

**BEFORE THE INSURANCE DEPARTMENT  
OF THE  
COMMONWEALTH OF PENNSYLVANIA**

Statement Regarding the Acquisition of Control of or Merger with  
Domestic Insurers:

Highmark Inc.; First Priority Life Insurance Company, Inc.;  
Gateway Health Plan, Inc.; Highmark Casualty Insurance Company;  
Highmark Senior Resources Inc.; HM Casualty Insurance Company;  
HM Health Insurance Company, d/b/a Highmark Health Insurance Company;  
HM Life Insurance Company; HMO of Northern Pennsylvania, Inc.,  
d/b/a First Priority Health; Inter-County Health Plan, Inc.;  
Inter-County Hospitalization Plan, Inc.; Keystone Health Plan West, Inc.;  
United Concordia Companies, Inc.; United Concordia Dental Plans of Pennsylvania, Inc.;  
United Concordia Life and Health Insurance Company

By UPE, a Pennsylvania nonprofit corporation

**SUPPLEMENTAL RESPONSE TO INFORMATION  
REQUEST 2.4.1 FROM THE PENNSYLVANIA INSURANCE  
DEPARTMENT AS SUPPLEMENTED BY A LETTER DATED MAY 16,  
2012 FROM DEPUTY COMMISSIONER JOHNSON**

**REQUEST 2.4.1 – Additional funding commitments including transfer, donation  
and assignment of assets:**

- A. Request 2.4.1 provides: In addition to the funding commitments described in Article 2 of the Affiliation Agreement, provide a full description of any plans of the Applicant or any Highmark and WPAHS Affiliate to declare or cause to be declared any extraordinary dividend, liquidate any of the Domestic Insurers, sell, transfer, donate, assign or create any lien or encumbrance upon its assets or merge them with any Person or to make any other material change in their business operations, corporate structure or management. Do not cross reference to other information. Please list and describe each such plan.**

\* \* \*

- G. Action Required: Please respond to the following supplemental question:**
- (2) Please describe (and provide a copy of any existing related agreements for) the proposed transaction, donation, contribution, transfer debt guarantee or other proposed relationship by, between or among**

**Highmark, UPE, UPE Provider Sub (or any other Highmark and WPAHS Entity) and Jefferson Regional Medical Center, including, without limitation, the parties to the transaction, the method of funding and the flow or distribution of funds among or between entities.**

**SUPPLEMENTAL RESPONSE TO REQUEST 2.4.1:**

The Affiliation Agreement by and among UPE, UPE Provider Sub, Highmark Inc., and Jefferson Regional Medical Center and the JRMC Subsidiaries and Jefferson Regional Medical Center Foundation is attached to this Response at Tab A.

**UPE**  
120 Fifth Avenue  
Pittsburgh, PA 15222

**TAB A**

**AFFILIATION AGREEMENT**

**BY AND AMONG**

**UPE,**

**UPE PROVIDER SUB,**

**AND**

**HIGHMARK INC.**

**AND**

**JEFFERSON REGIONAL MEDICAL CENTER**

**AND**

**THE JRMC SUBSIDIARIES**

**AND**

**JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION**

Dated as of August 13, 2012

**AFFILIATION AGREEMENT**

**BY AND AMONG**

**UPE,**

**UPE PROVIDER SUB,**

**AND**

**HIGHMARK INC.**

**AND**

**JEFFERSON REGIONAL MEDICAL CENTER**

**AND**

**THE JRMC SUBSIDIARIES**

**AND**

**JEFFERSON REGIONAL MEDICAL CENTER FOUNDATION**

Dated as of August 13, 2012

## TABLE OF CONTENTS

ARTICLE 1	2
DEFINITIONS; INCORPORATION OF RECITALS.....	2
1.1    Definitions.....	2
1.2    Interpretation.....	10
1.3    Recitals.....	11
ARTICLE 2	11
TRANSACTION STRUCTURE AND FUNDING COMMITMENTS .....	11
2.1    IDFS Structure. ....	11
2.2    Transfer of Control. ....	12
2.3    Amendment of Articles and Bylaws. ....	13
2.4    Governance Structure and Board Composition. ....	13
2.4.1    UPE Corporate Governance Authority. ....	13
2.4.2    UPE Provider Sub Board of Directors. ....	13
2.4.3    JRMC Board of Directors. ....	13
2.5    Funding Commitments.....	14
2.5.1    Facilities Projects and Capital Commitments.....	15
2.5.2    Commitment to Community Foundation.....	15
2.5.3    New Foundation.....	16
2.6    Ownership of Assets and Liabilities. ....	16
2.7    Debt, Pension and All Other Liabilities of JRMC.....	16
2.8    Potential for Successive Closings. ....	16
ARTICLE 3	17
CLOSING	17
3.1    Closing. ....	17
3.2    Actions of the JRMC Parties at the Closing. ....	17
3.3    Actions of the UPE Parties at the Closing. ....	19
3.4    Additional Acts. ....	20
ARTICLE 4	20
REPRESENTATIONS AND WARRANTIES OF THE JRMC PARTIES.....	20
4.1    Organization; Capacity. ....	20
4.2    Authority; Noncontravention.....	21
4.3    Subsidiaries; Minority Interests. ....	21

4.4	No Outstanding Rights.....	22
4.5	Title; Sufficiency of Assets.....	22
4.6	Binding Agreement.....	22
4.7	Financial Information.....	22
4.8	Material Licenses.....	24
4.9	Accreditation.....	24
4.10	Government Program Participation; Reimbursement.....	24
4.11	Third Party Payor Cost Reports.....	25
4.12	Regulatory Compliance.....	25
4.13	Information Privacy and Security Compliance.....	27
4.14	Medical Staff Matters.....	28
4.15	Statutory Funds.....	28
4.16	Intellectual Property.....	28
4.17	Contracts.....	29
4.18	Personal Property.....	30
4.19	Real Property.....	30
4.20	No Brokers.....	32
4.21	Inventory.....	32
4.22	Insurance.....	32
4.23	Employee Benefit Plans.....	32
4.24	Employee Matters.....	35
4.25	Litigation.....	36
4.26	Tax Matters.....	36
4.27	Environmental Matters.....	37
4.28	Immigration Act.....	38
4.30	Other Indebtedness.....	39
4.31	Absence of Changes.....	40
4.32	Solvency.....	40
4.33	Statements True and Correct.....	40
ARTICLE 5		41
REPRESENTATIONS AND WARRANTIES OF THE UPE PARTIES.....		41
5.1	Organization; Capacity.....	41
5.2	Authority; Noncontravention.....	41

5.3	Binding Agreement.....	42
5.4	Financial Information.....	42
5.5	Litigation.....	43
5.6	Solvency.....	43
5.7	No Brokers.....	43
5.8	Regulatory Compliance.....	43
5.9	Insurance.....	45
5.10	Indebtedness.....	45
5.11	Absence of Changes.....	45
5.12	Statements True and Correct.....	45
ARTICLE 6		45
PRE-CLOSING COVENANTS OF THE PARTIES.....		45
6.1	Access to the Premises; Information.....	45
6.2	Conduct of Business.....	47
6.3	Negative Covenants.....	48
6.4	Notification of Certain Matters.....	50
6.5	Restrictive Contracts, Undisclosed Contracts; New Contracts.....	51
6.6	Bond Compliance.....	51
6.7	Approvals.....	51
6.8	Title Matters.....	52
6.9	Additional Financial Information.....	52
6.10	Closing Conditions.....	52
ARTICLE 7		53
POST-CLOSING COVENANTS OF THE PARTIES.....		53
7.1	Restraint on Sale or Transfer; Right of First Refusal.....	53
7.2	Restricted Funds.....	53
7.4	Commitment to Key Business Terms.....	53
	7.4.1 Development of Key Clinical Programs.....	53
	7.4.2 Operations.....	55
7.5	Commitments Regarding Employees.....	57
7.6	Commitments Regarding Medical Staff.....	58
7.7	Commitments Regarding Facilities and Capital Projects.....	59
7.8	Charity Care and Community Benefit Programs.....	59

7.9	Continued Adherence to General Rules for Homestead and St. Joseph's Hospitals. ....	59
ARTICLE 8 59		
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE UPE PARTIES .....		59
8.1	Representations and Warranties.....	59
8.2	Performance.....	60
8.3	No Material Adverse Effect.....	60
8.4	Pre-Closing Confirmations by Governmental Authorities.....	60
8.5	Action/Proceeding.....	60
8.6	Closing Documents.....	60
8.7	Post-Closing Compliance with Laws and Regulations.....	60
8.8	Tax-Exempt Status of the JRMC Parties.....	61
ARTICLE 9 61		
CONDITIONS PRECEDENT TO OBLIGATIONS OF THE JRMC PARTIES .....		61
9.1	Representations and Warranties.....	61
9.2	Performance.....	61
9.5	Action/Proceeding.....	61
9.6	Closing Documents.....	62
9.7	Post-Closing Compliance with Laws and Regulations.....	62
9.8	Tax-Exempt Status of the JRMC Parties.....	62
9.9	Bond Compliance.....	62
ARTICLE 10 62		
TERMINATION.....		62
10.1	Termination.....	62
10.2	Break-up Fee.....	63
10.3	Effect of Termination.....	65
ARTICLE 11 65		
ADDITIONAL AGREEMENTS.....		65
11.1	Exclusivity.....	65
11.2	Confidentiality.....	66
11.3	Survival of Representations.....	66
11.4	Additional Highmark Commitments.....	66
11.5	Annual Reports.....	67

11.6	Enforcement of Agreement.....	68
ARTICLE 12 68		
GENERAL 68		
12.1	Notice.....	68
12.2	Counterparts.....	69
12.3	Choice of Law; Waiver of Trial by Jury; Venue.....	69
12.4	Benefit; Assignment.....	69
12.5	Reproduction of Documents.....	70
12.6	Cost of Transaction.....	70
12.7	Waiver of Breach.....	70
12.8	Severability.....	70
12.9	No Inferences.....	70
12.10	Divisions and Headings.....	71
12.11	No Third-Party Beneficiaries.....	71
12.12	Entire Agreement; Amendment.....	71
12.13	Schedules and Exhibits.....	71
12.14	Further Assurances.....	71

## LIST OF SCHEDULES

<u>Schedule</u>	<u>Description of Schedule</u>
R-1	JRMC Subsidiaries
R-2	JRMC Affiliates
2.6	JRMC Tax-Exempt Bonds
3.2(m)	Internal Revenue Service Determination Letters for JRMC and JRMC Parties
4.2(b)	JRMC Parties Approvals and Permits
4.3	JRMC Parties Minority Interests
4.4	JRMC Outstanding Rights
4.5(a)	JRMC Title Sufficiency of Assets
4.7(a)	JRMC Historical Financial Information
4.7(b)	JRMC Parties Change in Accounting Policy or Methodology
4.8	JRMC Parties Material Licenses
4.9	JRMC Parties and Facilities Accreditations and Certifications
4.10	JRMC Parties Government Program Participation; Reimbursement
4.12	JRMC Parties/Facilities Regulatory Compliance
4.14	JRMC Parties Medical Staff Matters
4.16	JRMC Parties Intellectual Property
4.17	JRMC Parties Material Contracts
4.17(f)	Certain Provisions of Material Contracts
4.18	JRMC Parties Personal Property
4.19(a)	JRMC Parties Real Property; Owned Real Property
4.19(b)	JRMC Parties Real Property; Leased Real Property
4.19(c)	JRMC Parties Real Property; Third Party Leases
4.19(f)	JRMC Parties Real Property; Incomplete Construction Projects

4.19(i)	JRMC Parties Real Property; Governmental Authority Notices of Non-Compliance
4.22	JRMC Parties Insurance Policies
4.23(d)	JRMC Parties Employee Benefit Plans; Compliance
4.23(e)	JRMC Parties Employee Benefit Plans; Payments or Compensation for Services
4.23(f)	JRMC Parties Employee Benefit Plans; Payments Resulting in Sanctions
4.23(g)	JRMC Parties Employee Benefit Plans; Liabilities
4.24(a)	JRMC Parties Employee Matters; List of Current Employees
4.24(c)	JRMC Parties Employee Matters; Unions
4.25(a)	JRMC Parties Litigation
4.25(b)	JRMC Parties Proceedings or Orders
4.26	JRMC Parties Tax Matters
4.26(a)	JRMC Parties 501(c)(3) Exemptions
4.27	JRMC Parties Environmental Matters
4.29	JRMC Parties Tax-Exempt Bond Debt
4.30	JRMC Parties Other Indebtedness
4.31	JRMC Parties Absence of Changes
5.2(b)	UPE Parties Approvals and Permits
5.4(a)	Highmark Historical Financial Information
5.4(b)	Highmark Change in Accounting Policy or Methodology
5.5	UPE Parties Litigation
5.8	UPE Parties Regulatory Compliance
5.9	UPE Parties Insurance
5.10	UPE Parties Indebtedness
5.11	UPE Parties Absence of Changes

6.2	Conduct of Business
6.3	Negative Covenants
6.3(g)	Capital Expenditures
7.6(c)	Employed Physicians with New Contracts of Seven Years or More
8.4	UPE Parties Pre-Closing Confirmations by Governmental Authorities
9.4	JRMC Parties Pre-Closing Confirmations by Governmental Authorities
11.4(b)	Scope of Highmark Commitment re Employed Physician Compensation

## LIST OF EXHIBITS

<u>Exhibit</u>	<u>Description of Exhibit</u>
A	Southern Region Depiction
B	JRMC Articles of Amendment and Amended and Restated Bylaws
C	JRMC Subsidiaries Prototype Governance Document Provisions
D	UPE or UPE Provider Sub Reserved Powers
E	Facilities Projects and Capital Commitments
F	Articles of Amendment and Amended and Restated Bylaws for JRMC Foundation
G	Opinion of Counsel for JRMC
H	Opinion of Counsel for Highmark
I	General Rules for Homestead and St. Joseph's Hospitals
J	Methodology for Calculating Reimbursement for Physician Terminations

## AFFILIATION AGREEMENT

**This Affiliation Agreement** (the “Agreement”) is made and entered into to be effective as of August 13, 2012, by and among UPE, a Pennsylvania nonprofit corporation (“UPE”), UPE Provider Sub, a Pennsylvania nonprofit corporation (“UPE Provider Sub”) and Highmark Inc., a Pennsylvania nonprofit corporation (“Highmark”) (collectively, UPE, UPE Provider Sub and Highmark are referred to herein as the “UPE Parties”), and Jefferson Regional Medical Center, a Pennsylvania nonprofit corporation (“JRMC”) and those JRMC Subsidiaries identified on Schedule R-1 (collectively, JRMC and those JRMC Subsidiaries identified on Schedule R-1 are referred to herein as the “JRMC Parties”) (the UPE Parties and JRMC Parties are collectively referred to herein as the “Parties” and each is referred to herein as a “Party”), and Jefferson Regional Medical Center Foundation, a Pennsylvania nonprofit corporation (“JRMC Foundation”).

### RECITALS

**A. WHEREAS**, JRMC is the parent corporation of a multi-institutional nonprofit health system that provides a broad spectrum of health care services;

**B. WHEREAS**, JRMC owns and operates Jefferson Regional Medical Center, an acute care hospital locate in Jefferson Hills, Pennsylvania that is licensed to operate 369 beds (“Hospital”);

**C. WHEREAS**, JRMC controls directly or indirectly various corporations, limited liability companies and other entities (collectively, the “JRMC Subsidiaries”) that are identified on Schedule R-1”);

**D. WHEREAS**, the JRMC Parties own certain rights, title and interests in other corporations, joint ventures, partnerships, limited liability companies and other entities (collectively, the “JRMC Affiliates”) that are not controlled directly or indirectly by the JRMC Parties and which are identified on Schedule R-2;

**E. WHEREAS**, Highmark is a leading health insurer with substantial operations throughout western Pennsylvania whose vision, mission and commitment are demonstrated to those they serve through the provision of innovative products, programs and services and community involvement;

**F. WHEREAS**, among Highmark’s strategic goals for western Pennsylvania is the development of an integrated delivery and financing system (“IDFS”), and the Parties envision that JRMC will be integral to the new IDFS and a key provider and cornerstone of the IDFS and the leader within the geographic area referred to by the Parties as the southern service region (“Southern Region”), as depicted on Exhibit A hereto, with a certain level of management responsibility for all IDFS-aligned provider assets, as well as affiliations with other providers, in the Southern Region; and

**G. WHEREAS**, by entering into the Transaction the Parties intend to: (a) preserve the operations of JRMC and the JRMC Subsidiaries as community healthcare resources that provide quality care and accessible and effective services, while ultimately operating in a fiscally sound

and responsible manner, as well as administratively within the UPE health system; (b) facilitate funding to JRMC to be used for certain necessary capital improvements that will help preserve choice for patients (including Highmark subscribers / policyholders) among health care providers in the western Pennsylvania region; (c) preserve competition among health care providers that will promote the delivery of cost-effective, high-quality health care; (d) be consistent with evolving trends in the health care industry by creating a more integrated health system with greater financing and health care delivery options; and (e) enhance opportunities to more meaningfully participate in the development of healthcare provider and payor policy at federal and state levels.

**NOW, THEREFORE**, for and in consideration of the premises, the agreements, covenants, representations and warranties herein set forth, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound hereby, the Parties hereto agree as follows:

## **ARTICLE 1 DEFINITIONS; INCORPORATION OF RECITALS**

### **1.1 Definitions.**

In addition to the terms defined elsewhere in this Agreement, the terms defined below as used in this Agreement (including the above-referenced recitals) shall have the following meanings:

**“Acquisition Proposal”** is defined in Section 11.1.

**“Affiliate”** means, as to the Person in question, any Person that directly or indirectly controls, is controlled by, or is under common control with, the Person in question and any successors or assigns of such Person.

**“Agreement”** means this Agreement as amended or supplemented together with all Exhibits and Schedules attached or delivered with respect hereto or expressly incorporated herein by reference.

**“Approval”** means any approval, authorization, consent, notice, qualification or registration, or any extension, modification, amendment or waiver of any of the foregoing, of or from, or any notice, statement, filing or other communication to be filed with or delivered to, any Governmental Authority.

**“Balance Sheet Date”** is defined in Section 4.7(a)(ii).

**“Benefit Program and Agreement”** is defined in Section 4.23(a)(ii).

**“Break-up Fee”** is defined in Section 10.2.

**“Business”** means the ownership and operation of the Facilities and other JRMC Assets, and all assets and operations ancillary to or associated with any of the foregoing, as currently conducted or as contemplated to be conducted in the future.

“**Closing**” is defined in Section 3.1.

“**Closing Date**” is defined in Section 3.1.

“**CMS**” means the Centers for Medicare and Medicaid Services.

“**COBRA**” means the Consolidated Omnibus Budget Reconciliation Act of 1985, the Public Health Service Act, codified as 42 USC §§ 300bb-1 through 300bb-8, and any similar state or federal continuation of coverage laws.

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

“**Commitments**” is defined in Section 6.8.

“**Confidentiality Agreement**” is defined in Section 11.2.

“**Contract**” means any legally binding oral or written commitment, contract, lease (including Tenant Leases and Third Party Leases), sublease, license, sublicense or other agreement of any kind relating to the Business, the JRMC Assets or the operation thereof to which a JRMC Party is a party or by which any of the JRMC Assets are bound.

“**EEOC**” means the Equal Employment Opportunity Commission.

“**Effective Time**” is defined in Section 3.1.

“**Encumbrance**” means any claim, charge, easement, encumbrance, encroachment, security interest, mortgage, lien or pledge, whether imposed by Contract, Law, equity or otherwise.

“**Environmental Condition**” means any event, circumstance or condition related in any manner whatsoever to: (a) the current or past presence or spill, emission, discharge, disposal, release or threatened release of any hazardous, infectious or toxic substance or waste (as defined by any applicable Environmental Laws) or any chemicals, pollutants, petroleum, petroleum products or oil (“Hazardous Materials”), into the environment; (b) the on-site or off-site treatment, storage, disposal or other handling of any Hazardous Material originating on or from the Real Property; (c) the placement of structures or materials into waters of the United States; (d) the presence of any Hazardous Materials in any building, structure or workplace or on any portion of the Real Property; or (e) any violation of Environmental Laws at or on any part of the Real Property or arising from the activities of a JRMC Party, or any other Person at the Facilities involving Hazardous Materials.

“**Environmental Laws**” means all Laws relating to pollution or the environment, including the Comprehensive Environmental Recovery, Compensation, and Liability Act, as amended, 42 U.S.C. § 9601, et seq.; the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 9601, et seq., the Clean Air Act, 42 U.S.C § 7401; OSHA; and all other Laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants, chemicals, pesticides, or industrial, infectious, toxic or hazardous substances or wastes into the

environment (including ambient air, surface water, groundwater, land surface or subsurface strata) or otherwise relating to the processing, generation, distribution, use, treatment, storage, disposal, transport, or handling of pollutants, contaminants, chemicals, or industrial, infectious, toxic, or hazardous substances or wastes.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” is defined in Section 4.23(c).

“**Executive Employees**” with respect to any Party shall mean each of the persons then serving as the Chief Executive Officer, Chief Financial Officer, Chief Legal Officer, Chief Information Officer, Chief Medical Officer, Chief Human Resources Officer and Chief Compliance Officer, or in a similar capacity by whatever title and, with respect to UPE Provider Sub, specifically including John Paul.

