MEDICAL CENTER OPERATING LEASE AGREEMENT

BY AND BETWEEN

CUYUNA RANGE HOSPITAL DISTRICT

AND

LONGVILLE LAKES CLINIC, INC.
A MINNESOTA NONPROFIT CORPORATION
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MEDICAL CENTER OPERATING LEASE AGREEMENT

THIS MEDICAL CENTER OPERATING LEASE AGREEMENT (the "Agreement"), entered into the ________ day of __________________, 2016, and effective as of the “Transfer Date” as defined herein by and between the Cuyuna Range Hospital District d/b/a Cuyuna Regional Medical Center, a Minnesota hospital district (the “District”), and Longville Lakes Clinic, Inc., a Minnesota nonprofit corporation (“Newco”).

PREAMBLE

WHEREAS, the District owns and operates a critical access hospital, senior living community, nursing home, ambulance service, home health, and outpatient health services and other programs both within and outside of the District collectively referenced herein as the (“Medical Center”); and

WHEREAS, the District has determined that it is in the best interests of the residents of the District and the community served by the Medical Center to lease and transfer the operation of the Medical Center to an independent locally-controlled, Minnesota nonprofit tax-exempt corporation subject to the terms and conditions of this Agreement; and

WHEREAS, the District has concluded, following thorough analysis, public input and consultation with legal counsel, that an operating lease of the Medical Center to such a nonprofit tax-exempt corporation will help to: (i) align the board composition with the patient population served by the Medical Center; (ii) enable a more diverse board composition, including physician board members; (iii) more effectively recruit and retain physicians and other health professionals to serve the people in the area; (iv) provide greater investment flexibility; (v) provide a better platform for receipt of philanthropy; (vi) enhance the competitive position of the Medical Center; (vii) strengthen the position of the Medical Center as an independent provider of health care in the service area; and (viii) provide continued District ownership of Newco real estate and equipment during the term of the lease and an opportunity for return of Newco to the District under certain circumstances; and

WHEREAS, the District has the statutory power and authority, pursuant to Minnesota Statutes § 447.47 (the “Act”), to lease its Medical Center assets and operations to Newco pursuant to the terms set forth herein; and

WHEREAS, Newco, a nonprofit corporation, has the power and authority to accept the lease of such assets and operations from the District under the terms and conditions set forth herein; and

WHEREAS, Newco intends to operate the Medical Center in a manner consistent with Newco’s charitable purposes, including, but not limited to, enhancing the health of people in the communities served by the Medical Center.

NOW, THEREFORE, in consideration of the premises, covenants and agreements set forth herein, the parties hereto agree as follows:
ARTICLE I
DEFINITIONS

The following words, terms or phrases, when used in this Agreement, shall have the following meanings, unless the context clearly indicates a different meaning:

1.1 “1999 Resolution” means the resolution adopted by the Medical Center Board of the District on May 20, 1999, governing the issuance of certain bonds issued in 1999, as well as the Existing Bonds, which have been issued as additional bonds thereunder.

1.2 “Assigned Contracts” means the agreements entered into in connection with Medical Center Operations before the Transfer Date, including, but not limited to, those real property leases listed on the attached Exhibit 1.2(a) and those other contracts listed on the attached Exhibit 1.2(b).

1.3 “Assumed Liabilities” means:

(a) All payment obligations, other obligations and liabilities arising under the Assigned Contracts listed on the attached Exhibits 1.2(a) and 1.2(b);

(b) Any materialmen, mechanics or other liens against the Leased Assets;

(c) The Medical Center accounts payable as of the Transfer Date;

(d) All payment obligations, other obligations and other liabilities arising in connection with the license agreements listed on the attached Exhibit 1.3(d) or the easements listed on the attached Exhibit 1.3(_);

(e) All employee liabilities arising from Medical Center Operations;

(f) Any fines, penalties or other payments, or repayments, required to be made to any governmental entity (including, but not limited to, return of overpayments made by Medicare) under the federal Anti-Kickback Law, federal Physician Self-Referral Law (“Stark Law”), federal False Claims Act, federal Civil Monetary Penalties Law and other similar federal and state laws in connection with the operation and use of the Medical Center prior to the Transfer Date;

(g) Hazardous waste claims, including claims arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, with respect to the Leased Assets and Medical Center Operations; and

(h) All other liabilities and obligations of the District arising out of the Medical Center Operations prior to the Transfer Date, except the Excluded Liabilities, but including and not limited to liability incurred by the District for acts or omissions attributable to Medical Center elected officials, officers, directors, employees or agents before the Transfer Date, together with the benefit of (i) all of the defenses, privileges and immunities afforded by applicable law (including, without limitation, Minnesota
Statutes, Chapter 466) and (ii) insurance with respect to such liabilities maintained by the District.

1.4 “Bond Resolutions” means (i) the 1999 Resolution and the resolutions of the District adopted and approved on March 19, 2007, July 15, 2013, and September 30, 2013, authorizing the issuance of the Existing Bonds, and (ii) other documents executed and delivered by the District in connection with the issuance of the Existing Bonds.

1.5 “Code” means the Internal Revenue Code of 1986, as amended, or the corresponding provisions of any future United States Internal Revenue Law.

1.6 “Excluded Liabilities” means the Existing Bonds.


1.8 “Initial Term” has the meaning set forth in Section 2.2 below.

1.9 “Inventories of Supplies” means all items of consumable Medical Center-related personal property owned by the District or held by the District in connection with the operation of the Medical Center as determined on substantially the same basis as that term was used in the audited financial statements of the Medical Center dated as of the fiscal year ending ____. For the avoidance of doubt, “Inventories of Supplies” does not include Leased Assets.

1.10 “Leased Assets” means the District’s interest in all of the following, subject to the rights of third parties pursuant to any Assigned Contracts: the real property comprising the Medical Center, which is more specifically described on the attached Exhibit 1.10, including all buildings and surrounding parking areas, driveways, power station and other improvements, appurtenances, goods, fixtures, furnishings or other types of personal property incorporated into or affixed to any part of such buildings located as of the Transfer Date. Further, for purposes of this Agreement, the term “Leased Assets” shall include all additions, alterations, improvements, changes and deletions in and to all or any part of the Leased Assets.

1.11 “Material Adverse Change” means an aggregate decrease in the value of the Transferred Assets not otherwise disclosed heretofore in writing to Newco or known to Newco prior to the date hereof between the date hereof and the Transfer Date exceeding __________. For all purposes in applying the term “Material Adverse Change,” book value shall be used [Confirm]. If an asset or liability is not accorded a book value by accounting convention, an asset or liability’s fair market value shall be used.

1.12 “Medical Center Accounts Receivable” means all amounts owed to the District in connection with Medical Center Operations as of the Transfer Date whether actually billed as of the Transfer Date or whether work in progress remaining to be billed.

1.13 “Medical Center Assets” collectively means the Leased Assets, the Transferred Assets and all other property acquired by Newco or any of its affiliates or subsidiaries after the Transfer Date.
1.14 “Medical Center Funds” means all of the District’s right, title and interest in or to all cash, bank accounts, savings and loan accounts, certificates of deposit, money market accounts, treasury bills, investments (whether debt or equity, liquid or illiquid), reserves, or other cash items held in the name of, or on behalf of, the District in connection with the Medical Center, except for any funds, including, but not limited to, debt service reserve funds held under the resolution providing for issuance of the Existing Bonds.

1.15 “Medical Center Medical Staff” means all medical, dental and midlevel health professionals holding appointment to the Medical Staff of the Medical Center as of the Transfer Date.

1.16 “Medical Center Operations” means all health care, administrative and related or ancillary activities conducted before the Transfer Date by the District in connection with the operation of the Medical Center or during the Term by Newco in connection with the operation of the Medical Center as it then exists.

