

ADMINISTRATIVE EXPENSE CLAIM FORM

Debtor: Fayette Memorial Hospital Association, Inc., Case No. 18-07762-JJG-11

NOTE: This form should only be used to make a claim for an Administrative Expense arising or accruing from October 10, 2018 through and including April 30, 2019. IT SHOULD NOT BE USED FOR CLAIMS ARISING PRIOR TO OCTOBER 10, 2018.

Name of Creditor (The person or other entity to whom the debtor owes money or property) Connersville Pain Management, LLC, on behalf of itself and as member of Fayette Regional Health System Pain Management, LLC	<input type="checkbox"/>	Check box if you are aware that anyone else has filed a proof of claim relating to your claim. Attach copy of statement giving particulars.
Name and address where notices should be sent: Mark A. Ozimek RCO Law, Four SeaGate, Ninth Floor, Toledo, OH 43604	<input type="checkbox"/>	Check box if you have never received any notices from the bankruptcy court in this case
Name and address where payment should be sent (if different)	<input type="checkbox"/>	Check box if the address differs from the address on the envelope sent to you by the court.
Telephone number 419-249-7900		

Last four digits of account or other number by which creditor identifies debtor:

1. Basis for Administrative Claim

- ☐ Goods sold
☒ Services performed
☐ Money loaned
☐ Personal injury/wrongful death
☐ Taxes
☐ Other

☐ Retiree benefits as defined in 11 U.S.C. § 1114(a)

☐ Wages, salaries, and compensation (fill out below)

Last four digits of your SS #:

Unpaid compensation for services performed

from _____ (date) - to _____ (date)

2. Date(s) debt was incurred 6/1/19 - current

3. If court judgment, date obtained:

4 TOTAL AMOUNT OF ADMINISTRATIVE CLAIM \$ 53,872.19

If all or part of your claim is secured, also complete Item 5 below.

☐ Check this box if claim includes interest or other charges in addition to the principal amount of the claim. Attach itemized statement of all interest or additional charges.

5. Please identify the property of the Debtor that secures the claim.

Description of Property: _____

Basis for Perfection: _____

Value of Property: _____

6. Offsets, Credits and Setoffs:

☒ All Payments made on this claim by the Debtor have been credited and deducted from the amount claimed herein

☒ This claim is not subject to any setoff or counterclaim.

☐ This claim is subject to setoff or counterclaim as follows:

7. This Administrative Proof of Claim:

☒ is the first filed proof of claim evidencing the claim asserted herein.

☐ amends/supplements a proof of claim _____ filed on _____ or

☐ replaces/suspends a proof of claim filed on _____.

8. Assignment

☐ If the claimant has obtained this claim by Assignment, a copy is attached hereto.

RECEIVED

AUG 09 2019

9. Supporting Documentation

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. Do not send original documents; they may be destroyed after scanning. If the documents are not available, explain in an attachment.

Date: 8/8/19

Sign and print the name and title, if any, of the creditor or other person authorized to file this claim (attach copy of power of attorney, if any):

Mark A. Ozimek, Attorney for Creditor

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

FMHA POC



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ATTACHMENT TO ADMINISTRATIVE EXPENSE CLAIM FORM

Debtor: Fayette Memorial Hospital Association, Inc. ("Debtor")
Case No.: 18-07762-JJG-11
Creditor: Connersville Pain Management, LLC, on behalf of itself and as member of Fayette Regional Health System Pain Management, LLC ("Creditor")

1. This Administrative Proof of Claim ("Claim") is filed by Creditor arising out of the operation of a joint venture relationship between Creditor and Debtor. The joint venture entity is known as Fayette Regional Health System Pain Management, LLC (the "Joint Venture") and operated the pain management department on Debtor's campus until approximately May 24, 2019. Debtor is the holder of 51% of the membership interest in the Joint Venture and Creditor is the holder of 49% of the membership interest in the Joint Venture. Debtor bills patient and third-party payors for all pain management services provided by the Joint Venture and, upon receipt, transfers to the Joint Venture all fees attributable to such billings.

2. As of the date of filing this Claim, Creditor and its parent company, Pain Management Group, LLC, is owed approximately \$53,872.19 in distributions and fees from the Debtor as follows:

Fayette Regional Pain Management, LLC Asset Distribution Calculation

Assets:	
Cash	70,258.00
AR Due from Hospital	188,978.54
Net Patient AR	<u>92,893.00</u>
Total Assets to be Distributed:	352,129.54
Liabilities:	
Payable to Hospital	125,853.10
Payable to PMG	<u>11,458.30</u>
Total Liabilities:	137,311.41
Assets less Liabilities:	<u><u>214,818.13</u></u>
Equity Split:	
51% Payable to Hospital	109,557.25
49% Payable to Connersville Pain Management	105,260.88
Combined Owed to Hospital	235,410.35
<i>*Payable to Hospital + 51% Equity Split</i>	

Combined Owed to PMG/Connersville Pain Management	116,719.19
<i>*Payable to PMG + 49% Equity Split</i>	
Paid to PMG after May 31, 2019	(62,847.00)
<i>Net Amount Owed to PMG/Connersville Pain Management</i>	
	<hr/> 53,872.19

3. Creditor reserves its rights to assert additional claims against Debtor for any and all other claims.

4. Creditor expressly reserves the right to amend, modify or supplement this Claim at any time for whatever reason, including that the claims against Creditor exceed the amounts reflected herein. The claim amount stated on the face of this Claim is intended to be a present, good faith, non-binding estimate of the amount of the claim, which ultimately may or will require revision to a higher or lower amount, as justice requires.

5. By virtue of filing this Claim, Creditor does not waive, and hereby expressly reserves its rights to pursue, claims including without limitation the claims described herein against the Debtor, based on alternative legal theories.

6. To the extent that the Debtor asserts any claims against Creditor of any kind, Creditor reserves the right to assert that such claims by the Debtor are subject to Creditor's rights of set-off and recoupment.

**Operating Agreement of
FAYETTE REGIONAL HEALTH SYSTEM PAIN
MANAGEMENT, LLC**

***A Limited Liability Company
Organized Under the Laws of
the State of Indiana***

Dated: May 28, 2015

THE MEMBERSHIP INTERESTS EVIDENCED BY THIS DOCUMENT ARE SUBJECT TO RESTRICTIONS ON ASSIGNMENT AND TRANSFER SET FORTH HEREIN. THE INTERESTS HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933 OR ANY STATE SECURITIES LAW AND MAY NOT BE SOLD OR OTHERWISE TRANSFERRED UNTIL REGISTERED OR UNTIL THE COMPANY HAS RECEIVED AN OPINION OF LEGAL COUNSEL, OR OTHER ASSURANCES SATISFACTORY TO THE COMPANY, THAT AN INTEREST MAY LEGALLY BE SOLD OR OTHERWISE TRANSFERRED WITHOUT REGISTRATION.

OPERATING AGREEMENT

OF

FAYETTE REGIONAL HEALTH SYSTEM PAIN MANAGEMENT, LLC

THIS OPERATING AGREEMENT is entered into effective as of the Organization Date (as defined below), by and between Fayette Regional Health System, an Indiana nonprofit corporation ("HOSPITAL") and Connersville Pain Management, LLC, an Ohio limited liability company ("PAIN"), each of which hereby agrees and certifies as follows:

ARTICLE I DEFINITIONS

The terms defined in this Article, whenever used in this Agreement and capitalized, have the following meanings unless the context or use requires another meaning:

"Act" means the Indiana Business Flexibility Act, as now enacted or hereafter amended.

"Adjusted Capital Account Deficit" means with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

- (a) Credit to such Capital Account any amount which such Member is obligated to restore or is deemed to be obligated to restore pursuant to Treasury Regulations §1.704-1(b)(2)(ii)(c) and the next to last sentence of Treasury Regulations §1.704-2(g)(1) and (i)(5); and
- (b) Debit to such Capital Account the items described in Treasury Regulations §1.704-1(b)(2)(ii)(d) (4), (5) and (6).

The foregoing definition is intended to comply with the provisions of Treasury Regulations §1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Affiliate" or **"Affiliates"** means with respect to any Member, any person or organization: (i) which owns fifty percent (50%) or more of the voting interests in the Member; or (ii) in which the Member owns fifty percent (50%) or more of the voting interests; or (iii) in which fifty percent (50%) or more of the voting interests are owned by a person or organization who has a relationship with the Member described in clause (i) or (ii); or (iv) in which fifty percent (50%) or more of the voting interests are held by persons or organizations that hold voting interests in the Member or in any organization described in clause (i), (ii) or (iii).

"Agreement" means this Operating Agreement, as amended from time to time.

"Appraised Value" means the Fair Market Value agreed to by the Members involved in a purchase or sale, or, in the absence of such agreement, the Appraised Value shall be determined as follows: Within fifteen (15) days after demand by either one or the other, the selling party and the purchasing party shall each appoint an appraiser to determine the Fair Market Value. Each appraiser shall hold one or more of the following designations/certifications:

- Accredited Senior Appraiser (ASA) designation of the American Society of Appraisers.
- Certified Business Appraiser (CBA) designation of the Institution of Business Appraisers.
- Accredited in Business Valuation (ABV) certification of the American Institute of Certified Public Accountants.
- Certified Valuation Analyst (CVA) designation of the National Association of Certified Valuation Analysts.

Any necessary appraisal shall be requested within thirty (30) days of the date of the notice. The appraisal shall be completed within sixty (60) days of the request. If the two appraisers agree upon the Fair Market Value, they shall jointly render a single written report stating that value. If the two appraisers cannot agree upon the Fair Market Value, they shall each render a separate written report and shall appoint a third appraiser, who shall determine the Fair Market Value (which shall not be greater than the greatest Fair Market Value or lower than the lowest Fair Market Value as determined by the first two appraisers), and shall render a written report of his or her opinion thereon, which shall be binding on all parties. Each party shall pay the fees and costs of the appraiser appointed by that party, and the fees and other costs of the third appraiser shall be shared equally by both parties.

“Book” means the method of accounting required to comply with the provisions of this Agreement and otherwise in accordance with generally accepted accounting principles, as distinguished from any accounting method that the Company may adopt for financial reporting or other purposes.

“Book Value” means, as of the date of determination, the Interest Holders’ equity in the Company, as determined by the balance sheet of the then most recently ended Fiscal Year prepared in accordance with Book accounting principles.

“Capital Account” means the capital account of a Member maintained in accordance with Section 4.1 of this Agreement.

“Code” means the Internal Revenue Code of 1986, as amended. All references to particular Sections of the Internal Revenue Code shall be deemed to include reference to corresponding provisions of any subsequent internal revenue law of the United States of America.

“Company” means Fayette Regional Health System Pain Management, LLC, an Indiana limited liability company.

“Company Unit” or **“Unit”** means an interest of a Member or an assignee in the Company representing such fractional part of the interests of all the Members and assignees pursuant to this Agreement as is equal to the quotient of one divided by the number of Outstanding Units.

“Control Rights” means the unilateral right to make governance decisions or to elect a majority of members of the governing body of a Person, directly or indirectly. A Person has indirect Control Rights if it has Control Rights in any entity that has Control Rights in another entity, through one or more intermediate levels.

“Excess Cash” means the amount of cash (from whatever source) of the Company on hand from time to time that is in excess of the required equity of the Company as determined by the Members, taking into account the general needs of the Company for working capital and investments, the preservation of Company property, contingencies and debts.

“Fair Market Value” means the value that would be paid by a willing buyer to a willing seller in an arm’s length transaction, and shall comply with the definition of Fair Market Value included in 42 CFR 411.351, as amended from time-to-time. If the Agreement specifies that the value shall be established as a “going concern,” the Fair Market Value shall include the value of any goodwill. If the Agreement specifies that the value is to be determined “not as a going concern,” the Fair Market Value shall be determined based on the value of the separate assets, and shall not include goodwill.

“Fiscal Year” means the fiscal year of the Company as determined by the Members from time to time in compliance with Code Section 706, and, initially, means a fiscal year ending on December 31.

“Immediate Family” means a Person’s spouse, the Person’s or spouse’s parents, grandparents, children, grandchildren and siblings, and the spouse of any of the foregoing.

“Interest Holder” means any person or organization who holds a Percentage Interest, whether as a Member or an unadmitted assignee of a Member.

“**Member**” or “**Members**” means the parties to this Agreement, as well as their successors and permitted assigns and any other Persons who are admitted as Members pursuant to the terms of this Agreement, so long as such Member holds at least one Company Unit, except as otherwise provided in Section 9.5 of this Agreement.

“**Net Loss**” means the amount by which the Company’s expenses, including any depreciation and amortization on all depreciable and amortizable Company assets, for the fiscal year to which the term relates exceeds gross income for such fiscal year, all determined in accordance with the method of accounting used for Book purposes.

“**Net Profit**” means the amount by which gross income of the Company for the fiscal year to which the term relates exceeds its expenses, including depreciation and amortization on all depreciable and amortizable Company assets for such fiscal year, all determined in accordance with the method of accounting used for Book purposes.

“**Officer**” means an officer of the Company appointed and acting, from time to time, pursuant to Article VI of this Agreement.

“**Outstanding Units**” means the number of Units shown on the books and records of the Company to be outstanding other than Units held by the Company; provided, however, that, for purposes of a written approval or affirmative vote required to take any action by the Members hereunder, the number of Outstanding Units shall not include Units held by an assignee who has not been admitted as a Member pursuant to the terms of this Agreement.

“**Percentage Interest**” means, with respect to an Interest Holder, the Interest Holder’s percentage interest in the Company’s Net Profits, Net Losses and distributions at the time of determination based on the number of Units held by the Interest Holder as a percentage of the total number of Outstanding Units. The number of Units initially held by each Member is listed in Exhibit A.

