’s PTO plan. Seller agrees to pay the Employees for all accrued but unused paid time off and extended illness benefits to the extent not assumed by Purchaser under Section 2.3(b)(ii).

(d) Seller will be solely responsible for, and Purchaser shall not have any liability with respect to: (i) all compensation and benefits agreements and arrangements which are not included among the Assumed Contracts; (ii) all obligations to Employees or former

employees of Seller, except for obligations assumed by Purchaser under Section 2.3(b)(iii); (iii) all employee retirement, health, welfare or benefit plans and programs of Seller or any of its Affiliates, whether or not relating to the Practice; and (iv) all obligations with respect to unemployment compensation and workers' compensation from claims arising on or before the Closing Date out of the claimant's employment by Seller.

(e) Notwithstanding anything in this Agreement to the contrary, on and after the Closing Date, and consistent with Section 2.3(a) of this Agreement, Seller will comply in all respects with the group health plan continuation coverage requirements of COBRA. Without limiting the generality of the foregoing, Seller will comply with all COBRA requirements, including furnishing the required COBRA notices and the provision of continuation coverage, that arise with respect to employees or former employees, and their respective spouses and dependents, of Seller, as a result of this transaction or that have arisen prior to this transaction, even if such COBRA requirements could be imposed upon Purchaser under current final or proposed regulations of the Department of Treasury. In the event that Seller cannot comply with COBRA requirements and, by operation of law, those requirements fall upon Purchaser, then Purchaser shall (without reimbursement from Seller) make COBRA continuation coverage available to any person electing such coverage at such person's sole cost and expense.

10.2 Trade Secrets and Confidential Information.

(a) Seller and the Shareholders each agree that it/he will not use, disclose, or reverse engineer the Trade Secrets or the Confidential Information for any purpose other than in connection with the medical practice formerly operated by Seller which shall be operated by Purchaser (such continued operations to be referred to as the "*New Practice*"), except as authorized in writing by Purchaser or its Affiliate. The obligations under this Section 10.2 shall remain in effect as long as the information constitutes Confidential Information or a Trade Secret. The confidentiality, property, and proprietary rights protections available in this Agreement are in addition to, and not exclusive of, any and all other rights to which Purchaser is entitled under any other contracts or federal and state law, including, but not limited to, rights provided under copyright laws, trade secret and confidential information laws, and laws concerning fiduciary duties. However, the restrictions in this Section 10.2 shall not restrict a Physician from using a list of such Physician's patients which is provided to such Physician by Purchaser in accordance with such Physician's Employment Agreement with Purchaser, provided that Physician is in compliance with the terms of such Employment Agreement.

(b) In the event Seller and/or any Shareholder breaches any portion of Section 10.2 above, nothing contained in this Agreement shall limit Purchaser's right to any remedies at law or in equity. If Seller and/or any Shareholder breaches any portion of Section 10.2 above, Seller and Shareholders agree that: (i) Purchaser would suffer irreparable harm; (ii) money damages alone would be an inadequate remedy for the injuries suffered by Purchaser; and (iii) if Purchaser seeks injunctive relief to enforce Section 10.2 above, Seller and Shareholders shall waive and shall not: (A) assert any defense that Purchaser has an adequate remedy at law with respect to the breach, (B) require that Purchaser submit proof of the economic value of any Trade Secret or Confidential Information, or (C) require Purchaser to post a bond or any other security.

(c) The covenants set forth in Section 10.2 of this Agreement shall be construed as an agreement independent of (i) any other agreements, or (ii) any other provision in this Agreement, and the existence of any claim or cause of action by Seller and/or Shareholders against Purchaser, whether predicated on this Agreement or otherwise, regardless of who was at fault and regardless of any claims that either Seller and/or Shareholders or Purchaser may have against the other, shall not constitute a defense to the enforcement by Purchaser of any of the covenants set forth in Section 10.2 of this Agreement. Purchaser shall not be barred from enforcing any of the covenants set forth in Section 10.2 of this Agreement by reason of any breach of (i) any other part of this Agreement, or (ii) any other agreement with Seller and/or Shareholders.