1.17 “Newco Liabilities” means all liabilities of Newco, both known and unknown as of either the date of the termination of this Agreement.

1.18 “Ordinary Course of Business” means the normal operation of a health care provider subject to sale under an executed purchase agreement for which there has not yet been a closing.

1.19 “Renewal Term” has the meaning set forth in Section 2.2 below.


1.21 “Series 2013A Bonds” means the District’s $14,245,000 Health Facilities Gross Revenue Bonds, Series 2013A, issued on September 30, 2013, as qualified 501(c)(3) bonds.

1.22 “Series 2013B Bonds” means the District’s $15,470,000 Health Facilities Gross Revenue Refunding Bonds, Series 2013B, issued on October 31, 2013, as governmental bonds.

1.23 “Term” has the meaning set forth in Section 2.2 below.

1.24 “Transfer Date” means the date on which the parties acknowledge in writing that all of the conditions precedent set forth in Article XII have been waived or satisfied.

1.25 “Transferred Assets” means all of the assets the District shall transfer to Newco under this Agreement, consisting of the following:

   (a) The District’s entire right, title, control and interest in Medical Center programs and operations and tangible and intangible personal property used in Medical Center programs and operations, including machinery, furniture and equipment, moveable medical and office equipment, but specifically excluding any personal property incorporated into or affixed to the real property that is included in the Leased Assets;
(b) The trademarks, servicemarks and names listed on the attached Exhibit 1.25(b);

(c) The Medical Center Accounts Receivable;

(d) The gifts, bequests, donations or other endowments specifically given for the benefit of or restricted to the use of the Medical Center or any part thereof;

(e) All rights to receive goods or services, to use and occupy personal and leased real property or to receive payment for goods or services rendered, or other benefits arising under the Assigned Contracts;

(f) All Inventories of Supplies, as defined in Section 1.9 above;

(g) All trade secrets and other confidential information concerning the operation or use of the Medical Center or the Medical Center not in the public domain and in existence on the Transfer Date;

(h) All medical records of Medical Center patients in existence on the Transfer Date;

(i) All business records arising from the operation or use of the Medical Center in existence on the Transfer Date;

(j) All Medical Center Funds;

(k) Any prepaid expenses arising from the operation or use of the Medical Center in existence on the Transfer Date;

(l) The right to any and all recovery from all collection cases in progress on the Transfer Date for goods furnished or services rendered by the Medical Center;

(m) All rights under the Assigned Contracts listed on the attached Exhibits 1.2(a) and 1.2(b) and under the license agreements listed on the attached Exhibit 1.3(d);

(n) The District’s entire right, title, control and interest in any and all subsidiaries and affiliate organizations including _____.

and all of such other assets owned by the District in connection with the operation of the Medical Center as of the Transfer Date.

1.26 “Transferred Employees” has the meaning set forth in Section 5.12(a).

ARTICLE II

LEASE AND TRANSFER OF ASSETS

2.1 Lease of Leased Assets. In consideration of the rents, covenants and agreements set forth herein, the District hereby leases and demises the Leased Assets to Newco on the terms
and conditions set forth herein, and Newco hereby leases such Leased Assets from the District on said terms and conditions, to have and to hold for the Term, as defined in Section 2.2 below.

2.2 Lease Term and Renewal. Subject to the further provisions of this Agreement, the initial term of the lease shall commence on the Transfer Date and expire at 11:59 p.m. on the thirtieth (30th) anniversary of such Transfer Date (the “Initial Term”). Provided that, if Newco is then in material compliance with all of the terms and conditions of this Agreement, or if the District has waived any noncompliance, then at any time after the twenty-seventh (27th) anniversary but before the twenty-eighth (28th) anniversary, Newco may notify the District of its intention to renew this Agreement, upon the same terms and conditions as contained herein, for one additional term beginning on the 30th anniversary of the Transfer Date and continuing, unless earlier terminated, until 11:59 p.m. on the sixtieth (60th) anniversary of the Transfer Date (the “Renewal Term”). The Initial Term and the Renewal Term, if any, are collectively referred to herein as the “Term.” If Newco fails to renew the Agreement, it shall be terminated under Section 11.3. At that point, the District could resume operations of the Medical Center or decide to close it in accordance with Sections 11.4 and 11.6.

2.3 Transferred Assets. In consideration of the covenants and agreements set forth herein, and for other good and valuable consideration, the District hereby transfers the Transferred Assets to Newco on the terms and conditions set forth herein.

ARTICLE III
CONSIDERATION

In consideration of the District’s lease of the Leased Assets to Newco, the transfer of the Transferred Assets to Newco, and all other promises and responsibilities of the District set forth in this Agreement, Newco agrees as follows:

3.1 Rent. Newco shall pay rent to the District (or, as directed by the District, to others on the District’s behalf) pursuant to the schedule contained in Exhibit 3.1.

3.2 Discharge of Assumed Liabilities. Newco shall pay, or otherwise cause to be satisfied or discharged, all Assumed Liabilities when due under their terms or if a claim, when payment of the claim is due. Newco may, at its expense and in its own name and behalf, or, to the extent lawful, in the name and behalf of the District, in good faith, contest the payment of any such Assumed Liabilities and, in the event of any such contest, except where prohibited by law, permit any such Assumed Liabilities to remain unpaid during the period of such contest and any appeal therefrom. The District will cooperate fully with Newco, at Newco’s expense, in any such contest. Any settlement by Newco of any claim that could potentially involve both Assumed Liabilities and Excluded Liabilities shall require sixty (60) days prior written notice the District. Although the District shall continue to be responsible for the Excluded Liabilities, except as specifically provided herein, Newco shall be responsible to fund the amounts due on the Existing Bonds through its payment of Rent.

3.3 Newco to Maintain Mission. At all times during the Term, Newco shall maintain its nonprofit tax-exempt mission of being organized and operated exclusively for religious, charitable, scientific or educational purposes within the meaning of Section 501(c)(3) of the
Code. In particular, the purposes of Newco shall be to provide quality healthcare to people seeking services from the Medical Center and to operate a nonprofit hospital.

3.4 Indemnification by Newco. Newco’s assumption of liabilities pursuant to Section 3.2 shall include a complete indemnification of the District, its elected officials, employees, officers, agents and contractors against and in respect of any and all uninsured claims, losses, liabilities, damages, expenses and costs, including attorneys’ fees, to the extent associated with the Assumed Liabilities. Newco shall procure and maintain director and officer liability insurance coverage with respect to the performance or nonperformance of the duties of the District officers and directors prior to the Transfer Date. Newco shall also indemnify and hold the District harmless from any and all claims, losses, liabilities, damages, expenses and costs, including attorneys’ fees, including those relating to an inquiry or adverse determination by the IRS related to the Existing Bonds arising out of the Medical Center Operations by Newco on or after the Transfer Date. The terms of this section shall survive expiration or any earlier termination of this Agreement.

3.5 District Meeting Space and Administrative Support. During the Term, Newco shall provide at no cost to the District meeting space and administrative support in amounts and at times reasonably requested by the District.

3.6 Performance of Covenants and Other Obligations. Newco shall (i) fully and continuously observe and perform all of the covenants described in Article IV below and its other obligations and responsibilities under this Agreement, and (ii) operate and use the Medical Center in a manner which will allow it to repay all its debts and satisfy all its obligations.

