# CHANGE OF CONTROL AGREEMENT

**By and Between**

**MURPHY MEDICAL CENTER, INC.,**

**SOUTHWESTERN HEALTH SYSTEM, INC.**

**And**

**THE TOWN OF MURPHY HOSPITAL AUTHORITY**

**And**

**CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY, d/b/a ERLANGER HEALTH SYSTEM**

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# CHANGE OF CONTROL AGREEMENT

**THIS CHANGE OF CONTROL AGREEMENT** (this "Agreement") is made and entered into as of the ____ day of __________, 2017 (the "Effective Date"), by and between **MURPHY MEDICAL CENTER, INC.,** a North Carolina nonprofit corporation ("Murphy"), **SOUTHWESTERN HEALTH SYSTEM, INC.**, a North Carolina nonprofit corporation ("Southwestern"), and **THE TOWN OF MURPHY HOSPITAL AUTHORITY**, a North Carolina hospital authority organized pursuant to the provisions of the North Carolina Hospital Authorities Act (the "Authority"), and **CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY, d/b/a ERLANGER HEALTH SYSTEM**, a Tennessee governmental Hospital Authority ("Erlanger"). Murphy, Southwestern, and the Authority are referred to herein collectively as "Murphy," and Erlanger and Murphy are referred to herein collectively as the "Constituent Corporations."

## Recitals:

**A.** The Boards of Directors, Boards of Trustees, and the Boards of Commissioners (collectively, the "Boards") of the Constituent Corporations have determined that it is advisable that Murphy become part of the Erlanger system on the terms and conditions set forth herein (the "Change of Control"), and have determined that such Change of Control is mutually beneficial, consistent with, and in furtherance of the strategic plans of each of the Constituent Corporations, and will be of substantial public benefit to the communities served by the Constituent Corporations;

**B.** The Erlanger system, to include Murphy, is developed and operated as a regional healthcare system in a manner intended (i) to reduce the cost and improve the quality of and access to services to patients, and (ii) to create new services and levels of care that most efficiently and effectively meet the needs of the region, in each case consistent with the mission, values, and vision of the parties; and

**C.** The Boards of the Constituent Corporations have duly approved and authorized the execution and delivery of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, the parties hereto do hereby agree as follows:

## ARTICLE I. PLAN OF CHANGE OF CONTROL

**Section 1.01 Change of Control.** The Change of Control shall be accomplished as follows:

**A.** Amendment of Articles. At the Effective Time (as defined in Section 4.01 below), Murphy shall amend its Articles of Incorporation to create a class of members having the right to vote, and to provide that there shall be one (1) member of that class (the "Member"), which shall be Erlanger. Such amendment to Murphy's Articles of Incorporation shall be effectuated by the filing of Articles of Amendment in the form of Exhibit A, attached hereto. Also at the Effective Time, Southwestern shall resign as sole member of Murphy.

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**B.** Bylaws of Murphy. At the Effective Time, the Bylaws of Murphy shall be amended and restated in the form of Exhibit B, attached hereto (the "Amended and Restated Bylaws of Murphy"), in order to reflect the changes required by Section 1.01.A.

**C.** Murphy Board. Immediately following the Effective Time, the Board of Directors of Murphy shall consist of six (6) directors, comprised of three (3) members of the Executive Committee of the Board of Trustees of Erlanger, Erlanger's Chief Executive Officer, Chief Operating Officer, and Chief Financial Officer, *ex officio* with voting rights, all of whom shall be appointed to the Board of Directors of Murphy by the Member in accordance with the Amended and Restated Bylaws of Murphy.

**D.** Murphy Subsidiaries. The Murphy Subsidiaries listed on Schedule 2.03 hereof will amend and restate their governing documents as necessary and appropriate to reflect the Change of Control as set forth in this Section 1.01.