“**Exhibits**” means the exhibits to this Agreement.

“**Facilities**” means (a) the Hospital, and (b) any other healthcare facility, healthcare operations or physician practice owned, operated, managed or leased by any of the JRMC Parties.

“**FTC**” means the Federal Trade Commission.

“**FTC Red Flags Rule**” shall mean the regulations set forth in 16 C.F.R. Part 681.

“**Funding Commitments**” is defined in Section 2.5.

“**GAAP**” means United States generally accepted accounting principles and practices as in effect from time to time.

“**Government Programs**” means Medicare, Medicaid, and CHAMPUS/TRICARE.

“**Governmental Authority**” means any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal or other instrumentality of any government, whether federal, state or local, domestic or foreign.

“**Hazardous Materials**” is defined in the definition of Environmental Condition.

“**Highmark**” is defined in the preamble to this Agreement.

“**Highmark For Good Cause**” is defined in Section 10.2(a).

“**Highmark Historical Financial Information**” is defined in Section 5.4(a) of this Agreement.

“**Highmark Material Adverse Effect**” means any change, fact, occurrence or event that, individually or in the aggregate with all other changes, facts, occurrences or events, has or is reasonably likely to have a material adverse effect on the ability of Highmark and the UPE Parties to either consummate the Transaction or pay the Funding Commitment under this

Agreement; provided, however, that in no event shall any of the following be deemed to constitute a Highmark Material Adverse Effect: (i) events, changes, conditions, or effects generally adversely affecting the United States economy as a whole or the health care or insurance industries (including any changes to GAAP, SAP or regulatory accounting principles generally applicable to such industries) in each case which do not disproportionately impact Highmark and the UPE Parties relative to other Persons operating in the same industries; (ii) regional, national or international political or social events, changes, conditions or effects, including those attributable to acts of war, terrorism, or the outbreak of hostilities, in each case which do not disproportionately impact Highmark and the UPE Parties relative to other Persons operating in the same industries; (iii) the announcement or pendency of the Transaction or any agreements contemplated by this Agreement, excluding any government investigations resulting therefrom; and (iv) material changes in Laws which do not disproportionately impact Highmark and the UPE Parties relative to other Persons operating in the same industries.

“**HIPAA**” means the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, and its implementing regulations.

“**Hospital**” is defined in the recitals to this Agreement.

“**IDFS**” is defined in the recitals to this Agreement.

“**Immigration Act**” means the Immigration Reform and Control Act of 1986, as amended.

“**Information Privacy or Security Laws**” means HIPAA and any other Law concerning the privacy or security of Personal Information, including state data breach notification laws, state health information privacy laws, the FTC Act, the FTC Red Flags Rule and state consumer protection laws.

“**Intellectual Property**” means, to the extent owned, licensed or used by the JRMC Parties in the Business and/or the JRMC Assets, all intellectual property or rights thereto, including patents, trademarks, trade names, service marks, symbols, copyrights and any applications therefor, mask works, net lists, schematics, technology, know-how, trade secrets, ideas, algorithms, processes, internet domain names, computer software programs and applications (in both source code and object code form), and tangible or intangible proprietary information or material and all choses in action arising from or related to the foregoing.

“**Inventory**” means all usable inventory and supplies held or used in the Business.

“**Jefferson JRMC Board Appointees**” is defined in Section 2.4.3.

“**JRMC**” is defined in the preamble to this Agreement.

“**JRMC Affiliates**” is defined in the recitals to this Agreement.

**“JRMC Assets”** means all assets of every description, whether real, personal or mixed, tangible or intangible, owned by any of the JRMC Parties whether used in the operation of the Business or otherwise.

**“JRMC For Good Cause”** is defined in Section 10.2(b).

**“JRMC Foundation”** is defined in the preamble to this Agreement.

**“JRMC Historical Financial Information”** is defined in Section 4.7(a).

**“JRMC Intellectual Property”** means all Intellectual Property to the extent owned, licensed or used by the JRMC Parties.

**“JRMC Material Adverse Effect”** means any change, fact, occurrence or event that, individually or in the aggregate with all other changes, facts, occurrences or events, (a) has or is reasonably likely to have a material adverse effect on the ability of the JRMC Parties to consummate the Transaction or (b) has or is reasonably likely to have a material adverse effect on the condition (financial or otherwise) of the operations, results of operations, properties, or assets of the JRMC Parties; provided, however, that in no event shall any of the following be deemed to constitute a JRMC Material Adverse Effect: (i) events, changes, conditions, or effects generally adversely affecting the United States economy as a whole or the health care industry (including any changes to GAAP) in each case which do not disproportionately impact the JRMC Parties relative to other Persons operating in the same industry; (ii) regional, national or international political or social events, changes, conditions or effects, including those attributable to acts of war, terrorism, or the outbreak of hostilities, in each case which do not disproportionately impact the JRMC Parties relative to other Persons operating in the same industry; (iii) the announcement or pendency of the Transaction or any agreements contemplated by this Agreement, excluding any government investigations resulting therefrom; and (iv) material changes in Laws which do not disproportionately impact the JRMC Parties relative to other Persons operating in the same industry.

**“JRMC Parties”** is defined in the preamble to this Agreement.

**“JRMC Subsidiaries”** is defined in the recitals to this Agreement.

**“JRMC Tax-Exempt Bond Documents”** is defined in Section 4.29(a).

**“JRMC Tax-Exempt Bonds”** is defined in Section 2.6.

**“JRMC Taxable Debt”** is defined in Section 2.6.

**“JRMC Taxable Debt Documents”** is defined in Section 4.30(a).

**“Justice Department”** means the United States Department of Justice.

**“Knowledge”** when used in the context of knowledge of any of the UPE Parties means the actual knowledge of any Executive Employee of the UPE Parties within the scope of his or her responsibility after reasonable inquiry of those employees known to such Executive

Employee to have specialized knowledge of the subject matter in question. **“Knowledge”** when used in the context of knowledge of any of the JRMC Parties means the actual knowledge of any Executive Employee of the JRMC Parties within the scope of his or her responsibility after reasonable inquiry of those employees known to such Executive Employee to have specialized knowledge of the subject matter in question.

**“Law”** means any constitutional provision, statute, law, rule, regulation, code, ordinance, resolution, Order, ruling, promulgation, published policy or guideline, or treaty directive, adopted or issued by any Governmental Authority.

**“Leased Real Property”** means all real property leased, subleased or licensed to, or for which a right to use or occupy has been granted to, a JRMC Party.

**“Long-Term Contract”** is defined in Section 10.2(a)(ii).

**“Master Indenture”** means the Master Indenture of Trust pertaining to the JRMC Tax-Exempt Bonds dated as of March 1, 1987, as amended and supplemented, by and between JRMC, the other Obligated Issuers (as defined in the Master Indenture) and U.S. Bank National Association, as Master Trustee (as defined in the Master Indenture).

**“Material Adverse Effect”** means any change, fact, occurrence or event that, individually or in the aggregate with all other changes, facts, occurrences or events, (a) has or is reasonably likely to have a material adverse effect on the ability of the JRMC Parties or the Highmark Parties to consummate the Transaction or (b) has or is reasonably likely to have a material adverse effect on the business, operation, condition (financial or otherwise) of the Facilities or the JRMC Assets.

**“Material Contracts”** is defined in Section 4.17.

**“Material Licenses”** is defined in Section 4.8.

**“OIG”** is defined in Section 4.12(g).

**“OFAC”** is defined in Section 4.19(g).

**“Order”** means any judgment, order, writ, injunction, decree, determination, or award of any Governmental Authority.

**“OSHA”** means the Occupational Safety and Health Act, 29 U.S.C. § 600, et seq.

**“Owned Real Property”** means all real property owned by a JRMC Party, together with the interest of any JRMC Party as landlord in all leases and subleases therein, improvements, buildings or fixtures located thereon or therein, all easements, rights of way, and other appurtenances thereto (including appurtenant rights in and to public streets), all architectural plans or design specifications relating to the development thereof, and all claims and recorded or unrecorded interests therein, including any and all options to acquire real property.

**“Party”** and **“Parties”** are defined in the preamble to this Agreement.

“**PBGC**” is defined in Section 4.23(d)(v).

“**Permit**” means any license, permit, or certificate, required to be issued or granted by any Governmental Authority.

“**Permitted Activities**” shall include but not be limited to any health care facility, business or service, including the following: acute care hospitals; long term acute care hospitals; specialty hospitals; cancer treatment (including outpatient radiation oncology centers, gamma knife centers and cyber-knife centers); physician practices; ambulatory surgery centers; urgent care clinics; free-standing emergency departments; psychiatric services; diagnostic imaging services; cath laboratories; nursing homes; assisted living facilities; home health services; hospice services; and dialysis centers. The foregoing list of facilities, businesses and services is not intended to be exclusive, but rather illustrative. Specific examples of activities and ventures that the JRMC Foundation may engage in without violating Section 2.5.2 of this Agreement include: the funding of a clinic in an economically disadvantaged community within JRMC’s service area that will provide free or subsidized health care and social welfare services to the poor and disadvantaged; funding of health education services to the community; funding of free or subsidized health screenings to the community; and funding of free or subsidized meals to the poor and disadvantaged.

“**Permitted Encumbrances**” means (a) zoning and building laws, ordinances, resolutions and regulations, (b) liens for Taxes not due and payable on or before the Effective Time, or being contested in good faith by appropriate proceedings, (c) such other title and survey matters that are shown on any Commitments obtained by the UPE Parties (copies of which Commitments and any updates thereto shall be delivered to the JRMC Parties by the UPE Parties, as applicable, upon receipt), (d) liens that individually or in the aggregate do not materially detract from the value of, or impair in any material manner the use of the Real Property or other JRMC Assets and (e) Permitted Liens.

“**Permitted Liens**” means (a) those liens or other actions or circumstances which qualify under the definition of the same term in the Master Indenture; and (b) those liens identified in the lien searches performed by CT Lien Solutions each dated in July 2012 (all of which qualify as Permitted Liens as defined in the Master Indenture).

“**Person**” means an individual, association, corporation, limited liability company, partnership, limited liability partnership, trust, Governmental Authority or any other entity or organization.

“**Personal Information**” means any information that can reasonably be used to identify an individual, including “individually identifiable health information” as defined in 45 C.F.R. 160.103, demographic information, and social security numbers.

“**Personal Property**” means all tangible and intangible personal property owned, leased or used or held for use in connection with the Business, including all equipment, furniture, fixtures, machinery, vehicles, office furnishings, instruments, leasehold improvements, spare parts, and all rights in all warranties of any manufacturer or vendor with respect thereto.

“**Plan**” is defined in Section 4.23(a)(i).

**“Primary Closing”** is defined in Section 2.8.

**“Proceeding”** means any claim, action, arbitration, audit, hearing, investigation, litigation suit or other similar proceeding by or before a Governmental Authority.

**“Program Agreements”** is defined in Section 4.10(a).

**“Proposed Contract Notification”** is defined in Section 6.3(c).

**“Real Property”** means the Owned Real Property and the Leased Real Property.

**“SAP”** means the statutory accounting principles that are prescribed by the Accounting Practices and Procedures Manuals published by the National Association of Insurance Commissioners, subject to any additional or amended requirements provided by statutes, regulations, orders or rulings of a Governmental Authority in the Commonwealth of Pennsylvania, including the Pennsylvania Insurance Department.

**“Schedules”** means the disclosure schedules to this Agreement.

**“Southern Region”** is defined in the recitals to this Agreement.

**“Stark Law”** is defined in Section 4.12(b).

**“Subsequent Closing”** is defined in Section 2.8.

**“Taxes”** means (a) any and all federal, state, local, foreign and other net income, gross income, gross receipts, sales, use, ad valorem, hospital, provider, unclaimed property, transfer, franchise, profits, license, lease, rent, service, service use, withholding, payroll, employment, excise, severance, privilege, stamp, occupation, premium, property, windfall profits, alternative minimum, estimated, customs, duties or other taxes, fees, assessments or charges of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amounts with respect thereto, (b) any liability for payment of amounts described in clause (a) as a result of transferee liability or otherwise through operation of law, and (c) any liability for the payment of amounts described in clauses (a) or (b) as a result of any tax sharing, tax indemnity or tax allocation agreement or any other express or implied agreement to indemnify any other Person.

**“Tax Returns”** means any return, declaration, report, claim for refund, or information return or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**“Tenant Lease”** means any lease, sublease, license or other contractual obligation pursuant to which a JRMC Party, as tenant or subtenant, currently leases, subleases, licenses or otherwise occupies all or some portion of the Leased Real Property.

**“Term Sheet”** means that certain letter of understanding pertaining to the Transaction as entered into by Highmark and JRMC and dated June 11, 2012.

**“Third Party Lease”** means any lease, sublease, license or other contractual obligation pursuant to which a JRMC Party, as landlord or sublandlord, currently leases, subleases, licenses or otherwise grants to a third party a right to use all or some portion of the Real Property.

**“Title Company”** is defined in Section 6.8.

**“Title Policy”** is defined in Section 6.8.

**“Title IV Plan”** is defined in Section 4.23(d)(v).

**“Transaction”** means, collectively, the transactions contemplated by, or related to, this Agreement, including those described in Article 2.

**“Transaction Documents”** means this Agreement and all documents to be delivered in connection with the Closing.

**“Transfer Taxes”** means any real property, excise, sales, use, documentary, transfer, value added, stock transfer, and stamp Taxes, any transfer, recording, registration, and other fees, and any similar Taxes imposed on the transactions (or deemed transactions) contemplated by, or related to, this Agreement.

**“Treasury Regulations”** means the income tax regulations promulgated under the Code.

**“UPE”** is defined in the preamble to this Agreement.

**“UPE Debt Documents”** is defined in Section 5.10.

**“UPE JRMC Board Appointees”** is defined in Section 2.4.3.

**“UPE Parties”** is defined in the preamble to this Agreement.

**“UPE Provider Sub”** is defined in the preamble to this Agreement.

**“WPAHS”** is defined in Section 2.8 of this Agreement.

## **1.2 Interpretation.**

In this Agreement, unless the context otherwise requires:

- (a) references to this Agreement are references to this Agreement and the Schedules and Exhibits; each Schedule and Exhibit is hereby incorporated by reference into this Agreement and will be considered a part hereof as if fully set forth herein;
- (b) references to sections are references to sections of this Agreement;
- (c) references to any Party to this Agreement shall include references to its respective successors and permitted assigns;

- (d) the terms “hereof,” “herein,” “hereby,” and derivative or similar words will refer to this entire Agreement;
- (e) references to any document (including this Agreement) are references to that document as amended, consolidated or supplemented by the Parties from time to time;
- (f) unless the context requires otherwise, references to any Law are references to that Law as of the Closing Date, and shall also refer to all rules and regulations promulgated thereunder;
- (g) the word “including” shall be interpreted to mean including without limitation;
- (h) references to time are references to Eastern Standard or Daylight time (as in effect on the applicable day) unless otherwise specified herein;
- (i) the gender of all words herein includes the masculine, feminine and neuter, and the number of all words herein includes the singular and plural;
- (j) the terms “date hereof,” “date of this Agreement” and similar terms shall mean the date first written above; and
- (k) the phrases “Parties have delivered,” “Parties have provided,” “Parties have made available” and phrases of similar import shall mean that, prior to the date hereof, the applicable Parties have either (i) delivered to the other Parties a hard or electronic copy of the document or information in question or (ii) made such document or information available to the other Parties via an electronic data room.

### **1.3 Recitals.**

The matters set forth in the Recitals are hereby incorporated into and made a part of this Agreement.

## **ARTICLE 2 TRANSACTION STRUCTURE AND FUNDING COMMITMENTS**

### **2.1 IDFS Structure.**

- (a) UPE was formed on October 20, 2011, by the filing of Articles of Incorporation with the Pennsylvania Department of State. UPE is a Pennsylvania nonprofit corporation without members.
- (b) UPE Provider Sub was formed on October 20, 2011, by the filing of Articles of Incorporation with the Pennsylvania Department of State. UPE Provider Sub is a Pennsylvania nonprofit corporation with UPE as its sole member.

- (c) UPE and UPE Provider Sub were informed by letters dated March 3, 2012, from the Internal Revenue Service that each such corporation had been determined to be exempt from federal income tax under Code Section 501(c)(3) as Type I supporting organizations under Code Section 509(a)(3).

## 2.2 Transfer of Control.

- (a) JRMC and the UPE Parties agree that the Transaction will be facilitated by the JRMC Board of Directors taking such action as may be necessary or appropriate to restructure JRMC as of the Effective Time to be a Pennsylvania nonprofit corporation with members and with UPE Provider Sub being JRMC's sole member (as defined in 15 Pa. C.S.A. § 5103). As set forth in more detail in Section 2.3 and Section 2.4 below, the structure of the Transaction and the resulting allocation of corporate governance authority relating to the JRMC Parties will be facilitated by JRMC creating a new membership class and both UPE and UPE Provider Sub holding reserved powers related to JRMC and the JRMC Subsidiaries.
- (b) Subject to the terms and conditions of this Agreement, effective as of the Effective Time, the JRMC Parties shall take or cause to be taken all such actions as may be necessary or appropriate to (i) transfer, convey and deliver to UPE Provider Sub all membership rights, title and interest in and to JRMC such that UPE Provider Sub will become the sole member of JRMC, and (ii) transfer and convey to UPE and UPE Provider Sub, as determined by the UPE Parties, all such rights, title and interest of or relating to JRMC and the JRMC Subsidiaries, as may be necessary or appropriate, to transfer, convey or deliver to UPE and UPE Provider Sub direct or indirect control over JRMC and the JRMC Subsidiaries and the respective interests of JRMC and the JRMC Subsidiaries in and to the JRMC Affiliates (collectively, the "Transaction"). JRMC will become a direct, wholly controlled subsidiary of UPE Provider Sub as of the Effective Time with all assets and operations of JRMC, the JRMC Subsidiaries and the JRMC Affiliates (to the extent of the interests of JRMC and the JRMC Subsidiaries) becoming part of the IDFS governed by UPE and UPE Provider Sub. Except as otherwise expressly set forth in Section 2.7, none of UPE, UPE Provider Sub or Highmark will assume or become liable for, and the JRMC Parties shall respectively retain, and thereafter remain responsible for paying when due, their respective debts, obligations and liabilities as they exist before, as of, or at any time after the Effective Time.
- (c) Notwithstanding this Section 2.2, the Parties acknowledge the potential that the proposed structure of the Transaction may change if, at the time all conditions precedent to the Closing of the Transaction have been satisfied, UPE has not yet become a member of Highmark. In such an event, the Transaction will be structured and proceed in accord with Section 2.8 hereof.

### **2.3 Amendment of Articles and Bylaws.**

The JRMC Parties agree to take such actions, and JRMC and the JRMC Subsidiaries agree to cause the JRMC Affiliates to take such actions, as shall be necessary to amend their respective Articles of Incorporation and Bylaws (or other comparable organizational documents) effective as of the Effective Time to include the reserved powers to be held by UPE or UPE Provider Sub, as the case may be, and to otherwise be in the form attached hereto as Exhibit B and Exhibit C. To the extent necessary to facilitate the Transaction, Highmark and the JRMC Parties agree to amend their corporate Bylaws, as of the Effective Time to permit a transfer of membership in accord with 15 Pa. C.S.A. § 5766(d).

### **2.4 Governance Structure and Board Composition.**

#### **2.4.1 UPE Corporate Governance Authority.**

In the new IDFS structure, UPE will be positioned as the ultimate parent entity and in such capacity will have and exercise a level of governance authority over entities that participate in the IDFS. Consistent therewith, UPE and UPE Provider Sub will have and exercise those reserved powers related to the JRMC Parties as are set forth on Exhibit D attached hereto.

#### **2.4.2 UPE Provider Sub Board of Directors.**

UPE shall have the sole and exclusive right to elect the individuals who will serve on the Board of Directors of UPE Provider Sub and upon commencing their service on the UPE Provider Sub Board of Directors, such Directors shall serve in office in accordance with the UPE Provider Sub's Articles of Incorporation and corporate Bylaws. The structure and composition of the UPE Provider Sub Board of Directors shall be as determined by UPE in its sole discretion, except that one individual serving at all times on the post-Closing UPE Provider Sub Board of Directors will be a Jefferson JRMC Board Appointee, the appointment of such individual being subject to the approval and election by the UPE Board, such approval to not be unreasonably withheld.