“**Person**” means and includes any natural person and any corporation, firm, partnership, trust, estate, limited liability company or other entity resulting from any form of association, including any person as defined in the Act.

“**Related Party**” or “**Related Parties**” means, with respect to any organization, any Affiliate of the organization and any Person that has Control Rights in the organization or in an Affiliate of the organization; and with respect to any individual, any member of the Immediate Family of the individual and any Person (i) that employs or is employed by the individual or a member of his or her Immediate Family; (ii) that has a contract with the individual or a member of his or her Immediate Family involving consideration of more than Five Thousand Dollars (\$5,000.00) per year on average; (iii) in which the individual or a member of his or her Immediate Family holds any Control Rights; (iv) in which Control Rights are held by a Person who has a relationship with the individual or a member of his or her Immediate Family that is described in clause (i), (ii), or (iii); or (v) that employs or is employed by a Person who has a relationship with the individual or a member of his or her Immediate Family described in clause (i), (ii), (iii), or (iv). In addition, a Person is a Related Party to an organization if he, she or it is a Related Party to an individual who is a Related Party to the organization.

“**Restricted Area**” means the following:

1. All of Fayette County (Indiana); and
2. To the extent outside Fayette County (Indiana), the geographical area that is within a fifteen (15) air mile radius of HOSPITAL’s main hospital building, currently located at 1941 Virginia Avenue, Connersville, IN 47331; and
3. All of Union County (Indiana); and
4. All areas within Wayne County (Indiana) that are not otherwise within this definition of “Restricted Area,” but only with respect to pain management services provided, directly or indirectly, at, for, or in affiliation with Reid Hospital and Healthcare Services (which has its main hospital location in Richmond, Indiana); and
5. Franklin County (Indiana), but only as follows:
 - a. The geographical area that is within a five (5) air mile radius of the Franklin County Courthouse, currently located at 459 Main Street, Brookville, IN 47012; and

- b. All areas within Franklin County (Indiana) that are not otherwise within this definition of "Restricted Area," but only with respect to pain management services provided, directly or indirectly, at, for, or in affiliation with Reid Hospital and Healthcare Services (which has its main hospital location in Richmond, Indiana).

"Taxable Member" means any Member that is not a Tax-Exempt Member.

"Tax Distribution Rate" means a percentage established from time to time that is intended to approximate the combined federal, state and municipal income tax payable by a typical Taxable Member with respect to taxable income allocated to such Taxable Member.

"Tax-Exempt Member" means a Member that is exempt from federal income tax under Code Section 501(c)(3).

"Transfer" means any sale, assignment, pledge, hypothecation, encumbrance, disposition, transfer (including, without limitation, a transfer by will, intestate distribution, or decree of divorce or separation), gift, or attempt to create or grant a security interest in any Unit or portion thereof, whether voluntary or involuntary, by operation of law or otherwise.

"Treasury Regulations" means regulations promulgated under the Code.

"Valuation Date" means the last day of the month prior to the event that gives rise to the need for a valuation to be performed, such as the exercise of an option to purchase Units at fair market value.

"Voting Rights" means all of the rights of a Member under this Agreement (including but not limited to all voting rights), exclusive of the Member's Percentage Interest.

"Withdrawal" means a voluntary or involuntary withdrawal from Membership.

ARTICLE II **ORGANIZATION**

2.1 Formation. The Members have caused the Company's Articles of Organization to be filed with the Indiana Secretary of State on or about the 24th day of April, 2015 (the "Organization Date"). The rights and obligations of the Members are as provided in the Act except as provided in this Agreement.

2.2 Principal Office. The location of the principal office and place of business of the Company is 1941 Virginia Ave., Connersville, IN 47331.

2.3 Statutory Agent. Randy White is the statutory agent of the Company in Indiana, and his address is 1941 Virginia Ave., Connersville, IN 47331.

2.4 Term. This Agreement is effective as of the Organization Date and will continue in perpetuity unless and until the Company is dissolved and liquidated in accordance with the provisions of this Operating Agreement.

2.5 Purpose.

- (a) The purpose of the Company is to operate hospital-based outpatient department of HOSPITAL that provides pain management services for the benefit of the greater Connersville, Indiana community. The Company may also have other activities not prohibited by the Act, provided that such activities are consistent with the charitable purposes of any Tax-Exempt Member.
- (b) Notwithstanding anything in this Agreement to the contrary and notwithstanding any duty of a Member under state law, any Tax-Exempt Member will, in carrying out its responsibilities

as a Member, and will cause the Company to, act exclusively to promote the charitable purposes of the Tax-Exempt Member and provide a benefit to the communities it serves and at no time shall the Company take any action or perform in a manner that jeopardizes the tax-exempt status of any Tax-Exempt Member. No change in the purposes of the Company or its operations will be permitted if such change would be inconsistent with or in violation of any requirement to maintain the Code Section 501(c)(3) status of any Tax-Exempt Member.

- (c) The Company shall operate in a manner that permits any Tax-Exempt Member to treat its distributive share of the gains and losses derived from the Company's operations as exempt from federal income tax. The Company's duty to operate in a tax-exempt manner, including in a manner consistent with the community benefit, charity care and health promotion commitments of any Tax-Exempt Member, shall control over any duty to maximize profits, and notwithstanding any provision of this Agreement to the contrary, the Tax-Exempt Member may take any and all actions which, in its sole discretion, may be required by its tax exempt purposes even when those purposes may conflict with the profitability of the Company or the objectives of the other Member. The Company shall participate in the Federal Medicare and Indiana Medicaid programs and shall provide its services to all on a nondiscriminatory basis and without regard to any patient's ability to pay consistent with the charitable purposes and objectives of the Tax-Exempt Member, and the Company shall make it known to the community that the Company is operating under the Tax-Exempt Member's charity care policy.

2.6 Fictitious Business Name Statement; Other Certificates. The Officers may, from time to time, file fictitious or trade name statements or certificates in those jurisdictions and offices as the Members consider necessary or appropriate. The Company may do business under any fictitious business names selected by the Members. The Officers shall, from time to time, file or cause to be filed certificates of amendment, certificates of cancellation, or other certificates that the Members reasonably consider necessary or appropriate under the Act or under the laws of any jurisdiction in which the Company is doing business to establish and continue the Company as a limited liability company or to protect the limited liability of the Members.

ARTICLE III **CAPITAL CONTRIBUTIONS**

3.1 Capital Contributions.

- (a) The Members shall contribute to the Company, upon execution of this Operating Agreement, cash in the amount shown on **Exhibit A** attached hereto, in exchange for their initial interests in the Company as described in Section 3.2 of this Agreement.
- (b) The Members shall make additional capital contributions as determined from time to time. Such additional capital contributions will be made in cash on a pro rata basis by each Member in accordance with its Percentage Interest at that time. Determination of the amounts and times of such additional capital contributions shall be made and approved by the Members. Each Member will deposit with the Company its pro rata share of such additional capital contributions within thirty (30) days of the Members' decision that such capital contributions are needed.
- (c) If any Member fails or refuses to remit to the Company its pro rata share of any capital contribution referred to in this Section 3.1 within thirty (30) days of the date due, the other Member may contribute the difference. The contributing Member's Units shall be increased and the noncontributing Member's Units shall be decreased accordingly. For this purpose the value of a Unit shall be based on the Book Value on the last day of the last month prior to the contribution.

3.2 **Initial Interest in the Company.** Each Member has subscribed for the number of Units as further described in Exhibit A attached hereto, and shall have an interest in the profits and capital of the Company proportionate to such Units as provided in this Agreement.

3.3 **No Interest On Capital.** No interest shall be paid by the Company on the contributions to the capital of the Company by the Members.

3.4 **Loans from the Members.** If any Member advances any funds to the Company in excess of its required contributions to the capital of the Company, the amount of any such advance shall not be deemed a capital contribution, but shall be an obligation of the Company to such Member and shall be repaid, including a market rate of interest equal to the prime rate as set forth in the Wall Street Journal, by the Company on such terms as the Members and such Member mutually determine as of the date of the advance.

3.5 **Withdrawal of Capital.** No Member may withdraw any portion of its paid-in capital contribution, and no Member has any right to a return of capital except through distributions as provided in Articles IV and X of this Agreement.

3.6 **Non-Assumption of Liability.** If any Member has incurred any indebtedness or other obligation prior to the date of this Agreement that relates to or otherwise affects the Company, neither the Company nor any other Member shall have any liability or responsibility for or with respect to such indebtedness or obligation unless such indebtedness or obligation is assumed by the Company pursuant to a written instrument signed by all Members. Neither the Company nor any Member shall be responsible or liable for any indebtedness or obligation that is incurred after the date of this Agreement by any Member. If any Member, whether prior to or after the date of this Agreement, incurs or has incurred any debt or obligation that neither the Company nor the other Member is responsible or liable for, that Member shall indemnify and hold harmless the Company and the other Member from any liability or obligation they may incur in respect thereto. Notwithstanding anything in this Agreement to the contrary, no Member shall have any obligation to repay to any other Member any funds invested by such other Member in the Company.

ARTICLE IV **ALLOCATION OF PROFITS, GAINS, AND LOSSES; DISTRIBUTIONS TO MEMBERS**

The income, profits, gains, and losses of the Company shall be allocated, and cash distributions of the Company shall be made, as follows:

4.1 **Capital Accounts.** The Company shall maintain a separate Capital Account for each Interest Holder. The Capital Account of each Interest Holder shall be (a) credited by the amount of money and the fair market value of any other property contributed to the Company pursuant to Section 3.1 (net of any liabilities secured by such contributed property that the Company is treated as assuming or as taking subject to the liability for purposes of Code Section 752), (b) appropriately adjusted for each Interest Holder's allocations of Net Profit and Net Loss for each Fiscal Year, (c) debited by the amount of cash and the fair market value of any other property distributions made by the Company to such Interest Holder from time to time (net of any liabilities secured by such distributed property that the Interest Holder is treated as assuming or as taking subject to the liability for purposes of Code Section 752), and (d) otherwise adjusted in accordance with Code Section 704(b) and relevant Treasury Regulations.

4.2 **Transferee's Capital Account.** In the event of a permitted Transfer, the Capital Account of the transferor shall become the Capital Account of the transferee or assignee to the extent it relates to the transferred Unit(s).

4.3 **Allocations.** After the special allocations contained in Section 4.5 have been made, any Net Profit and Net Loss will be allocated among the Interest Holders in proportion to their respective Percentage Interests in the Company. Notwithstanding the foregoing, no Interest Holder will be allocated Net Loss to the extent such allocation would cause the Interest Holder to have, or increase, an Adjusted Capital Account Deficit. Any Net Loss limited pursuant to the foregoing sentence will be reallocated among Interest Holders not subject to that limitation. Further, if Net Loss has been reallocated pursuant to the preceding sentence and the Company has Net Profit in a subsequent year, such Net Profit will first be allocated to those Interest Holders to whom such Net Loss was reallocated in the full amount of the reallocated Net Loss before any other allocations are made hereunder.

4.4 Revaluation of Company Property. In the sole discretion of the Members, the Capital Accounts of the Interest Holders may be adjusted to reflect a revaluation of Company property (including intangible assets such as goodwill) to its Appraised Value at the following times: (i) in connection with the acquisition of a Membership interest by a new Member for more than a de minimis capital contribution, (ii) in connection with the liquidation of the Company as defined in Treasury Regulations §1.704-1(b)(2)(ii)(g) or (iii) in connection with more than a de minimis distribution to a retiring or continuing Interest Holder as consideration for the Interest Holder's interest in the Company. In the event of any revaluation of Company property hereunder, the Capital Accounts of the Interest Holders shall be adjusted, including continuing adjustments for depreciation, to the extent provided in Treasury Regulations §1.704-1(b)(2)(iv)(f) and (g).

4.5 Special Allocations.

- (a) **Qualified Income Offset.** Except as provided in Section 4.5(b), if an Interest Holder unexpectedly receives an adjustment, allocation or distribution described in Treasury Regulations §1.704-1(b)(2)(ii)(d)(4), (5) or (6) that causes such Interest Holder to have or increase an Adjusted Capital Account Deficit, such Interest Holder will be allocated items of income or gain in an amount and manner sufficient to eliminate, to the extent required by Treasury Regulations under Code §704(b), the Adjusted Capital Account Deficit of such Member as quickly as possible. This provision is intended to constitute a "qualified income offset" within the meaning of Treasury Regulations §1.704-1(b)(2)(ii)(d).
- (b) **Recapture.** In making the allocation of Net Profit among the Interest Holders, the ordinary income portion, if any, of such Net Profit caused by the recapture of cost recovery or other deductions shall be allocated among those Interest Holders who were previously allocated the cost recovery or other deductions in proportion to the amount of such deductions previously allocated to them (taking into account any allocations of income that have recaptured prior allocations of losses and deductions). It is intended that the Interest Holders shall bear the burden of recapture caused by cost recovery or other deductions that were previously allocated to them, in proportion to the amount of such deductions that have been allocated to them, notwithstanding that an Interest Holder's share of Net Profit or Net Loss may increase or decrease from time to time. Nothing in this Subsection 4.5(b), however, shall cause the Interest Holders to be allocated more or less Net Profit or Net Loss than would otherwise be allocated to them pursuant to this Article IV.
- (c) **Maintenance of Economic Arrangement.** Any special allocations of items of Net Profit or Net Loss pursuant to this Section 4.5 shall be taken into account in computing subsequent allocations of Net Profit or Net Loss pursuant to this Article IV, so that the net amount of any item so allocated and the profit, gain, loss and other item allocated to each Interest Holder pursuant to this Article IV shall, to the extent possible, be equal to the net amount that would have been allocated to each such Interest Holder if the special allocations had not occurred.
- (d) **Company Minimum Gain.** If there is a net decrease in Company minimum gain (as determined pursuant to Treasury Regulations §1.704-2(d)) for a taxable year of the Company, then, before any other allocations are made for such taxable year, each Interest Holder shall be allocated items of book income and gain for such year (and, if necessary, for subsequent years) to the extent required by Treasury Regulation Section 1.704-2(f).
- (e) **Sharing of Nonrecourse Liabilities.** Each Interest Holder's share of excess nonrecourse liabilities of the Company, as such term is defined in Treasury Regulations §1.752-3(a)(3), and solely for such purpose, shall be such Interest Holder's Percentage Interest.