**E.** Advisory Board. Commencing on the Closing Date, local representation will be provided through an Advisory Board, which will be comprised of the pre-Closing Board of Directors of Murphy, who will serve terms in accordance with the Amended and Restated Bylaws of Murphy. The Amended and Restated Bylaws of Murphy will provide for the members of the Advisory Board to nominate their successors for consideration and approval by the Murphy Board of Directors, as well as the opportunity for the Advisory Board to recommend to Erlanger an increase in its number, when such increase, in the Advisory Board's opinion, will be in the best interests of Murphy. The Advisory Board's responsibilities will be to provide advice to the Chief Executive Officer of Murphy.

**Section 1.02 Effective Time.** The Change of Control shall be effective at the day and hour specified in Section 4.01 of this Agreement (the "Effective Time").

**Section 1.03 Further Assurances.** If, at any time after the Effective Time, Erlanger shall consider or be advised that any further actions are necessary, desirable, or proper to vest, perfect, or confirm of record or otherwise, the transactions described in this Agreement, the Constituent Corporations agree that they and their proper officers and directors shall and will execute and deliver all such proper deeds, assignments, and assurances and do all things necessary, desirable, or proper to vest, perfect, or confirm such transactions and otherwise to carry out the purpose of this Agreement, and that the proper officers and directors of Erlanger are fully authorized and directed in the name of the Constituent Corporations or otherwise to take any and all such actions.

**Section 1.04 Effect of Change of Control.** As of the Effective Time, Erlanger shall have and maintain control of the Hospital and otherwise inure to all benefits and powers afforded to Erlanger as the Member pursuant to the North Carolina Nonprofit Corporation Act, N.C. Gen. Stat. §§ 55A-1-01 et seq., and any other the applicable laws of the State of North Carolina, and pursuant to the Amended and Restated Bylaws of Murphy, as amended pursuant to this Article I.

## ARTICLE II. REPRESENTATIONS AND WARRANTIES OF MURPHY

Subject to the limitations and qualifications set forth in this Agreement, Murphy represents and warrants to Erlanger the matters set forth below. Murphy is sometimes referred to



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below as the "Representing Party." Statements by Murphy with respect to its Subsidiaries (as defined in Section 2.03) refer to all of its Subsidiaries.

**Section 2.01 Effect of Agreement.** This Agreement is a legal, valid, and binding obligation of the Representing Party and is enforceable against it in accordance with its terms. Except as set forth on Schedule 2.01 of the Disclosure Schedule, the Representing Party has the absolute and unrestricted right, power, authority, and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement. Except as set forth on Schedule 2.01 of the Disclosure Schedule, the execution, delivery, and performance of this Agreement by the Representing Party and the consummation of the transactions contemplated hereby by the Representing Party will not: (i) require the consent, approval, or authorization of any person, corporation, partnership, joint venture, or other business association or public authority; (ii) violate any provisions of law applicable to the Representing Party or to any of its Subsidiaries now or immediately prior to the Effective Time; (iii) with or without the giving of notice or the passage of time, or both, conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge, or encumbrance upon any of the properties or assets of the Representing Party or any of its Subsidiaries pursuant to any corporate charter, bylaw, indenture, note, bond, pledge, mortgage, deed of trust, lease, license, contract, agreement, commitment, or other instrument or obligation, or any order, judgment, award, decree, statute, ordinance, regulation, or any other restriction of any kind or character, to which the Representing Party or any of its Subsidiaries is a party or by which the Representing Party or any of its Subsidiaries or any of their respective assets or properties may be bound; or (iv) result in the acceleration of any indebtedness of the Representing Party or any of its Subsidiaries or increase the rate of interest payable by the Representing Party or by any of its Subsidiaries with respect to any indebtedness.