#### **2.4.3 JRMC Board of Directors.**

Effective upon the Closing, the structure and composition of the JRMC Board of Directors will change such that as of the Effective Time (i) UPE will elect five (5) individuals (the "UPE JRMC Board Appointees") to serve on the post-closing JRMC Board, each of which will be entitled to cast ten (10) votes on each matter considered by the JRMC Board, and (ii) the pre-Closing JRMC Board will elect eighteen (18) individuals (the "Jefferson JRMC Board Appointees") to serve on the initial post-Closing JRMC Board, each of which will be entitled to cast one (1) vote on each matter considered by the JRMC Board. The initial eighteen (18) post-Closing Jefferson JRMC Board Appointees will be the eighteen (18) individuals serving on the JRMC Board on the Closing Date. At least two (2) of the Jefferson JRMC Board Appointees shall be physicians on the JRMC medical staff and at least one (1) of the Jefferson JRMC Board Appointees shall be a Sister of the Community of Sisters of St. Joseph. The size of the JRMC Board will be reduced over time contemporaneous with the expiration of each term of service of the eighteen (18) Jefferson JRMC Board Appointees, until there are only six (6) initial Jefferson JRMC Board Appointees remaining. Notwithstanding the prior sentence, and only with regard

to the initial eighteen (18) post-Closing Jefferson JRMC Board Appointees, if any such Board member's term expires on June 30, 2013 and such Board member would otherwise be eligible to be re-elected (i.e. would not be ineligible due to term limits), then such Board member may serve an additional three (3) year term on the Board and the size of the JRMC Board will not be reduced on account of such Board member until his or her additional three (3) year term expires. At such time as there are only six (6) remaining Jefferson JRMC Board Appointees, such six (6) individuals will comprise a self-perpetuating class of JRMC Directors that will by majority vote elect their respective successors on the JRMC Board, provided however, that two (2) of such individuals shall be the President and Vice President, respectively, of the JRMC Medical Staff. As the number of Jefferson JRMC Board Appointees is reduced, the number of votes exercised by each UPE JRMC Board Appointee shall be proportionally reduced such that at all times the appropriate number of aggregate JRMC Board votes authorized to be cast by the UPE JRMC Board Appointees is as close as possible to seventy-five (75%) percent (but never eighty (80%) or more) of the total authorized JRMC Board votes. The initial post-Closing Bylaws of JRMC will allow for non-voting emeritus Board members.

The following actions of the JRMC Board of Directors shall require the approval of a majority of the Jefferson JRMC Board Appointees: (1) approval and replacement of Jefferson JRMC Board Appointees; (2) any decision that would terminate any currently performed clinical services provided by JRMC at the time of Closing prior to the expiration of the five (5) year period set forth in Section 7.4.1 of this Agreement; and (3) any amendment that diminishes the rights of the Jefferson JRMC Board Appointees (including any amendment which would reduce the number of Jefferson JRMC Board Appointees other than pursuant to the process outlined in this Section 2.4.3) as described in the JRMC Articles of Incorporation and Bylaws that will be effective as of the Closing.

Notwithstanding the reserved powers of UPE and UPE Provider Sub as set forth as Exhibit D, a unanimous approval of all of the Directors of JRMC shall be required before corporate action may be taken relative to the following: (i) eliminating the requirement that at least one of the Jefferson JRMC Board Appointees be a Sister of the Community of Sisters of St. Joseph; (ii) eliminating the requirement that JRMC, either directly or through a subsidiary, always maintain primary care and other desirable services in the Homestead, Pennsylvania community; and (iii) amending those specific provisions of the JRMC Articles of Incorporation set forth in Articles 8, 10, and 11 thereof as filed with the Pennsylvania Department of State on June 28, 2002 (except that the Parties agree that the reference in said Article 8 to "member" shall be amended to read "director" and the description of services set forth in Article 11 will be amended to be consistent with subsection (ii) of this paragraph).

## **2.5 Funding Commitments.**

Subject to the terms and conditions of this Agreement, the Parties agree and acknowledge, to the extent set forth below, that UPE or UPE Provider Sub (or Highmark if both UPE and UPE Provider Sub do not have sufficient financial capacity) will provide funding as described below (the "Funding Commitments"), further subject to the following:

### **2.5.1 Facilities Projects and Capital Commitments.**

To ensure that Highmark's subscribers/policyholders will continue to have meaningful choices with respect to where they obtain their health care services by preserving and enhancing the continued option of JRMC as a health care resource for the benefit of such subscribers/policyholders and the community, Highmark will make available to JRMC grants in an aggregate amount up to \$100 million to finance those capital expenditure projects specifically described on Exhibit E. Notwithstanding the foregoing, at the Closing there shall be an initial grant in the amount of \$21 million (from the up to \$100 million aggregate amount) which shall be an unrestricted contribution to JRMC and utilized for such charitable purposes as JRMC determines. The UPE Parties and JRMC will use their respective commercially reasonable efforts to assure that the capital expenditure projects described in Exhibit E will be completed within a three-year timeframe following the Closing. It is understood that Bethel Park Ambulatory Surgery/Outpatient Center and the Emergency Department project will be priorities, with a goal that such projects will be substantially completed within eighteen (18) months of the Closing. The grants (other than the initial grant described above) will only be made available to JRMC to the extent that JRMC is unable to fund the capital expenditure projects from its future cash flows from operations (determined in accordance with GAAP) and shall only be payable upon receipt of a request submitted by JRMC to Highmark, accompanied by a calculation of the current cash flow from operations. Highmark will exert commercially reasonable efforts to respond to each such request within ten (10) business days following receipt. It is anticipated that, through Highmark health insurance product design and the creation of additional service lines at JRMC, JRMC's cash flow will be enhanced to help cover a portion of the capital expenditures. Operating cash flow (which will exclude the initial \$21MM grant) will be used to fund JRMC operations first, routine and replacement capital second, with excess operating cash flow being used to fund the projects listed on Exhibit E. For further clarification, to the extent that at any time before the completion of the capital expenditure projects referenced on Exhibit E, JRMC has operating cash flow that exceeds any amounts used to fund the capital expenditure projects, such excess funds will be made available to Highmark for such uses as Highmark may determine.

### **2.5.2 Commitment to Community Foundation.**

At and after the time of Closing, Highmark will make a monetary contribution in the amount of \$75 million to JRMC Foundation, payable as follows: (i) \$15 million at the time of Closing; (ii) \$30 million on the first business day of 2013; and (iii) \$30 million on the first business day of 2014. Any such funds that are not paid until after the first business day of 2013 shall be payable with interest at a rate of 7.0% per annum calculated from the first business day of 2013, by wire transfer of immediately available funds to such account as is designated by JRMC Foundation, which funds shall be used, consistent with the JRMC Foundation's charitable corporate purposes and IRS regulations applicable to Code section 509(a)(3) supporting organizations, to support activities and ventures that supplement and/or complement the activities of JRMC, including the Permitted Activities, and not those or any other activities, ventures or services conducted by other health care systems, providers or services. Effective as of the Closing, JRMC and JRMC Foundation shall take actions, as necessary, to amend the Articles of Incorporation and Bylaws of the JRMC Foundation to be in the form attached as Exhibit F. Effective as of and at all times after the Closing, the individuals elected by UPE to

serve on the Board of JRMC shall have the ability to appoint twenty-five percent (25%) of the directors of the JRMC Foundation Board either from members of the Highmark Foundation Board or Highmark executives or management, including those involved with the Highmark Foundation and the Highmark community affairs department. Said appointees to the JRMC Foundation Board will be subject to the approval of the JRMC-appointed Board members serving on the JRMC Foundation Board, which approval shall not be unreasonably withheld.

### **2.5.3 New Foundation**

In the event that, prior to the Closing, consent to the withdrawal of JRMC Foundation from the Obligated Group (as defined in the JRMC Tax-Exempt Bond Documents) is not obtained, then JRMC may establish a new foundation meeting the requirements of Code section 509(a)(3) as a supporting organization of JRMC. In that event, all references in this Agreement to JRMC Foundation shall be interpreted as referring to such new foundation.

## **2.6 Ownership of Assets and Liabilities.**

Immediately after the Closing, the Assets and liabilities of the JRMC Parties (including, without limitation, the JRMC Parties' obligations and liabilities associated with the JRMC Tax Exempt Bonds, JRMC Taxable Debt and all obligations and liabilities of the JRMC Parties associated with the Plans) will continue to be owned by and be obligations of the JRMC Parties, subject to changes in the ordinary course of business and the other provisions of this Agreement. Any post-Closing disposition of JRMC Assets and liabilities, if any, shall comply with the terms and conditions of the Master Indenture, applicable tax requirements and the covenants set forth in the documents related to the outstanding tax-exempt bonds issued for the benefit of or incurred by any of the JRMC Parties or for which any of the JRMC Parties is liable as identified on Schedule 2.6 (collectively, the "JRMC Tax-Exempt Bonds"), as well as any indebtedness or financing which is not tax-exempt financing ("JRMC Taxable Debt").

## **2.7 Debt, Pension and All Other Liabilities of JRMC.**

At the time of and following the Closing, Highmark will guarantee the payment of debt, pension, and all other liabilities of JRMC on the books of JRMC as of March 31, 2012, or provide another structural solution that provides JRMC with the same financial support, consistent with applicable regulatory and tax obligations; provided however, that such guarantee or other structural solution shall not extend or apply to any material increases in debt, pension, or other liabilities of JRMC that (i) were not accounted for in JRMC's financial statements dated March 31, 2012, and that exceed \$5 million in the aggregate, or (ii) were within the control of JRMC and resulted from actions of JRMC outside the ordinary course of business or inconsistent with past practices. For purposes of this section, JRMC's investment performance and change in interest rates that impact on JRMC's variable rate debt and pension obligations shall not be deemed to be "within the control of JRMC."

## **2.8 Potential for Successive Closings.**

If, at the time all conditions precedent to the Closing of the Transaction have been satisfied or waived, UPE has not yet become a member of Highmark as a result of the pending transaction between the UPE Parties and West Penn Allegheny Health System, Inc., a

Pennsylvania nonprofit corporation (“WPAHS”), the Parties agree that the structure of the Transaction will be modified for an interim period, at a minimum, such that Highmark or, if necessary to satisfy applicable laws and regulations, a Highmark subsidiary, will become the sole member of JRMC as will be reflected in amendments to JRMC’s Articles of Incorporation and Bylaws (the “Primary Closing”). In the event of such a modification, all provisions of this Agreement that (i) refer to rights and obligations of UPE and UPE Provider Sub, including all those rights and obligations described in Article 2 of this Agreement, shall be interpreted as referring to rights and obligations of Highmark or the Highmark subsidiary, as determined by Highmark and subject to applicable laws and regulations, and (b) all references in this Agreement to Closing and Closing Date shall be interpreted as referring to the Primary Closing and date of the Primary Closing. Notwithstanding the preceding sentence, the obligations set forth in Section 2.7 shall be and remain obligations of Highmark at the time of and following the Primary Closing. If, after the Primary Closing, UPE becomes a member of Highmark as a result of the consummation of the transaction between the UPE Parties and WPAHS, the Parties will take all actions necessary as soon as reasonably practicable to modify the governance structure of JRMC so that UPE Provider Sub will become the sole member of JRMC with JRMC’s Articles of Incorporation and Bylaws being amended accordingly (the “Subsequent Closing”). From and after the date of such Subsequent Closing, this Agreement is to be read and applied literally and all those rights and obligations (except those fully discharged by Highmark or a Highmark subsidiary prior to the date of the Subsequent Closing) which pursuant to the provisions of this Agreement inure to the benefit or detriment of a respective UPE Party or JRMC Party shall apply to the UPE Party or JRMC Party specifically referenced, as dictated by the terms of this Agreement.

### **ARTICLE 3 CLOSING**

#### **3.1 Closing.**

Subject to the satisfaction or waiver by the appropriate Party of all the conditions precedent to the Closing specified in Article 8 and Article 9 hereof, the consummation of the Transaction (the “Closing”) shall take place at the offices of Buchanan Ingersoll & Rooney PC, located at One Oxford Centre, 301 Grant Street, 20th Floor, Pittsburgh, PA 15219-1410 at 9:00 a.m. local time not later than five (5) business days after the conditions set forth in Article 8 and Article 9 have been satisfied or waived or at such other date and/or at such other location as the Parties hereto may mutually designate in writing (the “Closing Date”). The Parties will endeavor to have the Closing occur at the end of a month for ease of transition. The Transaction shall be effective for accounting purposes as of 12:01 a.m., prevailing Eastern Time, on the calendar day immediately following the Closing Date (the “Effective Time”).

#### **3.2 Actions of the JRMC Parties at the Closing.**

At or before the Closing and unless otherwise waived in writing by Highmark, the JRMC Parties shall deliver the following to the UPE Parties, duly executed by JRMC, the JRMC Subsidiaries and the JRMC Affiliates, as appropriate.

- (a) Articles of Amendment (or comparable organizational document) of JRMC and the JRMC Subsidiaries consistent with the forms attached as Exhibit B, all duly executed and otherwise in compliance with all requirements for filing with the Pennsylvania Department of State;
- (b) Amended and Restated Bylaws of JRMC and the JRMC Subsidiaries consistent with the forms attached as Exhibit C;
- (c) Articles of Amendment of JRMC Foundation duly executed and otherwise in compliance with all requirements for filing with the Pennsylvania Department of State and Amended and Restated Bylaws of JRMC Foundation, both such documents being consistent with the forms attached as Exhibit F;
- (d) Copies of resolutions duly adopted by the Board of Directors and members, as applicable, of each JRMC Party authorizing and approving such JRMC Party's performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date, by the appropriate officers of each JRMC Party;
- (e) A certificate of each JRMC Party, certifying that the conditions set forth in Section 8.1 and Section 8.2 have been satisfied.
- (f) Certificates of incumbency for the respective officers of each JRMC Party executing this Agreement or any other document contemplated herein dated as of the Closing Date;
- (g) Certificates of existence and good standing (or the equivalent as available in the applicable jurisdiction) of each JRMC Party, certified by the Secretary of State of each entity's state of incorporation or organization as of the most recent practicable date prior to Closing;
- (h) Copies of the Articles of Incorporation (or other comparable organizing document) and all amendments thereto of each JRMC Party, duly certified by the Secretary of State of each entity's state of incorporation or organization as of the most recent practicable date prior to Closing;
- (i) To the extent necessary or appropriate, duly executed assignments of membership or other evidence of the irrevocable transfer, conveyance and delivery of all membership rights, title and interest in JRMC to the UPE Provider Sub to evidence the UPE Provider Sub as the sole member of JRMC;
- (j) Consents and waivers from third parties in form and substance reasonably satisfactory to the UPE Parties from those parties from whom, in the reasonable opinion of the UPE Parties, such consents and waivers are required in order to give effect to the Transaction and to assure that all the JRMC Assets and Contract rights remain with the JRMC Parties after the Closing;
- (k) The opinion of JRMC's legal counsel in the form attached as Exhibit G;

- (l) The opinion of nationally recognized bond counsel to JRMC as referenced in Section 6.6, addressed to the UPE Parties, to the effect that the Transaction (i) will not adversely affect the tax-exempt status of the JRMC Tax-Exempt Bonds, and (ii) will not result in an Event of Default under the Master Indenture, or any of the other documents associated with the JRMC Tax-Exempt Bonds;
- (m) Internal Revenue Service determination letters setting forth the Code § 501 (c)(3) tax-exempt status of JRMC and each of the other Code § 501 (c)(3) JRMC Parties which are listed on Schedule 3.2(m); and
- (n) The non-blocked person affidavits of the JRMC Parties as described in Section 4.19(g);
- (o) A roster of the Jefferson JRMC Board Appointees (as well as the name of the Jefferson JRMC Board Appointee who will serve on the UPE Provider Sub Board), together with certified resolutions of the pre-Closing JRMC Board of Directors approving their designation to serve on the post-Closing JRMC Board of Directors, effective as of the Effective Time; and
- (p) Such other instruments and documents as the UPE Parties deem reasonably necessary to complete the Transaction; provided, that such other instruments or documents shall be consistent with the Parties' existing agreements and covenants hereunder and shall not materially alter such agreements and covenants.

### **3.3 Actions of the UPE Parties at the Closing.**

At or before the Closing and unless otherwise waived in writing by JRMC, the UPE Parties, as noted below, shall deliver to the JRMC Parties the following, duly executed by the UPE Parties, or take the other actions noted, as applicable:

- (a) A wire transfer of immediately available funds in the amount of \$15 million paid by Highmark as a monetary contribution to the JRMC Foundation to be used for those purposes described in Section 2.5.2 of this Agreement;
- (b) Highmark will make an unrestricted contribution to JRMC in the amount of \$21 million payable by wire transfer of immediately available funds to be utilized for such charitable purposes as JRMC determines, in accordance with Section 2.5.1 hereof;
- (c) Copies of resolutions duly adopted by the Board of Directors and members, as applicable, of the UPE Parties, authorizing and approving such UPE Parties' performance of the Transaction and the execution and delivery of this Agreement and the documents described herein, certified as true and in full force and effect as of the Closing Date by appropriate officers of each UPE Party;
- (d) A certificate of each UPE Party certifying that the conditions set forth in Section 9.1 and Section 9.2 have been satisfied;

- (e) Certificates of incumbency for the respective officers of each UPE Party executing this Agreement or any other document contemplated herein dated as the Closing Date;
- (f) Certificates of existence and good standing (or the equivalent as available in the applicable jurisdiction) of each UPE Party, certified by the Secretary of State of each entity's state of incorporation dated the most practicable date prior to the Closing Date;
- (g) Copies of the Articles of Incorporation (or other comparable organizing document) and all amendments thereto of each of the UPE Parties, duly certified by the Secretary of State of each entity's state of incorporation or organization as of the most recent practicable date prior to Closing;
- (h) The opinion of Highmark's legal counsel in the form attached as Exhibit H;
- (i) Internal Revenue Service determination letters setting forth the Code § 501(c)(3) tax-exempt status and Code § 509(a)(3) supporting organization status of UPE and UPE Provider Sub;
- (j) A roster of UPE JRMC Board Appointees, together with certified resolutions of the UPE Board of Directors electing such individuals to serve on the post-Closing JRMC Board of Directors, effective as of the Effective Time; and
- (k) Such other instruments and documents as the JRMC Parties deem reasonably necessary to complete the Transaction; provided, that such other instruments or documents shall be consistent with the Parties' existing agreements and covenants hereunder and shall not materially alter such agreements and covenants.

### **3.4 Additional Acts.**

From time to time after the Closing, each JRMC Party shall execute and deliver such other instruments of transfer and conveyance, and take such other actions as any of the UPE Parties may reasonably request, to evidence the Transaction.

## **ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF THE JRMC PARTIES**

As of the date hereof and as of the Closing Date (except to the extent any of the following refers to a specific date, such as the date hereof), each JRMC Party represents and warrants to each UPE Party the following:

### **4.1 Organization; Capacity.**

Each JRMC Party is a corporation or limited liability company duly organized and validly existing and in good standing under the laws of the state of its incorporation or organization. Each JRMC Party is duly authorized, qualified to do business and in good standing under all applicable Laws of any Governmental Authority having jurisdiction over the

Programs (the “Program Agreements”). The JRMC Parties have delivered accurate and complete copies of all such Program Agreements to the UPE Parties. The Facilities are in compliance in all material respects with the conditions of participation in the Government Programs and with the terms, conditions, and provisions of the Program Agreements. The Program Agreements are each in full force and effect, and no events or facts exist that would cause any Program Agreement to be suspended, terminated, restricted, withdrawn, or subjected to an admissions hold or to not remain in force or effect after the Closing.

- (b) The JRMC Parties have received all approvals or qualifications necessary for reimbursement of the Facilities by the Government Programs. All billing practices of the JRMC Parties to all third party payors, including, but not limited to, the Government Programs and private insurance companies, have been conducted in compliance with all applicable Laws and the billing guidelines of such third party payors.
- (c) No JRMC Party has received notice of any Proceeding, survey, or other action pending, or, to the JRMC Parties’ Knowledge, threatened, involving any of the Government Programs or any other third party payor programs, including the Facilities’ participation in and the reimbursement received by the JRMC Parties and the Facilities from the Government Programs or any such program.
- (d) Schedule 4.10 contains a list of all National Provider Identifiers and all provider numbers of the JRMC Parties and the Facilities under the Government Programs, all of which are in full force and effect.

#### **4.11 Third Party Payor Cost Reports.**

The JRMC Parties have timely filed all required cost reports for all fiscal years through and including the fiscal year ended June 30, 2011, and copies of all Cost Reports filed by or on behalf of each Facility since 2008 have been provided to the UPE Parties. To the JRMC Parties’ Knowledge, all cost reports accurately reflect the information required to be included therein. The JRMC Parties have established adequate reserves to cover any potential reimbursement obligations that the JRMC Parties have reason to anticipate in respect of any cost reports, and such reserves are accurately set forth in the JRMC Historical Financial Information.

#### **4.12 Regulatory Compliance.**

Except as set forth on Schedule 4.12, for the prior two (2) years:

- (a) Neither the JRMC Parties nor the Facilities, nor to the JRMC’s Parties’ Knowledge, any of their respective officers, directors or employees, have been convicted of, charged with, investigated for, or have engaged in conduct that would constitute, a Medicare or other Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7(b)(f)) related offense or convicted of, charged with investigated for, or engaged in conduct that would constitute a violation of any Law related to fraud, theft, embezzlement, breach of fiduciary duty, kickbacks, bribes, other financial misconduct, obstruction of an investigation or controlled

substances. Neither the JRMC Parties, nor the Facilities, nor to the JRMC Parties' Knowledge, any officer, director or employee of the JRMC Parties or the Facilities (whether an individual or entity), has been excluded from participating in any Government Program, subject to sanction pursuant to 42 U.S.C. § 1320a-7a or § 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b, nor are any such exclusions, sanctions or charges threatened or pending.