4.6 Discretionary Allocations.

- (a) **Allocation Savings Provision.** The allocation method set forth in this Article IV is intended to allocate Net Profit and Net Loss to the Interest Holders in accordance with their economic interest in the Company while complying with the requirements of Code Section 704(b) and the Treasury Regulations promulgated thereunder. If in the opinion of the Members, the allocation of Net Profit or Net Loss pursuant to the preceding provisions of this Article IV do not (1) satisfy the requirements of Code Section 704(b) or the Treasury Regulations thereunder, (2) comply with any other provisions of the Code or Treasury Regulations or (3) properly take into account any expenditure made by the Company or transfer of an Interest Holder interest, then notwithstanding anything to the contrary contained in the preceding provisions of this Article IV, profits and losses shall be allocated in such manner as the Members in their sole and unrestricted discretion determine to be required so as to reflect properly (1), (2) or (3), as the case may be, and the Members shall have the right to amend this Agreement to reflect any such change in the method of allocating Net Profit and Net Loss, provided, however, that any change in the method of allocating Net Profit or Net Loss shall not materially alter the economic agreement among the Interest Holders.
- (b) **Members' Varying Interests.** If Company Units Transfer during the Fiscal Year, then for purposes of this Article IV, the Members shall take into account the requirements of Code §706(d) and shall have the right to select any method of determining the varying interests of the Interest Holders during the year which satisfies Code §706(d). If Members are admitted to the Company on varying dates and, pursuant to Code §706(d), Net Profit or Net Loss are consequently allocated among the Members to reflect such varying admission dates ("varying admission allocations"), subsequent allocations of Net Profit and Net Loss shall be made to the Members to offset such varying admission allocations.
- (c) **Compliance with Code §704(c).** If the value of any Company asset is required or permitted to be adjusted pursuant to the provisions of Code §704(b) and the Treasury Regulations thereunder, subsequent allocations of income, gain, loss and deduction for tax purposes with respect to such asset shall take account of any variation between the adjusted basis of such asset for federal income tax purposes and its adjusted value, in the same manner as under Code §704(c) and the applicable Treasury Regulations. Any elections or other decisions relating to such allocations shall be made by the Members in any manner that reasonably reflects the purpose and intention of this Agreement. Allocations pursuant to this Subsection 4.6(c) are solely for purposes of federal, state and local taxes, as appropriate, and shall not affect, or in any way be taken into account in computing, any Interest Holder's Capital Account or share of Net Profits, Net Losses, other items or distributions pursuant to any provision of this Agreement.

4.7 Distributions to Members.

- (a) The Company shall distribute to the Interest Holders (including any Tax-Exempt Member) in accordance with their respective Percentage Interests in the Company the lesser of (i) the Excess Cash, or (ii) an amount sufficient to allow any Member(s) to which net taxable income is allocable to satisfy such Member(s) income tax liability with respect to such allocation. Such distribution may be made periodically during the taxable year to which the income relates or during the subsequent year, but in no event will the distribution be made later than April 15 of the year following the taxable year to which the income relates.
- (b) The Company may distribute all or part of any remaining Excess Cash at such times and in such amounts as the Members determine.

- (c) Each distribution will be allocated among the Interest Holders in accordance with their respective Percentage Interests in the Company.
- (d) If the Company distributes any property in kind that is not revalued under Section 4.4, the Capital Accounts shall be adjusted to reflect the gain or loss that would be recognized if the property were sold for its Appraised Value (not as a going concern) at the time of distribution.

ARTICLE V

MANAGEMENT AND OPERATIONS

5.1 Management Rights. The management of the Company is hereby reserved to the Members.

5.2 Voting. Except as otherwise provided in this Agreement, the approval of the Members holding a majority of the Outstanding Units eligible to vote on the matter is required and sufficient to take action on any matter requiring Member approval.

5.3 Matters Requiring Unanimous Approval. In addition to those matters requiring such consent as specified elsewhere in this Agreement, none of the following actions may be taken by the Company without the approval of all Members eligible to vote on the matter:

- (a) Any amendment to the Articles of Organization or the Operating Agreement of the Company;
- (b) Any merger, consolidation or reorganization of the Company with or into another person, organization or entity, or any sale, lease or other disposition of all or substantially all of the assets of the Company;
- (c) The acquisition of any ownership or control interest in a separate organization (including but not limited to interests acquired by or through shares, membership or partnership or joint venture interests);
- (d) The incurrence, assumption or guarantee of any indebtedness (excluding trade payables) if following the incurrence, assumption, or guarantee of such indebtedness the aggregate amount of all outstanding indebtedness incurred, assumed or guaranteed by the Company which has not been previously approved by the Members exceeds Fifty Thousand Dollars (\$50,000);
- (e) The sale, lease or other disposition of any real or personal property of the Company with a value in excess of Fifty Thousand Dollars (\$50,000);
- (f) Any application for or consent to the appointment of a receiver, trustee or liquidator of the Members of all or a substantial part of its assets, the filing of a voluntary petition in bankruptcy, the making of a general assignment for the benefit of creditors, the filing of a petition or an answer seeking reorganization or similar arrangements with creditors, or the taking advantage of any insolvency law;
- (g) Acceptance of additional capital contributions from any Member at any time or from time to time pursuant to subsections 3.1(a) and (b);
- (h) Adoption of the annual operating and capital budgets;
- (i) Adoption of a strategic plan or business plan;

- (j) The admission of new Members to the Company; or
- (k) The entering into of any Agreement with a Member of the Company.

5.4 Tax Matters Member. HOSPITAL shall be identified as the Tax Matters Member on any tax returns filed on behalf of the Company.

5.5 Meetings of Members. The Members shall meet at such times as shall be determined by the consent or certification of the Members, for the purpose of transacting such business as may come before the meeting. Special meetings of the Members, for any purpose or purposes, may be called by any Member. The Members may designate any place, either within or outside the State of Indiana, as the place of any meeting of the Members. If no designation is made, the place of meeting shall be the principal office of the Company. Members may participate in any meeting through the use of any means of communication by which all of the Members may simultaneously hear each other during the meeting. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

5.6 Notice and Record Date of Meetings. Except as otherwise provided herein, written notice stating the place, day and hour of a meeting and the purpose or purposes for which the meeting is called shall be delivered not less than two (2) nor more than twenty (20) days before the date of the meeting, either personally or by mail, to each Member. If mailed, such notice shall be deemed to be delivered two calendar days after being deposited in the United States mail, addressed to the Member at his address as it appears on the books of the Company, with postage thereon prepaid. Members may waive prior notice by attending the meeting or by executing a written waiver of notice before or after the meeting. The date on which notice of the meeting is mailed shall be the record date for such determination of Members entitled to notice of or to vote at any meeting of Members.

5.7 Action by Members without a Meeting. Any action required or permitted to be taken at a meeting of Members may be taken without a meeting if the action is evidenced by one or more written consents delivered to the Company, which consents are to set forth the proposed action to be taken and contain the signatures of Members holding the requisite number of Outstanding Units at such time necessary for the approval of such action. Any action taken hereunder is effective when the Members sign the consent, unless the consent specifies a different effective date.

ARTICLE VI **OFFICERS**

6.1 Appointment of Officers. The Members may appoint, and delegate to, the Officers, other employees, and agents of the Company the authority to conduct the business of the Company in accordance with this Agreement and any policy of delegation that may be adopted and revised from time to time by the Members. Any power not delegated by the Members remains with the Members.

6.2 Officers of the Company. The initial Officers of the Company are:

President:	CEO of HOSPITAL
Vice President:	CEO of Pain Management Group, LLC
Treasurer:	AVP Physician Practices of HOSPITAL
Secretary:	CFO of Pain Management Group, LLC

Except as otherwise provided herein, each Officer shall serve for a term of one year and until his or her successor is appointed. The Members may remove any Officer at any time. An Officer may resign at any time by delivering his or her written resignation to the Members.

6.3 President. The President shall be the chief executive officer of the Company and shall exercise supervision over the business of the Company and over its several Officers, subject, however, to the control of the Members. The President shall preside at all meetings of the Members. The President shall have authority to sign all deeds, mortgages, bonds, contracts, notes and other instruments requiring the President's signature; and shall have all the powers and duties prescribed by law and such other duties as the Members may from time to time assign.

6.4 Vice Presidents. The Vice Presidents shall perform such duties as are conferred upon them by these regulations or as may from time to time be assigned to them by the Members or the President. At the request of the President, or in his absence or disability, the Vice President, designated by the President (or in the absence of such designation, the Vice President designated by the Members, shall perform all the duties of the President, and when so acting, shall have all the powers of the President. Any one or more of the Vice Presidents may be designated as an "Executive Vice President."

6.5 Secretary. The Secretary shall keep minutes of all the proceedings of the Members, and shall make proper record of the same, which shall be attested by the Secretary; sign all deeds, mortgages, bonds, contracts, notes, and other instruments executed by the Company requiring the Secretary's signature; give notice of meeting of Members; keep such books as may be required by the Members, and file all reports required by law; and perform such other and further duties as may from time to time be assigned by the Members or by the President.

6.6 Treasurer. The Treasurer shall have general supervision of all finances, shall receive and have in charge all money, bills, notes, deeds, leases, mortgages and similar property belonging to the Company, and shall do with the same as may from time to time be required by the Members. The Treasurer shall cause to be kept adequate and correct accounts of the business transactions of the Company, including accounts of its assets, liabilities, receipts, disbursements, gains, losses, and stated capital, together with such other accounts as may be required, and, upon the expiration of his term of office, shall turn over to his successor or to the Members all property, books, papers and money of the Company in his hands; and shall perform such other duties as may from time to time be assigned by the Members or the President.

6.7 Assistant and Subordinate Officers. The Members may appoint such assistant and subordinate officers as they may deem desirable. Each such officer shall hold office at the pleasure of the Members, and perform such duties as the Members may prescribe. The Members may, from time to time, authorize any Officer to appoint and remove assistant and subordinate Officers, to prescribe their authority and duties, and to fix their compensation.

6.8 Duties of Officers May Be Delegated. In the absence of any Officer of the Company, or for any other reason the Members may deem sufficient, the Members may delegate, for the time being, the powers or duties, or any of them, of such Officer to any other Officer.

6.9 Other Duties of the Officers. In addition to obligations imposed by other provisions of this Agreement, each Officer is to devote to the Company such time as is reasonably necessary and his or her best efforts to carry out the business of the Company and to accomplish its purposes. The Officers, on behalf of the Company and at the expense of the Company, are to:

- (1) maintain at the Company's principal place of business a list, updated from time to time, that accurately sets forth the names and addresses of the Members, the Units held by each Member, and the capital each Member has paid to the Company;
- (2) furnish to each Member, by the fifteenth day of the third month following the close of each Fiscal Year or such later date as may be approved by the Members, all information required for federal and state income tax reporting purposes with respect to the Company, including without limitation a copy of Schedule K-1 to the Company's federal income tax return for the Fiscal Year most recently ended;
- (3) arrange for the preparation of all necessary informational federal income tax forms on behalf of the Company and for the preparation and filing of any and all state and local income and franchise tax returns required to be filed by the Company;
- (4) maintain and preserve during the term of the Company and for five years thereafter, or for such longer time as is necessary to determine the cost basis of the Company assets, at the Company's office designated pursuant to Section 2.2 of this Agreement (or, if the Company has been terminated, at the location designated by the Members in a written notice to the

Members), complete and accurate books of account in accordance with the provisions of this Agreement, a list of the names and addresses of each Member, copies of the Articles of Organization, this Agreement, and copies of all financial statements and tax returns of the Company for the most recent five-year period during the term of the Company;

- (5) execute, acknowledge, and certify all documents and instruments and take or cause to be taken all actions which may be necessary or appropriate (i) for the continuation of the Company's valid existence as a limited liability company under the laws of the State of Indiana and of each other jurisdiction in which such existence is necessary to protect the limited liability of the Members, (ii) to effectuate the provisions of this Agreement, or (iii) to enable the Company to conduct its business;
- (6) obtain and maintain on behalf of the Company such all-risk, public liability, workers' compensation, Directors' and Officers' liability, fidelity, forgery, and other insurance, if any, as may be available on commercially reasonable terms and as may be deemed necessary or appropriate by the Members;
- (7) to the extent reasonably deemed necessary or appropriate by the Members, cause all persons dealing with the Company, the Members, or any Officer, agent, or employee of the Company acting on behalf of the Company, to be aware of the character of the Company as a limited liability company;
- (8) conduct the affairs of the Company in compliance with the applicable laws and in the best interests of the Company and of the Members;
- (9) not permit the use of Company funds or assets for other than the benefit of the Company and of the Members;
- (10) hold all Company property in the Company name or, in the case of cash or cash equivalents, in one or more depository accounts as to which the Company is a beneficial owner; and
- (11) use reasonable efforts not to cause the Company to incur debts or other liabilities and obligations beyond the Company's ability to pay such liabilities.

ARTICLE VII **STANDARD OF CARE**

7.1 Reliance on Experts. Any Member, Officer, or employee of the Company, in the performance of his, her, or its duties, is entitled to rely in good faith on information, opinions, reports, and other statements, including financial statements, books of account, and other financial data, if prepared or presented by (i) one or more Officers or employees of the Company, or (ii) legal counsel, public accountants, or other persons as to matters within the person's professional or expert competence.