ARTICLE IV
OPERATION, MAINTENANCE, EXPENSES, TAXES AND INSURANCE

4.1 Operation and Maintenance of Medical Center. Newco shall operate the Medical Center Operations in the Ordinary Course of Business and shall (i) maintain, preserve and keep the Medical Center Assets in good condition, repair and working order and (ii) purchase, repair or replace any and all equipment necessary to meet then-current state licensure and Medicare certification requirements. The District acknowledges and agrees that Newco may, at its own expense, make or cause to be made any and all additions, alterations, changes and deletions in and to all or any part of the Leased Assets as Newco, in its sole discretion, deems necessary or appropriate, except as may otherwise be provided in this Agreement or the Bond Resolutions; provided, however, that all additions and alterations shall be performed in a good and workmanlike manner, which means that the quality of workmanship and materials shall be at least equal to that existing on the Transfer Date.

4.2 Operating Expenses and Taxes. Newco shall pay, or otherwise cause to be paid, all Operating Expenses incurred during the Term and any Operating Expenses incurred before the Transfer Date, but not billed to or paid by the District as of the Transfer Date. For purposes of this Agreement, the term “Operating Expenses” means all costs associated with Medical Center Operations including, but not limited to, the costs of maintenance and repair, utilities, equipment rental, professional fees, salaries, wages, employee benefits, permit fees, license fees, and, as the same respectively become due, all taxes, assessments and governmental charges and
penalties that may be lawfully assessed or levied against or otherwise attributable to the Medical Center Assets during the Term; provided, however, that with respect to taxes, assessments or governmental charges and penalties that may lawfully be paid in installments over a period of years, Newco shall be obligated to pay only such installments as are due and payable during the Term; provided further, that nothing in this Section 4.2 diminishes Newco’s assumption of liabilities and indemnification obligations under Article III. Newco may, at its expense and in its own name and behalf, or, to the extent lawful, in the name and behalf of the District, in good faith, contest any such taxes, assessments and governmental charges (other than taxes, assessments, and governmental charges imposed or levied by the District) provided that such proceedings have the effect of preventing the forfeiture of the Leased Assets or any part thereof or interest therein to satisfy the same. The District will cooperate reasonably with Newco, at Newco’s expense, in any such contest.

4.3 Insurance. Newco will, at its expense, carry such type and amount of insurance concerning the Medical Center Assets, including, but not limited to, "all-risk" property insurance, insuring both the District and Newco each as their interests may appear, and commercial general liability insurance, worker’s compensation insurance and hospital professional liability insurance, customary in the case of similarly situated nonprofit hospital corporations engaged in the same or similar activities, and to the extent reasonably necessary to protect the interests of the District with respect to the revenues of the Medical Center and the ability of Newco to meet its rent and other payment obligations to the District as set forth in Article III of this Agreement, provided Newco shall carry no less than the types and amounts as are required by the Bond Resolutions. Subject to the requirements of the preceding paragraph, the Bond Resolutions and related documents governing the Existing Bonds, Newco may elect to obtain such insurance as is required by this Section by means of policies issued by insurance companies, or, at Newco’s election, partially by means of self-insurance in conjunction with other companies through an insurance trust or other arrangement, or wholly by means of self-insurance. All liability insurance policies maintained pursuant to this Section will name the District as an additional insured party. The proceeds of any property insurance on any Medical Center facility will be applied as required by the Bond Resolutions, as long as the Existing Bonds remain outstanding, and then as provided in Article VIII of this Agreement.

ARTICLE V
GENERAL COVENANTS OF NEWCO

Except as otherwise provided in this Article V, Newco hereby agrees and covenants with the District to take the following actions during the Term (or such other period as may be specified below):

5.1 Adoption of Revised Articles and Bylaws. Prior to the Transfer Date, but effective thereon, Newco shall have adopted and filed with the Minnesota Secretary of State Articles and Bylaws substantially in the form attached hereto as Exhibits 5.1(a) and 5.1(b).

5.2 Newco Governance.

(a) Initial Newco Board of Director Appointments. The parties agree that the initial Board of Directors of Newco (“Newco Board”) shall include nine (9) Directors and
be comprised as follows: two (2) Directors of the District holding such office on the Transfer Date; the Newco Chief Executive Officer as an ex-officio voting member; two (2) physicians with active medical staff privileges at the Medical Center; and four (4) independent community directors. The names and terms of the initial Newco Board shall be as specified in Exhibit 5.2(a), attached hereto and incorporated herein by reference.

(b) Future Newco Board of Directors. The parties agree that the future Newco Board shall have the following structure:

(i) Number and Composition of Directors. The Newco Board shall generally consist of nine (9) voting Directors, but in no case fewer than seven (7) nor more than eleven (11). The composition of the Newco Board shall include the Chief Executive Officer of Newco as an ex-officio voting member, two (2) members of the District Governing Board ("District Directors"), and two (2) physicians who are members of the Medical Center Medical Staff and have privileges at the Medical Center ("Physician Directors"). The majority of the Newco Directors shall be independent community directors who are not members of the Medical Center's Medical Staff or officers or employees of Newco.

(ii) Selection of Directors. With the exception of the Chief Executive Officer and the District Directors, Directors shall be elected by a majority of the Newco Board. The Chief Executive Officer shall automatically become a Director upon assuming the position of Chief Executive Officer of the Corporation. The District Directors shall be nominated by a nominating committee comprised of the then serving District Directors and two members of the Newco Board. The nominated candidate shall be subject to the approval of both the District Board and the Newco Board.

(iii) Terms and Term Limits. With the exception of the Chief Executive Officer of Newco, the term of each Director shall be for a period of three (3) years from the date of his or her election. With the exception of the Chief Executive Officer, a Director may not serve more than three three-year terms (excluding partial terms served). The term of the Chief Executive Officer shall run concurrently with his or her term as Chief Executive Officer of Newco and shall terminate upon his termination from that position.

(iv) Staggered Terms. The terms of Directors shall be staggered such that the term of one-third of the Directors shall expire each year.

(c) Committees. Newco may, in its discretion, appoint other District Board members not serving on the Newco Board to serve with Newco Directors and other community members on committees as determined by the Newco Board.

5.3 Corporate Status. Newco shall maintain its corporate existence as a Minnesota nonprofit corporation. Newco hereby agrees that it has not entered into and shall not enter into any lease, management contract, service contract, or similar arrangement which would give rise to any “private business use” of the Leased Assets as defined in Section 141(b)(6) of the Internal
Revenue Code of 1986, as amended (the “Code”), in an amount which would cause the Existing Bonds to lose their tax-exempt status under the Code.

5.4 Tax-Exempt Status; Tax Covenants. Newco will not use, or permit the use of, the Leased Assets, directly or indirectly, in a manner that would adversely affect the exclusion from gross income of interest on the Existing Bonds. To that end, Newco covenants as follows:

(a) From and after the Transfer Date, the Medical Center Assets financed with proceeds of the Existing Bonds will not be used in any activity which constitutes: (A) an unrelated trade or business activity of Newco or any other Section 501(c)(3) Organization (as defined below), determined by applying Section 513(a) of the Code; or (B) a trade or business of a person other than a Section 501(c)(3) Organization or a State of the United States or a political subdivision of a State of the United States, to the extent that such use would adversely affect the exclusion from gross income of interest on the Existing Bonds. As used in this Section, “Section 501(c)(3) Organization” means an organization that is exempt from federal income taxation pursuant to Section 501(a) of the Code as a result of the application of Section 501(c)(3) of the Code.

(b) Newco shall not cause the Existing Bonds to be “federally guaranteed” within the meaning of Section 149(b) of the Code. For purposes of this Section, the Existing Bonds are “federally guaranteed” if the payment of principal or interest with respect to the Existing Bonds is guaranteed, directly or indirectly, in whole or in part, by the United States (or any agency or instrumentality thereof).