- (b) The JRMC Parties, the Facilities and the JRMC Assets have been and are presently in all material respects in compliance with all applicable Law, including, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended, ("Stark Law"), 42 U.S.C. § 1395nn; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; Information Privacy or Security Laws; and any corresponding state statutes and applicable implementing regulations that address the subject matter of the foregoing.
- (c) Neither the JRMC Parties, nor the Facilities, have received any communication from a Governmental Authority or commercial payor that alleges the Facilities or the JRMC Assets are not in compliance with any Law, other than statements of deficiencies from a Governmental Authority received in the ordinary course of business.
- (d) To the JRMC Parties' Knowledge, all of the JRMC Parties' and the Facilities' contracts with physicians, other health care providers, or immediate family members of any physicians or other health care providers or entities in which physicians, other health care providers, or immediate family members of any physicians or other health care providers are equity owners involving services, supplies, payments, or any other type of remuneration, and all of the JRMC Parties' and the Facilities' leases of personal or real property with such physicians, health care providers, immediate family members or entities are in material compliance with all applicable Laws, and when required by such applicable Laws, are in writing, are signed by the appropriate parties, set forth the services to be provided, and provide for a fair market value compensation in exchange for such services, space, or goods.
- (e) Except in compliance with applicable Law, neither the JRMC Parties, nor, to the JRMC Parties' Knowledge, any of their officers, directors or employees is a party to any contract, lease agreement or other arrangement (including any joint venture or consulting agreement) related to the JRMC Parties or the JRMC Assets with any physician, physical or occupational therapist, health care facility, hospital, nursing facility, home health agency or other person or entity that is in a position to make or influence referrals to or otherwise generate business for any JRMC

Party with respect to the JRMC Assets, to provide services or lease space or equipment.

- (f) To the JRMC Parties' Knowledge, none of the JRMC Parties, the Facilities, or any of the JRMC Parties' officers, directors, or managing employees, have engaged in any activities that are prohibited under 42 U.S.C. §§ 1320a-7 et seq., or the regulations promulgated thereunder, or under any other federal or state statutes or regulations, or which are prohibited by applicable rules of professional conduct.
- (g) The JRMC Parties and the Facilities have conducted their operations in all material respects in accordance with their respective compliance programs. No JRMC Party (i) is a party to a Corporate Integrity Agreement with the U.S. Department of Health and Human Services Office of Inspector General ("OIG"); (ii) has reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority; (iii) has been the subject of any Government Program investigation conducted by any federal or state enforcement agency (not including routine or random surveys, audits or reviews which do not or reasonably should not result in findings materially adverse to the relevant JRMC Party); (iv) has been a defendant in any qui tam/False Claims Act litigation (other than by reason of a sealed complaint of which the JRMC Party may have no Knowledge); or (v) has been served with or received any search warrant, subpoena, or civil investigation demand by or from any federal or state enforcement agency (except in connection with medical services provided to third-parties who may be defendants or the subject of investigations into conduct unrelated to the Business). For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in compliance guidance published by the OIG.

#### **4.13 Information Privacy and Security Compliance.**

- (a) The JRMC Parties and the Facilities (i) to the extent their operations are subject to the administrative simplification provisions of HIPAA, and the implementing regulations contained in 45 C.F.R. Parts 160, 162 and 164, are in compliance with those administrative simplification provisions and implementing regulations, including, without limitation, in conducting any of the standard transactions set forth in 45 C.F.R. Part 162, and (ii) are in compliance with all other applicable Information Privacy or Security Laws.
- (b) The JRMC Parties have provided to the UPE Parties accurate and complete copies of the compliance policies and/or procedures and privacy notices of the Facilities relating to Information Privacy or Security Laws. All of the JRMC Parties' and the Facilities' workforce (as such term is defined in 45 C.F.R. § 160.103) have received training with respect to compliance with Information Privacy or Security Laws.

#### **4.14 Medical Staff Matters.**

The JRMC Parties have made available to the UPE Parties true, correct and complete copies of the bylaws and rules and regulations of the medical staff of the Facilities, as well as a list of all current members of the Facilities' medical staffs. Except as summarized on Schedule 4.14, there are no (i) pending or threatened adverse actions with respect to any medical staff member of the Facilities or any applicant thereto, including any adverse actions for which a medical staff member or applicant has requested a judicial review hearing that has not been scheduled or that has been scheduled but has not been completed, (ii) pending or threatened disputes with applicants, staff members or health professional affiliates, and all appeal periods in respect of any medical staff member or applicant against whom an adverse action has been taken have expired, or (iii) medical staff members of the Facilities that have resigned or had their privileges revoked or suspended since the Balance Sheet Date.

#### **4.15 Statutory Funds.**

No JRMC Party, nor any of its predecessors, has received any loans, grants, loan guarantees, donations, monies, or other financial assistance pursuant to the Hill-Burton Act program, the Health Professions Educational Assistance Act, the Nurse Training Act, the National Health Planning and Resources Development Act, or the Community Mental Health Centers Act, as amended, or similar laws or acts relating to health care facilities that remain unpaid or which impose any restrictions on the Facilities or the JRMC Assets.

#### **4.16 Intellectual Property.**

Except as set forth on Schedule 4.16, the JRMC Parties own, or will own, or are licensed or will be licensed or otherwise possess or will possess all necessary rights to use, all of the Intellectual Property.

- (a) To the Knowledge of the JRMC Parties, there is no unauthorized use, disclosure, infringement or misappropriation of any Intellectual Property rights of any JRMC Party, any trade secret material to any JRMC Party, or any Intellectual Property right of any third party to the extent licensed by or through any JRMC Party, by any third party, including any employee or former employee of any JRMC Party, relating in any way to any of the JRMC Assets. Except as set forth on Schedule 4.16, there are no royalties, fees or other payments payable by any JRMC Party, to any Person by reason of the ownership, use, sale or disposition of Intellectual Property related to any of the JRMC Assets.
- (b) Except as set forth on Schedule 4.16, no JRMC Party is, nor will be as a result of the execution and delivery of this Agreement or any of the documents described herein or the performance of its obligations under this Agreement or any of the documents described herein, in material breach of any Contract relating to the Intellectual Property or the Intellectual Property rights of any third party related to any of the JRMC Assets.
- (c) Except as set forth on Schedule 4.16, no JRMC Party has any patents, registered trademarks, registered service marks or registered copyrights related to any of the

JRMC Assets. Except as set forth on Schedule 4.16, no JRMC Party has been served with process in any Proceeding that involves a claim of infringement of any patents, trademarks, service marks, copyrights or violation of any trade secret or other proprietary right of any third party related to any of the JRMC Assets, the Business does not infringe any Intellectual Property or other proprietary right of any third party, and no JRMC Party has brought any Proceeding for infringement of Intellectual Property or breach of any license or Contract involving Intellectual Property related to any of the JRMC Assets against any third party.

#### **4.17 Contracts.**

Schedule 4.17 includes a complete and accurate description of all Contracts that (i) are entered into by a JRMC Party with a physician or doctor of osteopathic medicine or any other party which to the Knowledge of JRMC is owned in whole or in part by a physician or doctor of osteopathic medicine, (ii) contain any restrictive covenant, change of control or other Contract provision that would trigger any modification or termination of the Contract or that require the consent from or notice to any third party to the Contract as a result of the Transaction; (iii) involve the payment or receipt of more than \$100,000 annually and have a remaining term of one (1) year or more, and/or (iv) create rights or obligations between or among any of the JRMC Parties or between or among any of the JRMC Parties and JRMC Affiliates that involve the payment or receipt of more than \$100,000 annually (the Contracts described in Section 4.17(i)-(iv) above are collectively referred to herein as the “Material Contracts”). Schedule 4.17 identifies with respect to each Material Contract appearing thereon the applicable criteria noted in Section 4.17(i)-(iv) above that requires listing on Schedule 4.17, the date and title of the Material Contract and the parties thereto. The JRMC Parties have delivered or otherwise made available to the UPE Parties accurate and complete copies of all Contracts. In addition to the foregoing:

- (a) The Contracts constitute valid and legally binding obligations of the parties thereto and are enforceable in accordance with their terms, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors’ rights generally or by general principles of equity;
- (b) Each Contract constitutes the entire agreement by and between the respective parties thereto with respect to the subject matter of such Contract;
- (c) Each JRMC Party and, to the Knowledge of the JRMC Parties’, each other party to each Material Contract is in full compliance with the material terms of the applicable Material Contract, and no condition exists or event has occurred (or failed to occur) which, alone or with the giving of notice, the lapse of time or both would constitute a material default or a claim of excusable delay or non-performance under any of the Contracts. Each Contract is now and will be upon and after the Closing Date in full force and effect without default on the part of the parties thereto;
- (d) The completion of the Transaction will not result in any penalty, premium or variation of the rights, remedies, benefits or obligations of any party under any of

the Material Contracts, except for those Material Contracts listed on Schedule 4.17 under heading (ii) thereof;

- (e) The JRMC Parties have not given or received any correspondence or other written notice with respect to any actual, alleged or potential violation, breach or default under or any demand for renegotiation or termination with respect to any Material Contract;
- (f) Except as listed on Schedule 4.17(f), no Material Contract contains any (i) non-competition restriction, (ii) take-or-pay arrangement or (iii) other term that, in the case of (i), (ii) or (iii), requires the Business to deal exclusively with a particular party with respect to particular goods or services; and
- (g) Each Material Contract was entered into in the ordinary course of business and without the commission of any act, or any consideration having been paid or promised, which is or would be in violation of any Law.

#### **4.18 Personal Property.**

Schedule 4.18 includes a list of the Personal Property having a net book value in excess of \$250,000 as of the Balance Sheet Date which, to the JRMC Parties, is accurate and complete. All Personal Property is in good operating condition and repair, except for ordinary wear and tear. As of the Closing, all Personal Property will be free and clear of Encumbrances, other than the Permitted Encumbrances. No Person other than a JRMC Party owns any Personal Property situated on the Real Property, except for (a) items leased by a JRMC Party or improvements to items leased by a JRMC Party pursuant to a lease agreement identified on Schedule 4.18, (b) furniture and equipment owned or leased by physicians leasing space in the Real Property pursuant to a lease agreement identified on Schedule 4.18; and (c) personal property of the JRMC Parties' employees, patients or visitors.

#### **4.19 Real Property.**

- (a) Schedule 4.19(a) sets forth a true, correct and complete list of the addresses of each parcel of Owned Real Property and all such Owned Real Property is owned by the JRMC Parties free and clear of all Encumbrances, except for Permitted Encumbrances.
- (b) Schedule 4.19(b) sets forth a true, correct and complete list of the addresses of all of the Leased Real Property and identifies each Tenant Lease under which such Leased Real Property is occupied or used by any JRMC Party, including the date of and name of each of the parties to such Tenant Lease. JRMC Party holds good and marketable leasehold title to each parcel of the Leased Real Property.
- (c) Schedule 4.19(c) sets forth a true, correct and complete list and of all existing Third Party Leases, including the following information with respect to each: (i) the premises covered; (ii) the date; (iii) the name of the record tenant, licensee or occupant; (iv) the commencement date and; (v) either the expiration date or its status as a month to month tenancy.

- (d) The JRMC Parties have made available to the UPE Parties accurate and complete copies of the Tenant Leases and Third Party Leases, in each case as amended or otherwise modified and in effect, together with any extension notices, as applicable.
- (e) The JRMC Parties have not received written notice from any Governmental Authority of (and otherwise have no Knowledge of): (i) any pending or threatened condemnation Proceedings affecting the Real Property, or any part thereof; or (ii) any material violations of any Laws (including zoning and land use ordinances) with respect to the Real Property, or any part thereof, which have not heretofore been cured.
- (f) Except as set forth on Schedule 4.19(f), as of the Closing there will be no incomplete construction projects affecting the Real Property.
- (g) No JRMC Party is, nor will become, a Person or entity with whom U.S. persons are restricted from doing business under regulations of the Office of Foreign Asset Control (“OFAC”) of the United States Department of the Treasury (including those named on OFAC’s Specially Designated and Blocked Persons list) or under any statute, executive Order (including Executive Order November 13224 on Terrorism Financing, effective September 24, 2001), or the United and Strengthening America by Providing Tools Required to Intercept and Obstruct Terrorism Act of 2001, H.R. 3162, Public Law 107-56, or any other governmental action. At the Closing, each JRMC Party shall execute and deliver to the UPE Parties affidavits certifying that it is not a “blocked person” under Executive Order 13224, which form shall be acceptable to the UPE Parties.
- (h) All improvements, including all utilities which are a part of the Real Property, have been substantially completed and installed in accordance with the plans and specifications approved by the Governmental Authorities having jurisdiction, to the extent applicable.
- (i) Except as set forth on Schedule 4.19(i), no JRMC Party has received written notice from any Governmental Authority that the improvements which are a part of the Real Property, as designed and constructed, do not comply with all Laws applicable thereto, including but not limited to the Americans with Disabilities Act, as amended, and Section 504 of the Rehabilitation Act of 1973.
- (j) The existing water, sewer, gas and electricity lines, storm sewer and other utility systems on the Real Property are, as of the date hereof, adequate to serve the utility needs of the Real Property. All approvals, licenses and permits required for said utilities have been obtained and are in force and effect. All of said utilities are installed and operating, and all installation and connection charges have been paid in full.
- (k) No JRMC Party has received written notice from any Governmental Authority that the location, construction, occupancy, operation and use of the Real Property

Business and to own its properties and conduct its business in the place and manner now conducted. The JRMC Parties have the requisite power and authority in its own name and on behalf of the other JRMC Parties to enter into this Agreement and the other Transaction Documents and to perform their obligations hereunder and thereunder. The execution and delivery by each JRMC Party of this Agreement and documents described herein to which it is a party, the performance by each JRMC Party of its obligations under the Agreement and documents described herein to which it is a party and the consummation by each JRMC Party of the Transaction, as applicable, have been duly and validly authorized and approved by all necessary corporate actions on the part of each JRMC Party, none of which actions have been modified or rescinded and all of which actions remain in full force and effect.

#### **4.2 Authority; Noncontravention.**

The execution, delivery and performance of the Agreement and each other Transaction Document by each JRMC Party thereto and the consummation by each JRMC Party of the Transaction, as applicable:

- (a) are within each JRMC Party's powers and are not in contravention or violation of the terms of the articles of incorporation or bylaws or other comparable organizational documents of each JRMC Party and have been approved by all requisite corporate action;
- (b) except as set forth on Schedule 4.2(b), do not require that any JRMC Party seek or obtain any Approval of, filing or registration with, the issuance of any Permit by, or make Notice to, any Governmental Authority; and
- (c) assuming the Approvals and Permits set forth on Schedule 4.2(b) are obtained, will not conflict in any material respect with, or result in any violation of or default under (with or without notice or lapse of time or both), or give rise to a right of termination, cancellation, acceleration or augmentation of any obligation or to loss of a material benefit under, or result in the creation of any material Encumbrance (other than Permitted Encumbrances) upon any of the JRMC Assets under (i) any Contract, instrument, indenture, covenant, or understanding to which any of the JRMC Parties is a party, or (ii) assuming the Approvals and Permits set forth on Schedule 4.2(b) are obtained, any Order or Law applicable to any of the JRMC Assets or to which a JRMC Party may be subject.

#### **4.3 Subsidiaries; Minority Interests.**

Except as set forth on Schedule 4.3, no JRMC Party directly or indirectly owns any equity, membership or similar interest in, or any interest convertible into or exchangeable or exercisable for any equity, membership or similar interest in, any corporation, partnership, limited liability company, joint venture or other business association or entity other than publicly traded equities or other equity interests held solely for investment. Except as set forth in Schedule 4.3, each interest set forth on Schedule 4.3 is owned by the JRMC Party free and clear of all Encumbrances except Permitted Encumbrances, is duly authorized, validly existing and non-assessable, and is not subject to any preemptive or subscription rights.

(including the improvements which are a part of the Real Property) violates any applicable Law or determination of any Governmental Authority or any board of fire underwriters (or other body exercising similar functions), judicial precedent or any restrictive covenant or deed restriction (recorded or otherwise) affecting the Real Property or the location, construction, occupancy, operation or use thereof, including, all applicable Laws.

#### **4.20 No Brokers.**

The JRMC Parties have no liability of any kind to any broker, finder or agent with respect to the Transaction.

#### **4.21 Inventory.**

All of the Inventory existing on the date hereof will exist on the Closing Date, except for Inventory exhausted or added in the ordinary course of business between the date hereof and the Closing Date. The quantities of all Inventory are reasonable and justified under the normal operations of each of the Facilities and do not exceed levels that the JRMC Parties reasonably believe will be fully utilized within the ensuing 12-month period.

#### **4.22 Insurance.**

Schedule 4.22 sets forth an accurate and complete list and description of all insurance policies or self-insurance funds maintained by the JRMC Parties as of the date of this Agreement covering the Business and the JRMC Assets.

#### **4.23 Employee Benefit Plans.**

- (a) The JRMC Parties have provided or made available copies of each of the following that is sponsored, maintained or contributed to by any JRMC Party or any ERISA Affiliate, as defined below, for the benefit of the employees of any JRMC Party:
  - i) Each “employee benefit plan” for the benefit of the current or former employees of the JRMC Parties, as such term is defined in § 3(3) of ERISA, including employee benefit plans that are not subject to some or all of the provisions of ERISA (each, a “Plan”); and
  - ii) To the extent applicable to the employees of the JRMC Parties, copies of each material personnel policy, collective bargaining agreement, bonus plan, incentive award, vacation policy, severance pay plan, policy or agreement, deferred compensation agreement, form of consulting agreement, form of employment agreement, dependent care, life insurance program, and each other material employee benefit plan, agreement, arrangement, program, or practice that is not described in Section 4.23(a)(i) (each, a “Benefit Program and Agreement”).

- (b) True, correct and complete copies of each of the Plans and Benefit Programs and Agreements, and related trusts, if applicable, including all amendments thereto, have been furnished or made available to the UPE Parties. JRMC has also furnished or made available to the UPE Parties, with respect to each Plan required to file such report and description, the most recent report on Form 5500 and the summary plan description.
- (c) For purposes of this Agreement, the term “ERISA Affiliate” shall mean any person (as defined in § 3(9) of ERISA) that together with any JRMC Party would be treated as a single employer under § 4001(b) of ERISA, or would be aggregated with any JRMC Party under § 414(b), (c), (m) or (o) of the Code.
- (d) Except as otherwise set forth on Schedule 4.23(d):
  - i) All obligations, whether arising by operation of law or by contract, required to be performed by a JRMC Party in connection with the Plans and the Benefit Programs and Agreements have been performed in all material respects;
  - ii) The JRMC Parties have provided a copy of the most recent favorable determination or opinion letter from the Internal Revenue Service for each Plan intended to be qualified under § 401 of the Code. To the Knowledge of JRMC, since receipt of the most recent favorable determination letters, none of the Plans have been amended or operated in a way that would reasonably be expected to affect adversely such qualified and exempt status;
  - iii) There are no actions, suits, or claims pending (other than routine claims for benefits) or, to the Knowledge of JRMC, threatened against, or with respect to, any of the Plans or Benefit Programs and Agreements or their assets, other than with regard to Plans, routine claims for benefits;
  - iv) All contributions required to be made to the Plans and Benefit Programs and Agreements pursuant to their terms and provisions have been timely made or reserved;
  - v) As to any Plan, subject to Title IV of ERISA (“Title IV Plan”), there has been no event or condition that presents the material risk of any Title IV Plan termination, no funding deficiency, whether or not waived, within the meaning of § 302 of ERISA or § 412 of the Code has been incurred, no reportable event within the meaning of § 4043 of ERISA (for which the disclosure requirements of Regulation §2615.3 promulgated by the Pension Benefit Guaranty Corporation (“PBGC”) have not been waived), other than as a result of the Transaction, has occurred, no notice of intent to terminate any Title IV Plan has been given under § 4041 of ERISA, no Proceeding has

been instituted under § 4042 of ERISA to terminate any Title IV Plan, no liability to the PBGC has been incurred, and the assets of each Title IV Plan equal or exceed the actuarial present value of the benefit liabilities under the Plan, determined based on the actuarial assumptions set forth in the most recent actuarial valuation performed with respect to such Plan; and, provided further, there is no material risk that any JRMC Party has any liability with respect to any plan subject to Title IV maintained by any former ERISA Affiliate (with respect to that period in which such former ERISA Affiliate was an ERISA Affiliate);

- vi) There is no matter pending (other than routine qualification determination filings) with respect to any of the Plans or Benefit Programs or Agreements before the Internal Revenue Service, the Department of Labor or the PBGC;
  - vii) No JRMC Party has any liability, contingent or otherwise, relating to a Title IV Plan that is a “multiemployer plan” as defined in § 3(37) of ERISA; and
  - viii) No JRMC Party maintains or contributes to any defined benefit pension plan that is not a Title IV Plan.
- (e) Except as otherwise set forth on Schedule 4.23(e), no JRMC Party is a party to any agreement, nor has any such entity established any policy or practice, requiring it to make a payment or provide any other form of compensation or benefit to any Person performing services for any JRMC Party upon termination of such services which would not be payable or provided in the absence of the Transaction.
- (f) Except as set forth in Schedule 4.23(f), in connection with the consummation of the Transaction, no payments have or will be made under the Plans or Benefit Programs and Agreements which, in the aggregate, would result in imposition of the sanctions imposed under section 280G, 4999 or 409A of the Code.
- (g) Except as set forth in Schedule 4.23(g), no JRMC Party presently maintains, contributes to or has any liability under any funded or unfunded medical, health or life insurance plan or arrangement for present or future retirees or future terminated employees for the benefit of the employees of the JRMC Parties, except as required by the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended. Neither the JRMC Parties nor any ERISA Affiliate maintains or contributes to a trust, organization or association for the benefit of the employees of the JRMC Parties or any ERISA Affiliate described in any of §§ 501(c)(9), 501(c)(17) or 501(c)(20) of the Code.