**Section 2.02 Organization; Power; Good Standing.** The Representing Party is a nonprofit corporation duly organized and validly existing under the laws of the State of North Carolina, as well as a North Carolina hospital authority organized pursuant to the provisions of the North Carolina Hospital Authorities Act, and each such party has all requisite corporate power and authority to own, lease, and operate its properties, to carry on its business as now being conducted, and to enter into this Agreement and perform its obligations hereunder. True and correct copies of the Articles of Incorporation and Bylaws of each of the Murphy entities and its Subsidiaries are attached to Schedule 2.02 of the Disclosure Schedule. Schedule 2.02 of the Disclosure Schedule sets forth all of the Representing Party's principal places of business and all of its Subsidiaries' principal places of business. Neither the character of the properties owned or leased by the Representing Party nor the nature of the business conducted by the Representing Party requires the licensing or qualification of the Representing Party as a corporation in any jurisdiction other than the State of North Carolina.

**Section 2.03 Subsidiaries.** Other than as disclosed in Schedule 2.03 of the Disclosure Schedule, the Representing Party does not directly or indirectly own any interest in any other corporation, partnership, joint venture, or other business association or entity, foreign or domestic. Such corporations, partnerships, joint ventures, or other business entities set forth on Schedule 2.03 of the Disclosure Schedule of which the Representing Party owns, directly or indirectly, more than fifty percent (50%) of the outstanding membership interests, shares of capital stock, or other equity interests (including partnership interests) are referred to herein each





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as a "Subsidiary" or collectively as "Subsidiaries." Set forth on Schedule 2.03 is an indication of the interest owned by the Representing Party in each corporation, partnership, joint venture, or other business association or entity in which the Representing Party owns twenty-five percent (25%) or more of the outstanding membership interests, shares of capital stock, or other equity interests (including partnership interests). With respect to its Subsidiaries, the Representing Party on behalf of itself and its Subsidiaries represents and warrants the following:

**A.** Each Subsidiary that is a corporation is a corporation duly organized, validly existing, and in good standing under the laws of the jurisdiction of its incorporation. Each Subsidiary that is a partnership or a limited liability company is duly formed and validly existing under the laws of its jurisdiction of formation.

**B.** Each Subsidiary has the corporate power, or power under the North Carolina Limited Liability Company Act and its internal governing documents, as applicable, and authority to own, lease, and operate its properties and to carry on its business as presently conducted or presently proposed to be conducted.

**C.** Each Subsidiary is duly qualified to do business as a foreign corporation or limited liability company, as the case may be, and is in good standing, in each jurisdiction where the character of its properties owned or held under lease or the nature of its activities makes such qualification necessary.

**D.** All of the outstanding shares of capital stock or other equity interests of the Subsidiaries that are for-profit entities and all membership interests in nonprofit entities are, in each case, validly issued, fully paid, and non-assessable.

**E.** All of the outstanding shares of capital stock of, or other ownership or membership interests in, each of the Subsidiaries owned by the Representing Party or by any of its Subsidiaries are so owned free and clear of any liens, claims, charges, or encumbrances. There are no outstanding options, warrants, subscriptions, calls, rights, convertible securities, or other agreements or commitments obligating the Representing Party or any of its Subsidiaries to issue, transfer, or sell any securities of any Subsidiary.

**F.** There are no voting trusts, standstill, shareholder, partnership, operating, or other agreements or understandings to which the Representing Party or a Subsidiary is a party or is bound with respect to the voting of the capital stock or other ownership interest in any Subsidiary.