(d) If any covenant in Section 10.2 is held to be unreasonable, arbitrary, or against public policy, such covenant will be considered to be divisible with respect to scope, time, and geographic area, and such lesser scope, time, or geographic area, or all of them, as a court of competent jurisdiction may determine to be reasonable, not arbitrary, and not against public policy, will be effective, binding, and enforceable against Seller and the Shareholders.

10.3 Confidentiality. Seller and Purchaser previously entered into a confidentiality letter agreement dated January 15, 2014 (the “*Confidentiality Agreement*”), which shall remain in full force and effect. In addition to the covenants in the Confidentiality Agreement, except as expressly contemplated hereunder, neither party will disclose to any Person any of the terms, conditions or other facts with respect to the Transaction, including the status thereof; provided, however, that each party may disclose such information (i) to its officers and advisors who need to know the same for the sole purpose of evaluating the Transaction and also have been informed of the confidential nature of the Confidential Information and have been directed to hold such information in strict confidence and to use such information solely for the purposes permitted hereunder, (ii) to third parties in connection with obtaining Required Consents, and (iii) to the extent required under applicable Law. Notwithstanding any provision to the contrary in the Confidentiality Agreement, Seller authorizes Purchaser and its representatives to disclose information regarding the Transaction with Seller’s physicians and employees in a manner mutually acceptable to Seller and Purchaser that will not be disruptive to current operations.

10.4 No Discussions with Others. Until this Agreement terminates, neither Seller, the Shareholders nor any of their respective Affiliates, officers, directors, employees, agents, or advisors shall, directly or indirectly, solicit or entertain offers from, negotiate with or in any manner encourage, discuss, accept, or consider any proposal of any other Person relating to (a) the acquisition of Seller, its assets or businesses, in whole or in part, through purchase, merger, consolidation, share exchange or otherwise, or (b) the employment of any Shareholder.

10.5 Access. Purchaser may continue its due diligence review and investigation of Seller including its business, assets and liabilities. Seller shall provide Purchaser and its representatives with copies of, and/or reasonable access to, all information requested by Purchaser relating to the operations, assets and financial condition of Seller, together with reasonable access to the management and employees of Seller, for the purpose of conducting such due diligence. Purchaser and its representatives will use good faith efforts to conduct due diligence in such manner as to minimize any disruption to Seller’s business. The parties shall cooperate with one another in the due diligence process.

10.6 Books and Records.

(a) Until the later to occur of (i) the final adjudication of any dispute or investigation arising out of the business, operations or affairs of the Practice before the Closing Date, (ii) as required by Law, or (iii) sixty (60) days following the running of the applicable statutes of limitations, Purchaser will maintain in the ordinary course of business all books and records of the Practice constituting a part of the Assets which relate to the pre-Closing business, operations and affairs of the Practice, and Seller will maintain in the ordinary course of business all such books and records not constituting a part of the Assets, in each case to the extent reasonably necessary in connection with any Tax, Medicare or Medicaid or other liability or matter for any period ending on or before the Closing Date. After the expiration of such period, neither Purchaser nor Seller will destroy any of such books or records without giving the other the opportunity, at the latter's sole expense, to take possession thereof.

(b) After the Closing Date, upon reasonable notice, each party will give to the representatives, employees, counsel and accountants of the other party, access, during normal business hours, to records relating to periods prior to or including the Closing Date, and will permit such persons to examine and copy such records (at no cost to the requesting party), in each case to the extent reasonably requested by the other party in connection with and for the purpose of Tax and financial reporting matters, audits, legal proceedings, governmental investigations and other business purposes relating to the transfer of the Practice and the Assets (including such financial information and any receipts evidencing payment of Taxes as may be requested by Seller to substantiate any claim for Tax credits or refunds); provided, however, that nothing herein will obligate any party to take actions that would unreasonably disrupt the normal course of its business or violate the terms of any contract to which it is a party or to which any of its assets is subject.