7.2 Standard of Care. Each Member, Officer, employee or agent is to perform his, her, or its duties in good faith, in a manner he, she, or it reasonably believes to be in or not opposed to the best interests of the Company (taking into account the provisions of subsections 2.5(b) and (c)), and with the care that an ordinarily prudent person in a similar position would use under similar circumstances.

7.3 Evidentiary Standard. A Member, Officer, employee or agent cannot be found to have violated Section 7.2 of this Agreement unless it is proved, by clear and convincing evidence, in an action brought against the Member, Officer, employee or agent that he, she, or it has not met the standard of Section 7.2 of this Agreement.

7.4 Damage Liability. A Member, Officer, employee or agent is to be liable in damages for any action that he, she, or it takes or fails to take in carrying out his, her or its duties only if it is proved, by clear and convincing evidence, that such action or failure was with deliberate intent to cause injury to the Company or with reckless disregard for the best interests of the Company.

ARTICLE VIII

CONFLICTS OF INTEREST

8.1 Disclosure. Each Member, each Officer, each Affiliate and each employee or agent of the Company who is authorized to enter into arrangements or approve transactions (either individually or as part of a committee) on behalf of the Company (collectively "Designated Persons") shall disclose all conflicts of interest with the Company. The term "conflict of interest" includes all arrangements and transactions between the Company and any Designated Person, any Related Party of a Designated Person, or any Person in which any Designated Person or Related Party has a personal or financial interest or a potential personal or financial interest, either directly or indirectly through an intermediate entity. The term "financial interest" includes any legal or beneficial equity interest, debt interest, or compensation arrangement (including employment arrangements). Any person who receives remuneration from the Company, directly or indirectly, has a potential personal or financial interest in any decision concerning his or her compensation or benefits.

All Designated Persons having conflicts of interest shall make the required disclosure when the conflict of interest arises, before the arrangement or transaction in question is approved, and once each calendar year so long as the conflict exists. All disclosures shall include a description of the relationship or interest causing the conflict, the role in the arrangement or transaction played by the person having the conflict of interest, and the benefits and detriments accruing to the Company and to the person having the conflict of interest.

Any person who acts in violation of this Article shall be subject to immediate termination of his or her position with the Company. In addition, the Company may exercise any remedies it may have under applicable law against any violator, including but not limited to seeking damages from the violator. Any affected transaction or arrangement shall be void or voidable by the Company to the extent required under law.

8.2 Reporting. Conflicts of interest involving a Member shall be reported to the other Member, and conflicts of interest concerning Designated Persons other than Members shall be disclosed in writing to the President of the Company, who shall report them to the Members and to any applicable committee at their next regularly scheduled meetings.

8.3 Approval of Transaction. No Person who has a conflict of interest arising out of an arrangement or transaction may participate in deliberations or voting concerning the authorization by the Company of the arrangement or transaction, except (i) to make the disclosures required by this Article and (ii) to be counted in determining the presence of a quorum at any meeting of the Members that authorizes the arrangement or transaction. Any transaction involving a conflict of interest that is otherwise required to be approved by the Members shall be specifically approved by vote of the disinterested Members, as the case may be.

8.4 Benefits to Company. Any arrangement or transaction involving a conflict of interest shall be fair and reasonable to the Company. The person or persons having the conflict of interest shall at all times act with good faith toward the Company. The Company shall recover from the person having the conflict of interest and the party to the arrangement or transaction other than the Company any benefit accruing to the person or party from any arrangement or transaction that is not in compliance with this Section.

ARTICLE IX

RIGHTS AND OBLIGATIONS OF THE MEMBERS

9.1 Limitations on the Rights of Members. Subject to any mandatory requirements of applicable law or as otherwise specified in this Agreement, no Member (in his, her, or its capacity as a Member) has the right to take any part whatsoever in the management and control of the ordinary business of the Company, sign for or bind the Company, compel a sale or appraisal of Company assets, or Transfer his, her, or its Units in the Company except as provided in this Agreement.

9.2 Limited Liability of Members. Anything in this Agreement to the contrary notwithstanding, the liability of the Members arising out of or in any manner relating to the Company or its business shall not exceed the amount of their agreed upon contributions and obligations specified in Article III of this Agreement.

After such contributions and obligations, the Members shall have no further liability to contribute money or otherwise to, or in respect of, the liabilities or obligations of the Company except as otherwise provided under the Act.

9.3 Access to Information. Each Member has the right to obtain from the Company, at such Member's expense, and upon reasonable demand for any purpose reasonably related to his, her, or its Membership interest in the Company, any information or documents concerning the Company or its business. In complying with a Member's demand pursuant to this Section 9.3, the Company may elect to do either or both of the following: (i) provide such Member with the right to examine documents in person or by agent or attorney and to make copies or extracts of the documents; (ii) provide to such Member true and accurate copies of documents responsive to the demand.

9.4 Confidentiality. "Proprietary Information" means all information relating to the Company, a Member or an Affiliate (the "Disclosing Party"), which is previously, currently or subsequently disclosed by or on behalf of the Disclosing Party to another party (the "Receiving Party"), including but not limited to financial information, historical data, corporate governance documents, management structure information and other information concerning methods, techniques, trade secrets, policies and procedures, communicated in any form, including but not limited to oral, written, graphic, photographic, optical, electric, magnetic, or electrical magnetic forms, all of which are proprietary and confidential. Each Member in its capacity as a Receiving Party agrees on behalf of itself and its Affiliates:

- (1) Not to divulge any Proprietary Information or any information directly and substantially derived therefrom to any person, except (1) to such Affiliates, agents, consultants and personnel of the Member to whom disclosure is necessary to carry out the purposes of the Company and who have agreed to hold such Proprietary Information in confidence and not use it for their own purposes and (2) to the extent required by law or judicial process; and
- (2) Not to make any use of the Proprietary Information for any purpose unrelated to carrying out the purposes of the Company.

Each party agrees to take all actions and precautions that are reasonably necessary to avoid unauthorized disclosure or use of the Proprietary Information. This Section 9.4 shall not prohibit disclosure of information:

- (1) that is in the public domain at the time of disclosure to the Receiving Party or thereafter enters the public domain, through no action or inaction in breach of this Agreement by the Receiving Party or its Affiliates, agents, consultants and personnel;
- (2) that is disclosed to the Receiving Party by another person whom the Receiving Party reasonably believes is not in violation of the rights of the Disclosing Party or any other person or entity;
- (3) that is developed by the Receiving Party independently of any disclosures previously made by the Disclosing Party to the Receiving Party of such information;
- (4) that is required to be disclosed by order of a court of competent jurisdiction, administrative agency or governmental body, or by subpoena, summons or other legal process or by law, rule or regulation, or by applicable regulatory standards; provided that the Receiving Party shall take its best efforts to notify the Disclosing Party of any such requirement in a manner that reasonably permits the Disclosing Party to assert in the appropriate forum any claim it may have that disclosure should not be required.
- (5) the disclosure of which is reasonably necessary to enforce the legal and contractual rights of the Members.

This Section 9.4 shall continue in effect notwithstanding the Withdrawal of Members, the dissolution of the Company, or the termination of this Agreement.

9.5 Competition.

- (a) No Member, its Affiliates or its Related Parties shall, directly or indirectly,
 - (i) engage in any activities within the Restricted Area that directly compete with the activities engaged in by the Company;
 - (ii) own, manage, or operate any firm, corporation, limited liability company or other enterprise that engages in any activities within the Restricted Area that directly compete with the activities engaged in by the Company; or
 - (iii) contact any employee of the Company or of any Member for the purpose of seeking to employ such employee or to encourage such employee to discontinue employment with the Company or any Member.
- (b) The restrictions contained in subsection 9.5(a) apply (i) for so long as such Member is an Interest Holder and (ii) with respect to PAIN and its Affiliates and Related Parties, the earlier of the following: (a) the date which is two (2) years after the date Company ceases providing pain management services to HOSPITAL or (b) the date which is two (2) years after PAIN ceases to be an Interest Holder. The restriction in Section 9.5(b)(ii)(a) shall not apply if HOSPITAL initiates termination of its Pain Management Services Agreement with Company ("Services Agreement") without cause; however, in such case, neither PAIN nor its Affiliated and Related Parties may solicit, employ, contract with, or otherwise retain or attempt to retain the services of any physician who provided pain management services to HOSPITAL pursuant to the Services Agreement for the purpose of providing pain management services in the Restricted Area.
- (c) This Section 9.5 shall not prohibit HOSPITAL or its affiliated individuals and entities, (including without limitation, HOSPITAL, its related companies and subsidiaries, its employees, agents and members of HOSPITAL's Medical Staff), from offering pain management services to patients in their usual and customary role of providing anesthesia and pain management services to patients in its inpatient or outpatient facilities as a component of the offering of anesthesia services and the dispensing of drugs and other medications for the management of pain within HOSPITAL facilities. Notwithstanding, this provision prohibits HOSPITAL or its affiliated individuals and entities from recruiting or establishing an entity to recruit specialists who would provide a service that is solely intent upon providing the same pain management services to patients that the Company provides; however, it does not prohibit HOSPITAL from accepting an application for initial, or renewal of, medical staff membership and/or privileges by/of a physician or other health care provider who desires to practice the specialty of pain management as a member of HOSPITAL's medical staff.

9.6 Compliance. The Members, its Affiliates and its Related Parties shall comply with (i) all requirements of the Company's Corporate Responsibility Plan (the "Plan"); and (ii) all applicable provisions of law and rules and regulations promulgated by any and all governmental authorities thereunder relating to the Company, including but not limited to applicable state and federal laws and regulations relating to the security, protection and privacy of individually identifiable health care information. If a Member becomes aware of any fact or circumstance that constitutes or creates a significant risk of a violation of any of the foregoing, whether by the Member or any other party, it shall promptly call it to the attention of the Members.

9.7 Remedies. The Members recognize and acknowledge that the restrictions and limitations on their activities contained in Section 9.3 through 9.6 are required for the reasonable protection of Members and of the Company. In the event of a breach of the covenants contained in this Section, the non-breaching Member shall be entitled, if it so elects, to (i) institute and prosecute proceedings at law or in equity to obtain damages with respect to such breach, (ii) enforce the specific performance of these covenants, (iii) enjoin the offending party from engaging in any activity in violation of this Agreement, whether threatened or actual, without proving actual

damages and without being required to post bond; and/or (iv) to collect reasonable attorney fees from the breaching Member. If the temporal and/or geographic restrictions of the covenants contained in Section 9.5 are held invalid by a court, the covenants shall be revised to include the maximum permissible restrictions. In the event any violation of Section 9.5 is determined, the period of noncompetition shall be extended by a period of time equal to the period of noncompliance.

9.8 **Acknowledgement of Other Business Ventures.** HOSPITAL acknowledges that one or more affiliated entities of PAIN, including but not limited to Pain Management Group, LLC, an Ohio limited liability company, is engaged and is seeking to be engaged in, both before and after the Organization Date, third party business ventures with purposes similar to those for which the Company is formed. HOSPITAL agrees that such business ventures of PAIN's affiliated entities are permitted under this Agreement, without any requirement of notice to HOSPITAL, provided such business ventures are not operated within the Restricted Area.

ARTICLE X

DISSOLUTION AND LIQUIDATION

10.1 **Events of Dissolution.** The Company shall be dissolved only upon the occurrence of:

- (a) the decree of a court that other circumstances render a dissolution of the Company equitable;
- (b) the sale or other disposition of all or substantially all of the assets of the Company;
- (c) the approval of all Members;
- (d) the termination for any reason of the Management and Support Services Agreement dated 2015 by and between Pain Management Group, LLC and Fayette Regional Health System Pain Management, LLC and/or the Pain Management Services Agreement dated 2015 by and between Fayette Regional Health System Pain Management, LLC and Fayette Regional Health System, as such agreement(s) may be amended; or
- (e) at the option of the Tax-Exempt Member in the event of any: (i) threatened revocation of the tax-exempt status of the Tax-Exempt Member or any of its Affiliates; (ii) assertion that the Tax-Exempt Member's participation in the Company generates unrelated business taxable income; or (iii) actual regulatory enforcement action relating to federal or state fraud and abuse violations.

10.2 **Legal Developments.** If legal counsel for a Member determines in good faith that the continuation of the Operating Agreement and/or the participation of either Member as a Member, either separately or in conjunction with referrals by either Member to the Company, creates a substantial risk of being deemed in violation of any legal or regulatory requirement applicable to the Company or the Members, then such Member shall give written notice to the other Member of such determination (the "Determination Notice"). The Members shall work in good faith to fix any problematic provisions or issues. If the Members in good faith cannot fix the problematic provisions or issues, then the Members shall proceed in accordance with Section 10.3.

10.3 **Liquidation.**

- (a) Upon an event of dissolution described in Section 10.1 or 10.2 of this Agreement, the Members shall (i) file a certificate of dissolution in accordance with the Act, and (ii) diligently proceed to wind up the affairs of the Company, liquidate its assets, and distribute the assets in accordance with this Agreement. During the time prior to liquidation, the Company shall continue as a limited liability company bound by the terms of this Agreement, succeed to all Company assets and liabilities, the business of the Company shall be continued, and the Members shall have the right to do all acts authorized by law for the purpose of winding up the affairs of the Company.