**Section 2.04 Financial Statements.** Murphy has delivered to Erlanger copies of its audited financial statements for the years ended ______________________, containing combined balance sheets of Murphy at such dates and the related combined statements of operations, changes in net assets and cash flows, as presented by the auditors regularly retained by Murphy. Such financial statements, together with the notes thereto (the "Financial Statements"), are true, correct, and complete in all material respects as of their respective dates; are in accordance with the books and records of the Representing Party; and fairly present the financial position of the Representing Party and the results of operations and cash flows for the years then ended in conformity with generally accepted accounting principles applied on a consistent basis

throughout such periods and, except as noted in such statements, consistent with prior periods. Complete copies of the unaudited financial statements of Murphy for each calendar month of the year ending __________ __, 20__ (the "Interim Statements") have been previously, or will be promptly, delivered to Erlanger. To the best knowledge of the Representing Party, the Interim Statements are, or will be when delivered, true, correct, and complete in all material respects as of the dates thereof; are, or will be when delivered, in accordance with the books and records of the Representing Party; accurately reflect the assets and liabilities of the Representing Party; and present fairly the financial position of the Representing Party and the results of operations and cash flows for the periods then ended, except that they contain no notes and are subject to year-end audit adjustments that are not, individually or in the aggregate, material. The most recent balance sheet of the Representing Party included in its Interim Statements is referred to herein as its "Balance Sheet." The "Balance Sheet Date" shall mean __________ __, 20__.

**Section 2.05 Absence of Undisclosed Liabilities.** Other than with respect to matters addressed in Section 2.17, representations concerning which are contained only in Section 2.17, except as expressly disclosed or reserved against on the Balance Sheet or as specifically set forth in the Disclosure Schedule, neither the Representing Party nor any of its Subsidiaries had, as of the Balance Sheet Date, any debts, liabilities, or obligations of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, including, but not limited to, guarantees, liabilities, or obligations on account of Taxes (as defined in Section 2.08 below), other governmental charges, duties, penalties, interest, fines, or obligations to refund. To the best knowledge of the Representing Party, there is no basis for the assertion against the Representing Party or any Subsidiary of any such debt, liability, or obligation, other than current liabilities incurred in the ordinary and usual course of business since the Balance Sheet Date, which liabilities would not, individually or in the aggregate, reasonably be expected to materially and adversely affect, individually or taken as a whole, the Representing Party or any of its Subsidiaries or their respective condition (financial or otherwise) or businesses or properties ("Material Adverse Effect").

**Section 2.06 Absence of Certain Changes.** Except as set forth on Schedule 2.06 of the Disclosure Schedule or as permitted by this Agreement, since the Balance Sheet Date, the Representing Party and its Subsidiaries have conducted their respective businesses in the ordinary and usual course and have maintained their records and books of account in a manner that fairly and accurately reflects their transactions, assets, and liabilities in accordance with generally accepted accounting principles consistently applied. Except as set forth on Schedule 2.06 of the Disclosure Schedule or as permitted by this Agreement, since the Balance Sheet Date, there has occurred no event or circumstance that would reasonably be expected to have a Material Adverse Effect. In particular, and without limiting the foregoing, except as otherwise disclosed on Schedule 2.06 of the Disclosure Schedule or as permitted by this Agreement, neither the Representing Party nor any Subsidiary of the Representing Party has, since the Balance Sheet Date:

**A.** Incurred any obligation or liability (contingent or otherwise) except normal trade or business obligations incurred in the ordinary course of business, consistent with past practices, the performance of which will not, individually or in the aggregate, have a Material Adverse Effect;



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**B.** Mortgaged, pledged, or subjected any of its assets (whether tangible or intangible) to any lien, charge, security interest, or other encumbrance (other than Permitted Liens as defined in Section 2.09 below);

**C.** Sold, assigned, transferred, conveyed, leased, or otherwise disposed of or agreed to sell, assign, transfer, convey, lease, or otherwise dispose of any of its assets or properties, except in the ordinary course of business consistent with past practice;

**D.** Suffered any material adverse change in its operations, assets, liabilities, properties, business, or prospects, or in its condition, financial or otherwise;

**E.** Introduced any material change with respect to the operation of its business, including its method of accounting; or