10.7 Further Assurances. After Closing, and without further consideration, each party shall, at the request of the other party, execute and deliver such further documents and instruments of conveyance, assignment, and transfer and shall take such further reasonable actions as may be necessary or desirable, in the reasonable opinion of the requesting party, to consummate the transactions contemplated hereunder or to carry out the intent of this Agreement.

10.8 Risk of Loss. Seller will bear all risk of loss, destruction or damage to any of the Assets occurring prior to Closing, whether due to fire, accident or other casualty, willful act, condemnation, riot, act of God or otherwise, and Purchaser will have no responsibility with respect thereto.

10.9 Publicity. From and after the date hereof, neither party shall publish any press release or make any other public communications with respect to the transactions contemplated hereby and the method of release thereof unless mutually agreed upon by Seller and Purchaser.

10.10 Post-Closing Business of Seller. Following the Closing, Seller shall not engage in any business or activity other than any activities arising from or relating to the termination of its medical practice and winding up of its business (including but not limited to billing and collection of Practice Receivables, payment, settlement or contest of debts and claims arising

from the Practice, winding up of employee claims and benefit programs, filing of tax returns, maintenance of bank accounts utilized in connection with such activities, and other similar activities consistent with the termination and winding-up of a discontinued business). Purchaser hereby grants Seller a nonexclusive, non-terminable, royalty-free license to use the name “Texas Surgical Specialists, P.C.” for a period from the Closing Date through the earlier of one year thereafter or the date on which the Collection Agreement terminates, in connection with any such permitted activities. In the event Seller wishes to utilize such the name “Texas Surgical Specialists, P.C.” beyond the time period set forth in this Section 10.10 or for any reason not set forth in this Section 10.10 or Seller wishes to conduct business or activities not permitted in this Section 10.10, Seller must first obtain Purchaser’s consent.

10.11 Collection of Accounts Receivable. Purchaser or its Affiliate shall bill and collect the outstanding Practice Receivables beginning on the Closing Date and continuing for a period of one hundred eighty (180) days thereafter, pursuant to the terms of Billing and Collection Agreement in substantially the form set forth in Exhibit D attached hereto (the “*Collection Agreement*”). In consideration for the performance by Purchaser or its Affiliate of such billing and collection services, Seller shall pay Purchaser an amount equal to five percent (5%) of the Net Collections collected by Purchaser or its Affiliate, as defined in the Collection Agreement.

10.12 “Tail” Insurance. Seller (at its cost) will maintain extended “tail,” “prior acts” or similar coverage for acts, errors and omissions of professional negligence by Seller and its employees (other than the Physicians who execute Employment Agreements with Purchaser at Closing) which occurred prior to the Effective Time, in such amounts as are not less than the coverage limits of Seller’s currently effective policies of professional malpractice insurance.

10.13 Third Party Payors. Seller and Shareholders will cooperate with Purchaser and take all actions reasonably requested by Purchaser in order for Purchaser to bill and collect for professional services to be provided by the Physicians who will be employed by Purchaser immediately following the Closing under all of Purchaser’s agreements (including any Assumed Contracts) with governmental and other payors including, without limitation, the credentialing of the Physicians and transfer of the Physicians’ provider numbers.

ARTICLE 11. INDEMNIFICATION

11.1 Indemnification by Seller and Shareholders. Seller and each of the Shareholders hereby indemnify and hold harmless Purchaser against any Losses suffered by Purchaser arising out of or resulting from:

(a) the breach or failure of any representation or warranty of Seller or any Shareholder contained in this Agreement or any of the Transaction Documents;

(b) the breach or nonfulfillment of any agreement or covenant of Seller or any Shareholder contained in this Agreement or any of the Transaction Documents; or

(c) any liability, Encumbrance (other than Permitted Encumbrances), obligation, claim against or contract of Seller, its Affiliates, Shareholders or the Practice, of any kind or nature whatsoever, and at any time existing or asserted, whether or not accrued, whether

fixed, contingent or otherwise, whether known or unknown, and whether or not recorded on the books and records of Seller or otherwise disclosed to Purchaser, due to or arising by reason of any transaction or event occurring prior to Closing, which is not an Assumed Liability; or

(d) any Retained Liability; or

(e) any Excluded Asset; or

(f) any act of commission or omission of Seller, its Affiliates, any Shareholder or the Practice, or their respective employees, officers, agents or independent contractors, prior to Closing; or

(g) the use, operation or maintenance of the Assets or the Practice prior to Closing; or

(h) any claim for brokerage commission or finder's fee asserted by any person, firm or corporation claiming to have been engaged by Seller.