(c) Newco has no present intention to sell or otherwise dispose of any substantial portion of the property acquired, financed, or refinanced with the proceeds of the Existing Bonds, in whole or in part, before the final maturity date of the Existing Bonds except such portions of the moveable equipment as may, pursuant to the express terms of this Agreement, be disposed of in the ordinary course of business because of normal wear and tear or obsolescence. Newco has not been an obligor with respect to state or municipal obligations issued within thirty days prior to the date hereof which were sold pursuant to a common plan of financing with the Existing Bonds, and Newco does not expect to become an obligor with respect to any such obligations within thirty days after the date hereof.

(d) The aggregate authorized face amount of obligations issued to finance capital expenditures incurred before August 6, 1997, and obligations issued to refund such obligations (when increased by the outstanding tax-exempt “qualified 501(c)(3) bonds” issued to finance capital expenditures incurred on or after August 6, 1997, other than “qualified hospital bonds,” of Newco or any organization with which Newco is under common management or control and is a test-period beneficiary determined in accordance with Section 145(b) of the Code) does not exceed $150,000,000.

(e) While any portion of the Existing Bonds remains outstanding, from and after the Transfer Date, no portion of the proceeds of the Existing Bonds will be used to provide any airplane, skybox, or other private luxury box, any facility primarily used for
gambling, or a store, the principal business of which is the sale of alcoholic beverages for consumption off premises.

(f) Newco shall not cause the payment of the principal of, or interest on, more than five percent of the proceeds of the Existing Bonds to be directly or indirectly: (i) secured by any interest in (A) property used or to be used for a private business use or (B) payments in respect of such property; or (ii) to be derived from payments in respect of property, or borrowed money, used or to be used for a private business use as defined in Section 141 of the Code (except for by a Section 501(c)(3) organization).

(g) Newco will promptly provide District with full information as to any use of the Leased Assets financed with proceeds of the Existing Bonds for which the District was not aware of prior to the Transfer Date by anyone other than a Section 501(c)(3) Organization, including the revenues and square footage involved. Nothing in this paragraph is intended to give Newco rights to assign this Agreement or sublease any portion of the Leased Assets not granted in Section 7.2 (except for by a Section 501(c)(3) Organization) for a use that is not an unrelated trade or business.

(h) From and after the Transfer Date, no portion of the proceeds of the Existing Bonds is to be used directly or indirectly to provide residential rental property for family units.

(i) Newco has not leased, sold, assigned, granted, or conveyed and will not lease, sell, assign, grant, or convey all or any portion of the Leased Assets or any interest therein to the United States or any agency or instrumentality thereof within the meaning of Section 149(b) of the Code.

(j) Newco is, and throughout the term of the Existing Bonds will remain, a nonprofit organization described and qualified under Section 501(c)(3) of the Code, that is not a “private foundation” as defined in Section 509(a) of the Code.

(k) There is no action, proceeding, or investigation pending or threatened or any basis therefor by the IRS or authorities of the State of Minnesota which, if adversely determined, might result in a modification of the status of Newco as a nonprofit organization described and qualified under Section 501(c)(3) of the Code.

(l) From and after the Transfer Date, no part of the Leased Assets will be subject to a contract for management services except for contracts for management services which will not adversely affect the exclusion from gross income of interest on the Existing Bonds. Newco will not enter into any research contracts that currently or in the future result in (i) another entity having an ownership interest in the Leased Assets; (ii) actual or beneficial use of the Leased Assets by another entity pursuant to a lease; or (iii) another party using the Leased Assets pursuant to a management or incentive payment contract.

(m) Newco shall operate the Leased Assets in a manner that complies with the requirements of Minnesota Statutes, Section 447.47(a), as amended from time to time.
Any improvements to the Leased Assets made by Newco during the term of this Agreement shall comply with the terms of the then outstanding Existing Bonds to which the Leased Assets are subject.

5.5 Bond Covenants. As long the Existing Bonds remain outstanding, notwithstanding any other provision of this Lease, Newco shall be subject to the agreements and covenants set forth in the Bond Resolutions made by the District for the benefit of the owners of the Existing Bonds, including the following:

(a) Newco shall maintain in its official books and records a Health Facilities Revenue Bond Fund (the “Bond Fund”) and the accounts therein substantially as described in Section 4.01 of the 1999 Resolution, as modified by the other Bond Resolutions, and shall deposit Gross Revenues (as defined in the 1999 Resolution) to such fund and accounts as provided therein. Newco pledges and appropriates Gross Revenues of the Health Facilities (as defined in the 1999 Resolution) to the various accounts of the Bond Fund, and agrees to deposit and credit the same to the accounts of the Bond Fund and to expend the same as provided in such Section 4.01. Newco shall not permit the investment of moneys in the Bond Fund or any accounts therein in a manner which would cause the Existing Bonds to be arbitrage bonds, within the meaning of Section 148 of the Code and applicable regulations.

(b) Newco shall invest funds on deposit in the Bond Fund as provided in Section 4.02 of the 1999 Resolution.

(c) Newco will not become a conduit obligor of any Additional Bonds (as defined in the 1999 Resolution), other than Additional Bonds which satisfy the requirements of Section 4.03 of the 1999 Resolution.

(d) Newco will not incur any Long-Term Indebtedness (as defined in the 1999 Resolution) unless the same is payable from the Surplus Account in the Bond Fund, as provided in Section 4.04 of the 1999 Resolution, and will otherwise comply with the requirements of Section 4.04 of the 1999 Resolution.

(e) Newco shall not grant any mortgage lien, encumbrance or security interest in or against its real or personal property or tangible or intangible assets to secure any Long-Term Indebtedness (as defined in the 1999 Resolution); provided that Newco may enter into a purchase money security interest in connection with the acquisition of equipment.

(f) Newco agrees to be bound by the covenants set forth in Section 5 of the 1999 Resolution with respect to the operation, sale or conveyance, leasing and operating agreements as to the Medical Center Assets, as if such covenants were made directly by Newco.

(g) Newco covenants and agrees that it will notify the District of the occurrence of any event which the District would be required to disclose pursuant to Section 22 of the Bond Resolution which authorized the issuance of the District’s Health
Facilities Gross Revenue Refunding Bonds, Series 2007, within 4 days of such occurrence.

(h) Newco covenants and agrees that it will not take or permit to be taken any action which would cause the interest on the Existing Bonds to become includable in gross income of the recipient and covenants to take any and all affirmative action within its powers to insure that the interest on such Existing Bonds will not become includable in gross income of the recipient. Newco shall take such actions, at the direction of the District, as are required to comply with the arbitrage rebate requirements applicable to the Existing Bonds.

5.6 Licenses. Newco shall obtain on or before the Transfer Date all necessary licenses to operate the Medical Center from the Minnesota Department of Health and shall maintain such licenses in good standing throughout the Term.

5.7 Medicare Certification. Newco shall maintain all necessary Medical Center Medicare certification at all times during the Term.

5.8 Medical Staff. On or before the Transfer Date, Newco shall adopt the Bylaws, Rules and Regulations of the Medical Center’s Medical Staff in effect as of the Transfer Date and shall extend privileges to all members of the Medical Center’s Medical Staff then in compliance with such Bylaws, Rules and Regulations on identical terms as in effect as of the Transfer Date. Newco shall maintain an open Medical Staff unless it determines otherwise based on the best interest of the community it serves.

5.9 Consents, Licenses and Approvals. Newco shall take all actions it deems necessary or appropriate to obtain and maintain in full force and effect any consents, licenses, permits and approvals necessary in connection with this Agreement, Medical Center Operations, or the furtherance of Newco’s corporate purposes.