#### 4.24 Employee Matters.

- (a) Schedule 4.24(a) contains a list of all current JRMC Party employees, their current salary or wage rates, bonus and other compensation, benefit arrangements, accrued paid time off, period of service, department and a job title or other summary of the responsibilities of such employees. Schedule 4.24(a) also indicates whether such employees are part-time, full-time, per diem or on a leave of absence and, if so, the type of leave. The JRMC Parties and each of the Plans have properly classified individuals providing services to the JRMC Parties as independent contractors or employees, as the case may be. All current JRMC Parties' employees are employees at-will, unless otherwise specified on Schedule 4.24(a). Except as disclosed on Schedule 4.24(a), no JRMC Party is a party to any oral (express or implied) or written (i) employment agreement, (ii) consulting agreement, or (iii) independent contractor agreement with any individual or entity.
- (b) No JRMC Party is delinquent in payments to any of its employees for any wages, salaries, commissions, bonuses or other direct compensation for any services performed for it or any other amounts required to be reimbursed to such employees (including accrued paid time off and other benefits) or in the payment to the appropriate Governmental Authority of all required Taxes, insurance, social security and withholding thereon, except to the extent that such delinquency in payment would not, individually or in the aggregate, materially and adversely affect the relevant JRMC Party.
- (c) Except as set forth on Schedule 4.24(c): (i) there is no pending or threatened employee strike, work stoppage or labor dispute at any of the Facilities; (ii) to the Knowledge of JRMC, no union representation question exists respecting any JRMC Party's employees, no demand has been made for recognition by a labor organization by or with respect to any JRMC Party's employees, no union organizing activities by or with respect to any JRMC Party's employees are taking place, and none of the JRMC Party's employees is represented by any labor union or organization; (iii) no collective bargaining agreement exists or is currently being negotiated by any JRMC Party; (iv) there is no unfair practice claim against any JRMC Party before the National Labor Relations Board pending or, to the Knowledge of JRMC, threatened against or involving the Business or the Facilities; (v) each JRMC Party is in compliance in all material respects with all Laws and Contracts respecting employment and employment practices, labor relations, terms and conditions of employment, and wages and hours; (vi) no JRMC Party is engaged in any unfair labor practices; (vii) there are no pending or, to the Knowledge of JRMC, threatened complaints or charges before any Governmental Authority regarding employment discrimination, safety or other employment-related charges or complaints, wage and hour claims, unemployment compensation claims or workers' compensation claims; and (viii) none of the Parties will be subject to any claim or liability for severance pay as a result of the consummation of the Transaction through the Closing.

#### 4.25 Litigation.

- (a) Schedule 4.25(a) contains an accurate and complete list and summary description of all Proceedings with respect to which any of the JRMC Parties is a party or that relates to the Business or the JRMC Assets. Except as set forth on Schedule 4.25(a), the JRMC Parties have not received notice of any Proceedings pending, and none are threatened against or affecting (i) any JRMC Party with respect to the Business or the JRMC Assets, (ii) any current or former employee or agent of any JRMC Party relating to obligations with respect to the Business or JRMC Assets, or (iii) any current or former medical staff member, supplier or contractor at law or in equity, or before or by any Governmental Authority relating to obligations with respect to the Business or JRMC Assets.
- (b) Except as provided on Schedule 4.25(b), (i) there is no Proceeding or Order pending or to the Knowledge of the JRMC Parties, threatened against or affecting any JRMC Party before any court or Governmental Authority that has or would reasonably be expected to have a Material Adverse Effect on the JRMC Parties' ability to perform this Agreement; and (ii) no JRMC Party is subject to any Order that would materially and adversely affect the consummation of the Transaction.

#### 4.26 Tax Matters.

Except as set forth on Schedule 4.26:

- (a) The JRMC Parties listed on Schedule 4.26(a) are, and have been since the date of their incorporation, organizations exempt from federal income tax under § 501(a) of the Code as organizations that are described in § 501(c)(3), (ii) are not private foundations within the meaning of § 509(a) of the Code because they are organizations described in §§ 509(a)(1), 509(a)(2) or 509(a)(3), (iii) are in possession of a determination letter from the Internal Revenue Service to such effect, which determination letter has not been revoked or otherwise modified, (iv) are in compliance in all material respects with all applicable Laws pertaining to the operation of an organization described in § 501(c)(3) of the Code, and (v) have not entered into any transaction that constitutes an "excess benefit transaction" within the meaning of § 4958 of the Code. Except as set forth on Schedule 4.26(a), the JRMC Parties' interest in the Real Property and Facilities are, and shall be through Closing Date, exempt from all real and personal property Taxes, sales and use Taxes and there are no municipal assessments, for betterments or otherwise, on, related to or, to the Knowledge of JRMC, under consideration for, any of the Real Property.
- (b) Each JRMC Party has filed all Tax Returns required to be filed by it, including, but not limited to, all Tax Returns relating to the Business (all of which are true and correct in all material respects). All Taxes due and owing by the JRMC Parties (whether or not shown on any Tax Return), including, but not limited to, all Taxes with respect to the Business, have either been paid or are being contested in good faith by appropriate Proceedings for which adequate reserves

have been established. Except with respect to waivers or extensions that are no longer in force, the JRMC Parties have not waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency other than ordinary course extensions of time within which to file any Tax Return.

- (c) Each JRMC Party has withheld and paid all material Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor or other third party, and all Internal Revenue Service Forms W-2 and 1099 required with respect thereto have been properly completed and timely filed.
- (d) There are no Encumbrances, other than Permitted Encumbrances, with respect to Taxes on any of the JRMC Assets.
- (e) No deficiencies for Taxes of any JRMC Party have been claimed, proposed or assessed in writing by any Governmental Authority. To the Knowledge of JRMC, there are no pending or threatened Proceedings relating to any liability in respect of Taxes of any JRMC Party.

#### **4.27 Environmental Matters.**

Except as disclosed on Schedule 4.27:

- (a) The JRMC Parties are in compliance in all material respects with, and to the JRMC Parties' Knowledge, the Real Property and all improvements on the Real Property are in compliance in all material respects with, all Environmental Laws.
- (b) The JRMC Parties have no material liability under any Environmental Law with respect to any of the JRMC Assets or the Real Property, nor is any JRMC Party responsible for any such liability of any other Person under any Environmental Law with respect to any of the JRMC Assets or the Real Property. There are no pending or, to the Knowledge of JRMC, threatened Proceedings or Orders based on, and no JRMC Party has received any formal or informal written notice of any complaint, Order, directive, citation, notice of responsibility, notice of potential responsibility, or information request from any Governmental Authority or any other Person or knows any fact(s) which would reasonably be expected to form the basis for the initiation of any formal action seeking to impose liability on the JRMC Parties in connection with any Environmental Condition affecting the Real Property.
- (c) The JRMC Parties have been duly issued, and currently have and will maintain through the Closing Date, all material Approvals and Permits required under any Environmental Law with respect to any of the Facilities. Each JRMC Party is in material compliance (with respect to each Facility) with, and the Real Property and all improvements on the Real Property are in material compliance with, all Approvals and Permits. Except in accordance with such Approvals and Permits, to the Knowledge of the JRMC Parties, there has been no release of material

regulated by such Approvals and Permits at, on, under, or from the Real Property in violation of Environmental Laws.

- (d) The Real Property contains no underground improvements, including treatment or storage tanks or underground piping associated with such tanks, used currently or in the past for the management of Hazardous Materials, and no JRMC Party has used any portion of the Real Property as a dump or landfill.
- (e) Each JRMC Party has made available to the UPE Parties accurate and complete copies of all information in its possession pertaining to the environmental condition of the Real Property.
- (f) Each JRMC Party will promptly furnish to the UPE Parties written notice of any material Environmental Condition or of any actions or notices described in this Section 4.27 arising or received after the date hereof prior to the Effective Time.
- (g) Except to the extent permitted under Environmental Laws, to the JRMC Parties' Knowledge neither PCBs, lead paint, nor asbestos-containing materials are present on or in the Real Property.
- (h) No Encumbrance in favor of any Person relating to or in connection with any claim under any Environmental Law has been filed or has attached to the Real Property.

#### **4.28 Immigration Act.**

Each JRMC Party is in compliance in all material respects with the terms and provisions of the Immigration Act with respect to each of the Facilities. No JRMC Party has been cited, fined, served with a Notice of Intent to Fine or with a Cease and Desist Order (as such terms are defined in the Immigration Act) at any of the Facilities, nor, to the Knowledge of the JRMC Parties, has any Proceeding been initiated or threatened against any JRMC Party in connection with the Business, by reason of any actual or alleged failure to comply with the Immigration Act.

#### **4.29 Tax-Exempt Bond Debt.**

- (a) Except as listed on the attached Schedule 4.29, no JRMC Party nor any Affiliate of any JRMC Party is subject to any Encumbrance (other than a Permitted Encumbrance) or any covenant or obligation relating to the JRMC Tax-Exempt Bonds pursuant to any trust indenture, loan agreement or other agreement entered into in connection with the JRMC Tax-Exempt Bonds (the "JRMC Tax-Exempt Bond Documents"). Schedule 4.29 sets forth all the JRMC Tax-Exempt Bonds and all the JRMC Tax-Exempt Bond Documents.
- (b) Except as set forth on Schedule 4.29, no JRMC Party is in violation of any of the terms and conditions of any JRMC Tax-Exempt Bond Documents, and no event or condition exists that constitutes an event of default under any such documents or that, to the Knowledge of the JRMC Parties, with the passing of time or the

giving of notice, or both, would constitute an event of default under any such documents.

- (c) No JRMC Party is aware of any event or condition that has occurred or exists which would adversely affect the tax-exempt status under federal law of the interest payable on any JRMC Tax-Exempt Bonds and no inquiry from the Internal Revenue Service or action is pending or, to the Knowledge of JRMC, threatened which challenges the tax-exempt status under federal law of the interest payable on any JRMC Tax-Exempt Bonds;
- (d) Any arbitrage rebate payments required to be paid with respect to the JRMC Tax-Exempt Bonds under § 148(f) of the Code and the Treasury Regulations thereunder have been paid to the United States, in the manner, on the dates and in the amounts required by § 148(f) of the Code and the Treasury Regulations thereunder;
- (e) Between the date hereof and the Closing Date, the JRMC Parties will use their best efforts to ensure that no JRMC Party takes any action or fails to act if such action or failure to act would adversely affect the tax-exempt status under federal law of the interest payable on any JRMC Tax-Exempt Bonds or would with the passage of time, constitute an event of default with respect to any JRMC Tax-Exempt Bond Documents; and
- (f) No JRMC Party has entered into, or will enter into between the date of this Agreement and the Closing, any lease, management contract, service agreement, or other similar arrangement with a private entity or person which could be considered a private use of facilities financed with the proceeds of JRMC Tax-Exempt Bonds if such private use, combined with any other private uses with respect to the JRMC Tax-Exempt Bonds, causes any JRMC Tax-Exempt Bonds to cease qualifying for tax-exempt status under Code § 103.

#### **4.30 Other Indebtedness.**

- (a) Except for the JRMC Tax-Exempt Bonds listed on Schedule 4.29, and except as listed on Schedule 4.30, no JRMC Party nor any JRMC Affiliate is subject to any Encumbrance or any covenant or obligation relating to any JRMC Taxable Debt or trust indenture, loan agreement or other document entered into in connection with the JRMC Taxable Debt (the “JRMC Taxable Debt Documents”). Schedule 4.30 describes all of the JRMC Taxable Debt and all of the JRMC Taxable Debt Documents.
- (b) Except as set forth as Schedule 4.30, no JRMC Party or any JRMC Affiliate is in violation of any of the terms and conditions of any JRMC Taxable Debt Documents and no event or condition exists that constitutes an event of default under any such documents or that, to the Knowledge of the JRMC Parties, with the passing of time or the giving of notice, or both, would constitute an event of default under any such documents.

#### **4.31 Absence of Changes.**

Except as set forth on Schedule 4.31, since July 1, 2011, there has not been with respect to any JRMC Party, the Business or the JRMC Assets:

- (a) any JRMC Material Adverse Effect, except for financial performance reflected in the JRMC Historical Financial Information;
- (b) any material damage, destruction or loss with respect to or affecting any of the JRMC Assets, whether or not covered by insurance;
- (c) any strike, work stoppage, lockout or other significant labor dispute or, to the JRMC Parties' Knowledge, commencement of organization activity with respect to the JRMC Parties' workforce;
- (d) any sale, transfer or other disposal of any of the JRMC Assets except in the ordinary course of business;
- (e) any Encumbrance imposed on any of the JRMC Assets, except for Permitted Encumbrances;
- (f) any change in any accounting policy or methodology, except as may have been required in accordance with GAAP;
- (g) any transaction or other action by a JRMC Party outside the ordinary course of business or not otherwise permitted by this Agreement; or
- (h) any agreement, whether in writing or otherwise, by any JRMC Party to take any of the actions set forth in this Section 4.31 or not otherwise permitted by this Agreement.

#### **4.32 Solvency.**

The JRMC Parties, on a consolidated basis, are not insolvent and will not be rendered insolvent as a result of the Transaction. For purposes hereof, the term "solvent" means that: (a) the fair salable value of each JRMC Party's tangible assets is in excess of the total amount of its liabilities (including for purposes of this definition all liabilities, whether or not reflected on a balance sheet prepared in accordance with generally accepted accounting principles, and whether direct or indirect, fixed or contingent, secured or unsecured, and disputed or undisputed); (b) each JRMC Party is able to pay its debts or obligations in the ordinary course as they mature; and (c) each JRMC Party has capital sufficient to carry on its businesses and all businesses which it is about to engage.

#### **4.33 Statements True and Correct.**

To the JRMC Parties' Knowledge, this Agreement and all other documents and information furnished to the UPE Parties by the JRMC Parties pursuant to this Agreement do not, and will not as of the Effective Time, contain any untrue statement of a material fact or omit

#### **4.4 No Outstanding Rights.**

Except as set forth on Schedule 4.4, there are no outstanding rights (including any right of first refusal), options, or Contracts giving any Person any current or future right to require a JRMC Party to sell or transfer to such Person or to any third party any interest in any of the JRMC Assets.

#### **4.5 Title; Sufficiency of Assets.**

- (a) Schedule 4.5(a) sets forth a true, complete and correct list of each JRMC Party, and the Facilities owned, leased or operated by each such JRMC Party. Each JRMC Party holds good and marketable title to all tangible assets and valid title to all intangible assets included in the JRMC Assets, free and clear of all Encumbrances, except the Permitted Encumbrances. The JRMC Parties are the sole record and beneficial owners of the JRMC Assets. The JRMC Assets constitute all of the assets used in the Business. As of the Closing, the JRMC Parties shall own and hold good and marketable title (including leasehold title) to all assets, real, personal or mixed, whether tangible or intangible, associated with or employed or held for use in the Business, or located on the Real Property, all of which shall be a part of the JRMC Assets.
- (b) The JRMC Assets (as well as assets leased by the JRMC Parties) consist of all the assets necessary to operate and are adequate for the purposes of operating the Business in the manner in which it has been operated. To the JRMC Parties' Knowledge, there are no facts or conditions affecting the JRMC Assets which could, individually or in the aggregate, interfere in any material respect with the use, occupancy or operation of the JRMC Assets as currently used, occupied or operated, or their adequacy for such uses.

#### **4.6 Binding Agreement.**

This Agreement and all other Transaction Documents constitute the valid and legally binding obligations of the JRMC Parties and are and will be enforceable against them in accordance with the respective terms hereof or thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

#### **4.7 Financial Information.**

- (a) Schedule 4.7(a) hereto contains the following financial statements and financial information of the JRMC Parties (collectively, when taken together with the financial information delivered pursuant to Section 6.6, the "JRMC Historical Financial Information"):
  - (i) the audited consolidated balance sheets, statements of operation, statements of changes in net assets, and statements of cash flow (including the accompanying consolidating schedules of balance sheet information

and statement of operation information) as of, and for the 12-month periods ended June 30, 2009, June 30, 2010 and June 30, 2011; and

- (ii) the most recent unaudited consolidated balance sheet (including the accompanying consolidating schedules of balance sheet information) and unaudited consolidated statement of operations (including the accompanying consolidating schedules of statement of operation information) prepared in the ordinary course of business for that fiscal period ending on the last day of a month preceding the date of this Agreement that is not more than forty-five (45) days prior to the date of this Agreement (the “Balance Sheet Date”).

For purposes of this Agreement, as of the Closing Date, the term “JRMC Historical Financial Information” shall include in addition to the above, all financial statements comparable to those referenced in Sections 4.7(a)(i)-(ii) that have been prepared by or on behalf of the JRMC Parties during the period from the date of this Agreement through the Closing Date.

- (b) The JRMC Historical Financial Information is true, correct and complete in all material respects and fairly presents the consolidated financial position of the JRMC Parties as of the respective dates thereof and the consolidated results of the operations of the JRMC Parties and changes in financial position for the respective periods covered thereby. The consolidated financial statements included in the JRMC Historical Financial Information have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods indicated (subject, in the case of the unaudited JRMC Historical Financial Information, to the absence of notes and year-end audit adjustments, the effect of which is not material to the JRMC Parties), and are based on the information contained in the books and records of the JRMC Parties. Except as otherwise referenced on Schedule 4.7(b), the JRMC Parties have not changed any accounting policy or methodology during the periods presented in the JRMC Historical Financial Information (including accounting policies and methodologies for determining the obsolescence of inventory or in calculating reserves, including reserves for uncollected accounts receivable).
- (c) Except for (i) liabilities reflected in the JRMC Historical Financial Information and (ii) liabilities that were incurred after the Balance Sheet Date in the ordinary course of business, and (iii) contingent liabilities not in excess of \$5 million in the aggregate (of which JRMC currently has no Knowledge), the JRMC Parties have no liabilities of any nature relating to the JRMC Parties whether accrued, absolute, fixed, contingent, liquidated, unliquidated, recorded, unrecorded, known, unknown, or otherwise that would result in a JRMC Material Adverse Effect.

#### **4.8 Material Licenses.**

All Facilities, including all pharmacies, laboratories and all other departments located at such Facilities or operated for the benefit of such Facilities, operated by the JRMC Parties have in place and operate in accordance with those Permits and Approvals that are identified on Schedule 4.8 (the “Material Licenses”) and are duly licensed by all appropriate Governmental Authorities with jurisdiction over the Material Licenses. Schedule 4.8 contains an accurate and complete list of all Permits and Approvals owned or held by the JRMC Parties and such Material Licenses constitute all Material Licenses necessary for the JRMC Parties to own and operate the Facilities and the JRMC Assets and to carry on the Business as currently conducted. The JRMC Parties have provided to the Parties accurate and complete copies of all Material Licenses listed on Schedule 4.8. The JRMC Parties and the JRMC Assets, as applicable, are and have been for the last three years, in compliance in all respects with the terms of such Material Licenses. There are no provisions in, or agreements relating to, any Material Licenses that preclude or limit the JRMC Parties from operating the Facilities and the JRMC Assets and carrying on Business as currently conducted. Except as set forth on Schedule 4.8, there is no pending or, to the Knowledge of the JRMC Parties, threatened Proceeding by or before any Governmental Authority to revoke, cancel, rescind, suspend, restrict, modify, or refuse to renew any Material Licenses owned or held by the JRMC Parties and all such Material Licenses are now, and as of the Closing shall be, unrestricted, in good standing, in full force and effect and, not subject to meritorious challenge. Neither the JRMC Parties nor the Facilities have received any written notice or communication from any Governmental Authority regarding any violation of any Material Licenses owned or held by the JRMC Parties (other than any surveys or deficiency reports for which the JRMC Parties have submitted a plan of correction that has been accepted or approved by the applicable Governmental Authority). The JRMC Parties have delivered to the UPE Parties accurate and complete copies of all survey reports, deficiency notices, plans of correction, and related correspondence received by the JRMC Parties or the Facilities since July 1, 2009 in connection with the Material Licenses owned or held by the JRMC Parties.

#### **4.9 Accreditation.**

Schedule 4.9 sets forth an accurate and complete list of all accreditations and certifications held by the JRMC Parties and the Facilities. The Hospital is duly accredited, with all requirements for improvement removed, by The Joint Commission. Since the date of the most recent survey conducted by The Joint Commission, JRMC has not made any changes in policy or operations that would cause the Hospital to lose such accreditations. There is no pending or, to the JRMC Parties’ Knowledge, threatened Proceeding by any accrediting body to revoke, cancel, rescind, suspend, restrict, modify, or non-renew any such accreditation/certifications, and no such Proceedings, surveys or actions are pending, threatened or imminent.

#### **4.10 Government Program Participation; Reimbursement.**

Except as set forth on Schedule 4.10:

- (a) The Facilities are certified or otherwise qualified for participation in the Government Programs and have current and valid provider agreements with such

to state any material fact necessary to make the statements made in this Agreement with regard to the JRMC Parties not misleading.