11.2 Indemnification by Purchaser. Purchaser will indemnify and hold harmless Seller against any Losses suffered by Seller arising out of or resulting from:

(a) the breach or failure of any representation or warranty of Purchaser contained in this Agreement or in any of the Transaction Documents; or

(b) the breach or nonfulfillment of any agreement or covenant of Purchaser contained in this Agreement or in any of the Transaction Documents; or

(c) any Assumed Liability; or

(d) any act of commission or omission of Purchaser, or its employees, officers, agents or independent contractors, subsequent to Closing; or

(e) the use, operation or maintenance of the Assets or the Practice by Purchaser after the Closing; or

(f) any claim for brokerage commission or finder's fee asserted by any person, firm or corporation claiming to have been engaged by Purchaser.

11.3 Survival.

(a) Each of the representations and warranties set forth in this Agreement will survive the Closing until the date that is _____ from the date hereof; provided, however, that (i) the representations in Section _____ shall survive until the expiration of the statute of limitations applicable to the underlying claim, if any, and (ii) the representations and warranties set forth in Section _____ shall survive indefinitely (the applicable date until which the representations and warranties survive is referred to herein as the "**Representation Survival Date**"). No Proceeding arising out of or related to the breach of any representation or warranty contained in this Agreement may be made by any party to this

Agreement unless notice of such Proceeding is given to the applicable party prior to the applicable Representation Survival Date.

(b) Each of the covenants set forth in this Agreement will survive the Closing in accordance with its terms.

(c) Notwithstanding anything herein to the contrary, the rights and remedies under this Article 11 with respect to any Proceeding (including, without limitation, recovery of Losses in respect thereof) for which notice has been given prior to the applicable Representation Survival Date will survive until such Proceeding has been resolved.

11.4 Limitations.

(a) As used in this Article 11, the term “*Losses*” include only losses actually paid or incurred and does not include any amounts recovered from any surety, insurance carrier, or third party obligor.

(b) [The liability of the Shareholders under Section 11.1 shall be several (not joint and several) in accordance with their respective Pro Rata Shares as set forth on Schedule 11.4.]

(c) Notwithstanding anything contained herein to the contrary, (i) Seller and Shareholders shall not be required to make any indemnification payment pursuant to Section 11.1(a) of this Agreement with respect to Losses until the aggregate of all Losses exceed _____ Dollars (\$00), and then only for the amount by which the aggregate of all Losses exceeds such amount; provided, however, that the limitation in this subsection (i) shall not apply to Losses arising under Section 11.1(a) with respect to the breach of the representations and warranties in Sections _____, [(ii) in no event shall Seller be required to make indemnification payments pursuant to Section 11.1(a) in the aggregate exceeding the amount of the Purchase Price, and (iii) in no event shall any Shareholder be required to make indemnification payments pursuant to Section 11.1(a) in the aggregate exceeding the amount of such Shareholder’s Pro Rata Share of the Purchase Price.] In the event the Seller or any Shareholder fails to pay Purchaser an indemnity amount owed hereunder, Seller or such Shareholder shall pay Purchaser any costs (including reasonable attorney’s fees) incurred by Purchaser in collecting such indemnity payments, and such payment obligation shall be in addition to the maximum amounts owed under subsections (ii) or (iii) above.

(d) Notwithstanding anything contained herein to the contrary, to the extent that a Loss arises from a breach of a representation or covenant which pertains solely to a particular Shareholder (and not the Seller in general), only Seller and the breaching Shareholder shall be liable to Purchaser for Losses resulting from such breach (subject to the other limitations contained herein).