5.10 Open to All on Equal Terms. Newco shall operate the Medical Center as a hospital open to all residents of the communities it serves on equal terms. Newco agrees that, during the term, it will not discriminate against any person in admission, treatment or participation in its programs, services or activities or deny any person the full and equal enjoyment of its facilities, accommodations, goods, advantages or privileges based on race, color, national origin, ethnicity, culture, language, disability, age, creed, religion, sex, marital status, sexual orientation, gender identity or expression, socioeconomic status or other protected class status as provided by applicable law.

5.11 Care Center. Newco shall continue to operate the long-term care facility located at 320 East Main Street, Crosby, MN 56441, (the “Care Center”) for a period of five (5) years after the Transfer Date. If Newco in its sole discretion, determines it is no longer financially feasible to continue operating the Care Center, it must give the District one (1) year prior written notice of its planned discontinuance of Care Center operations. The soonest Newco could provide notice of a planned discontinuance of Care Center operations is the fourth anniversary of the Transfer Date. Upon receipt of such notice, the parties will discuss options for disposition of the Care Center, including seeking a third party operator or owner of the Care Center or financial
assistance from the District to Newco to facilitate Newco’s continued operation of the Care Center. Notwithstanding the foregoing, at any time during the Term of this Agreement, Care Center operations, including any Leased Assets used in the Care Center operations, may be transferred to Crosby Senior Services d/b/a Heartwood to facilitate construction of a new nursing home on the Heartwood campus.

5.12 Transfer of District Employees.

(a) Newco recognizes the contributions made by the Medical Center’s current and former employees in providing care and services to patients. Accordingly, each employee of the Medical Center who is actively employed or on a leave of absence from such active employment on the Transfer Date will be offered employment by Newco, as applicable, with comparable position, hours and benefits, and at the wage or salary provided as of the Transfer Date, subject only to the following pre-employment screening requirements: (i) professional licensure that is presently required for the position at the Medical Center; (ii) criminal background check; (iii) drug testing; (iv) immigration law compliance; and (v) any other legally mandated requirements. Employees hired under this Section 5.12 are referred to as “Transferred Employees.” Continued employment of Transferred Employees by Newco will be subject to Newco’s policies and procedures.

(b) Eligibility for benefits for Transferred Employees will begin on the first day of employment at Newco. Newco shall treat employee service with the Medical Center prior to the Transfer Date as having been service with Newco and will waive, to the extent permitted by law, any length of service requirements, waiting periods, vesting periods or differential benefits based on length of service in any such employee benefit plans and defined contribution plans for which Transferred Employees may be eligible after the Transfer Date.

(c) Newco will grant credit for all unused Paid Time Off (PTO) accrued by Transferred Employees before the Transfer Date, provided that such PTO credit effectively eliminates any claim for a payout of accrued PTO by such Transferred Employees. If a Transferred Employee does not consent to such credit, then the District will pay out all such accrued PTO as of the Transfer Date, and the Transferred Employee will not be granted PTO credit.

(d) Newco will assume all collective bargaining agreements relating to the Transferred Employees in place on the Transfer Date subject to adjustment to reflect the National Labor Relations Act.

5.13 Annual Report to District. Newco will provide an annual report on its performance to the District Governing Board.

ARTICLE VI
GENERAL COVENANTS OF THE DISTRICT

The District hereby agrees and covenants with Newco to take the following actions during the Term (or such other period as may be specified below):
6.1 Operation in Ordinary Course. The District shall conduct the Medical Center Operations from the date hereof until the Transfer Date in the Ordinary Course of Business.

6.2 Consents and Notices. The District, prior to the Transfer Date, shall obtain such consents and give such notices as may be required in connection with the assignment to Newco of the Assigned Contracts and the assumption by Newco of the Assumed Liabilities, but only to the extent that Newco reasonably requests the same. The District shall provide Newco satisfactory evidence on or before the Transfer Date that all requested consents have been obtained and notices have been given. Newco agree that, in the event that any required consent or notice is not procured or given as of the Transfer Date, Newco shall indemnify the District to the same extent as would be the case for an Assumed Liability pursuant to Section 3.4.

6.3 Cooperation with Newco. The District, at Newco’s request and Newco’s expense, shall cooperate reasonably with Newco in any manner necessary to enable Newco to fulfill their individual and joint obligations and exercise their rights under this Agreement.

6.4 Update to Exhibits, Accounts Receivable, Accounts Payable Reports. No later than three (3) business days prior to the Transfer Date, the District shall deliver to Newco (i) updated Exhibits to reflect any changes occurring since the date of this Agreement and (ii) updated accounts receivable and accounts payable reports.

6.5 Liens and Encumbrances. The District shall not suffer or permit any liens or encumbrances (other than any liens or encumbrances which may exist on the Transfer Date) to be filed or exist against the Leased Assets except with the consent of Newco.

6.6 Quiet Enjoyment. So long as Newco pays the Rent and fulfills all of its other obligations hereunder, the District shall allow Newco to take and enjoy peaceful, quiet and undisputed possession of the Leased Assets, subject to the rights of third parties in such assets.

6.7 Eminent Domain. The District shall take no action to exercise the power of eminent domain or to cause any other governmental authority or person, firm or corporation acting under governmental authority to exercise such power over any of the Leased Assets.

6.8 No Transfer. So long as Newco is not in default hereunder, the District shall not transfer its interest in the Leased Assets, except with the consent of Newco.

6.9 Continuation of Levy. The District shall continue to levy taxes in an amount sufficient to cover its operating expenses and as otherwise determined necessary and appropriate by the District.

6.10 Issuance of New Debt. So long as the District holds legal title to the real property comprising the Leased Assets, it agrees, unless infeasible, to issue 501(c)(3) revenue bonds for the Medical Center if requested by Newco. Any expenses and obligations incurred as a result of any such debt would be satisfied by Newco as an expense and additional rent under this Agreement.
ARTICLE VII  
SALE, AFFILIATION, ASSIGNMENT, SUBLETTING AND EXPANSION

7.1 Right to Sell or Affiliate. Newco shall not, without first obtaining the affirmative consent of the District, authorize any transaction providing for the (i) sale or other disposition of the Medical Center Assets, provided Newco may dispose of obsolete or non-functional equipment, furnishings or other types of personal property without consent of the District so long as the proceeds from any sale are used for replacement or upgrade of such personal property or in Medical Center operations; or (ii) affiliation of Newco with a multi-hospital system or 501(c)(3) organization including, but not limited to, by way of corporate organization or reorganization involving Newco or its subsidiaries and their respective assigns or the transfer of rights of Newco as part of such organization or reorganization. Notwithstanding the foregoing, Newco may merge or otherwise combine with a 501(c)(3) organization located within a forty-five (45) mile radius of Newco that is not part of a multi-hospital system without consent of District.

7.2 Assignment and Subletting. Except as otherwise provided in this Agreement, neither party shall assign this Agreement to a third party without the prior written consent of the other party. Newco may (i) sublet any portion of the Leased Assets or (ii) enter into a contract for the management of one or more departments of the Leased Assets, such as radiology or emergency room, in each instance to healthcare professionals or business entities having expertise in the operation of such departments, so long as such sublease or management contract is consistent with state and federal laws and regulations and the terms of the Existing Bonds; provided, however, Newco shall not enter into a sublease, management contract, service contract, or similar arrangement which would give rise to “private business use” of the Leased Assets as defined in Section 141(b)(6) of the Code in an amount which would cause the Existing Bonds to lose their tax-exempt status under the Code.

7.3 Expansion of Medical Center Building. Subject to standard zoning, land use, ordinance and similar requirements and approvals, Newco shall have the right to expand the Medical Center building within the Medical Center real property specifically described on Exhibit 1.10, subject to the requirements, if any, of the Existing Bonds or any other provision of this Agreement.