**ARTICLE 5**  
**REPRESENTATIONS AND WARRANTIES OF THE UPE PARTIES**

As of the date hereof and as of the Closing Date (except to the extent any of the following refers to any other specific date, such as of the date hereof), each UPE Party warrants to each JRMC Party the following:

**5.1 Organization; Capacity.**

Each UPE Party is a corporation duly organized and validly existing and in good standing under the laws of the Commonwealth of Pennsylvania. Each UPE Party is duly authorized, qualified to do business and in good standing under all applicable Laws of any Governmental Authority having jurisdiction over its businesses and to own its properties and conduct its business in the place and manner now conducted. The UPE Parties have the requisite power and authority to enter into this Agreement and the other Transaction Documents and to perform their obligations hereunder and thereunder. The execution and delivery by each UPE Party of this Agreement and documents described herein to which it is a party, the performance by each UPE Party of its obligations under this Agreement and documents described herein to which it is a Party and the consummation by each UPE Party of the Transaction, as applicable, have been duly and validly authorized and approved by all necessary corporate actions on the part of each UPE Party, none of which actions have been modified or rescinded and all of which actions remain in full force and effect.

**5.2 Authority; Noncontravention.**

The execution, delivery and performance of this Agreement and each other Transaction Document by each UPE Party thereto and the consummation by each UPE Party of the Transaction, as applicable:

- (a) are within each UPE Party's powers and are not in contravention or violation of the terms of the articles of incorporation or bylaws of each UPE Party and have been approved by all requisite corporate action;
- (b) except as set forth on Schedule 5.2(b), do not require that any UPE Party seek or obtain any Approval of, filing or registration with, the issuance of any material Permit by, or make Notice to, any Governmental Authority;
- (c) assuming the Approvals and Permits set forth on Schedule 5.2(b) are obtained will not conflict in any material respect with, or result in any violation of or default under (with or without notice or lapse or both), or give rise to a right of termination, cancellation, acceleration or augmentation of any obligation or to loss of any material benefit under, (i) any Contract, instrument, indenture, covenant, or understanding to which any of the UPE Parties is bound or is a party, or (ii) assuming the Approvals and Permits set forth on Schedule 5.2(b) are obtained, any Order of Law to which a UPE Party may be subject; and

- (d) will neither conflict with, nor result in, a material breach or contravention of any agreement, lease, instrument, indenture, covenant, or understanding to which any of the UPE Parties is bound or is a party.

### 5.3 Binding Agreement.

This Agreement and all other Transaction Documents constitute the valid and legally binding obligations of the UPE Parties and are and will be enforceable against them in accordance with the respective terms hereof and thereof, except as enforceability may be restricted, limited or delayed by applicable bankruptcy or other Laws affecting creditors' rights generally and except as enforceability may be subject to general principles of equity.

### 5.4 Financial Information.

- (a) Schedule 5.4(a) hereto contains the following financial statements and financial information of Highmark (the "Highmark Historical Financial Information"):
  - i) the audited combined balance sheets, statements of operation, statements of changes in net assets, and statements of cash flow (including the accompanying consolidating schedules of balance sheet information and statement of operation information) as of, and for the twelve-month periods ended December 31, 2009, December 31, 2010 and December 31, 2011;
  - ii) the unaudited combined balance sheet (including the accompanying consolidating schedules of balance sheet information) and unaudited consolidated statement of operations (including the accompanying consolidating schedules of statement of operation information) for the then-current fiscal period ending on the Balance Sheet Date.

For purposes of this Agreement, as of the Closing Date, the term "Highmark Historical Financial Information" shall include in addition to the above, all financial statements comparable to those referenced in Section 5.4(a)(i)-(ii) that have been prepared by or on behalf of Highmark, and provided to the JRMC Parties during the period from the date of this Agreement through the Closing Date.

- (b) The Highmark Historical Financial Information is true, correct and complete in all material respects and fairly presents the combined financial position of Highmark and its Affiliates as of the respective dates thereof and the combined results of the operations of Highmark and its Affiliates and changes in financial position for the respective periods covered thereby. The combined financial statements included in the Highmark Historical Financial Information have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods indicated (subject, in the case of the unaudited Highmark Historical Financial Information, to the absence of notes and normal year-end audit adjustments, the effect of which is not material to Highmark), and are based on the information contained in the books and records of Highmark and its Affiliates. Except as

otherwise referenced on Schedule 5.4(b), Highmark has not changed any accounting policy or methodology during the periods presented in the Highmark Historical Financial Information (including accounting policies and methodologies for determining the obsolescence of inventory or in calculating reserves, including reserves for uncollected accounts receivable).

- (c) Except for (i) liabilities reflected in the Highmark Historical Financial Information and (ii) liabilities that were incurred after the Balance Sheet Date in the ordinary course of business, Highmark has no liabilities of any nature, whether accrued, absolute, fixed, contingent, liquidated, unliquidated, recorded, unrecorded, known, unknown, or otherwise that would result in a Highmark Material Adverse Effect.

#### **5.5 Litigation.**

Except as set forth on Schedule 5.5: (i) there is no Proceeding or Order pending or, to the Knowledge of the UPE Parties, threatened against or affecting the UPE Parties before any court of Governmental Authority that has or would reasonably be expected to have a material adverse effect on the UPE Parties' ability to perform this Agreement; and (ii) no UPE Party is subject to any Order that would materially and adversely affect the consummation of the Transaction.

#### **5.6 Solvency.**

Each UPE Party is not insolvent and will not be rendered insolvent as a result of the Transaction. For purposes hereof, the term "solvent" means that: (a) the fair salable value of a UPE Party's tangible assets is in excess of the total amount of its liabilities (including for purposes of this definition all liabilities, whether or not reflected on a balance sheet prepared in accordance with GAAP, and whether direct or indirect, fixed or contingent, secured or unsecured, and disputed or undisputed); (b) each UPE Party is able or will be able to pay its debts or obligations in the ordinary course as they mature; and (c) each UPE Party has or will have capital sufficient to carry on its businesses and all businesses in which it is about to engage.

#### **5.7 No Brokers.**

The UPE Parties have no liability of any kind to any broker, finder or agent with respect to the Transaction.

#### **5.8 Regulatory Compliance.**

Except as set forth on Schedule 5.8, for the prior two (2) years:

- (a) None of the UPE Parties, nor to the UPE Parties' Knowledge, any of their respective officers, directors or employees, have been convicted of, charged with investigated for, or have engaged in conduct that would constitute, a Medicare or other Federal Health Care Program (as defined in 42 U.S.C. § 1320a-7(b)(f)) related offense or convicted of, charged with, investigated for, or engaged in conduct that would constitute a violation of any Law related to fraud, theft, embezzlement, breach of fiduciary duty, kickbacks, bribes, other financial

misconduct, obstruction of an investigation or controlled substances. None of the UPE Parties, nor to the UPE Parties' Knowledge, any officer, director or employee of the UPE Parties (whether an individual or entity), has been excluded from participating in any Government Program, subject to sanction pursuant to 42 U.S.C. § 1320a-7a or § 1320a-8 or been convicted of a crime described at 42 U.S.C. § 1320a-7b, nor are any such exclusions, sanctions or charges threatened or pending.

- (b) The UPE Parties have been and are presently in all material respects in compliance with all applicable Law, including, Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395hhh (the Medicare statute), including specifically, the Ethics in Patient Referrals Act, as amended, ("Stark Law"), 42 U.S.C. § 1395nn; Title XIX of the Social Security Act, 42 U.S.C. §§ 1396-1396v (the Medicaid statute); the Federal Health Care Program Anti-Kickback Statute, 42 U.S.C. § 1320a-7b(b); the False Claims Act, as amended, 31 U.S.C. §§ 3729-3733; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the Anti-Kickback Act of 1986, 41 U.S.C. §§ 51-58; the Civil Monetary Penalties Law, 42 U.S.C. §§ 1320a-7a and 1320a-7b; the Exclusion Laws, 42 U.S.C. § 1320a-7; Information Privacy or Security Laws; and any corresponding state statutes and applicable implementing regulations that address the subject matter of the foregoing.
- (c) No UPE Party (i) is a party to a Corporate Integrity Agreement with the OIG; (ii) has reporting obligations pursuant to any settlement agreement entered into with any Governmental Authority; (iii) has been the subject of any Government Program investigation conducted by any federal or state enforcement agency (not including routine or random surveys, audits or reviews which do not or reasonably should not result in findings materially adverse to the relevant UPE Party); (iv) has been a defendant in any qui tam/False Claims Act litigation (other than by reason of a sealed complaint of which the UPE Party may have no Knowledge); or (v) has been served with or received any search warrant, subpoena, or civil investigation demand by or from any federal or state enforcement agency. For purposes of this Agreement, the term "compliance program" refers to provider programs of the type described in compliance guidance published by the OIG.
- (d) To the UPE Parties' Knowledge, all of the UPE Parties' contracts with physicians, other health care providers, or immediate family members of any physicians or other health care providers or entities in which physicians, other health care providers, or immediate family members of any physicians or other health care providers are equity owners involving services, supplies, payments, or any other type of remuneration, and all of the UPE Parties' leases of personal or real property with such physicians, health care providers, immediate family members or entities are in material compliance with all applicable Laws, and when required by such applicable Laws, are in writing, are signed by the appropriate parties, set forth the services to be provided, and provide for a fair market value compensation in exchange for such services, space, or goods.

- (e) Except in compliance with applicable Law, neither the UPE Parties, nor, to the UPE Parties' Knowledge, any of their officers, directors or employees is a party to any contract, lease agreement or other arrangement (including any joint venture or consulting agreement) related to the UPE Parties with any physician, physical or occupational therapist, health care facility, hospital, nursing facility, home health agency or other person or entity that is in a position to make or influence referrals to or otherwise generate business for any UPE Party with respect to its assets, to provide services or lease space or equipment.

#### **5.9 Insurance.**

Schedule 5.9 sets forth an accurate and complete list and description of all insurance policies or self-insurance funds maintained by the UPE Parties as of the date of this Agreement.

#### **5.10 Indebtedness.**

Except as set forth as Schedule 5.10, no UPE Party or any UPE Affiliate is in violation of any of the terms and conditions of any covenant or obligation relating to any trust indenture, loan agreement, guaranty or other document entered into in connection with obligations for borrowed money (the "UPE Debt Documents"), and no event or condition exists that constitutes an event of default under any such documents or that, to the Knowledge of the UPE Parties, with the passing of time or the giving of notice, or both, would constitute an event of default under any such documents.

#### **5.11 Absence of Changes.**

Except as set forth on Schedule 5.11, since December 31, 2011, there has not been with respect to any UPE Party any Highmark Material Adverse Effect, except for financial performance reflected in the Highmark Historical Financial Information.

#### **5.12 Statements True and Correct.**

To the UPE Parties' Knowledge, this Agreement and all other documents and information furnished to the JRMC Parties by the UPE Parties pursuant to this Agreement do not, and will not as of the Effective Time, contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements made in this Agreement with respect to the UPE Parties not misleading.

### **ARTICLE 6 PRE-CLOSING COVENANTS OF THE PARTIES**

#### **6.1 Access to the Premises; Information.**

The covenants of the Parties set forth in this Article 6 shall apply to the period between the date of this Agreement and the Closing.

- (a) By the UPE Parties:

- i) Between the date of this Agreement and the Effective Time, to the maximum extent permitted by and in compliance with Law, the JRMC Parties shall allow the UPE Parties and their authorized representatives and agents reasonable access to and the right to inspect the Facilities, properties, books, Contracts, papers and records of the JRMC Parties relating to the Business and the JRMC Assets, and will furnish the UPE Parties with such additional financial and operating data and other information as to the Business and the JRMC Assets as the UPE Parties may from time to time reasonably request. The UPE Parties right of access and inspection shall be made in such a manner as not to interfere unreasonably with the Business.
- ii) In connection with the access provided under this Section 6.1(a), from the date hereof until the Effective Time, management personnel or authorized representatives of the UPE Parties shall have the right to be present at the Hospital and other Facilities, and shall have the opportunity to regularly meet with management of the Hospital and Facilities to review operations and the level of compliance with the terms of this Agreement, including financial performance, capital expenditures, contract renewals and extensions, employee management and other matters related to the Business and to provide such advice regarding operation of the Business as such UPE Parties' personnel believe reasonable and appropriate under this Agreement, including with regard to matters covered by Section 6.2 and Section 6.3. The JRMC Parties shall provide the UPE Parties' management personnel with reasonable access to office space and to such of the JRMC Parties' personnel as necessary to permit them to comply with this covenant. The managers of the Facilities shall promptly provide such written reports and information as may be reasonably requested by the UPE Parties with respect to the foregoing, provided that the time required to prepare such written reports shall not interfere unreasonably with the Business.
- iii) The Parties agree that from the date of this Agreement until either the Closing of the Transaction or the date when negotiations have been terminated by the Parties, the JRMC Parties will give the UPE Parties, their management personnel, legal counsel, accountants, technical and financial advisors, and other agents involved in the due diligence process full access and opportunity to (i) inspect, investigate and audit their books, records, contracts and other documents as it relates to their Business and all of their assets and liabilities (actual or contingent), including without limitation, inspecting their property, financial records, contracts, operating plants and other business records, for the purposes of evaluating issues related to the operations of their Business, and (ii) interview

members of the Board of Directors of the JRMC Parties, management personnel and certain of the physicians associated with the JRMC Parties with regard to all of the matters referenced in subsections (i) and (ii) above and such other matters as the UPE Parties shall determine as part of its due diligence. The JRMC Parties further agree to provide the UPE Parties with such additional information as may be reasonably requested pertaining to JRMC's Business and the JRMC Assets to the extent reasonably necessary to complete the Transaction Documents. The obligations of the JRMC Parties under this Section 6.1(a)(iii) shall be subject to bona fide claims of legal privilege statutory and contractual confidentiality, and the Laws pertaining to antitrust and competition.

- (b) By the JRMC Parties:
  - i) In anticipation of the Closing, the JRMC Parties shall be entitled to conduct legal and financial due diligence related to the UPE Parties' ability to consummate the Transaction and perform their commitments in this Agreement. The UPE Parties agree to provide the JRMC Parties with the information necessary for JRMC to complete its due diligence to the extent set forth in this Section 6.1(b), and to provide the JRMC Parties with full access to interview relevant members of the UPE Parties' management. The obligations of the UPE Parties under this Section 6.1(b) shall be subject to bona fide claims of legal privilege, statutory and contractual confidentiality, and the Laws pertaining to antitrust and competition.

## **6.2 Conduct of Business.**

From the date hereof until the Effective Time, except as set forth on Schedule 6.2 or as otherwise approved in writing by the UPE Parties, the JRMC Parties will:

- (a) carry on the Business in substantially the same manner as it has heretofore and not make any material change in operations, finance, accounting policies, or the JRMC Assets other than in the ordinary course of business;
- (b) not make any change in JRMC employees or other personnel (excluding voluntary terminations and retirements) that either (i) is at a level of executive vice-president or above, or (ii) pertains to any JRMC employee or other personnel paid by JRMC annual compensation of more than \$200,000;
- (c) maintain the JRMC Assets and all parts thereof in as good working order and condition as at present, ordinary wear and tear excepted;
- (d) make all normal and planned capital expenditures and other capital expenditures for emergency repairs or replacement;

- (e) perform in all material respects all of its obligations and enforce the performance in all material respects of any party's obligations under the Material Contracts;
- (f) keep in full force and effect present insurance policies or other comparable insurance on the JRMC Assets;
- (g) use commercially reasonable efforts to maintain and preserve intact its business organization with respect to the Facilities, retain its present employees at the Facilities and maintain its relationships with physicians, medical staff, suppliers, customers and others having business relations with the Facilities;
- (h) permit and allow reasonable access by the UPE Parties to establish relationships with physicians, medical staff and others that have business relations with any JRMC Party;
- (i) use commercially reasonable efforts to correct any requirements for improvement cited by any Governmental Authority or The Joint Commission in the most recent surveys conducted by each or develop and timely implement evidence of standards compliance that is acceptable to any Governmental Authority or The Joint Commission;
- (j) comply in all material respects with all Laws applicable to the conduct of the Business;
- (k) continue to collect accounts receivable and pay accounts payable with respect to the Business in the ordinary course of business;
- (l) comply with all obligations, covenants and requirements set forth in the JRMC Tax Exempt Bond Documents and JRMC Taxable Debt Documents.

### **6.3 Negative Covenants.**

From the date hereof to the Effective Time, except as set forth on Schedule 6.3 or as otherwise agreed by the UPE Parties or permitted by this Agreement, the JRMC Parties will not, with respect to the Business or otherwise regarding the JRMC Assets:

- (a) enter into any Contract (including, for purposes of this Section 6.3(a) only, employment or independent contracts which may otherwise constitute Benefit Program and Agreements and therefore otherwise be exempt from the definition of Contract) (i) that involves direct or indirect payments to or from physicians or, to the Knowledge of JRMC, other potential sources of referrals (or Persons owned or controlled, in whole or in part, by physicians or, to the Knowledge of JRMC, potential sources of referrals, including those in a position to influence referrals) of a base compensation or fee of more than \$250,000 annually (or \$250,000 annually in the case of a Contract renewal), (ii) that is an employment agreement that commits to the payment of annual base compensation greater than \$250,000 and that is for a term greater than one year (regardless of whether such agreement satisfies the standards described in Section 6.3(a)(i)), (iii) that will restrict the

ability of the JRMC Parties to compete in any manner in any geographic area, (iv) that is with a union or other collective bargaining group, or (v) that is with a managed care payor or other third party payor, except consistent with the JRMC Parties' ordinary course of business and past practices;

- (b) enter into any other Contract, except for Contracts that satisfy each of the following requirements: (i) the Contract does not contain any restrictive covenant, change of control or other Contract provision that would trigger any modification or termination of the Contract or that requires the consent from or notice to any third party to the Contract as a result of the Transaction, and (ii) the Contract does not involve the payment or receipt of more than \$500,000 annually (or \$500,000 in the case of a Contract renewal);
- (c) amend or terminate any Contract that is of the type referenced in either Section 6.3(a) or Section 6.3(b) above; provided however, that from and after the date of this Agreement, the JRMC Parties shall notify the UPE Parties as and when any additional Contracts described in subsections (a), (b) or (c) of Section 6.3 are proposed to be entered into, amended or terminated by the JRMC Parties (each, a "Proposed Contract Notification"). Thereafter, any such proposed Contract may be entered into, amended or terminated by the JRMC Parties if consented to in writing by the UPE Parties, which consent shall be deemed to have been given if no objection by the UPE Parties is received by the JRMC Parties within five (5) business days following the date of the Proposed Contract Notification. Each Proposed Contract Notification shall be in writing (which may be in the form of email) addressed to Karen Hanlon at Highmark (Karen.Hanlon@highmark.com), and shall identify the parties to the proposed Contract and set forth a description of the Contract terms in sufficient detail to allow the UPE Parties to make an informed determination. Set forth as part of Schedule 6.3 is a description of certain Contracts of the type described in subsections (a), (b) or (c) of Section 6.3 that are under negotiation by the JRMC Parties as of the date of this Agreement, and execution of such Contracts by the JRMC Parties is hereby consented to by the UPE Parties.
- (d) materially increase compensation payable to, or to become payable to, or make a bonus payment to, any employee, physician, director or officer or under any consulting or independent contractor Contract, except in the ordinary course of business in accordance with existing personnel policies;
- (e) sell, assign or otherwise transfer (other than among JRMC Parties) or dispose of, or change the Business use of, or reduce or cease operations utilizing, any of the JRMC Assets, except in the ordinary course of business;
- (f) (i) by action or inaction, abandon, terminate, cancel, forfeit, waive or release any material rights of any JRMC Party, in whole or in part, with respect to the JRMC Assets or encumber any of the JRMC Assets (other than purchase money security interests or vendor financing entered into in the ordinary course of the Business); (ii) effect any corporate merger, business combination, reorganization or similar

transaction or take any other action, corporate or otherwise; or (iii) settle any dispute or threatened dispute with any Governmental Authority regarding the JRMC Assets in a manner that materially and adversely affects the Business;

- (g) make any unbudgeted capital expenditure commitment in excess of \$250,000 for additions to property, plant, equipment, intangible or capital assets or for any other purpose, other than for emergency repairs or replacement, except for the capital expenditures disclosed on Schedule 6.3(g);
- (h) fail to maintain the books, accounts and records of the JRMC Parties in accordance with GAAP consistently applied;
- (i) amend the JRMC Parties' Articles of Incorporation, Bylaws or other comparable charter or organizational documents, except as required hereunder;
- (j) adopt or amend any new or existing Plans of the JRMC Parties (other than such routine amendments as may be necessary for regulatory compliance);
- (k) apply for or become subject to the appointment of a receiver, trustee or liquidator, make an assignment for benefit of its creditors, admit in writing its inability to pay its debts as they become due, or file a voluntary petition in any court of competent jurisdiction seeking protection from creditors or declaring itself insolvent and unable to meet its obligations when due;
- (l) incur any unbudgeted long-term indebtedness; or
- (m) alter title to the Owned Real Property as it exists on the date of this Agreement, between the date of this Agreement and Closing.

#### **6.4 Notification of Certain Matters.**

- (a) From the date hereof to the Effective Time, the JRMC Parties shall give prompt written notice to the UPE Parties of (i) the occurrence, or failure to occur, of any event that causes any representation or warranty of the JRMC Parties contained in this Agreement to be untrue in any material respect, and (ii) any failure of the JRMC Parties to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. Such notice shall provide a reasonably detailed description of the relevant circumstances, based on facts known to the JRMC Parties.
- (b) From the date hereof to the Closing Date, the UPE Parties shall give prompt notice to the JRMC Parties of (i) the occurrence, or failure to occur, of any event that causes any representation or warranty of the UPE Parties contained in this Agreement to be untrue in any material respect, and (ii) any failure of the UPE Parties to comply with or satisfy, in any material respect, any covenant, condition or agreement to be complied with or satisfied by it under this Agreement. Such notice shall provide a reasonably detailed description of the relevant circumstances, based on facts known to the UPE Parties.