- (b) In the event of liquidation of the Company, the Members shall take the following steps and in the following order of priority:
- (1) determine which Company properties and assets should be distributed in kind, and dispose of all other Company properties and assets at the best cash price obtainable therefor;
 - (2) apply Company property to the payment of the debts and liabilities of the Company, the expenses of liquidation, and the establishment of any reserves deemed necessary by the Members;
 - (3) repay any loans and advances (other than capital contributions) by Members and all accrued interest thereon;
 - (4) distribute any remaining Company assets to the Members in accordance with their positive Capital Account balances as determined pursuant to Section 4.1 of this Agreement, and
 - (5) Any other Company assets not so disposed of shall be distributed for one or more exempt purposes within the meaning of Section 501(c)(3) of the Code, or shall be distributed to the federal government, or to a state or local government, for a public purpose. Any such assets not so disposed of shall be disposed of by a court of competent jurisdiction of the county in which the principal office of the Company is then located, exclusively for such purposes or to such organization or organizations, as said Court shall determine, which are organized and operated exclusively for such purposes.
- (c) If the Company distributes any property in kind that is not revalued under Section 4.4, the Capital Accounts shall be adjusted to reflect the gain or loss that would be recognized if the property were sold for its Appraised Value (not as a going concern) at the time of distribution.
- (d) If any reserves are established in connection with the liquidation, the Members may pay over the amounts reserved to an escrow agent to be held by it for the purposes of disbursing the reserves in payment of any contingencies which may arise and, at the expiration of any period as the Members consider advisable, for distribution of the balance of the funds in the same manner and with the same priorities as are provided in Subsection 10.3(b) above. The Members are to look solely to the assets of the Company for the return of their capital contributions.

10.4 Time for Winding-Up. A reasonable time will be allowed for the orderly liquidation of assets of the Company and the discharge of liabilities to creditors so as to enable the Members to minimize the normal losses attendant upon a liquidation.

10.5 Final Accounting. Each of the Members is to be furnished with a statement setting forth the assets and liabilities, if any, of the Company as of the date of the complete liquidation which is to be audited and certified to by the Company's certified public accountants. Upon the compliance by the Members with the distribution provisions of this Agreement, the Members shall cease to be members and the Company shall cease to exist.

ARTICLE XI

TRANSFER OF COMPANY UNITS

11.1 Prohibition on Unapproved Transfers. A Member shall not Transfer its Company Units, in whole or in part, except as otherwise specifically permitted in this Agreement. In no event shall the assignee or transferee of any Units become, or exercise the rights of, a Member unless approved by all of the existing Members to

become a substitute Member with respect to such transferred Units and the assignee or transferee executes a copy of or joinder to this Agreement.

11.2 Right of First Refusal. If an Interest Holder (a "Transferor") desires to Transfer all or any portion of, or any interest or rights in, the Transferor's Percentage Interest or Voting Rights (the "Transferor Interest"), the Transferor shall notify the Company of its intention to do so, which notice will include the identity of the proposed transferee, the consideration for the proposed transfer and the price and payment terms upon which the proposed transfer is intended to be made (the "Transfer Notice"). The Company shall have the option (the "Purchase Option") to purchase all of the Transferor Interest for the Appraised Value of the Transferor Interest. The Purchase Option shall be and remain irrevocable for a period (the "Transfer Period") of thirty (30) days following the effective date of the Transfer Notice. At any time during the Transfer Period, the Company may elect to exercise the Purchase Option by giving written notice of its election to the Transferor. The Transferor shall not be entitled to vote on whether the Company shall elect to exercise the Purchase Option. If the Company elects to exercise the Purchase Option, the Company's notice of its election shall fix a closing date (the "Transfer Closing Date") for the purchase, which shall not be earlier than five (5) days after the effective date of the notice of election or more than ninety (90) days after the expiration of the Transfer Period, unless otherwise reasonably required for purposes of closing; and the purchase price shall be paid in cash or certified check at the closing or as otherwise determined by the Members. If the Company fails to exercise the Purchase Option, the Transferor shall be permitted to offer and sell the Transferor Interest for a period of ninety (90) days (the "Free Transfer Period") after the expiration of the Transfer Period upon terms no less favorable to the Transferor than those set forth in the Transfer Notice. If the Transferor does not Transfer the Transferor Interest within the Free Transfer Period, the Transferor's right to Transfer the Transferor Interest pursuant to this Section shall cease and terminate. Any attempted Transfer of the Transferor Interest made after the last day of the Free Transfer Period or without strict compliance with the terms, provisions, and conditions of this Section and other terms, provisions, and conditions of this Agreement, shall be null, void and of no force or effect.

11.3 Documents and Expenses. As a condition to admission as a substitute Member, an assignee, transferee, legatee, or distributee of all or part of the Company Units of any Member shall execute and acknowledge such instruments, in form and substance satisfactory to the Members, as it deems necessary or advisable to effect such admission and to confirm the agreement of the person being admitted as such substitute Member to be bound by all the terms and provisions of this Agreement. Such assignee, transferee, legatee, or distributee shall pay all reasonable expenses in connection with such admission as a substitute Member, including, but not limited to, legal fees and costs incurred by the Company in connection therewith.

11.4 Acquit Company. Following the effective date of an approved Transfer of Company Units pursuant to Section 11.1 and 11.2 above, the Company shall make all allocations and pay all further distributions of profits or other compensation by way of income or returns of capital in respect of the Units so assigned to the assignee thereof. In the absence of compliance with Section 11.1 and 11.2, any payment in respect thereto by the Company to the assigning Member, or its personal representative, shall acquit the Company of liability to the extent of such payment to any Person who may have an interest in such payment by reason of a Transfer or otherwise.

11.5 General Restrictions on Transfers by Members. Notwithstanding the foregoing provisions of this Agreement, no Transfer of an interest in the Company may be made if the Transfer would result in the termination of the Company under Code Section 708 or would otherwise violate any laws, rules or regulations.

ARTICLE XII

WITHDRAWAL; OPTIONS TO PURCHASE AND SELL

12.1 Withdrawal. Except as otherwise provided herein, each Member agrees not to withdraw from the Company except with the written consent of the other Member, which consent may be withheld for any reason.

12.2 Options to Purchase and Sell. At any time after the fifth anniversary of the Organization Date, HOSPITAL shall have the option to purchase all the Units held by PAIN for the Purchase Price (as defined below) by giving written notice of its intent to exercise such option to PAIN. The term "Purchase Price" means an amount equal to (i) the Appraised Value of the equity of the Company as a going concern, without any discount arising from the fact that only a portion of the Company's ownership is being transferred, times (ii) the Percentage Interest held by PAIN on

the date of the purchase. Any closing anticipated by the terms of this Section 12.2 shall take place at the offices of the Company within ninety (90) business days after notice of exercise has been given, unless otherwise reasonably required for purposes of closing. At such closing, the purchaser or purchasers of Units shall pay to the applicable seller or sellers the Purchase Price by means of cashier's or bank checks and the seller of Units shall deliver to the purchaser evidence of transfer thereof, free of all liens and encumbrances, unless otherwise determined by the Members.

12.3 Effect on Other Agreements. In the event of a Withdrawal, any agreement between the Company and the withdrawn Member other than this Operating Agreement shall automatically terminate. In the event of a purchase by HOSPITAL of the Units held by PAIN, any agreement between the Company and PAIN shall automatically terminate.

ARTICLE XIII **INDEMNIFICATION**

13.1 Right to Indemnity.

(a) Subject to the limitations and conditions as provided in this Agreement and the Act, each person who was or is a party, or who is threatened to be made a party, to any threatened, pending, or completed civil, criminal, administrative, or investigative action, suit, or proceedings, other than an action by or in the right of the Company, because he or she is or was a Manager, Member, Officer, employee or agent of the Company or is or was serving at the request of the Company as a manager, member, director, trustee, officer, employee, partner or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise will be indemnified by the Company to the fullest extent permitted by the Act, as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than the Act permitted the Company to provide prior to such amendment) against expenses, including attorneys fees, judgments, fines, and amounts paid in settlement ("Expenses") that actually and reasonably were incurred by him or her in connection with the action, suit or proceeding if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, in connection with any criminal action or proceeding, had no reasonable cause to believe his or her conduct was unlawful.

(b) The termination of any action, suit or proceeding by judgment, order, settlement or conviction or upon a plea of nolo contendere or its equivalent does not create of itself a presumption that the person did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Company and in connection with any criminal action or proceeding, a presumption that he had reasonable cause to believe that his conduct was unlawful.

(c) Subject to the limitations and conditions as provided in this Agreement and the Act, each person who was or is a party or who is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Company to procure a judgment in its favor, because he or she is or was a Manager, Officer, employee or agent of the Company or is or was serving at the request of the Company as a manager, member, partner, director, trustee, officer, employee, or agent of another limited liability company, corporation, partnership, joint venture, trust or other enterprise will be indemnified by the Company to the fullest extent permitted by the Act, as the same exists or may hereafter be amended (but in the case of any such amendment, only to the extent that such amendment permits the Company to provide broader indemnification rights than the Act permitted the Company to provide prior to such amendment) against Expenses that were actually and reasonably incurred by him or her in connection with the defense or settlement of the action or suit if he or she acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company, except that indemnification will not be made in respect of any claim, issue, or matter as to which the person is adjudged to be liable for negligence or misconduct in the performance of his or her duty to the Company unless and only to the extent that the Court of Common Pleas or the court in which the action or suit was brought determines, upon application, that, despite the adjudication of liability but in view of all of the circumstances of the case, the person is fairly and reasonably entitled to indemnification for expenses that the court considers proper.

13.2 Determination. Unless indemnification is ordered by a court, the determination for purposes of Section 13.1 of this Agreement as to whether an Indemnitee met the standard set forth in this Agreement is to be made in the specific case by the Members in any manner permitted by the Act.

13.3 Advance Payment. The right to indemnification conferred in this Article includes the right to be paid or reimbursed by the Company for the reasonable expenses incurred by a person of the type and title to be indemnified under Section 13.1 who was, is or is threatened to be made a named defendant or respondent in a proceeding in advance of the final disposition of the proceeding and without any determination as to the person's ultimate entitlement to indemnification; provided, however, that the payment of such expenses incurred by any such person in advance of the final disposition of a proceeding, will be made only upon delivery to the Company of a written affirmation by such person of his or her good faith belief that he or she has met the standard of conduct necessary for indemnification under this Article and a written undertaking, by or on behalf of such person, to repay all amounts so advanced if it is ultimately determined that such indemnified person is not entitled to be indemnified under this Article or otherwise.

13.4 Other Rights to Indemnity or Reimbursement; Survival. Notwithstanding the foregoing, indemnification under this Article XIII is to be provided only with respect to losses, costs, expenses, judgments, and amounts which otherwise are not compensated for by insurance carried for the benefit of the Company. Indemnification under this Agreement is not exclusive of any other rights to which those seeking indemnification may be entitled under any rule of law (whether common law or statutory), agreement, or arrangement, whether as to action in an official capacity and as to action in another capacity while holding such position or while employed by or acting as agent for the Company, and continues as to an Indemnitee who has ceased to serve in any capacity on behalf of the Company and inures to the benefit of the heirs, successors, executors, and administrators of the Indemnitee.

13.5 Indemnification of Employees and Agents. The Company may indemnify any employee or agent of the Company upon such terms and conditions, if any, as the Members consider appropriate.

13.6 Insurance. The Company may purchase and maintain insurance or furnish similar protection, including, but not limited to, trust funds, letters of credit, or self-insurance, for or on behalf of any Person who is or was a Member, Officer, partner, employee, or agent of the Company, or who is or was serving at the request of the Company as a manager, director, trustee, officer, employee, or agent of another Person, so long as the insurance is available on acceptable terms as determined by the Members. The insurance or similar protection purchased or maintained for such Person or Persons may be for any liability asserted against them and incurred by them in any capacity described in this Section 13.6 or for any liability arising out of their status as described in this Section 13.6, whether or not the Company would have the power to indemnify them against that liability under this Agreement. Insurance may be so purchased from or so maintained with a Person in which the Company has a financial interest.

13.7 Savings Clause. If this Article XIII or any portion hereof is invalidated on any ground by any court of competent jurisdiction, then the Company shall nevertheless indemnify each Indemnitee as to costs, charges, and expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement with respect to any action, suit, proceeding, or investigation, whether civil, criminal, administrative, or investigative, including any action by or in the right of the Company, to the fullest extent permitted by any applicable portion of this Article XIII that has not been invalidated and to the fullest extent permitted by applicable law.

ARTICLE XIV **RESOLUTION OF DISPUTES**

14.1 Good Faith Negotiations. If there is an issue or dispute between or among the parties regarding this Agreement, the parties shall enter into good faith discussions and use their best efforts to negotiate a resolution to such dispute. If the parties are unable to reach a resolution within thirty (30) days of beginning negotiations, then, the disputed matter may, at the option of either party by written notice to the other party, be settled by binding arbitration in accordance with Section 14.2.

14.2 **Arbitration.** Any controversy or claim arising out of, under, or relating to this Agreement or the breach thereof (a "Dispute") which cannot be resolved by good faith discussions, may, at the option of any party as provided in Section 14.1, be settled by binding arbitration in Connersville, Indiana, pursuant to the terms set forth in this Section 14.2. This provision shall survive any termination or expiration of this Agreement. All matters regarding the arbitration shall, be administered pursuant to the Commercial Arbitration Rules of the American Arbitration Association. The decision of the arbitrators with respect to any matter submitted to arbitration under this Agreement shall be final and binding upon, and fully enforceable against, the parties.

14.3 **Exception.** Notwithstanding the foregoing, this Article XIV shall not apply to Disputes arising under Sections 9.3 through 9.7 of this Agreement.

ARTICLE XV **MISCELLANEOUS**

15.1 **Entire Agreement.** This Agreement contains the entire agreement of the Members with respect to the Company. No oral or written agreement or understanding, except an amendment duly adopted with the unanimous written consent of all the Members, affects or amends the terms of this Agreement.

15.2 **Further Action.** The parties hereto shall execute and deliver all documents, provide all information, and take or forbear from all such actions as may be necessary or appropriate to achieve the purposes of this Agreement.