**F.** Agreed to do any of the foregoing.

**Section 2.07 Contracts.** Schedule 2.07 of the Disclosure Schedule contains a list of all contracts, agreements, commitments, or arrangements to which Murphy or any of its Subsidiaries are a party or by which any of their assets are bound or affected (other than Plans listed on Schedule 2.16) that: (i) involve the expenditure by Murphy or any of its Subsidiaries thereto of more than $50,000.00; (ii) are not terminable by Murphy or its Subsidiary without penalty upon thirty (30) days' notice or less; or (iii) are with or relate to any Disqualified Person. As used herein, Disqualified Persons means any of the following: (a) voting members of the subject organization's governing body; (b) presidents, chief executive officers, chief operating officers, and other persons with ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization, regardless of title; (c) treasurers and chief financial officers and other persons with ultimate responsibility for managing the finances of the organization, regardless of title; (d) any other person in a position to exercise substantial influence over the subject organization's activities, operations, operating budgets, capital expenditures, or employee compensation (this would include without limitation persons having one (1) of the following titles: manager, director, vice president, senior vice president, and executive vice president); (e) family members of persons meeting a definition in (a)-(d) above (for this purpose, "family members" are limited to the following: spouse, brothers or sisters (by whole or half-blood), ancestors, children, grandchildren, great grandchildren, and spouses of children, grandchildren, and great grandchildren); and (f) physicians or immediate family members of physicians (immediate family member or member of a physician's immediate family means spouse, birth, or adoptive parent, child, or sibling; stepparent, stepchild, stepbrother, or stepsister; father-in-law, mother-in-law, son-in-law; daughter-in-law, brother-in-law, or sister-in-law; grandparent or grandchild; spouse of a grandparent or grandchild). Other than Plans or as set forth in Schedule 2.07 of the Disclosure Schedule, neither the Representing Party nor any of its Subsidiaries has entered into any material written or oral contracts, agreements, commitments, or arrangements not in the ordinary course of the business of the Representing Party and its Subsidiaries. All material contracts, agreements, and other arrangements to which the Representing Party or any of its Subsidiaries are a party are valid and enforceable in accordance with their terms, except as such enforceability may be limited by bankruptcy, insolvency, receivership, and other laws affecting creditors' rights generally and general principles of equity. The Representing Party and its

Subsidiaries and, to the knowledge of the Representing Party, all other parties to each of the foregoing arrangements, have performed all obligations to date required to be performed in connection therewith. Except as disclosed on Schedule 2.07 of the Disclosure Schedule, neither the Representing Party or any of its Subsidiaries nor, to the knowledge of the Representing Party, any other party, is in default or in arrears in any material respect under the terms of any of the foregoing arrangements, and no condition exists or event has occurred that, with the giving of notice or the lapse of time or both, would constitute a default under any of them. Except as noted to the contrary on Schedule 2.07 of the Disclosure Schedule, none of the rights of the Representing Party or any of its Subsidiaries under any of such agreements is subject to termination or modification as the result of the transactions contemplated hereby.

**Section 2.08 Tax Matters.**

**A.** For the purposes of this Section:

**(i)** "Tax" or "Taxes" means any federal, state, or local income (including unrelated business income), gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, environmental (including taxes under Section 59A of the Internal Revenue Code of 1986, as amended (the "Code")), capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property, personal property, sales, use, transfer, registration, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

**(ii)** "Tax Return" means any return, declaration, report, claim for refund or information return, or statement relating to Taxes, including any schedule or attachment thereto, and including any amendment thereof.

**B.** The Representing Party and its Subsidiaries will have timely filed all Tax Returns that they are required to file before the Closing Date. All such Tax Returns are correct and complete in all material respects. All Taxes owed by the Representing Party and its Subsidiaries (whether or not shown on any Tax Return) have been paid or reserved against in such party's Financial Statements. Neither the Representing Party nor its Subsidiaries currently is the beneficiary of any extension of time within which to file any Tax Return. No claim has ever been made by an authority in a jurisdiction where the Representing Party or its Subsidiaries do not file Tax Returns that they are or may be subject to taxation by that jurisdiction. There are no liens on any of the assets of the Representing Party and its Subsidiaries that arose in connection with any failure (or alleged failure) to pay any Tax.