ARTICLE VIII  
DAMAGE, DESTRUCTION AND EMINENT DOMAIN

8.1 Damage and Destruction. Subject to the requirements of the Existing Bonds or other permitted indebtedness then in effect, in the case of damage or destruction by fire or other casualty of the Leased Assets, Newco shall use best efforts to cause the damage to be repaired and the Leased Assets to be restored promptly in the case of damage or destruction in which less than twenty-five percent (25%) of the Leased Assets are destroyed and in all other circumstances within two (2) years following the date of such damage or destruction, subject to delays beyond the reasonable control of Newco. All insurance proceeds from casualty insurance covering the Leased Assets shall be used to make the repairs or restoration. In the event that such insurance proceeds exceed the actual cost to make the repairs or restoration, such excess shall belong to
Newco. In the event that such insurance proceeds are insufficient to pay the actual cost of repairs or restoration, Newco shall complete the repairs at Newco’s sole cost and expense.

8.2 Eminent Domain. If during the Term either title to or the temporary use of any portion of the Leased Assets shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, this Agreement shall terminate as to the portion of the Leased Assets so taken on the date (the “Taking Date”) Newco is required to yield possession thereof to the condemning authority. If the amount of the Leased Assets so taken substantially impairs the usefulness of the remaining Leased Assets for use by Newco, Newco may, by notice to the District delivered at least 60 days prior to the Taking Date, terminate this Agreement as of the Taking Date. All compensation or damages awarded for such taking under the power of eminent domain, whether for the whole or part of the Leased Property, shall be first applied to satisfaction of any then outstanding indebtedness under the Existing Bonds. Any remaining funds shall then be apportioned between the District and Newco as their interests may appear.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES OF THE DISTRICT

Except as otherwise noted in the District Disclosure Schedule, attached hereto as Exhibit 9, which is subject to updating by the District as of the Transfer Date, the District hereby represents and warrants to Newco that the following representations and warranties are true and accurate as of the date hereof and as of the Transfer Date:

9.1 Authority. The District has power and authority to execute and deliver this Agreement, and to carry out the transactions contemplated hereby and therein, respectively. The Cuyuna Range Medical Center District Governing Board, acting on behalf of the District in connection with this Agreement, is the properly appointed, acting, and duly authorized governing body of the District, and is acting in accordance with the provisions of the Act, or any successor or similar statute.

9.2 No Conflicts. The Agreement is duly executed and delivered and is a valid and legally binding obligation of the District enforceable in accordance with its respective terms. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, result in the creation of any lien, charge or encumbrance or the acceleration of any indebtedness or other obligation of the District, and are not prohibited by, in violation of or in conflict with any provisions of, and will not result in a default under or a breach of (i) any constitutional provision affecting the District, (ii) any ordinance, law or regulation, or (iii) any order, decree or judgment of any court or governmental agency to which the District or the Medical Center is a party or is bound.

9.3 Bonds. The Existing Bonds are the only bonds authorized and issued by the District which are outstanding as of the Transfer Date and applicable to the Medical Center.

9.4 Rent. The rent payable to the District under Section 3.1 hereof is deemed by the District to be an appropriate amount in view of the purposes of the parties set forth in the Preamble hereof.
9.5 Condition. Except as expressly stated herein, the District does not make any representations or warranties regarding the Leased Assets or the Transferred Assets. Newco acknowledges that it is accepting the Transferred Assets and leasing the Leased Assets on an “AS IS,” “WHERE IS” and “WITH ALL FAULTS” basis, based upon its own judgment.

ARTICLE X
REPRESENTATIONS AND WARRANTIES OF NEWCO

Newco hereby represents and warrants to the District that the following representations and warranties are true and accurate as of the date hereof and as of the Transfer Date:

10.1 Organization. Newco is a nonprofit corporation duly organized and in good standing under the laws of the State of Minnesota. Newco is an organization described in and qualified under Section 501(c)(3) of the Code. Newco has the power to lease and to own assets and to carry on its business as contemplated under this Agreement.

10.2 Authority. Newco has the power to execute and deliver this Agreement and to carry out the transactions contemplated hereby. All corporate actions required to be taken by Newco to authorize the execution, delivery and performance of this Agreement and all transactions contemplated hereby have been duly and properly taken.

10.3 No Conflicts. This Agreement is duly executed and delivered and is a valid and legally binding obligation of Newco enforceable in accordance with its respective terms. The execution and delivery of this Agreement does not, and the consummation of the transactions contemplated hereby will not, result in the creation of any lien, charge or encumbrance, or the acceleration of any indebtedness or other obligation of Newco, and are not prohibited by, in violation of or in conflict with any provision of, and will not result in a default under or a breach of (i) any contract, agreement or other instrument to which Newco is a party or is bound, (ii) any ordinance, law or regulation, or (iii) any order, decree or judgment of any court or governmental agency to which Newco is a party or is bound.

ARTICLE XI
DEFAULT, TERMINATION AND OPTION TO PURCHASE

11.1 Effect of Default by Newco. If Newco (i) fails to perform any of its obligations under the terms of this Agreement and such failure continues for sixty (60) days after written notice of such default from the District (provided, however, that if the nature of the default is such that more than sixty (60) days are reasonably required for its cure, then Newco shall not be deemed to be in default if Newco commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion, and provided, further, if the default involves a hazardous condition Newco shall immediately after written notice commence and with diligence thereafter prosecute a cure to such default); or (ii) adopts a plan of dissolution or files for bankruptcy, liquidation or receivership, then the District shall have the right either to terminate this Agreement upon written notice at any time after expiration of the applicable cure period, if any, or enforce the terms of this Agreement by invoking any other right or remedy allowed at law or in equity, including without limitation an action for specific performance.
11.2 Effect of Default by the District. If the District fails to perform or pay, in a full and timely manner, any of its obligations under the terms of this Agreement and such failure continues for sixty (60) days after written notice of such default from Newco (provided, however, that if the nature of the default is such that more than sixty (60) days are reasonably required for its cure, then the District shall not be deemed to be in default if the District commences such cure within said sixty (60) day period and thereafter diligently prosecutes such cure to completion, and provided, further, if the default involves a hazardous condition the District shall immediately after written notice commence and with diligence thereafter prosecute a cure to such default), then Newco shall have the right either to (i) terminate this Agreement upon written notice at any time after expiration of the applicable cure period, if any, or (ii) enforce the terms of this Agreement by invoking any other right or remedy allowed at law or in equity, including without limitation an action for specific performance.

11.3 Non-renewal of Agreement. In the event Newco fails to notify the District of its intention to renew the Agreement by the time period set forth in Section 2.2, the Agreement shall terminate at the expiration of the Initial Term.

11.4 Effect of Early Termination. Upon the termination of this Agreement for any reason other than Newco’s exercise of the Newco Option pursuant to Section 11.5 below or the District’s decision to close the Medical Center pursuant to Section 11.6 below, the following provisions shall apply:

(a) **Surrender of Leased Assets.** Upon termination, Newco shall, on the date of termination, surrender the Leased Assets to the District and shall transfer the following items to the District or its designee:

   (i) All Medical Center Assets, wheresoever then located as of the effective date of termination;

   (ii) All Newco Liabilities;

   (iii) All rights of Newco in any assignment or sublease entered into by Newco pursuant to Section 7.2;

(b) **Operation of Medical Center.** From and after the termination date the District or its designee shall assume operation of the Medical Center and collect as its own revenue all revenues from operation of the Medical Center.