ARTICLE 12. TERMINATION

12.1 Termination. This Agreement may be terminated at any time prior to Closing as follows:

(a) by the mutual consent of Purchaser and Seller;

(b) by Purchaser if a material breach of this Agreement has been committed by Seller or any Shareholder and such breach has not been cured (to the extent curable) to the reasonable satisfaction of Purchaser within fifteen (15) days after the giving of written notice by Purchaser to Seller or such Shareholder of such breach;

(c) by Purchaser, upon notice to Seller, if (without any breach by Purchaser of any of its obligations hereunder) compliance with any condition set forth in Article 8 becomes impossible, and such failure of compliance is not waived by Purchaser;

(d) by Seller if a material breach of this Agreement has been committed by Purchaser and such breach has not been cured by Purchaser (to the extent curable) to the reasonable satisfaction of Seller within fifteen (15) days after the giving of written notice by Seller to Purchaser of such breach;

(e) by Seller, upon notice to Purchaser, if (without any breach by Seller of any of its obligations hereunder) compliance with any condition set forth in Article 9 becomes impossible, and such failure of compliance is not waived by Seller;

(f) by Purchaser, upon notice to Seller, if between the date hereof and the Closing Date there has occurred (or been discovered): (A) any event, condition or change in the operations of the Practice, or in the financial condition, assets, liabilities (contingent or otherwise) or income of Seller which, individually or in the aggregate, results in or is reasonably likely to result in a material adverse effect on the assets, operations, results of operations, or financial condition of the Practice taken as a whole; or (B) any damage, destruction or loss, whether or not covered by insurance, that adversely impairs the use or value of the Practice or any Asset which, individually or in the aggregate, results in or is reasonably likely to result in a material adverse effect on the assets, operations, results of operations, or financial condition of the Practice taken as a whole; or

(g) by Seller, upon notice to Purchaser, if between the date hereof and the Closing Date there has occurred (or been discovered) any event, condition or change in the operations of the Purchaser, or in the financial condition, assets, liabilities (contingent or otherwise) or income of Purchaser, which, individually or in the aggregate, results in or is reasonably likely to result in a material adverse effect on the assets, operations, results of operations, or financial condition of Purchaser taken as a whole; or

(h) by Purchaser or by Seller, upon notice to the other (without any breach by the terminating party of its obligations hereunder), at any time after December 31, 2014, if the Closing has not occurred by such date.

12.2 Effect of Termination. In the event of any termination of this Agreement, as provided by Section 12.1, this Agreement will thereupon become void and of no effect, no party will have any further rights or obligations hereunder, and no party will have any liability to any other party arising out of such termination.

12.3 Unwind Post-Closing. Seller may elect to unwind the transactions described in this Agreement and repurchase the Assets between the first and second anniversaries of the Closing Date. Such an election by Seller shall require the written consent of two-thirds (2/3) of the Shareholders then employed by Purchaser. In the event Seller wishes to repurchase the Assets, Seller shall give to Purchaser a notice requesting such repurchase (the “*Unwind Notice*”). Upon receipt of an Unwind Notice, Purchaser shall enter into an agreement to sell and convey all of the Assets still owned by Purchaser and to assign all of the Assumed Liabilities and Assumed Contracts to Seller, or its nominee. The purchase price for the Assets shall be equal to the fair market value for the Assets as determined by an independent third party valuation firm selected by Purchaser and subject to the reasonable approval of Seller in a manner consistent with the methodology used (the “*Unwind Purchase Price*”). In addition to the Unwind Purchase Price, Seller shall pay to Purchaser an amount equal to all fees, expenses and disbursements of Purchaser and its Affiliates, agents, representatives, accountants, and counsel incurred in connection with the transaction contemplated by this Section 12.3. Purchaser will not make any representations or warranties in connection with the conveyance of the Assets and Assumed Liabilities to Seller, except that Seller shall receive good and marketable title to all of the Assets free and clear of all Encumbrances, subject only to Permitted Encumbrances. Seller shall accept conveyance of the Assets on an “as is where is” basis and will accept the assignment of the Assumed Liabilities and Assumed Contracts. Upon the closing of the transaction described in this Section 12.3, (a) all Employment Agreements delivered by all Physicians will be terminated in which case such Physicians shall not be subject to any ongoing non-competition obligations, and (b) Purchaser will terminate the employment of each Hired Employee, in each case unless Purchaser and a Physician or Hired Employee mutually agree otherwise. All other representations, warranties and covenants shall survive such unwind.