**C.** The Representing Party and its Subsidiaries have withheld and paid all Taxes required to have been withheld and paid in connection with amounts paid or owing to any employee, independent contractor, creditor, stockholder, or other third party.

**D.** No director, officer, or employee responsible for Tax matters of the Representing Party or its Subsidiaries expects any governmental authority to assess any additional Taxes for any period for which Tax Returns have been filed with respect to any entity listed in Schedule 2.03. There is no dispute or claim concerning any Tax liability of the Representing Party or any entity listed in Schedule 2.03 either: (i) claimed or raised by any governmental authority in



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writing and brought to the attention of any of the directors, officers, or employees responsible for Tax matters of the Representing Party and its Subsidiaries; or (ii) as to which any of the directors, officers, or employees responsible for Tax matters of the Representing Party and its Subsidiaries has knowledge based upon personal contact with any agent of such governmental authority. Except as disclosed on Schedule 2.08 of the Disclosure Schedule, neither the Representing Party nor any of its Subsidiaries is the subject of an audit or examination by any governmental authority with respect to its potential liability for Taxes.

**E.** Neither the Representing Party nor its Subsidiaries have waived any statute of limitations in respect of Taxes or agreed to any extension of time with respect to a Tax assessment or deficiency.

**F.** The Representing Party and its Subsidiaries have disclosed on their federal income Tax Returns all positions taken therein that could give rise to a substantial understatement of federal income Tax within the meaning of Section 6662 of the Code. Other than as set forth in Schedule 2.08 of the Disclosure Schedule, the Representing Party and its Subsidiaries are not a party to and have no continuing obligations under any Tax allocation or sharing agreement. The Representing Party and its Subsidiaries: (i) have not been members of an affiliated group (within the meaning of Code §1504(a)) filing a consolidated federal income Tax Return, and (ii) have no liability for the Taxes of any entity or unincorporated organization (other than the Representing Party and its Subsidiaries) under Treasury Regulation § 1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract or otherwise.

**G.** The unpaid Taxes of the Representing Party and its Subsidiaries: (i) did not, as of the most recent fiscal month end, exceed the reserve for Tax liability (excluding any reserve for deferred Taxes established to reflect timing differences between book and Tax income) set forth on the face of the most recent Balance Sheet (rather than in any notes thereto), and (ii) do not exceed that reserve as adjusted for the passage of time through the Closing Date in accordance with the past custom and practice of the Representing Party and its Subsidiaries in filing its Tax Returns.

**H.** The Representing Party and its Subsidiaries that claim to be tax-exempt and are listed on Schedule 2.08.H (for purposes of this Section 2.08.H only, the "Tax-Exempt Subsidiaries") are exempt from federal income taxation under Section 501(c)(3) of the Code and are not private foundations under Section 509(a) of the Code. No part of the net earnings of the Representing Party and its Tax-Exempt Subsidiaries inures to the benefit of any private member or individual. Neither the Representing Party nor its Tax-Exempt Subsidiaries has taken or permitted any action that would jeopardize its status as a tax-exempt organization under Section 501(c)(3) of the Code or that would subject the Representing Party or any Tax-Exempt Subsidiary to penalty excise taxes (also known as "Intermediate Sanctions") under the Taxpayer Bill of Rights 2 (Pub. L. No. 104-168, 110 Stat. 1452).