11.5 Newco Option to Purchase.

(a) Notwithstanding any other provision in this Agreement to the contrary, Newco shall have the option (the “Newco Option”) to purchase the Transferred Assets and Leased Assets from the District at any time following the ten (10) year anniversary of the Transfer Date (the “Exercise Date”) for an amount equal to one dollar ($1.00) plus: (i) the total amount of the District’s remaining obligations under the Existing Bonds as of the Exercise Date, plus (ii) any amounts necessary to cover prepayment penalties, defeasance costs or similar expenses related to the Existing Bonds, plus (iii) any amounts necessary to transfer title to the Leased Assets, plus (iv) any expenses incurred by the
District if it elects to dissolve as a result of the exercise of the Newco Options. If Newco exercised the Newco Option, it would also retain all Assumed Liabilities, including a continued obligation to indemnify the District according to the terms set forth in this Agreement. If Newco intends to exercise its above-described purchase option, it must give the District ninety (90) days’ written notice prior to the applicable Exercise Date.

(b) After Newco exercises the Newco Option, the District’s remaining rights with respect to Newco will be extinguished.

(c) Effective as of the Exercise Date, the District will transfer to Newco, free and clear of all liens and encumbrances, the Leased Assets.

11.6 District Option to Close Medical Center. Upon the termination of this Agreement, the District may exercise its option not to resume operation of the Medical Center and close the Medical Center. Under such circumstances, Newco shall preserve the Leased Assets on behalf of the District in order to allow the District to seek appointment of a receiver to be responsible for winding up all Medical Center operations. Newco agrees to cooperate with District and any such receiver in the event of a closure of the Medical Center.

ARTICLE XII

CONDITIONS PRECEDENT TO CLOSING

The obligations of the parties under this Agreement are subject to the satisfaction, on or prior to the Transfer Date, of the following conditions:

12.1 There shall have been no material breach by either party in the performance of any of their respective covenants herein, each of the representations and warranties of each of them contained or referred to in this Agreement shall be true and correct in all material respects on the Transfer Date as though made on the Transfer Date, and there shall have been delivered to each party their respective deliveries as described in Article XIII below;

12.2 No order shall have been entered in any action or proceeding before any court or governmental agency, and no preliminary or permanent injunction by any court shall have been issued which would have the effect of (i) making the transactions contemplated by this Agreement illegal; or (ii) otherwise preventing consummation of such transactions; and there shall have been no federal or state statute, rule or regulation enacted or promulgated that could reasonably, directly or indirectly, result in any of the consequences referred to in clauses (a) or (b) of this Section;

12.3 All necessary federal, state and local governmental approvals and consents, including the approval of the District Governing Board, shall have been obtained, without the imposition of any material conditions or restrictions and without the loss of any existing material waivers arising out of the closing of the transactions contemplated hereby;

12.4 If any governmental agency seeks to preliminary enjoin the transactions contemplated hereby, either party may decide not to proceed further with the transactions; provided, however, that if both of the parties agree to contest such preliminary injunction, each party shall bear its own costs and expenses associated therewith;
12.5 All third party consents or waivers required to be obtained with respect to the proposed transactions shall have been obtained or waived;

12.6 The District shall have received (a) the consent of the owners of the Series 2013A Bonds and Series 2013B Bonds to the transactions contemplated by this Agreement and the related amendment of the 1999 Bond Resolution; (b) an approving opinion of special counsel for the Series 2013A Bonds and bond counsel for the Series 2007 Bonds and Series 2013B Bonds that the transactions represented by this Agreement will not adversely affect the tax-exempt status of interest on the Existing Bonds, following any procedural prerequisites to such opinion; and (c) the consent of MMCDC CDE New Markets Fund XLII, LLC (“Lender”) to the District’s assignment to Newco and Newco’s assumption of the District’s lessor’s interest in that certain Ground Lease between the District and Longville Development, LLC (“LDL”) dated December 20, 2013 (the “Ground Lease”) and that certain Sublease between LDL and the District dated December 20, 2013 (the “Sublease”).

12.7 No Material Adverse Change shall have occurred.

12.8 All Exhibits and Schedules herein provided for shall be complete in form and substance. The parties agree that the Exhibits hereto may be amended by the parties up to and including the Transfer Date to reflect current information as of the Transfer Date.

Upon satisfaction or waiver of the foregoing conditions, the parties shall promptly execute a certificate acknowledging that each said condition has been either satisfied or waived.

ARTICLE XIII
TRANSFER DATE DELIVERIES

13.1 Newco’s Deliveries to the District. Newco shall deliver the following to the District on or before the Transfer Date:

(a) Certificate of Good Standing from the Minnesota Secretary of State.

(b) A certificate executed by the Chairman of Newco, dated as of the Transfer Date, stating that, to the best of his knowledge, all representations and warranties of Newco set forth herein are accurate and true as of the Transfer Date.

(c) A certified copy of resolutions adopted by the Board of Directors of Newco, authorizing and approving the execution and performance of this Agreement.

Newco also shall take any and all additional actions which may be reasonably necessary in order to complete the transaction on the Transfer Date.

13.2 The District’s Deliveries to Newco. The District shall deliver the following to Newco on or before the Transfer Date:

(a) A Certificate executed by the Chairperson of the District Governing Board, dated as of the Transfer Date, stating that, to the best of his knowledge, all
representations and warranties of the District set forth herein are accurate and true as of the Transfer Date.

(b) The Certificates of Title, properly assigned to Newco.

(c) A Bill of Sale, in a form mutually agreed upon by the parties, transferring the Transferred Assets to Newco as of the Transfer Date.

(d) The updated Exhibits and accounts receivable and accounts payable reports described in Section 6.4.

(e) Evidence of all consents and notices required by Section 6.2, including but not limited to, the Lender’s consent to the District’s assignment to Newco, and Newco’s assumption, of the District’s interest in the Ground Lease and Sublease to Newco.

(f) A certified copy of resolutions adopted by the District Governing Board authorizing and approving the execution and delivery of this Agreement and amending the 1999 Bond Sale Resolution to conform to the language in the 1999 and 2007 Offering Statements that authorized the District to enter into a lease of the Medical Center under Minn. Stat. § 447.47.


The District also shall take any and all additional actions which may be reasonably necessary in order to complete the transaction on the Transfer Date.

13.3 Failure to Deliver. In the event that either party hereto fails to make any delivery required under this Article, the non defaulting party may, at its option, declare this Agreement to be null and void as of the Transfer Date, in which case all deliveries shall immediately be returned to the party making the delivery. Any failure not objected to shall be deemed waived immediately after the Transfer Date.

ARTICLE XIV
MISCELLANEOUS

14.1 Notices and Payments. All notices, requests, demands, payments and other communications to be made hereunder shall be in writing and shall be deemed to have been duly given if either mailed by certified mail, return receipt requested, postage prepaid, or hand delivered and with such delivery evidenced by a signed receipt or sworn affidavit of the deliverer, as follows:
(a) If to the District:

Cuyuna Range Hospital District

_________________________
Crosby, MN  56441
Attention: Governing Board Chair

(b) If to Newco:

Cuyuna Regional Medical Center
320 East Main Street
Crosby, MN  56441
Attention: Chief Executive Officer

or to such other address as either party hereto may request by such written notice. Any notice given in accordance with this Article shall be deemed to have been received either three (3) days after it was mailed or upon delivery, whichever first occurs.

14.2 Severability. If any provision of this Agreement or the application thereof is held invalid, such invalidity shall not affect other provisions or applications of this Agreement that can be given effect without the invalid provisions or application, and to this end the provisions of this Agreement are declared to be severable.

14.3 Entire Agreement. This Agreement, together with the Exhibits attached hereto (including documents contained in Exhibits that are fully executed) and in accordance herewith, contains the entire understanding of the District and of Newco with respect to the transactions contemplated hereby and supersedes all other agreements and understandings among the District, Newco.

14.4 Amendment. This Agreement may be amended only by a written agreement authorized by the affirmative vote of the governing body of both Newco and the District and executed by the authorized representatives of both parties.