## **6.5 Restrictive Contracts, Undisclosed Contracts; New Contracts.**

- (a) With regard to any Contract that contains a restrictive covenant, change of control or other Contract provision that would trigger a modification or termination of the Contract or that requires consent from or notice to any third party to the Contract as a result of the Transaction, the JRMC Parties shall be responsible for and shall use their best efforts to obtain all such consents and providing all such notices. If any such consent cannot be obtained despite the JRMC Parties' best efforts, the JRMC Parties shall upon the request of the UPE Parties cooperate in any reasonable arrangement designed to preserve benefits under any such Contract, including enforcement of any and all rights of the JRMC Parties against the other party or parties thereto arising out of the breach or cancellation by such other party or otherwise.
- (b) Anything contained herein to the contrary notwithstanding, this Agreement shall not be deemed to constitute an agreement that would restrict the UPE Parties' actions, purchasing power or options, or other contracting rights with respect to any entity, facility, business or operations other than the Facilities. If a Contract contains such a restriction, the JRMC Parties shall cooperate in any reasonable arrangement designed to preserve benefits under any such Contract without the application of such restrictions or limitations to the UPE Parties.

## **6.6 Bond Compliance.**

JRMC shall engage nationally recognized bond counsel (which may be any law firm listed in the *Bond Buyer's Municipal Marketplace*) to provide an opinion addressed to the UPE Parties and delivered at the Closing to the effect that the Transaction (i) will not adversely affect the tax-exempt status of the JRMC Tax-Exempt Bonds, and (ii) will not constitute a default under the JRMC Tax-Exempt Bond Documents. Notwithstanding any other provision of this Agreement, the JRMC Parties will as soon as reasonably practicable, but in no event more than five (5) business days after its receipt or distribution, provide UPE with copies of all notices received from or sent to the Bond Trustee, Master Trustee, bondholders or the Municipal Securities Rulemaking Board in connection with the JRMC Tax-Exempt Bonds.

## **6.7 Approvals.**

Between the date hereof and the Closing Date, the JRMC Parties and the UPE Parties shall use their respective best efforts, as practicable, to obtain all Approvals and Permits and deliver all Notices necessary for the completion of the Transaction and the operation of the Business following the Closing. The UPE Parties and the JRMC Parties agree to cooperate with each other and to provide such information and communications to each other or to any Governmental Authority as may be reasonably requested by one another or any Governmental Authority in order to obtain the Approvals and Permits and deliver the Notices contemplated above or as otherwise necessary to consummate the Transaction. Subject to any limitations required by applicable Law, the UPE Parties will, and will cause their respective counsel to, supply to each other copies of all material correspondence, filings or written communications by

such Party with any Governmental Authority or staff members thereof, with respect to the Transaction.

#### **6.8 Title Matters.**

UPE Parties may, at their option and without cost or expense to the JRMC Parties, obtain commitments (the "Commitments") from a title insurance company selected by the UPE Parties (the "Title Company") to issue as of the Closing Date an ALTA owner's policy of title insurance (Form 2006) (the "Title Policy") for certain of the Real Property. Notwithstanding the foregoing, the issuance of any Title Policy shall not be a condition precedent to the obligation of the UPE Parties to close the Transaction. Each JRMC Party agrees to deliver any information in its possession as may be reasonably required by the Title Company under the requirements section of the Commitments in connection with the issuance of the Title Policy, and also agrees to provide an affidavit of title and/or such other non-confidential information as the Title Company may reasonably require in order for the Title Company to insure over the "gap" (*i.e.*, the period of time between the effective date of the title insurance company's last checkdown of title to such Real Property and the Closing Date); provided, in no event shall any JRMC Party be required to post any bond, escrow any funds or indemnify the Title Company, its agents or any other Person in connection with the issuance of any Title Policy.

#### **6.9 Additional Financial Information.**

Within thirty (30) days following the end of each calendar month prior to the Closing Date, the JRMC Parties will deliver to the UPE Parties, copies of the unaudited consolidated balance sheets and the related unaudited consolidated income statements relating to the Business for each month then ended. Within five (5) days of receipt, the JRMC Parties will deliver to the UPE Parties for fiscal years ending prior to the Closing Date audited consolidated balance sheets, statements of operation, statements of changes in net assets, and statements of cash flow (including the accompanying consolidating schedules of balance sheet information and statement of operation information). Such financial statements shall have been prepared from and in accordance with the JRMC Parties' books and records, shall be true, correct and complete in all material respects and fairly present the financial position and results of operations of the Business as of the date and for the period indicated, and shall be prepared in accordance with GAAP, consistently applied, except that in the case of the unaudited monthly statements, such financial statements need not include required footnote disclosures, nor reflect normal year-end adjustments or adjustments that may be required as a result of the Transaction.

#### **6.10 Closing Conditions.**

Between the date of this Agreement and the Effective Time, the JRMC Parties and the UPE Parties will use their commercially reasonable best efforts (unless another standard is provided herein) to cause the conditions specified in Article 8 and Article 9 hereof over which the JRMC Parties and the UPE Parties, respectively, have control, including the receipt of all required Approvals and Permits set forth in Schedules 8.4 and 9.4, to be satisfied as soon as reasonably practicable, but in all events on or before the Effective Time.

**ARTICLE 7**  
**POST-CLOSING COVENANTS OF THE PARTIES**

The covenants of the Parties set forth in this Article 7 shall apply to the period that commences upon the Closing.

**7.1 Restraint on Sale or Transfer; Right of First Refusal.**

The UPE Parties will not sell or otherwise cease to control JRMC for a period of at least five (5) years after the Closing Date. In addition, in the event that the UPE Parties propose to sell or cease to control JRMC at any time within the ten (10) year period immediately succeeding the Closing Date, the JRMC Foundation will have a right of first refusal to match the material terms and conditions of any such proposal that would lead to any such sale or cessation of control. Any notice from the JRMC Foundation of its election to exercise such right of first refusal must be given in writing to the UPE Parties not later than ninety (90) days after the date when the UPE Parties provide written notice of the material terms and conditions of any such proposal. If no such notice is provided within such ninety (90) day period, then the UPE Parties may proceed to complete the sale or other transaction which is subject to the right of first refusal. This Section 7.1 is not intended to and shall not be interpreted as restricting or preventing the UPE Parties and JRMC Parties from reorganizing their corporate structures or the corporate relationships and organizational structure of the new IDFS, and any such transactions will not be subject to this right of first refusal.

**7.2 Restricted Funds.**

The UPE Parties and JRMC Parties will continue to be bound by and honor the terms of all endowments and/or donor-restricted funds, and the beneficial interests of the Parties in any gifts or bequests shall continue. Additionally, in the future, contributions to each of the Parties, whether under will, deed of trust or otherwise, shall be treated as contributions to the named Party (as it may be renamed in the future) operating as part of the IDFS.

**7.3 Post-Closing Access to Information.**

The Parties acknowledge that subsequent to the Closing the UPE Parties and the JRMC Parties may need access to information and documents in the control or possession of the other for purposes of completing the Transaction, audit preparation, compliance with Laws and other legitimate business purposes. The Parties agree that they will provide such information and documents in their possession or control to the other Parties, their attorneys and independent auditors as shall be reasonably necessary or appropriate for the purposes described in this Section 7.3, subject to all applicable Laws, specifically including the Laws pertaining to antitrust and competition.

**7.4 Commitment to Key Business Terms.**

**7.4.1 Development of Key Clinical Programs.**

- (a) UPE Provider Sub is committed to ensuring that JRMC provides the highest quality of care to the community. One of UPE Provider Sub's objectives is to

bring care provided by quaternary and tertiary centers to community hospitals, when appropriate. UPE Provider Sub proposes to conduct planning sessions among the clinical leadership teams of JRMC, UPE Provider Sub, and, as and when legally permissible, WPAHS, to develop an integrated clinical capability strategy that is focused on driving care into the community. These discussions include:

- i) Review detailed aggregated clinical spend data (e.g., inpatient, outpatient, etc.) to understand trends and clinical needs within the community (subject to applicable confidentiality requirements);
- ii) Review present clinical capabilities of both JRMC and WPAHS in each service line, so that following the Closing, action can be taken to strengthen or expand services within the Southern Region;
- iii) Evaluate the existing service lines that JRMC will provide at its facilities and those of the Southern Region so that any appropriate expansion or reduction can be implemented following the Closing (it is anticipated that quaternary care in these service lines will be provided at Allegheny General Hospital and/or West Penn Hospital);
- iv) Develop a process to align and standardize medical protocols, quality goals, and expected outcomes in every hospital to be affiliated with UPE Provider Sub, including JRMC, hospitals affiliated with WPAHS, and others;
- v) Develop the process to share clinical knowledge, protocols, and technologies (including virtual offerings) in these service lines and thereby allow all the hospitals and other service providers affiliated with UPE Provider Sub to learn from each other;
- vi) Replace any health care ventures that are currently provided through a joint venture to the extent that a “change in control” caused by the Affiliation causes the dissolution of such service; and
- vii) Set post-Closing timelines for accomplishing these goals, including revenue targets.

Promptly after the Closing, UPE Provider Sub and its Affiliates will immediately begin executing the clinical capability strategy.

- (b) Contingent upon WPAHS becoming an Affiliate of UPE, UPE and UPE Provider Sub intend to broaden WPAHS’s research institute and educational programs and as part of this process, UPE Provider Sub will work with JRMC to evaluate the potential for extending high-tech clinical trials to JRMC after the Closing.

- (c) UPE and UPE Provider Sub commit to maintain the established clinical service lines at JRMC for a minimum of five (5) years following the Closing. After such five (5) year period, UPE Provider Sub and JRMC will evaluate individual clinical service lines and sites of clinical service lines provided by JRMC and will base future decisions pertaining to such matters on sound strategic and financial criteria, with consideration of patient access.

#### 7.4.2 Operations.

- (a) Branding. As part of its branding strategy for the provider division and because of the strong brand recognition of both Highmark and JRMC that already exists in the marketplace, after the Closing the UPE Parties will promote JRMC and its brand.
- (b) Information Systems. The UPE Parties will undertake a significant expansion and enhancement of its information technology infrastructure as part of its overall provider business strategy. UPE Provider Sub intends to pursue a common platform for its core clinical and patient management functions across acute and ambulatory services. This will take the form of significant development across all major platforms (patient and provider access portals, cross setting patient management, core clinical, ancillary support, back office and analytics/BI). As a hub hospital, JRMC will play a significant role in defining the detailed requirements of the community hospital, its role in the network, and the specific technologies required to support that role. In addition, JRMC's list of major information technology projects will be aligned/synchronized, where appropriate, with UPE Provider Sub's major projects. JRMC will also be a pilot site for early deployments, where appropriate. The UPE Parties will continue to support JRMC's existing Siemens platform until the transition to a common platform. The following additional information systems will be made available to JRMC either promptly after the Closing or as soon thereafter as they become operational:
  - i) Highmark is currently targeting the third quarter of 2012 for the initial release of its HIE platform. Highmark will accelerate the deployment to JRMC as a key partner, supporting initial integration and roll out to JRMC physicians as part of the initial deployment.
  - ii) Highmark will make available to JRMC the proposed Highmark patient portal.
  - iii) JRMC may integrate its quality reporting platforms with Highmark's quality scorecard.
  - iv) JRMC may implement Highmark's telemedicine capabilities.

The expenses, enhancements or interface costs necessary to achieve the above goals will be paid by the UPE Parties, subject to being reimbursed by JRMC as part of its corporate services allocation. Any penalties relating to existing JRMC vendor contracts that are incurred in order to

achieve the above goals will be paid by the UPE Parties without reimbursement by JRMC.

- (c) Corporate Services and Overhead Allocation. JRMC will not be disproportionately allocated corporate overhead costs of the UPE Parties vis-à-vis other sister hospitals in the IDFS. JRMC will participate fully in the corporate services program provided to IDFS members and all costs and expenses associated therewith will be applied fairly and consistently across all IDFS participants, provided however, that for the first twelve (12) months after the Closing Date, JRMC will have no obligation to participate in any IDFS or Highmark group purchasing organization or UPE Provider Sub's professional liability insurance program. JRMC and UPE Provider Sub will jointly reexamine JRMC's potential participation in such programs for the time period after the aforesaid twelve (12) months. For all allocations provided at fair market value, UPE or UPE Provider Sub will provide additional documentation as to the cost of such services in fulfillment of CMS regulations. To the extent that JRMC's assets or services are utilized to support other facilities or services in the Southern Region, JRMC's costs relating thereto shall similarly be fairly allocated.
- (d) Management and Management Reporting. JRMC will be the regional management team leader for the Southern Region, including all IDFS aligned provider assets (hospitals, ambulatory facilities, physicians, pre-acute and post-acute providers, etc.) in the Southern Region and potential relationships with providers in the West Virginia panhandle and eastern Ohio. To assure security and alignment, the UPE Parties will accept any decision made by JRMC to maintain the existing senior management contracts for the longer of three (3) years or the existing term of any such contract, provided that there are no significant material changes to any such contracts between the date hereof and the Closing Date (except for any changes made in the ordinary course of business consistent with past practices or changes made prior to the Closing Date that extend the term of any such contracts for a term not to exceed three (3) years from the Closing Date). For the purposes of this provision, "senior management" personnel shall include the following JRMC employees: John Dempster, Richard Collins, M.D., James Cooper, Louise Urban, Marcie Caplan, JoAnne Hahey, Michael Evans, Albert Ragan, Rosanne Saunders, and Susan Barrett. Following the execution of this Agreement, the Parties will engage in discussions concerning possible modification of the change of control provisions in the management contracts of John Dempster, James Cooper and Richard Collins, M.D. Nevertheless, in the event that mutual agreement is not reached with any of referenced three (3) individuals with respect to such modifications, the existing change of control provisions shall continue as currently contained in such contracts, and the failure to reach agreement on such modifications shall not be the basis for non-consummation of the Transaction by the Parties.
- (e) Innovative Programs and Tools to Support the Evolution Toward Value-Based Models. Promptly after the Closing, the UPE Parties will share with JRMC

innovative solutions to advance the evolution towards value-based models. These include:

- i) The UPE Parties will work aggressively with JRMC to evaluate the potential benefits of and deploy, where appropriate, patient-centered medical homes and an accountable care organization through a three-step process:
    - a. Baseline assessment: Determining the readiness of JRMC to transition to a pay-for-value model;
    - b. Core capability development: Developing and implementing the tools/competencies for participation; and
    - c. Volume improvement: Develop the product/benefit structure to help increase volume.
  - ii) Virtual health and telemedicine through a network of physicians who provide health visits over the telephone, internet and other means of electronic communication;
  - iii) Personalized medicine (concierge medicine); and
  - iv) Digital advancements such as Highmark's M site.
- (f) Quality, Patient Safety and Patient Satisfaction Standards. The UPE Parties will deploy their resources in clinical quality improvement at JRMC. The UPE Parties will support JRMC's efforts to maintain and improve certain minimum requirements related to quality, patient safety and patient satisfaction standards, consistent with this Agreement.

## **7.5 Commitments Regarding Employees.**

Provided that there is no significant material change in aggregate staffing levels, compensation or benefits between the date hereof and Closing (except for any such changes made in the ordinary course of business consistent with past practices), UPE and UPE Provider Sub will accept any decision made by JRMC to retain JRMC's employees at the Closing in accord with JRMC's existing policies and consistent with the employees' current status, whether as at-will employees or on a term contract basis, with benefits that are substantially comparable to those the employees enjoy now and compensation that is generally consistent with current levels, assuming such levels are consistent with the then current health care provider market in JRMC's service area. After the Closing, UPE Provider Sub and JRMC will work together to respond to market forces and other demands that may from time to time require increases or decreases in staffing levels, compensation and benefits. To the extent that any reductions in staffing occur, UPE Provider Sub and JRMC will use their commercially reasonable efforts to redeploy such employees elsewhere in the IDFS. To the extent that after the Closing, JRMC employees participate in any employee benefit plans or programs (including qualified or nonqualified retirement or savings programs, welfare, vacation, sick leave, holiday and

severance benefits) of the UPE Parties, the applicable UPE Parties will, to the extent permitted by applicable law, provide credit for eligibility, benefit accrual, and retirement vesting and eligibility for periods of service as JRMC employees. If applicable laws require that the UPE Parties amend their existing employee benefit plans or programs before the JRMC employees can be provided credit for prior service with JRMC, the UPE Parties will take commercially reasonable efforts to amend such plans or programs.

## 7.6 Commitments Regarding Medical Staff.

- (a) Commitment to Implementing Physician Practice Infrastructure at JRMC. Promptly after the Closing, UPE Provider Sub will make available ProMed Xchange, a management services organization that offers a comprehensive set of solutions and services for physicians. These services will be available to all members of the JRMC medical staff. In addition, the UPE Parties will make group purchasing, health information exchange and self-insured captive products available to members of the JRMC medical staff either promptly after the Closing or as soon thereafter as such services become available.
- (b) Commitment to Physician Recruitment and Development of Services. Promptly after the Closing, UPE Provider Sub will (i) assist JRMC with the recruitment of physicians in cardiology, gynecology and oncology, and other physician specialties currently being recruited by JRMC; (ii) work with JRMC to evaluate the need for physicians in obstetrics and pediatrics; (iii) work with JRMC to further develop JRMC's cardiology and gynecology services, and to establish new services in oncology and neurosurgery and recruit physicians in those areas, if appropriate; and (iv) work with JRMC to ensure that the community has the appropriate complement of physicians on the JRMC campuses and in the community.
- (c) Commitment to Employed Physicians. UPE Provider Sub will accept any decision made by JRMC to honor existing contracts of physicians employed by JRMC and its Affiliates in the current legal structure through the longer of the term of the contracts existing on the date hereof or three (3) years. With regard to this commitment, the Parties agree that the only employed physicians that entered into contracts with a term of seven (7) years or more between June 11, 2012 and the date of this Agreement are listed on Schedule 7.6(c). UPE Provider Sub will use commercially reasonable efforts to continue to work with JRMC to develop a detailed plan for consolidating and standardizing practice models where appropriate, but not in any way inconsistent with honoring the current contracts, as stated above.
- (d) Commitment to Hospital-Based Physician Contracts. UPE Provider Sub will accept any decision made by JRMC to honor the existing contracts for hospital-based physicians.
- (e) Commitment to Development of Primary Care Residencies. UPE Provider Sub will develop primary care residencies promptly after the Closing. The goal is for

JRMC to have a robust residency program that is an extension of WPAHS's residency program which extends into the community. UPE Provider Sub will use commercially reasonable efforts to ensure that JRMC has a pipeline of credentialed, primary care and other residencies to help meet the needs of the community. In the event that it is not possible to extend WPAHS's residency program, UPE Provider Sub will identify and make available an alternative.

- (f) Commitment to Critical Care Coverage. UPE Provider Sub, with input and assistance from WPAHS (or other physicians if WPAHS cannot provide the assistance), will work with JRMC to develop and implement a solution that can effectively address current coverage issues in the JRMC critical care unit during the 7:00 p.m. to 7:00 a.m. time period, or develop a new critical care model.

#### **7.7 Commitments Regarding Facilities and Capital Projects.**

On a post-Closing basis, the UPE Parties agree that they will support the JRMC capital projects described and to the extent set forth in Section 2.5.1 of this Agreement.

#### **7.8 Charity Care and Community Benefit Programs.**

UPE and UPE Provider Sub agree that JRMC's existing charity care policy and JRMC's level of support for education and community programs will not change as a result of the Transaction, or thereafter for a period of five (5) years post-Closing, provided that such policy and level of support remain consistent with prevailing industry standards and that there is no significant adverse change in the financial condition of JRMC. After such five (5) year period, such policy and level of support will be evaluated from time to time to determine if changes are appropriate.

#### **7.9 Continued Adherence to General Rules for Homestead and St. Joseph's Hospitals.**

The Parties agree that JRMC and its subsidiaries will continue to adhere to the document labeled "General Rules for Homestead and St. Joseph's Hospitals" which is set forth on Exhibit I attached hereto and which is incorporated as part of JRMC's Articles of Incorporation.

### **ARTICLE 8**

#### **CONDITIONS PRECEDENT TO OBLIGATIONS OF THE UPE PARTIES**

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

#### **8.1 Representations and Warranties.**

The representations and warranties of the JRMC Parties contained in this Agreement and in any document, instrument or certificate delivered hereunder shall be true and correct in all material respects at and as of the Closing with the same force and effect as if made as of the Closing.

## **8.2 Performance.**

The JRMC Parties will have performed and complied, in all material respects, with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by the JRMC Parties at or prior to the Closing.

## **8.3 No Material Adverse Effect.**

There shall have been no JRMC Material Adverse Effect as of the Closing Date.

## **8.4 Pre-Closing Confirmations by Governmental Authorities.**

The UPE Parties shall have obtained documentation or other evidence reasonably satisfactory to the UPE Parties that the Parties have received those Approvals and Permits set forth on Schedule 8.4. For the avoidance of any doubt, the Parties agree and understand that if any Approval or Permit sought or obtained by any Party in connection with the Transaction is subject to any material condition that the UPE Parties determine to be unacceptable, the UPE Parties shall have no obligation to complete the Transaction.