**Section 2.09 Title to Properties.** Except as disclosed on Schedule 2.09 of the Disclosure Schedule, the Representing Party and its Subsidiaries have good and marketable title to all their real and personal property and other assets, tangible and intangible, subject to no security interest, pledge, lien, encumbrance, claim, charge, or other restrictions other than: (a) those





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incurred in the ordinary course of the Representing Party's business, including those related to debt obligations of the Representing Party reflected in its Financial Statements, and (b) "Permitted Liens." For the purposes of this Agreement, "Permitted Liens" shall mean: (i) easements that do not materially adversely affect the full use and enjoyment of the Owned Real Property (as defined in Section 2.13 below) or Leased Real Property (as defined in Section 2.13 below) for the purposes for which it is currently used or materially detract from its value; (ii) imperfections of title and encumbrances, if any, individually or in the aggregate, which are not material, do not materially detract from the marketability or value of the properties subject thereto, and do not materially impair the operations of the owner thereto; (iii) liens for taxes not yet due and payable; and (iv) liens incurred in the ordinary course of business in connection with governmental insurance or benefits or to secure performance of leases and contracts (other than for borrowed money) which liens do not, individually or in the aggregate, materially and adversely affect the full use and enjoyment of the properties to which they are attached.

**Section 2.10 Litigation.** Schedule 2.10 of the Disclosure Schedule contains a true and correct listing of all material litigation, administrative, arbitration, or other proceedings in which the Representing Party or any of its Subsidiaries is currently involved, and all court decrees or administrative orders to which the Representing Party or any of its Subsidiaries is subject. Other than as shown on Schedule 2.10 of the Disclosure Schedule, there is no claim, action, suit, proceeding (legal, administrative, or otherwise), investigation, or inquiry (by an administrative agency, governmental body, or otherwise) pending as to which the Representing Party has been served process or otherwise notified or, to the best knowledge of the Representing Party, threatened by or against, or otherwise affecting, the Representing Party or any of its Subsidiaries, their properties or assets, or the transactions contemplated hereby, at law or in equity, or before or by any federal, state, municipal, or other governmental department, commission, board, agency, instrumentality, or authority, domestic or foreign, the result of which could have a Material Adverse Effect.

**Section 2.11 Compliance with Law.** Other than with respect to matters addressed in Section 2.17, representations concerning which are contained only in Section 2.17, and except as set forth on Schedule 2.11 of the Disclosure Schedule, the Representing Party and its Subsidiaries are presently, and to the best knowledge of the Representing Party have been at all times, in compliance in all material respects with all applicable laws, rules, regulations, and licensing requirements of all federal, state, local, and foreign authorities.

**Section 2.12 Permits and Licenses.** The Representing Party and its Subsidiaries maintain in full force and effect and are in compliance in all material respects with all permits, licenses, orders, and approvals necessary for them to carry on their respective businesses as presently conducted. All fees and charges incident to such permits, licenses, orders, and approvals have been fully paid and are current, and no suspension or cancellation of any such permit, license, order, or approval has been threatened or could result by reason of the transactions contemplated by this Agreement. A list of all permits, licenses, orders, and approvals held by Murphy and its Subsidiaries is set forth in Schedule 2.12 of the Disclosure Schedule.

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**Section 2.13 Real Property.**

**A.** Owned. Except as set forth in Schedule 2.13.A of the Disclosure Schedule, the Representing Party and its Subsidiaries have good and marketable title to all real property reflected on their respective balance sheets (collectively, the "Owned Real Property"). Except as set forth in Schedule 2.13.A of the Disclosure Schedule, (i) neither the Representing Party nor any Subsidiary of the Representing Party has agreed, orally or in writing, or is otherwise obligated, to sell, lease, encumber, or otherwise dispose of any of the Owned Real Property; and (ii) no person or entity has any leasehold interest in, and no person or entity (other than the Representing Party or a Subsidiary of the Representing Party) has any right to use, operate, or occupy any of the Owned Real Property. A description of all Owned Real Property of Murphy and its Subsidiaries is set forth in Schedule 2.13.A of the Disclosure Schedule.