ARTICLE 13. IN GENERAL

13.1 Costs. Whether or not the transactions contemplated hereby are consummated and except as otherwise expressly provided herein, each party will be responsible to pay its own costs and expenses incurred in connection with proceeding with the Transaction, including, but not limited to, any legal fees incurred by such party. Purchaser or its Affiliate will pay the costs and expenses of consultants and advisers jointly engaged by Purchaser or its Affiliate, on the one hand, and Seller, on the other hand. Seller shall timely pay all sales, transfer or similar taxes required to be paid by reason of the sale by Seller to Purchaser of the Assets pursuant to this Agreement.

13.2 Notices. Any notice, demand or communication required, permitted or desired to be given hereunder will be in writing and will be deemed effectively given when personally delivered, when received by telegraphic or other electronic means (including telecopy and telex) or overnight courier, or five (5) days after being deposited in the United States mail, with postage prepaid thereon, by certified or registered mail, return receipt requested, addressed as follows:

if to Seller or Shareholders: _____, P.C.

Houston, Texas _____

Attn:

with copies to:

if to Purchaser:

with copies to:

or to such other address, and to the attention of such other Person or officer as any party may designate by notice given in like manner.

13.3 Schedules and Other Instruments. Each Schedule, each certificate provided hereunder and each written disclosure required hereby is incorporated by reference into this Agreement and will be considered a part hereof as if set forth herein in full; provided, however, that information set forth on any Schedule, certification or written disclosure constitutes a representation and warranty of the party providing the same, and not the mutual agreement of the parties as to the facts therein stated. Any Schedule may be amended after the date hereof only on the mutual written consent of the parties.

13.4 Choice of Law. This Agreement will be governed by and construed in accordance with the laws of the State of Texas without regard to its principles of conflicts of laws.

13.5 Benefit; Assignment. Subject to express provisions herein to the contrary, this Agreement will inure to the benefit of and be binding upon the parties hereto and their respective legal representatives, successors and permitted assigns, and the rights and obligations of the parties hereunder will survive the sale or other transfer of substantially all of the assets of any party or a change in control of any party. Seller may not assign any of its rights or obligations under this Agreement without the express consent of Purchaser. Purchaser may not assign any of its rights or obligations under this Agreement without the express consent of Seller, provided that Purchaser may assign its rights and obligations hereunder to an Affiliate of Purchaser.

13.6 No Rights in Third Parties. Nothing contained in this Agreement will be construed as giving rise to any right to enforce its provisions to any Person not a party to this Agreement under any legal theory.

13.7 Waivers and Consents. Any waiver of any provision of this Agreement and any consent given hereunder must be in writing signed by the party sought to be bound. The waiver by any party of breach or violation of any provision of this Agreement will not operate as, or be construed to constitute, a waiver of any subsequent breach or violation of the same or any other provision hereof.

13.8 Interpretation. In the event any provision of this Agreement is held to be invalid, illegal, or unenforceable for any reason and in any respect, such invalidity, illegality, or unenforceability will in no event affect, prejudice, or disturb the validity of the remainder of this Agreement, which will be and remain in full force and effect, enforceable in accordance with its terms. Inasmuch as this Agreement is the result of negotiations among sophisticated parties of equal bargaining power represented by counsel, no inference in favor of, or against, any party will be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such party. The Article and Section headings of this Agreement are for convenience of reference only and do not form a part hereof and do not in any way modify, interpret or construe the intention of the parties.