14.5 Governing Law and Venue. This Agreement shall be governed by and interpreted and enforced in accordance with the laws of the State of Minnesota. Venue shall lie exclusively in Crow Wing County, Minnesota.

14.6 Counterparts. This Agreement may be executed simultaneously in two (2) or more counterparts, all of which together shall constitute one and the same Agreement.

14.7 Accounting Determinations. All accounting determinations required to be made under this Agreement shall be made in accordance with generally accepted accounting principles.

14.8 Successors and Assigns. All the terms, conditions, covenants, agreements and provisions of this Agreement shall inure to the benefit of and be binding upon the District and Newco and upon their respective personal representatives, heirs, successors and permitted assigns. All of the terms, conditions, covenants, agreements and provisions of this Agreement
pertaining to the Leased Assets shall also be construed as covenants running with the land. This Agreement is for the benefit solely of the District and Newco and their respective successors and permitted assigns, and it shall give rise to no third party rights and shall not be enforceable by any other party (as a third party beneficiary or otherwise).

14.9 Authorization of Newco to Act. Notwithstanding any other provisions of this Agreement, the District hereby authorizes Newco, at its sole discretion, to obtain any and all zoning and/or building permits, tax divisions and certifications of tax exempt status, filing plats of subdivision, negotiated agreements with public and private utilities, and any and all other documents and/or approvals required by or from any governmental authority exercising jurisdiction over all or any part of the Leased Assets, as Newco, in its sole discretion, shall from time to time deem necessary or appropriate in order to carry out the health care purposes of Newco. Nothing in this Article shall be deemed or construed as in any way limiting or amending the obligations of the District under Section 6.2 to cooperate with Newco in any way necessary in order to enable Newco to exercise their rights hereunder, including without limitation, the obligation to sign any and all documents and to take any and all other steps necessary to accomplish any of the actions set forth in this Article.

14.10 Impossibility. Except for Newco’s obligations under Section 3.1 and Newco’s obligations under Article VIII, no party hereto shall be liable for any delay in performance or failure to perform when fire, flood, explosion, accident, unavailability of equipment, supplies, parts or materials, energy shortage, war, weather, casualty, act of God, sabotage, law or government regulation, or any other cause reasonably beyond such party’s control makes performance impossible despite the best efforts to perform by the party from whom performance is required.

14.11 No Third-Party Beneficiary. The terms and conditions of this Agreement are intended solely for the benefit of the District, Newco and their respective permitted successors or assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

14.12 Accounts Receivable. Some of the accounts receivable being or to be assigned and transferred are or may be due from governmental authorities or agencies, or intermediaries/agents thereof, under the programs commonly known as Medicare and Medicaid/Medicaid Assistance. To the extent those accounts receivable are not transferable or assignable, the assigning party shall collect those receivables and remit or endorse the receipts to the other promptly. Further, the assigning party hereby appoints the other as its attorney-in-fact to collect and endorse for payment of all the receivables being assigned and transferred in any way that the assigning party could collect them and endorse payment. This appointment is irrevocable, special and coupled with an interest.

14.13 Recordation. The parties agree to execute and file of record, on or before the Transfer Date, either this Agreement or a memorandum of lease evidencing the existence of this Agreement, the Term, and the Leased Assets herein leased.

14.14 Nondelegation. No provision of this Agreement shall be construed to permit or require the delegation by the District or Newco of any governmental function of the District.
IN WITNESS WHEREOF, the parties hereto have caused their authorized representatives to execute this Agreement in their respective names effective as of the day and year first above written.

[Signature pages follow]
CUYUNA RANGE HOSPITAL DISTRICT,
   d/b/a CUYUNA REGIONAL MEDICAL CENTER

By:____________________________
______________________________, Chairperson

NOTARY

STATE OF MINNESOTA   )
) ss.
COUNTY OF CROW WING   )

The foregoing instrument was acknowledged before me this _____ day of ________,
______, by _____________, who is the Chairperson of the Cuyuna Range Hospital District
Governing Board on behalf of the District.

________________________________________
Notary Public
LONGVILLE LAKES CLINIC, INC.

By:______________________________  
______________________________, ________

NOTARY

STATE OF MINNESOTA    )
) ss.
COUNTY OF CROW WING   )

The foregoing instrument was acknowledged before me this _____ day of ________,  
______, by ____________, who is the ____________ of Longville Lakes Clinic, Inc., a  
Minnesota nonprofit corporation, on behalf of the corporation.


______________________________
Notary Public
EXHIBIT 1.2(a)

Assigned Real Property Leases

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EXHIBIT 1.2(b)

Assigned Contracts

See list attached hereto.
EXHIBIT 1.3(d)

License Agreements

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EXHIBIT 1.3(\_)

Easements
EXHIBIT 1.10

Real Property

[To be inserted]
EXHIBIT 1.25(b)

Trademarks, Servicemarks and Names
Federal Marks

Cuyuna Regional Medical Center

The following unregistered logos and marks:
EXHIBIT 3.1

Schedule of Rental Payments

Newco shall pay rent ("Rent") at times and in amounts sufficient to pay principal, premium, if any, and interest due on the Existing Bonds:

[Actual schedule to be inserted.]

Rent payment for a given period will be due 20 days prior to the applicable due date.
EXHIBIT 5.1(a)

Newco Amended and Restated Articles of Incorporation

Attached.
EXHIBIT 5.1(b)

Newco Amended and Restated Bylaws

[To be inserted.]
EXHIBIT 5.2(a)

Initial NEWCO Board of Directors

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To facilitate staggered terms, for the Initial Board only, three (3) directors shall be elected for a term of one (1) year, three (3) directors shall be elected for a term of two (2) years, and three (3) directors shall be elected for a term of three (3) years.
EXHIBIT 9

District Disclosure Schedule

This District Disclosure Schedule relates to the Medical Center Operating and Lease Agreement, signed on ________________, 2016 (the “Agreement”), by and among the Cuyuna Range Hospital District, d/b/a Cuyuna Regional Medical Center, a Minnesota hospital district (the “District”), and Longville Lakes Clinic, Inc., a Minnesota nonprofit corporation (“Newco”).

Pursuant to Article IX of the Agreement, District does hereby certify to Newco that except as set forth herein, the representations and warranties of District made in the Agreement are true, correct, and complete in all material respects as of the date hereof.

All capitalized terms used herein and not otherwise defined shall have the same meanings ascribed to them in the Agreement. The headings contained in this Disclosure Schedule are for convenience of reference only and shall not be deemed to modify or influence the interpretation of the Agreement or the information contained in this Disclosure Schedule. Disclosure of any fact, circumstance or matter in any Section of this Disclosure Schedule shall be deemed to qualify any other representation or warranty in the Agreement to the extent that the nature of such disclosure item would make such qualification readily apparent from a reading of such disclosure item regardless of whether or not a specific cross reference appears.

Inclusion of information herein shall not be deemed an admission that such information is required to be disclosed in connection with the representations and warranties made by the parties in the Agreement, nor that such information represents a material exception or fact, event or circumstance or that such item would reasonably be expected to result in a Material Adverse Change.

Pursuant to Article IX of the Agreement, District provides the following, with the paragraph references below corresponding to the numbered paragraphs contained in Article IX of the Agreement:

9.2 No Conflicts. District is required to give notice and/or obtain consents under certain Assigned Real Property Leases, Assigned Contracts and License Agreements. On or before the Transfer Date, District is required to obtain a favorable Opinion of Bond Counsel with respect to the Existing Bonds.

The undersigned has duly executed this District Disclosure Schedule as of the __ day of _____________, 2016.

CUYUNA RANGE HOSPITAL DISTRICT

By: ______________________________
    ____________________________, Chairperson