15.3 **Counterparts.** This Agreement may be executed in several counterparts, all of which shall constitute one agreement, binding on all parties hereto, notwithstanding that all the parties are not signatories to the same counterpart.

15.4 **Applicable Law.** This Agreement and the rights of the Members shall be interpreted and enforced in accordance with the laws of the State of Indiana.

15.5 **Severability.** The invalidity or unenforceability of any provision of this Agreement in any particular respect shall not affect the validity and enforceability of any other provision of this Agreement or of the same provision in any other respect.

15.6 **Reference to Statutory Provisions.** All references to statutory provisions shall be deemed to refer to corresponding provisions of subsequent law.

15.7 **Pronouns and Plurals.** All pronouns and any variations thereof shall be deemed to refer to the masculine, feminine, neuter, singular, or plural, as the identity of the person or persons may require.

15.8 **Benefits.** This Agreement shall inure to the benefit of and shall bind the parties hereto, their heirs, executors, administrators, permitted successors, and permitted assigns.

15.9 **Remedies.** The Members agree that the Company Units are unique, and the damages that might result to any party by breach of this Agreement are difficult to determine, and, therefore, in addition to all of the other remedies that may be available under applicable law, any party shall have the right to equitable relief, including, without limitation, the right to enforce specifically the terms of this Agreement by obtaining injunctive relief against any party violating the terms of this Agreement, subject to Article XIV.

15.10 **Notices.** All notices to the Company are to be sent registered or certified mail, return receipt requested, or by recognized overnight courier or facsimile addressed to the Company's principal place of business. All notices to a Member are to be sent addressed to such Member at the address as may be specified by the Member from time to time in a notice to the Company. All notices are effective the next day, if sent by recognized overnight courier or facsimile, or five days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

15.11 Notice of Tax Examinations. Any Member receiving advice that the Internal Revenue Service intends to examine any income tax return of the Company is to promptly notify the Company and the other Members. Each Member is to report on his, her, or its federal income tax return items of income and loss on a basis consistent with the Form K-1 prepared by or on behalf of the Company.

15.12 Securities Act Matters. Each Member represents and warrants to the Company and every other Member that such Member (i) is an individual residing in the State of Ohio or a Person incorporated or organized in and having a principal place of business in the State of Ohio or Indiana; (ii) is fully aware of, and is capable of bearing, the risks relating to an investment in the Company; (iii) understands that his, her or its interest in the Company has not been registered under the Securities Act of 1933 (the "Securities Act") or the securities law of any jurisdiction in reliance upon exemptions contained in those laws; and (iv) has acquired the Company Units for his, her or its own account, with the intention of holding the interest for investment, and without any intention of participating directly or indirectly in any redistribution or resale of any portion of the Company Units in violation of the Securities Act or any applicable law.

15.13 Prohibited Purposes, Relationships and Understandings.

- (a) It is expressly understood by the parties hereto that the Company's operations are subject to various state and Federal laws regulating permissible relationships between the Members, its Affiliates, its Related Parties and entities such as the Company, including the anti-kickback provisions of the Medicare and Medicaid fraud and abuse laws, 42 U.S.C. §1320a-7(b), and the amended Federal Physician Self-Referral Act, 42 U.S.C. §1395nn. It is the intent of the Members that the Company operates in a manner consistent with the foregoing statutes. Accordingly, notwithstanding anything else contained in this Agreement to the contrary:
- (1) No contract or other agreement may be entered into by the Company with any Member or Related Party of a Member or any other third party unless such contract or agreement is for fair value, without regard to the referral of any business between the parties;
 - (2) The Members, its Affiliates, its Related Parties represent and warrant that there is no intent to induce the referral of patients to the Company by any Person in connection with the formation and operation of the Company, and it is expressly understood among the parties that each Member, its Related Parties, and the employees of the Member and its Related Parties are not precluded or discouraged from referring patients to any alternate provider of services other than the Company;
 - (3) The Company shall not loan funds to or guarantee a loan for any Member to enable such Member to make a capital contribution to the Company;
 - (4) Any distributions to Members shall be directly proportional to such Member's respective Units;
 - (5) The Company shall not furnish or provide services to patients who are referred by Members, their Related Parties or employees of the Members or their Related Parties, on terms different from those offered to patients referred by any other Person; and
 - (6) The Company shall have an open medical staff.
- (b) **No Physician Owners.** PAIN, represents and warrants, on behalf of PAIN, its Affiliates and its Related Parties, no physician (or immediate family member of a physician) that refers to HOSPITAL has or will have any ownership or investment interest, directly or indirectly, in Company, PAIN or Pain Management Group, LLC, or any of their

respective Affiliates and Related Parties. PAIN shall promptly notify Hospital of any noncompliance with this provision, and noncompliance with this provision shall permit Hospital to terminate PAIN as a Member of Company immediately. The preceding sentence shall not limit Hospital's rights and remedies for noncompliance with this provision.

IN WITNESS WHEREOF, the Members have executed and delivered this Agreement as of the 28th day of May, 2015.

CONNERSVILLE PAIN MANAGEMENT, LLC

By: [Signature]
Its: [Signature]
Date: 5/22/15

FAYETTE REGIONAL HEALTH SYSTEM

By: [Signature]
Its: CEO
Date: 5-25-15

EXHIBIT A
MEMBERS, CAPITAL CONTRIBUTIONS,
AND COMPANY UNITS

Member	Capital Contribution	Company Units
HOSPITAL	Cash: \$51,000.00	51
PAIN	Cash: \$49,000.00	49

PAIN MANAGEMENT SERVICES AGREEMENT

THIS PAIN MANAGEMENT SERVICES AGREEMENT (the "Agreement") is made as of the 20 day of May, 2015, by and between **FAYETTE REGIONAL HEALTH SYSTEM**, an Indiana non-profit corporation ("Hospital"), and **FAYETTE REGIONAL HEALTH SYSTEM PAIN MANAGEMENT, LLC**, an Indiana Limited Liability Company ("Company").

WITNESSETH

WHEREAS, Hospital is organized and operated for the purpose of providing inpatient and outpatient health care services to patients of the Hospital ("Patients"), and provides medical and surgical services through various departments of the Hospital, including the provision of pain management services; and

WHEREAS, the Company is organized and operated for the purpose of providing, and is duly qualified to provide, certain medical and surgical services on the campus of the Hospital relating to pain management, and services related thereto; and

WHEREAS, the Hospital has determined that it can best serve Patients and the community through an arrangement by which the Hospital contracts with the Company to provide the full range of services necessary to provide clinical pain management services to Patients (the "Services"), and that such arrangement will facilitate coordination and standardization of the Hospital's procedures and protocols, improved scheduling, quality of care, and efficient use of resources; and

WHEREAS, the Company is willing and possesses the requisite resources and capabilities to provide the Services in accordance with the terms and conditions of this Agreement, and the Hospital desires to engage the Company pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

ARTICLE I **ENGAGEMENT**

A. General. Hospital hereby retains Company to provide, and Company agrees to provide, the Services for the Hospital. For purposes of this Agreement, the Services shall mean specialty services required for management of acute and chronic pain, including but not limited to percutaneous or invasive pain management procedures typically performed by physicians who are pain management specialists in inpatient and outpatient settings. Company shall arrange, subject to Hospital's Bylaws (which, for purposes of this Agreement, shall be construed to include Hospital's bylaws and Hospital's Medical Staff's bylaws, rules and regulations, as any of same may be amended from time-to-time) as well as Hospital department policies and protocols implemented by Hospital from time to time, for appropriate specialty medical consultations for Patients, as well as communicate with Medical Staff regarding operational or service quality matters relating to the Services; including, without limitation, educating Hospital's medical staff members regarding the Services provided to Patients by the Company.

B. Documentation of the Services. The Company shall document all the Services provided under this Agreement, and all resulting medical reports in accordance with appropriate quality measures, including, but not limited to, accuracy and completeness, and in accordance with Hospital Bylaws, applicable laws and accreditation requirements, and turnaround time standards as established from time to time by Hospital in consultation with Company; provided, however, that Company shall be

responsible for producing final, accurate, completed and authenticated patient records within three (3) days from time of each Patient's discharge. All such records, including Patient medical records and charts, regardless of form or media, shall belong to and remain the sole property of Hospital. At Company's request and expense, Hospital will provide Company with copies of medical records as necessary to perform Services pursuant to this Agreement and, after termination of this Agreement, to assist with the defense of malpractice claims or other governmental investigations, but only to the extent permitted by this Agreement and any other written agreement between Company and Hospital (including, without limitation, a HIPAA Business Associate Agreement), Hospital Bylaws, and the Laws and Professional Standards.

C. Performance of the Services. To provide the Services, Company shall arrange for and provide all the required space, equipment, technology, personnel (including without limitation, support and administrative personnel, as well as professional and para-professional personnel), administrative and support services, supplies (both medical and surgical), products, dressings, drugs and biologicals, and support services necessary to provide the Services throughout the term of this Agreement. The Company shall provide the Services to Patients pursuant to a schedule mutually agreed to between the Hospital and the Company. Without limiting the generality of the foregoing, the Company will ensure that the Services are rendered at all times with an appropriate number of personnel necessary to render the Services. At a minimum, this shall require the Company to meet the requirements sufficient to provide the Services in a manner consistent with the Hospital Bylaws, Hospital policies and procedures, applicable standards promulgated by the Indiana State Department of Health, Healthcare Facilities Accreditation Program ("HFAP") or any other body that accredits the Hospital during the term of this Agreement (collectively, the "Professional Standards"). Company shall also comply with all applicable state, local and federal governmental laws, rules and regulations and applicable judicial opinions, holdings and government agency policies and pronouncements (hereinafter collectively referred to as "Laws") in connection with providing the Services. During the term hereof, the parties hereto shall take all steps required for the Hospital and Company to satisfy all conditions necessary for Company to be considered provider-based as to Hospital, as set forth in 42 C.F.R. §413.65, as the same may be amended from time to time. No physician, employee or representative providing Services shall be required to refer Patients who receive Services to other Hospital facilities or Medical Staff members in any manner that violates the Laws; however, consistent with provider-based status, Patients receiving Services who require further care will have full access to all services of Hospital and may be referred where appropriate to an appropriate inpatient or outpatient department or service of Hospital.

D. Equipment/Supplies. Company shall provide and utilize equipment necessary to perform Services ("Equipment"). Company shall be responsible for maintaining such Equipment in appropriate working condition and represents and warrants that the Equipment will be in good working condition and appropriate for the intended use. Company shall remain responsible for providing all supplies related to the Equipment and Services provided herein. Company shall provide Hospital with preventive maintenance reports and other service reports for the Equipment and such other actions or information as are necessary to fulfill the Hospital's biomedical equipment obligations under Hospital's policies.

E. Physician Qualifications. The Company shall ensure that physicians providing and/or supervising the Services are duly appointed to the Hospital's Medical Staff in accordance with the Hospital's Bylaws, and duly qualified to perform the Services. The Company shall further ensure that all the Services are provided in a manner that is consistent with the Professional Standards and the Laws.

F. Insurance. Company shall provide, or cause to be provided, professional liability insurance in an amount and on terms in accordance with generally accepted medical standards and practices in Indiana covering Company personnel who provide health care services at the Hospital, with

coverage in amounts so as to qualify Company and Company personnel providing services hereunder as "qualified providers" under the Indiana Medical Malpractice Act (I.C. § 34-18 et seq.) with respect to the provision of Services under this Agreement. If Company obtains such insurance on a "claims made" basis, Company agrees to provide, or cause to be provided, coverage for tail liability upon the termination of the policy providing such insurance or any replacement or substitute policy therefor. In addition, Company agrees to obtain, or cause to be obtained, general liability and employee practices liability insurance coverage in amounts not less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate, and worker's compensation coverage in amounts no less than as may be statutorily required. Company agrees to provide Hospital with certificates evidencing such coverage and agrees to provide Hospital with not less than thirty (30) days written notice prior to any cancellation of or material modification to such coverage.

Hospital shall provide professional liability insurance coverage so as to qualify Hospital as a "qualified provider" under the Indiana Medical Malpractice Act (I.C. § 34-18 et seq.) with respect to Services provided under this Agreement. If Hospital obtains such insurance on a "claims made" basis, Hospital agrees to provide coverage for tail liability upon the termination of the policy providing such insurance or any replacement or substitute policy thereof. In addition, Hospital agrees to obtain general liability coverage with respect to Hospital's obligations hereunder, to the extent applicable, with coverage in amounts no less than \$1,000,000 per occurrence and \$3,000,000 annual aggregate. Hospital agrees to provide Company with certificates evidencing such coverage and agrees to provide Company with 30 days written notice prior to any cancellation of or material modification to such coverage.