13.9 Entire Agreement; Amendment. This Agreement together with any other agreements expressly contemplated hereby supersede all previous agreements (except for the Confidentiality Agreement, which shall continue to be in effect) and constitute the entire agreement of whatsoever kind or nature existing among the parties representing the within subject matter, between Seller and Purchaser, and no party will be entitled to benefits other than those specified herein and therein. The parties specifically acknowledge that in entering into and executing this Agreement and any other agreements specifically referenced herein or therein, the parties rely solely upon the representations and agreements contained herein and therein and no others. All prior representations or agreements, whether written or oral, not expressly referenced herein are superseded unless and until made in writing and signed by the party sought to be charged therewith. This Agreement may be amended, and the terms hereof may be modified, only by a writing executed by each party hereto, and any matter referred to herein as mutually agreed to or designated by the parties must be evidenced by such a writing.

13.10 Counterparts. This Agreement, and any document or instrument required or permitted hereunder, may be executed in counterparts, each of which will be deemed an original and all of which together will constitute but one and the same instrument.

[Signatures on following page]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers, all as of the date and year first above written.

SELLER:

PURCHASER:

TEXAS SURGICAL SPECIALISTS, P.C.

MERCY HOSPITAL, INC.

By: _____

By: _____

Its: _____

Its: _____

SHAREHOLDERS:

Exhibit A

Bill of Sale

[See attached]

DRAFT

Exhibit B

Assignment and Assumption Agreement

[See attached]

DRAFT

Exhibit C

Employment Agreement

[See attached]

DRAFT

Exhibit D

Billing and Collection Agreement

[See attached]

DRAFT

Schedule 4.3

Binding Effect

Enforceability may be restricted, limited or delayed as follows:

- (a) By applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally;
- (b) By limitations imposed under general principles of equity upon specific enforcement, injunctive relief, or other equitable remedies;
- (c) By the exercise of judicial discretion in appropriate cases;
- (d) By limitations on any provisions which purport to waive the right to trial by jury or purport to consent to or waive any objection to the jurisdiction or venue of any particular court;
- (e) Enforcement of any warranties and indemnities contained therein may be limited to the extent such indemnities would require any party to indemnify another party for costs, losses, liabilities, claims, damages, or expenses incurred by or asserted against such party as a result of action or inaction of such party constituting negligence. In addition, it is possible that a court would not enforce any warranties or indemnities with respect to environmental matters contained therein;
- (d) With respect to the enforceability hereof, to the extent that applicable law would require the rights and remedies set forth herein to be exercised in good faith or in a reasonable or commercially reasonable manner as a condition to the enforceability hereof, that the persons having remedial rights hereunder will observe and satisfy such legal requirements;
- (e) The applicability of the corporate practice doctrine as it relates to the corporate practice of medicine; and
- (f) The enforceability of any restrictive covenants contained herein.

Schedule 5.3

Binding Effect

Enforceability may be restricted, limited or delayed as follows:

- (a) By applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally;
- (b) By limitations imposed under general principles of equity upon specific enforcement, injunctive relief, or other equitable remedies;
- (c) By the exercise of judicial discretion in appropriate cases;
- (d) By limitations on any provisions which purport to waive the right to trial by jury or purport to consent to or waive any objection to the jurisdiction or venue of any particular court;
- (e) Enforcement of any warranties and indemnities contained therein may be limited to the extent such indemnities would require any party to indemnify another party for costs, losses, liabilities, claims, damages, or expenses incurred by or asserted against such party as a result of action or inaction of such party constituting negligence. In addition, it is possible that a court would not enforce any warranties or indemnities with respect to environmental matters contained therein;
- (d) With respect to the enforceability hereof, to the extent that applicable law would require the rights and remedies set forth herein to be exercised in good faith or in a reasonable or commercially reasonable manner as a condition to the enforceability hereof, that the persons having remedial rights hereunder will observe and satisfy such legal requirements; and
- (e) The applicability of the corporate practice doctrine as it relates to the corporate practice of medicine.