## **8.5 Action/Proceeding.**

No court or any other Governmental Authority shall have issued an Order restraining or prohibiting the Transaction (that, if not permanent, has not been lifted or vacated or otherwise is no longer in effect); no Governmental Authority shall have commenced or threatened in writing to commence any Proceeding before any court of competent jurisdiction or other Governmental Authority that seeks to restrain or prohibit the consummation of the Transaction or otherwise seeks a remedy which could materially and adversely affect the operation of the Business; and neither the Justice Department, nor the FTC, nor the Pennsylvania Attorney General, Pennsylvania Insurance Department or Pennsylvania Department of Health shall have requested, orally or in writing, that the UPE Parties delay, postpone or forebear from the Closing.

## **8.6 Closing Documents.**

The JRMC Parties shall have executed and delivered to the UPE Parties all of the items required to be delivered by the JRMC Parties as contemplated by Section 3.2 or otherwise pursuant to any term or provision of this Agreement.

## **8.7 Post-Closing Compliance with Laws and Regulations.**

The UPE Parties shall have received such assurances as they determine to be reasonably necessary to confirm that the Transaction described in this Agreement and the post-Closing operations and affairs of the UPE Parties and JRMC Parties will comply with all applicable Laws, including those relating to antitrust and competition, and that all other outstanding substantive and regulatory issues have been resolved to the satisfaction of the UPE Parties, including those under Laws that place statutory limits on investments by Highmark or its Affiliates.

#### **8.8 Tax-Exempt Status of the JRMC Parties.**

The UPE Parties shall have received such reasonable assurances as each deems reasonably necessary to confirm that, since the date of this Agreement, (i) no changes in Law shall have occurred and (ii) no changes in facts and circumstances (excluding those that were either reasonably foreseeable or caused by or within the control of the UPE Parties) shall have transpired, that in either case cause the Code § 501(c)(3) tax-exempt status of JRMC and those JRMC Parties identified on Schedule 4.26(a), respectively, for federal income tax purposes to be reasonably placed in jeopardy by the Closing of the Transaction.

#### **8.9 Bond Compliance.**

The opinion described in Section 6.6 shall have been delivered to the UPE Parties.

### **ARTICLE 9 CONDITIONS PRECEDENT TO OBLIGATIONS OF THE JRMC PARTIES**

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

#### **9.1 Representations and Warranties.**

The representations and warranties of the UPE Parties contained in this Agreement and in any document, instrument or certificate delivered hereunder shall be true and correct in all material respects at and as of the Closing with the same force and effect as if made as of the Closing.

#### **9.2 Performance.**

The UPE Parties will have performed and complied, in all material respects, with all agreements, obligations and covenants contained in this Agreement that are required to be performed or complied with by the UPE Parties at or prior to the Closing.

#### **9.3 No Material Adverse Effect.**

There shall have been no Highmark Material Adverse Effect as of the Closing Date.

#### **9.4 Pre-Closing Confirmations by Governmental Authorities.**

The JRMC Parties shall have obtained documentation or other evidence reasonably satisfactory to the JRMC Parties that the Parties have received such Approvals and Permits as set forth on Schedule 9.4.

#### **9.5 Action/Proceeding.**

No court or any other Governmental Authority shall have issued an Order restraining or prohibiting the Transaction (that, if not permanent, has not been lifted or vacated or otherwise is no longer in effect); no Governmental Authority shall have commenced or threatened in writing

to commence any Proceeding before any court of competent jurisdiction or other Governmental Authority that seeks to restrain or prohibit the consummation of the Transaction or otherwise seeks a remedy which could materially and adversely affect the operation of the Business; and neither the Justice Department, nor the FTC, nor the Pennsylvania Attorney General, Pennsylvania Insurance Department or Pennsylvania Department of Health shall have requested, orally or in writing, that the JRMC Parties delay, postpone or forebear from the Closing.

#### **9.6 Closing Documents.**

The UPE Parties shall have executed and delivered to the JRMC Parties all of the items required to be delivered by the UPE Parties as contemplated by Section 3.3 or otherwise pursuant to any term or provision of this Agreement.

#### **9.7 Post-Closing Compliance with Laws and Regulations.**

The JRMC Parties shall have received such assurances as they determine to be reasonably necessary to confirm that the Transaction described in the Agreement and the post-Closing operations and affairs of the UPE Parties and the JRMC Parties will comply with all applicable Laws, including those relating to antitrust and competition, and that all other outstanding substantive and regulatory issues have been resolved to the satisfaction of the JRMC Parties.

#### **9.8 Tax-Exempt Status of the JRMC Parties.**

The JRMC Parties shall have received such reasonable assurances as each deems reasonably necessary to confirm that, since the date of this Agreement, (i) no changes in Law shall have occurred and (ii) no changes in facts and circumstances (excluding those that were either reasonably foreseeable or caused by or within the control of the JRMC Parties) shall have transpired, that in either case cause the Code § 501(c)(3) tax-exempt status of JRMC and those JRMC Parties identified on Schedule 4.26(a), respectively, for federal income tax purposes to be reasonably placed in jeopardy by the Closing of the Transaction.

#### **9.9 Bond Compliance.**

The JRMC Parties shall have obtained the opinion described in Section 6.6 of this Agreement.

### **ARTICLE 10 TERMINATION**

#### **10.1 Termination.**

This Agreement may be terminated and the Transaction may be abandoned at any time prior to the Closing only as follows:

- (a) by JRMC, which shall be binding on all JRMC Parties, if JRMC determines that the “JRMC For Good Cause” standard set forth in Section 10.2(b) of this Agreement has been satisfied, in which case, prior to sending any notice of

termination of this Agreement, JRMC shall give the UPE Parties written notice that the “JRMC For Good Cause” termination standard has been satisfied and the UPE Parties will have thirty (30) days after its receipt of such written notice (or a longer period if, in JRMC’s sole discretion, the UPE Parties are diligently pursuing and making satisfactory progress toward a cure) to cure any deficiencies that JRMC has identified. If after such cure period, the events or circumstances that lead to the “JRMC For Good Cause” standard being triggered still exist, JRMC shall have the option of promptly terminating this Agreement;

- (b) by the UPE Parties, if the UPE Parties determine that the “Highmark For Good Cause” standard set forth in Section 10.2(a) of this Agreement has been satisfied, in which case, prior to sending any notice of termination of this Agreement, the UPE Parties shall give the JRMC Parties written notice that the “Highmark For Good Cause” termination standard has been satisfied and the JRMC Parties will have thirty (30) days after its receipt of such written notice (or a longer period if, in the UPE Parties’ sole discretion, the JRMC Parties are diligently pursuing and making satisfactory progress toward a cure) to cure any deficiencies that the UPE Parties have identified. If after such cure period, the events or circumstances that lead to the “Highmark For Good Cause” standard being triggered still exist, the UPE Parties shall have the option of promptly terminating this Agreement;
- (c) by mutual written consent of the UPE Parties and JRMC, which shall be binding on all JRMC Parties, in which case no Break-up Fee will be paid by any Party; or
- (d) by either the UPE Parties or JRMC, which shall be binding on all JRMC Parties, if a final nonappealable Order permanently enjoining, restraining or otherwise prohibiting the Closing will have been issued by a Governmental Authority of competent jurisdiction, in which case no Break-up Fee will be paid by any Party.

## **10.2 Break-up Fee.**

Highmark and JRMC have agreed upon liquidated damages (“Break-up Fee”) in recognition of the market forces and the harm to either Party in the event the other Party would fail to close the Transaction, subject to the provisions of this Section 10.2. For either Party to be entitled to a Break-up Fee, such Party shall have been diligently pursuing the consummation of the Transaction in good faith. For the avoidance of doubt, a Break-up Fee shall be payable if the conditions for payment set forth below are met, regardless of whether the conditions precedent to closing set forth in Articles 8 and 9 hereof have then been met, except to the extent that any such failure to satisfy conditions precedent either (i) constitutes Highmark For Good Cause or JRMC For Good Cause, as defined below or (ii) results from a Party’s failure to take the actions or deliver the documents necessary for the Closing of the Transaction. A Break-up Fee shall apply as follows:

- (a) If the UPE Parties decide not to close the Transaction for a reason other than (i) for good cause (“Highmark For Good Cause”) or (ii) that regulatory approvals have not been received (other than a failure of the Pennsylvania Insurance

Department to approve the current change of control and reorganization transaction involving Highmark and UPE in a timely manner), then;

- i) Highmark will pay a Break-up Fee to JRMC in the amount of \$150 million. Payment shall be made within 120 days following a determination under this Section 10.2;
- ii) Highmark and JRMC will agree to sign a ten (10) year insurance contract(s) which shall be based on rates which are negotiated in good faith by the Parties and which will include participation in Community Blue and tiered products ("Long Term Contract"). Such Long Term Contract will not be terminable upon a sale or change of control of JRMC and will be binding on the Parties' successors and assigns; and
- iii) Highmark will agree not to affiliate with another hospital provider in the Southern Region, other than hospitals affiliated with WPAHS, for two (2) years after notice of break-up (i.e. formal notice terminating this Agreement).

"Highmark For Good Cause" is defined as a discovery that any of the JRMC Parties have significant compliance issues, violated laws or regulations, or made material misstatements regarding its financial condition.

- (b) If JRMC decides not to close the Transaction for a reason other than (i) for good cause ("JRMC For Good Cause") or (ii) that approvals required relative to the Transaction from the Pennsylvania Office of Attorney General have not been received, then:

- i) JRMC will pay a Break-up Fee to Highmark in the amount of \$5 million. Payment shall be made within 120 days following a determination under this Section 10.2;
- ii) Highmark and JRMC will agree to sign the Long Term Contract which will not be terminable upon a change of control of JRMC and will be binding on the Parties' successors and assigns; and
- iii) JRMC will agree not to affiliate with, cede control to, or be acquired by another Western Pennsylvania based IDFS for two (2) years after notice of break-up (i.e. formal notice terminating this Agreement).

"JRMC For Good Cause" is defined as a discovery that any of the UPE Parties have significant compliance issues, violated laws or regulations, or made material misstatements regarding its financial condition. In addition, "JRMC For Good Cause" shall include (i) any material changes in the leadership of Highmark (excluding a change in the Chief Executive Officer) resulting in the majority of the senior management team currently

leading the health insurance business, the integrated delivery system and the financial operations of Highmark no longer being with either Highmark or any other UPE Party (except in the event of death or disability) (for purposes of this section senior management team members of Highmark or any other UPE Party shall be limited to John Paul, Deborah Rice and Nanette DeTurk); (ii) any confirmed reduction prior to Closing in Highmark's overall \$1 billion financial commitment to its provider strategies by an amount greater than twenty percent (20%); and (iii) any material change in the financial condition of Highmark that would have a material adverse effect on Highmark's ability to consummate the Transaction.

### **10.3 Effect of Termination.**

In the event that this Agreement shall be terminated pursuant to Section 10.1, all further obligations of the Parties under this Agreement shall terminate without further liability of any Party to another; provided, however, the obligations of the Parties contained in this Section 10.3, Section 10.2 and Article 12 (General) shall survive such termination.

## **ARTICLE 11 ADDITIONAL AGREEMENTS**

### **11.1 Exclusivity.**

During the period from the date of this Agreement to the earlier of (i) the Closing Date or (ii) the date on which discussions with respect to a potential Transaction have been terminated by either Party pursuant to Section 10.1, the JRMC Parties agree that they shall not, directly or indirectly, through any officer, director, employee, agent or otherwise (including through any advisor, consultant, placement agent, broker, investment banker, attorney or accountant retained by any JRMC Party) solicit, initiate or encourage the submission of or entertain any proposal or offer from any Person (including any of such Person's officers, directors, employees, agents or other representatives), related to any business combination, division, conversion, affiliation, member substitution, capital infusion, sale of JRMC as a whole, merger or consolidation of any JRMC Party with or into any other entity, sale of all or any substantial portion of the JRMC Assets, any arrangement with any JRMC Party similar to any arrangement contemplated by this Agreement, sale or issuance of securities (including debt securities), any transfer of voting rights, any transaction in which there is a required change in the method of selection or identity of the members of Board of Directors of any of the JRMC Parties, any change in the identity of any Person entitled to receive all or any part of the assets of JRMC Assets upon liquidation or dissolution thereof, any transaction in which the members of any of the JRMC Parties immediately prior to such transaction shall not have the power to elect the Board of Directors of any of the JRMC Parties immediately following such transaction, any transaction in which any of the JRMC Parties grants to a third Person in whatever manner the power to control the management of any of the JRMC Parties or the operations of a significant portion of its assets or an action in which any Person is granted the power to approve or to disapprove (directly or indirectly) any action with respect to the management, operations or assets of any of the JRMC Parties that would otherwise be taken by the Board of Directors of any of the JRMC Parties, or

relating to any other transaction having a similar effect or result on the ownership, capitalization, or financial position of any of the JRMC Parties (an “Acquisition Proposal”), or participate in any discussions or negotiations regarding, or furnishing to any other Person any information with respect to, or otherwise cooperating in any way with, or assisting or participating in, facilitating, furthering or encouraging any effort or attempt by any other Person to do or seek to do any of the foregoing without the prior written consent of the UPE Parties, which consent may be withheld or delayed by the UPE Parties in its sole and absolute discretion. The JRMC Parties further agree to immediately cease and cause to be terminated any and all contacts, discussions and/or negotiations with third parties regarding any Acquisition Proposal. The JRMC Parties shall promptly notify the UPE Parties if any such Acquisition Proposal, or any inquiry or contact with any Person with respect thereto, is made or received by any JRMC Party.

### **11.2 Confidentiality.**

Each Party agrees to remain subject to and bound by the terms of that certain Confidentiality Agreement dated as of March 26, 2012 (the “Confidentiality Agreement”), which is incorporated by reference into this Agreement, until the earlier of (a) the Closing Date or (b) the date on which this Agreement is terminated pursuant to Section 10.1 herein. No Party will make any public disclosure or issue any press releases pertaining to the existence or terms and conditions of this Agreement or the Transaction between the Parties without having first obtained the written consent of the other Parties, except for communications with governmental or regulatory agencies as may be legally required, necessary or appropriate solely with respect to the Transaction, and which are not inconsistent with the prompt consummation of a Transaction as contemplated by this Agreement. All public communications regarding the Transaction will be made only in accordance with a mutually agreed upon communication plan.

### **11.3 Survival of Representations.**

Notwithstanding any right of any Party (whether or not exercised) to investigate the accuracy of the representations and warranties of the other Party contained in Articles 4 and 5 of this Agreement, the UPE Parties, on the one hand, and the JRMC Parties, on the other hand, have the right to rely upon the representations, warranties, covenants and agreements of the other contained in this Agreement; provided however, that the representations and warranties of both the UPE Parties and the JRMC Parties will not survive the Closing and will expire as of the Effective Time.

11.4

**REDACTED**

**REDACTED**

**11.5 Annual Reports.**

The UPE Parties will provide a written annual report to the JRMC Foundation Board regarding progress in meeting their commitments set forth in this Agreement. The JRMC

Foundation will provide the JRMC Board with an annual report on the programs it has funded in the prior year.

#### **11.6 Enforcement of Agreement.**

To the extent that a dispute develops with regard to the Agreement, including with regard to the matters covered by Article 10 hereof, the Parties agree that they will engage in informal non-binding mediation to try and resolve the dispute. With regard to any such dispute that develops after the Closing, if after informal non-binding mediation no resolution develops, the Parties agree that JRMC Foundation, in addition to JRMC and the UPE Parties, will be vested with authority to contact the Pennsylvania Office of Attorney General to seek a remedy. Only if no satisfactory remedy is achieved, as determined in the JRMC Foundation's discretion, within a reasonable time period after contacting the Attorney General, JRMC Foundation will then have such third party beneficiary rights as may be necessary to enforce the obligations of the UPE Parties under the Agreement.

### **ARTICLE 12 GENERAL**

#### **12.1 Notice.**

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

If to the UPE Parties:           UPE, UPE Provider Sub and Highmark Inc.  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3099  
Attention: President and CEO  
Facsimile: (412) 544-8240

with a copies to:               Highmark Inc.  
Fifth Avenue Place  
120 Fifth Avenue  
Pittsburgh, PA 15222-3099  
Attention: Executive V.P. and Chief Legal Officer  
Facsimile: (412) 544-8240

Buchanan Ingersoll & Rooney PC  
301 Grant Street, 20<sup>th</sup> Floor  
Pittsburgh, PA 15219  
Attention: Dale S. Webber, Esquire  
Facsimile: (412) 562-1041

shall be drawn from the fact that any portion of this Agreement has been drafted by or on behalf of such Party.

**12.10 Divisions and Headings.**

The division of this Agreement into sections and subsections and the use of captions and headings in connection therewith are solely for convenience and shall have no legal effect in construing the provisions of this Agreement.

**12.11 No Third-Party Beneficiaries.**

The terms and provisions of this Agreement are intended solely for the benefit of the UPE Parties and the JRMC Parties and their respective permitted successors or assigns, and it is not the intention of the Parties to confer, and this Agreement shall not confer, third-party beneficiary rights upon any other Person, except as expressly set forth in Section 11.6 hereof.

**12.12 Entire Agreement; Amendment.**

This Agreement supersedes all previous agreements among the Parties and constitutes the entire agreement of whatsoever kind or nature existing between or among the Parties relating to the Transaction and no Person shall be entitled to benefits other than those specified herein. All prior agreements, whether written or verbal, not expressly incorporated herein are superseded unless and until made in writing and signed by all Parties hereto. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

**12.13 Schedules and Exhibits.**

All Schedules and Exhibits referred to in this Agreement shall be attached hereto and incorporated herein by reference. The Schedules and Exhibits delivered with this Agreement are complete as of the date hereof, and will be updated by the Parties in intervals of thirty (30) days succeeding the date hereof, and again within ten (10) days prior to Closing, for any developments, including those required by changes in Law, occurring after the date hereof and prior to the Closing.

**12.14 Further Assurances.**

On and after the Closing Date, the UPE Parties and the JRMC Parties will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out the terms and conditions hereof.

**[SIGNATURE PAGES FOLLOW]**

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in multiple originals by their authorized officers, all as of the date and year first above written.

UPE PARTIES:

UPE

By: Nanette P Detwiler  
Name: Nanette P Detwiler  
Title:  EVP, CEO & Treasurer

UPE PROVIDER SUB

By: Nanette P Detwiler  
Name: Nanette P Detwiler  
Title:  EVP, CEO & Treasurer

HIGHMARK INC.

By: Nanette P Detwiler  
Name: Nanette P Detwiler  
Title:  EVP, CEO & Treasurer

JRMC PARTIES:

JEFFERSON REGIONAL MEDICAL CENTER

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

JEFFERSON REGIONAL MEDICAL CENTER, as sole Member and acting on behalf of all JRMC Subsidiaries except Health System Service Corporation, Jefferson Regional Medical Center Pavilion, and Primary Care Group 11, Inc.

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

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed in multiple originals by their authorized officers, all as of the date and year first above written.

UPE PARTIES:

**UPE**

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

**UPE PROVIDER SUB**

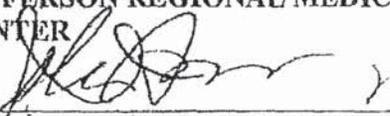
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**HIGHMARK INC.**

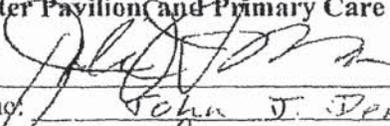
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Title: \_\_\_\_\_

JRMC PARTIES:

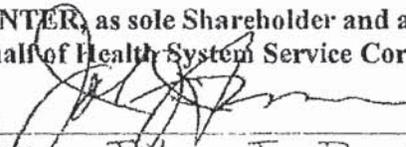
**JEFFERSON REGIONAL MEDICAL CENTER**

By:   
Name: John J. Dempster  
Title: President + CEO

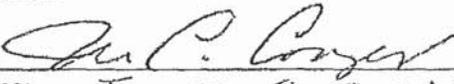
**JEFFERSON REGIONAL MEDICAL CENTER, as sole Member and acting on behalf of all JRMC Subsidiaries except Health System Service Corporation, Jefferson Regional Medical Center Pavilion and Primary Care Group 11, Inc.**

By:   
Name: John J. Dempster  
Title: President + CEO

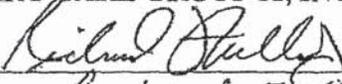
**JEFFERSON REGIONAL MEDICAL CENTER**, as sole Shareholder and acting on behalf of Health System Service Corporation

By:   
Name: John J. Dempster  
Title: President & CEO

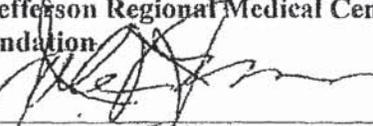
**HEALTH SYSTEM SERVICE CORPORATION**, as sole Member and acting on behalf of Jefferson Regional Medical Center Pavilion

By:   
Name: James C. Cooper  
Title: President

**PRIMARY CARE GROUP 11, INC.**, for itself

By:   
Name: Richard F. Collins, Jr.  
Title: President

**JEFFERSON REGIONAL MEDICAL CENTER**, as sole Member and acting on behalf of Jefferson Regional Medical Center Foundation

By:   
Name: John J. Dempster  
Title: President & CEO