G. Certifications. Company represents and warrants that: (i) Company is a limited liability company duly organized, existing and in good standing under the laws of the State of Indiana; (ii) the execution of this Agreement and the performance of Company's duties and responsibilities hereunder will not violate Company's articles of organization or operating agreement or any other written agreement to which it is a party, or require the consent or approval of any third person or entity; (iii) neither Company nor any manager, officer or member of Company has been convicted of any act or omission constituting a felony under the laws of any State or constituting Medicare or Medicaid fraud or any other offense or violation under Titles XVIII, XIX, or XX of the Social Security Act, 349 Stat. 620 (1935), as amended; (iv) the execution and delivery of this Agreement and the performance and satisfaction by Company of its duties and responsibilities hereunder will have been duly and validly authorized by all necessary action on the part of Company, and this Agreement will constitute a valid and legally binding obligation of Company enforceable against it in accordance with its terms; (v) neither Company nor any manager, officer, employee or member of Company ever has been or is at any time during the term of this Agreement excluded, suspended, or otherwise ineligible to participate in, or provide goods and services to others that participate in federal health care programs, as defined in 42 USC 1320a-7b(f), and Company agrees to check its managers, officers, employees and members against the HHS/OIG List of Excluded Individuals/Entities and the General Services Administration List of Parties Excluded from Federal Programs prior to the execution of this Agreement and at least annually thereafter; and (vi) at no time during the term of this Agreement shall Company have any financial relationship (as such term is defined at 42 C.F.R. § 411.354) with a physician who has privileges at the Hospital or who makes referrals to the Hospital for "designated health services" (as such term is defined at 42 C.F.R. § 411.351) other than financial relationships that satisfy all of the requirements of a permitted exception to the Stark prohibitions, as provided at 42 C.F.R. § 411.351, *et seq.* As to subsection (v) of this section, Company further represents and warrants that to its knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion of Company or any of its managers, officers, employees or members of Company. Company shall notify Hospital in writing upon the commencement of any such exclusion or investigation within seven (7) business days of receiving first notice of such exclusion or investigation. Hospital shall have the right to terminate this Agreement immediately upon

learning of any such exclusion and shall be kept informed by Company of the status of any such investigation.

H. **Compliance.** Company acknowledges that Hospital promotes a compliance attitude and has established a culture that fosters the prevention, detection and resolution of instances of misconduct. In furtherance thereof, as it relates to the Services, Company shall: (1) cooperate with Hospital's corporate compliance program during the term hereof. Such cooperation shall include making personnel available for training, reasonable participation in contract and claims audits and other aspects of the Hospital's compliance program and upon request, cooperation and assistance during any internal compliance review, investigation, monitoring protocol and/or audit, (2) notify the Hospital of any material violation of applicable law, regulation, third party payer requirement or breach of the Hospital's ethics program of which Company becomes aware of during the term hereof and instruct its personnel working in the Hospital of this requirement, (3) cooperate with Hospital in responding to or resolving any complaint, investigation, inquiry or review initiated by a governmental agency or otherwise, and (4) participate in the development and implementation of Hospital's quality and performance improvement, risk management and education programs.

I. **Nondiscrimination.** The Company shall provide the Services to all individuals without unlawful discrimination including, but not limited to, discrimination based upon sex, race, color, age, religion, disability, ancestry, military status, ability to pay or source of payment or any other characteristic protected by applicable law.

J. **Quality Assurance.** The Company shall participate in any quality assurance and/or utilization review programs and/or any risk management programs (hereinafter collectively referred to as "Quality Programs") developed by or implemented at the Hospital and Company acknowledges and agrees that eligibility to perform the Services at the Hospital is subject to compliance with all Hospital Quality Programs as developed and amended from time to time.

K. **Preparation of Medical Records.** The Company shall, in accordance with Hospital policies and consistent with the Hospital Bylaws, cause to be promptly prepared and either saved in Hospital's electronic health record system(s) or delivered to Hospital's Medical Records Department, reports of all examinations, procedures and other services performed by Company providers on forms supplied by and/or in a format required by Hospital, within seventy-two (72) hours after a Patient has been discharged, or such shorter time as required by the Hospital's Bylaws.

L. **HIPAA Compliance.** Company agrees that it will, at all times, comply, and assure that all Company personnel providing Services hereunder will comply, with applicable state and federal laws and regulations related to the Services including but not limited to applicable state and federal laws and regulations relating to the security, protection and privacy of individually identifiable health care information, including without limitation the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder ("HIPAA"), as they may be amended from time to time. Company recognizes that it is a business associate of Hospital and as such, will execute a reasonable form of HIPAA-compliant Business Associate Agreement as requested by Hospital.

M. **Provision of Patient Data.** Subject to applicable law, the Hospital shall make reasonably available to Company such biographic, identifying and clinical data as Hospital may maintain and as may be necessary to enable Company to provide the Services. Company shall use and/or disclose such information only as permitted by this Agreement and any other written agreement between Company and Hospital (including, without limitation, a HIPAA Business Associate Agreement), Hospital Bylaws, and the Laws and Professional Standards.

N. **Credentialing.** If required by a commercial payor, Company shall apply to be credentialed as a subcontractor of the Hospital for performance of the Services on the Patients.

O. **Hospital Oversight.** Hospital shall have the right to monitor and oversee the Services provided by Company to patients under this Agreement in the same manner as it does for services provided in any department of the Hospital. Without limiting the foregoing, Company shall support and work with Hospital to ensure the following:

(a) Any Patient receiving Services must be admitted in accordance with Hospital's admission standards.

(b) Medical records of Patients shall be completed by the Company in accordance with, among others, Sections I.B., I.K., and I.L of this Agreement. Company will prepare a complete and timely clinical record on each Patient which includes diagnosis, medical history, physician's orders, and progress notes relating to all Services received. All such records shall be property of Hospital and integrated into Hospital's medical record system. Provided, however, Company shall have a right to copies of such records as necessary to perform Services pursuant to this Agreement and, after termination of this Agreement, to assist with the defense of malpractice claims or other governmental investigations, but only to the extent permitted by this Agreement and any other written agreement between Company and Hospital (including, without limitation, a HIPAA Business Associate Agreement), Hospital Bylaws, and the Laws and Professional Standards.

(c) Company shall secure from the attending or treating physician the required certifications and recertifications.

(d) The medical director for the Services shall maintain a reporting relationship with the Hospital's chief of staff that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of Hospital and the Hospital's chief of staff, and is under the same type of supervision and accountability as any other director, medical or otherwise, of Hospital.

(e) Medical staff committees or other professional committees at Hospital are responsible for medical activities in the facility in which the Services are provided, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable. Hospital shall continue to exercise professional responsibility for all Services provided by Company hereunder and shall have the right to take any other action as may be reasonably necessary to insure that the Services provided by Company hereunder are provided in a manner consistent with Hospital policy.

P. **No Physician Owners.** Company represents and warrants that for the term of this Agreement no physician (or immediate family member of a physician) that refers to Hospital has or will have any ownership or investment interest, directly or indirectly, in Company, in Connersville Pain Management, LLC, an Ohio limited liability company ("CPM"), or in Pain Management Group, LLC, an Ohio limited liability company ("PMG"). Company shall promptly notify Hospital of any noncompliance with this provision, and noncompliance with this provision shall permit Hospital to terminate this Agreement immediately and without notice. In the event of such termination, Hospital shall not be required to compensate Company for any services hereunder. The immediately preceding two sentences shall not limit Hospital's rights and remedies with respect to noncompliance with this Section I.P.

ARTICLE II FINANCIAL ARRANGEMENTS

A. **Hospital Fees as Compensation in Full.** The Company acknowledges and agrees that the Services shall be rendered to the Hospital's Patients, and that the Hospital's payment to the Company pursuant to this Agreement shall constitute payment in full for the Services rendered to Patients by the Company. The Company shall not bill the Patient or any third party payors for the Services. The Hospital shall be solely responsible for billing for the Services as a part of its Hospital billing processes, and shall have the discretion to set the rates it charges for the Services and discounts to be negotiated with third party payors and Patients, as well as the discretion to determine what payors or plans it will negotiate with to provide in-network services. In the event a Patient makes any payment to the Company for the Services performed by Company, or such money inadvertently reaches the business office of the Company, the Company agrees to receive same as agent for Hospital and to remit the sum in full in a timely manner to the Hospital with a full accounting of the same.

B. **Billing Information.** The Company agrees to provide all applicable information requested by the Hospital that is necessary to bill Patients and their applicable third party payors for Services rendered by the Company as a Hospital service. The Company agrees to deliver such information to the Hospital promptly and within the timelines reasonably set by the Hospital necessary to effectuate timely and efficient billing.

C. **Compensation.** In return for the Services provided by Company hereunder, Company shall be compensated as follows:

- (a) **Reimbursement Received by Hospital for Services.** Hospital will compensate the Company for the Services by remitting the amount the Hospital collects from its billings to Medicare, Medicaid, private insurance companies, patients or any other payors for the Services. To the extent, Hospital collections include payment for services rendered by the Hospital but outside of the scope of Services provided by the Company, Hospital shall remit to Company only that portion of the collections that are attributable to the Services as determined by Hospital in the good faith exercise of its discretion.
- (b) **Payment.** With respect to the Services, the Hospital shall not be responsible for the payment of amounts billed but not collected from Patients or third party payors. In addition, the Company shall honor the Hospital's provision of charity or other discounted care for Patients who may qualify for charity care under the Hospital's charity care policy. All compensation for Services shall be paid to the Company pursuant to the Hospital's customary accounts payable practices for the period of time to which such compensation relates.
- (c) **Adjustments.** The parties hereby acknowledge that the Hospital's Medicare and Medicaid cost reports are subject to review and audit by CMS (for Medicare) and by the state of Indiana and final settlement of the Hospital's Medicare and Medicaid reimbursement rate. In the event that final settlement of the Hospital's Medicare and Medicaid cost reports result in a reduction of the Hospital's reimbursement for the Services for the applicable period that creates an overpayment to be realized by the Company for the Services, the Hospital and Company agree to reconcile the difference between the amounts paid to the Company and any final settlement of the Hospital's reimbursement. Such overpayment shall be returned to the Hospital by the

Company within sixty (60) days of the Hospital providing written notice of such audit or final settlement determination. This section shall survive the termination of this Agreement. In effectuating a reconciliation, the parties shall have the right to offset from future amounts due and owing to the other party.

D. Annual Review and Adjustment. The parties agree to review the Company's compensation annually. Except as otherwise expressly provided herein, any change to such compensation shall be by mutual written agreement. If a party hereto believes that the fair market value of the Services provided under this Agreement has changed in any material way since the most recent anniversary of the Commencement Date (as hereinafter defined) and desires to renegotiate the compensation payable hereunder, then such party shall notify the other party of the same in writing at least ninety (90) days prior to the applicable anniversary date of the Commencement Date, and the parties shall negotiate in good faith an adjustment to the compensation described in this Section so that it represents fair market value for the duties and responsibilities to be provided under this Agreement during the next year of the term of this Agreement. Notwithstanding the foregoing, the compensation hereunder shall be adjusted not more frequently than annually. If the parties are unable to agree on an adjustment, then either party may require that the matter be submitted to a qualified independent third party valuation consultant mutually selected by both the parties to determine the fair market value of the services required hereunder, the cost and fees of which third party shall be borne equally by the parties. If, after good faith discussions regarding multiple potential third-parties, the parties are unable to agree on the third party, then Hospital shall select the valuation consultant. Any consultant(s) determining fair market value pursuant to the immediately preceding sentences shall be reasonably experienced in similar matters and shall utilize one or more methodologies for determining fair market value consistent with guidance from the Internal Revenue Service, Centers for Medicare and Medicaid Services and the Office of Inspector General. The fair market value of the services determined in accordance with the foregoing shall be final and binding on the parties.

E. Commercial Reasonableness and Fair Market Value. The sole purpose of this Agreement is to provide for commercially reasonable and necessary Services for Hospital's Patients. The compensation set forth herein is set out in advance, consistent with fair market value in an arms-length transaction, and is not determined in a manner that takes into account (directly or indirectly) the volume or value of any actual or anticipated referrals by any party, or of any other business that may be generated between the parties. The parties are not entering into this Agreement with an intention to improperly induce or reward referrals or other business of any kind.

F. Compensation of Company Personnel. The Hospital shall have no obligation or responsibility for compensating or making any payment for any salary, benefits, contractor fees or otherwise to Company or any personnel (whether employed by Company or contracted by Company) for any of the Services rendered by Company under this Agreement, except as otherwise expressly agreed in writing between the parties. The Company shall not incur any expense on behalf of Hospital or bind Hospital to any contract without Hospital's prior written consent. Company and its employees and contractors shall be responsible for withholding and paying all taxes and/or assessments for any monies received by them in connection with this Agreement.

G. Physician's Professional Fees. Neither Hospital nor the Company are responsible for billing or collecting any physician's professional fees connected with the provision of the Services. The Patient's physician performing professional services shall be solely responsible for billing and collection for such services. Neither Hospital nor Company shall be entitled to any professional fees connected with rendering services to Patients.

ARTICLE III
SPACE AND SUPPORT SERVICES PROVIDED BY HOSPITAL

A. **General Responsibilities of Hospital.** Company hereby engages Hospital, and Hospital agrees to provide the Space and Support Services (as defined below) to the Company.

B. **Services Provided by Hospital.** The Hospital shall provide the services listed on Exhibit A attached hereto (the "Space and Support Services") to Patients of the facilities provided by Company ("Facilities") in a timely manner upon request.

C. **Oversight.**

(a) **Medical Care Evaluation.** All Services rendered in the Facilities shall be subject to evaluation under the Hospital's Quality Assurance Program.

(b) **Quality.** All personnel working at the Facilities or providing clinical Services to the Facilities shall strictly adhere to the Hospital's policies, procedures and protocols and the Hospital's medical staff by-laws affecting the operation of the Facilities. The Hospital shall perform quality assurance, utilization review, and coordination activities to ensure the quality and integration of services.

D. **Support Fees.** In exchange for Hospital's provision of Space and Support Services, Company shall pay Hospital the amounts set forth on Exhibit A, or set forth in separate agreements referenced in Exhibit A, attached hereto. Hospital shall provide monthly invoices for Space and Support Services, which Company agrees to pay within fifteen (15) days of receipt or in accordance with a payment schedule mutually agreed upon by the parties hereto.

The parties agree to review the Hospital's compensation annually. Except as otherwise expressly stated herein, any change to such compensation shall be by mutual agreement.

ARTICLE IV.
TERM AND TERMINATION

A. **Term.** The term of this Agreement shall commence on August 24, 2015 (the "Commencement Date") and shall continue until August 23, 2019 (the "Initial Term") unless otherwise terminated earlier as provided herein. Following the Initial Term, this Agreement shall automatically renew for successive one (1) year terms, unless terminated earlier according to the provisions set forth herein or unless either party gives written notice of non-renewal to the other party no less than 90 days before the expiration of the current term.

B. **Permitted Early Termination.** This Agreement shall be terminated prior to the expiration of the Initial Term or any additional term hereof upon the following events:

(a) By either party in the event Company or Hospital is adjudicated by a court of competent jurisdiction to be unable to pay its debts as they mature, insolvent or bankrupt; commences a federal bankruptcy proceeding, or has a federal bankruptcy proceeding commenced against it which is not stayed or discharged within 90 days of the commencement thereof.

- (b) Immediately upon Company or Hospital's disqualification from participation in any governmental payment program.
- (c) Immediately in the event the representations and warranties provided under Section I(G) cease to be true and accurate.
- (d) If Company or Hospital fails to perform any of its material obligations hereunder and fails to cure such breach within thirty (30) days of its receipt of written notice from the other party setting forth in detail the nature of such breach, provided that if such breach is curable, but not within such thirty (30) day period, Company or Hospital shall not be deemed to have failed to cure such breach as long as Company or Hospital has commenced appropriate action to cure such breach during such period and diligently continues such action thereafter provided. Notwithstanding, the Hospital shall have the authority to immediately suspend the provision of Services by the Company in the event that the Hospital determines significant Patient care issues place the Hospital or Patients at risk of adverse action or outcomes. The Hospital shall have the sole discretion as to when the Services may be resumed, or should the Hospital determine that the Company is reasonably unable to ensure compliance and to rectify the Patient care concerns, to terminate this Agreement immediately upon written notice to the Company.
- (e) In the event that either party gives written notice to the other party that counsel for such party has determined in good faith that the execution and delivery or performance of this Agreement by such party, or the performance by such party of any provision hereof, or any matter contemplated hereby, either separately or in conjunction with other activities by such party, creates a substantial risk of being deemed in violation of any legal or regulatory requirement applicable to such party (including but not limited to laws or regulations that may be applicable to such party by virtue of its participation in any third party payment program or its tax-exempt status) as such requirement is interpreted by any agency or instrumentality of federal, state or local government charged with enforcement of such requirement, including but not limited to a substantial risk that the fees exceed fair market value, then the party giving notice shall have the right to require that the other party renegotiate the terms of this Agreement, such renegotiated terms to become effective not later than thirty (30) days after receipt of written notice of such request for negotiation. If the parties fail to reach an agreement satisfactory to all parties within thirty (30) days of the request for renegotiation, the party requesting such renegotiation may terminate this Agreement upon no less than thirty (30) days' prior written notice to the other party or sooner if required by law. Notwithstanding the foregoing, if such risk of illegality applies only to certain provisions of this Agreement, the termination shall be limited to the affected provisions, and shall not affect the duty of the parties to perform the remaining provisions of this Agreement unless the failure to perform the affected provisions would defeat the essential purposes of this Agreement.
- (f) Immediately and effective as of the effective date of the termination of the Management and Support Services Agreement to which Company and PMG are parties.

- (g) After the Initial Term, either party may terminate this Agreement at any time without cause by providing the other party with at least ninety (90) days advance written notice of termination.

C. **Effect of Termination.** Upon the effective date of termination of this Agreement, and except as otherwise provided herein, neither party shall have any further rights nor obligations hereunder except to the extent accrued through such effective date, including without limitation, the right to receive any accrued but unpaid fees.

ARTICLE V MISCELLANEOUS

A. **Notices** All notices hereunder are to be sent registered or certified mail, return receipt requested, or by recognized overnight courier or facsimile, addressed as set forth below. All notices are effective the next day, if sent by recognized overnight courier, or five days after deposit in the United States mail, postage prepaid, properly addressed and return receipt requested.

To Hospital:

Fayette Regional Health System
Attn: Randall White, President and CEO
1941 Virginia Ave.
Connersville, IN 47331

To Company:

Fayette Regional Health System Pain Management, LLC
Attn.: John Bookmyer
123 E. Crawford St.
Findlay, OH 45840

or such other address or addresses as either party may from time to time furnish in writing to the other for said purpose, making specific reference therein to this Agreement.

B. **Confidentiality.** In the course of this Agreement, Hospital shall have access to certain information of Company, and Company shall have access to certain knowledge about Hospital that is not generally public knowledge (collectively, the "Confidential Information"). The Confidential Information may include, without limitation, medical records, financial information, business methods and practices, business and marketing plans, symbols, trademarks, trade names, service marks, copyrights, designs, agreements, procedures and other information. During the term of this Agreement and thereafter, the parties shall not disclose the Confidential Information without the prior written consent of the party to whom the information relates. Upon termination of this Agreement for any reason, the parties shall return to the other all documents, records, notebooks, computer disks or similar repositories containing Confidential Information, without making or retaining copies thereof.

C. **Independent Contractor Status.** Company and Hospital are performing the Services and duties required pursuant to this Agreement as independent contractors and not as employees or agents. Except as specifically set forth herein, Company shall not have authority to bind or obligate Hospital in any manner. Company shall be solely responsible for the payment or withholding of all federal, state or local income taxes, Social Security taxes, unemployment taxes, workers' compensation and other insurance required by law arising from Company's compensation of its employees, and

Hospital shall be solely responsible for the payment or withholding of all federal, state or local income taxes, Social Security taxes, unemployment taxes, workers' compensation and other insurance required by law arising from Hospital's compensation of its employees.

D. **Books and Records.** Until the expiration of four years after the furnishing of the services pursuant to this Agreement, the parties agree to make available, upon written request of the Secretary of Health and Human Services, the Comptroller General, and any other licensing or accrediting agency, or to any of their duly authorized representatives, this Agreement, and the books, documents and records of the parties that are necessary to certify the extent of any costs arising from this Agreement. Further, if any party subcontracts any of its duties arising from this Agreement with a value or cost of \$10,000.00 or more over a 12 month period, with a Related Party, such subcontract shall contain a clause to the effect of the foregoing sentence. As used in this Section, "Related Party" includes any person or entity employed or controlled by any party, any person or entity by whom any party is employed or controlled and any person or entity with whom any party develops a close association or affiliation.

E. **Assignment.** No assignment of this Agreement or the rights and obligations hereunder shall be valid without the specific written consent of both parties hereto.

F. **Amendments.** This Agreement may be amended by mutual agreement provided that before any amendment shall be operative or valid, it shall be reduced to writing and signed by both parties.

G. **Indemnification.**

(a) **By Company.** Company will indemnify, defend and save harmless Hospital, including its members, trustees, officers, agents and employees, from any and all claims, losses, obligations, liabilities, damages, penalties, costs, charges, and expenses (including reasonable attorney fees) to the extent accruing and resulting from Company's breach of its obligations under this Agreement.

(b) **By Hospital.** Hospital will indemnify, defend and save harmless Company, including its members, trustees, officers, agents and employees, from any and all claims, losses, obligations, liabilities, damages, penalties, costs, charges, and expenses (including reasonable attorney fees) to the extent accruing and resulting from Hospital's breach of its obligations under this Agreement.

(c) **By CPM and PMG.** CPM and/or PMG will indemnify, defend and save harmless Company and Hospital, including each of their members, trustees, officers, agents and employees, from any and all claims, losses, obligations, liabilities, damages, penalties, costs, charges, and expenses (including reasonable attorney fees) to the extent accruing and resulting from CPM's or PMG's non-compliance with Section I.P hereof.

H. **Applicable Law.** This agreement shall be construed under and interpreted in accordance with the laws of the State of Indiana.

I. **Complete Agreement.** This Agreement represents the total and entire agreement between the parties regarding the subject matter contained herein. This Agreement shall be binding upon the Hospital and the Company and their respective successors and assigns. The parties shall use their respective best efforts to maintain the confidentiality of the terms of this Agreement.

EXHIBIT A

Description of Purchased Support Services and Basis for Payment

1. Space

Hospital shall lease space to Company in accordance with a mutually acceptable written lease agreement.

2. Sterilization Services

(a) Hospital shall provide contract sterilization services as needed by Company.

(b) In return for the services provided above, Company shall pay to Hospital Twenty-Five Dollars (\$25.00) on a monthly basis, as set forth below.

3. Office Management and Support

(a) Hospital shall provide to Company office management and support services, to include accounting and executive management (not daily operating management).

(b) In return for the services provided above, Company shall pay to Hospital Six Hundred Twenty Five Dollars (\$625.00) on a monthly basis, as set forth below.

4. Personnel

All clinical, clerical and other personnel who primarily work for the Company shall be employed by Hospital and leased to Company in accordance with a mutually acceptable written lease agreement. Company shall pay Hospital the costs related to such personnel's provisions of services to Company.

5. Billing Services

(a) Hospital shall prepare and submit directly to patients, Medicare, Medicaid and insurance companies and third-party payors and contracting entities, as the case may be, all bills for items and services provided at the Facilities (excluding bills for professional services). Hospital shall use the name and tax identification number of Hospital to the extent permitted by law. Hospital shall maintain, administer and update, as necessary, controls and systems for the timely recording and collection of the Facilities' revenues.

(b) Company shall pay Hospital a fee for billing services equal to five percent (5.0%) of cash collected per annum.

(c) The parties shall meet on an annual basis to review the performance of the Hospital in providing billing services, and the Hospital will act in good faith to address any reasonable concerns.

6. Biohazardous Material Handling

(a) Hospital shall provide biohazardous material handling services including the removal of biohazardous material from the Clinic.

(b) In return for these services, Company shall pay Hospital Forty-One Dollars and Sixty Seven Cents (\$41.67) on a monthly basis, as set forth below.

7. Biomedical Equipment Maintenance and Repair

- (a) Hospital shall provide all required biomedical services including routine periodic maintenance and required repairs.
- (b) In return for these services, Company shall pay to Hospital its actual cost, plus 10%.

8. Transcription Services

- (a) Hospital shall provide to Company transcription services to prepare technical fee billing and records management purposes.
- (b) In return for the services provided above, Company shall pay to Hospital twelve cents (\$.12) per line, payable monthly, as set forth below

9. Medical Supplies and Pharmaceuticals

- (a) Hospital shall provide to Company medical supplies and pharmaceuticals and related services.
- (b) In return for the products and services provided above, Company shall pay to Hospital its actual cost, plus 10% per month, as set forth below.

10. Additional Purchased Services.

Any other medical or support services not listed above that Company purchases from Hospital whereby Hospital is paid by Company shall be purchased and paid for by Company at the rate based on market rates as quoted to the general public or at a rate not to exceed actual cost paid by Hospital plus ten percent (10%) if the service is not offered directly to the public at market rates.

11. Patient Data and Telephone System

Hospital shall provide Company, without additional charge, access to its patient database to the extent consistent with legal requirements, and the right to tie into the hospital telephone and computer systems (including electronic medical records systems), to the extent consistent with legal requirements and restrictions on licenses held by Hospital.

12. Monthly Billing

For all services rendered by Hospital to the Company as set forth in this Exhibit A, Hospital shall provide to Company by the fifteenth (15th) day of each month an invoice for all such services rendered the prior month. Company shall pay such invoice within thirty (30) days of the invoice date.

13. Aggregate Compensation

The aggregate amounts of all compensation to be paid to Hospital by Company in this Exhibit A shall not be determined in a manner that takes into account the volume or value of any referrals or other business otherwise generated herein and have been determined by the parties to be fair market value for such services.

J. **Captions.** All captions are for reference use only and are not part of this Agreement.

K. **Severability.** If any provision of this Agreement is deemed to be or held invalid or unenforceable by any court of competent jurisdiction or by any governmental agency (including any court) with jurisdiction over the matter, then the remainder of this Agreement and any other application of such provision shall not be affected thereby.

L. **Waiver of Breach.** The waiver by any party hereto of a breach of this Agreement by another party shall not operate or be construed as a waiver of any subsequent breach by such other party.

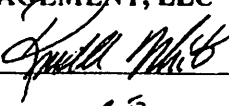
M. **Signatures.** In the event that any valid signature is delivered by facsimile transmission, by e-mail delivery of a legible and complete ".pdf" format data file attachment or by e-mail delivery of another electronic file format attachment that when opened displays a legible and complete electronic reproduction of the executed counterpart, such signature shall create a valid and binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if the facsimile signature page, the ".pdf" signature page or the other electronic file format signature page were an original thereof.

N. **No Third-Party Beneficiaries.** This Agreement is not intended to and does not confer any legal rights or benefits upon any person or entity other than the parties to this Agreement.

O. **Counterparts.** This Agreement may be executed simultaneously in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed on the day and year first above set forth.

FAYETTE REGIONAL HEALTH SYSTEM PAIN
MANAGEMENT, LLC

By: 

Its: CEO

FAYETTE REGIONAL HEALTH SYSTEM

By: 

Its: CEO

As to Section I.P and V.G(c) hereof only:

CONNERSVILLE PAIN MANAGEMENT, LLC

By: 

Its: 

PAIN MANAGEMENT GROUP, LLC

By: 

Its: 



August 8, 2019

VIA UPS

BMC Group, Inc.
Attn: FMHA Claims Processing
3732 West 120th Street
Hawthorne, CA 90250

Re: Administrative Expense Claim
In re: Fayette Memorial Hospital Association, Inc., Case No. 18-07762-JJG-11

Dear Sir or Madam:

Please see enclosed Administrative Expense Claim Form, and supporting attachments and documentation, submitted by Connersville Pain Management, LLC, on behalf of itself and as member of Fayette Regional Health System Pain Management, LLC.

Please let me know if you have any questions.

Very truly yours,

Mark A. Ozimek
mozimek@rcolaw.com

MAO/ksw
Enclosures