**B.** Leased. With respect to all real property leased by the Representing Party or any of its Subsidiaries (collectively, the "Leased Real Property") and all leases relating thereto (collectively, the "Real Property Leases"), the Representing Party represents and warrants that except as set forth in Schedule 2.13.B of the Disclosure Schedule, (i) each Real Property Lease is valid, binding, and enforceable in accordance with its terms and is in full force and effect, and there are no offsets or defenses by either landlord or tenant thereunder; (ii) there are no existing breaches of or defaults under, and no events or circumstances have occurred which, with or without notice or lapse of time, or both, would constitute a breach of or a default under, any of the Real Property Leases; and (iii) consummation of the Change of Control will not constitute or result in a breach or default under any Real Property Lease. A description of all Real Property Leases of Murphy and its Subsidiaries is set forth in Schedule 2.13.B of the Disclosure Schedule.

**C.** Improvements. The Owned Real Property and the Leased Real Property are zoned for the various purposes for which the buildings and other improvements located thereon (the "Improvements") are presently being used, except in the case of permitted nonconforming uses. All of the Improvements and all uses thereof are in compliance with all applicable zoning and land use laws, ordinances, and regulations. To the best knowledge of the Representing Party, all Improvements are in good repair and in good operating condition, ordinary wear and tear excepted, and free from latent and patent defects. No part of any of the Improvements encroach on any real property not included in the Owned Real Property or the Leased Real Property in such a way that the remediation of the encroachment would prevent the Representing Party's continued use of the Improvements to such an extent as to materially affect such Party's operations.

**Section 2.14 Environmental Protection.** The Representing Party and its Subsidiaries have complied in all respects with all federal, state, and local environmental laws and regulations. Except as set forth in Schedule 2.14 of the Disclosure Schedule, to the best knowledge of the Representing Party, no substances that are defined by laws or regulations concerning the environment as toxic materials, hazardous wastes, or hazardous substances (including without limitation any asbestos, oils, petroleum-derived compounds or pesticides) (collectively, "Hazardous Materials") have been or are located in, on, or about the Owned Real Property or the Leased Real Property, the Improvements, or other assets of the Representing Party or its Subsidiaries (other than Hazardous Materials used in the ordinary course of the business of the Representing Party or its Subsidiaries in accordance with all applicable laws). To the best





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knowledge of the Representing Party, neither the Owned Real Property nor the Leased Real Property: (a) has been used for the storage or disposal of Hazardous Materials (other than in the ordinary course of business of the Representing Party or its Subsidiaries), or (b) has been used for the manufacture of Hazardous Materials. To the best knowledge of the Representing Party, no Hazardous Materials have been transported off site from any of the Owned Real Property or the Leased Real Property, other than by persons licensed to so transport such materials in the manner required by applicable law.

**Section 2.15 Insurance.** Other than as set forth in Schedule 2.15 of the Disclosure Schedule, the Representing Party and its Subsidiaries maintain in force valid, binding, and enforceable insurance policies providing adequate coverage for all risks normally insured against in the businesses of the Representing Party and its Subsidiaries. All premiums due thereon have been paid and will be paid through the Effective Time. Neither the Representing Party nor any of its Subsidiaries has been refused any insurance by any insurance carrier during the past two (2) years. All insurance policies maintained by Murphy and by its Subsidiaries are described in Schedule 2.15 of the Disclosure Schedule.

**Section 2.16 Employees; Benefit Plans.**

**A.** Murphy has previously given to Erlanger a complete and correct list of the name, position, rate of compensation, and any incentive compensation arrangements, bonuses or commissions, or fringe or other benefits, whether payable in cash or in kind, of each current employee, trustee, independent contractor, or consultant of Murphy or its Subsidiaries.

**B.** Except as set forth on Schedule 2.16 of the Disclosure Schedule, there are no Plans, as defined below, contributed to, maintained, or sponsored by the Representing Party or any of its Subsidiaries, to which the Representing Party or any Subsidiary is obligated to contribute or with respect to which it has any current or future obligation or liability, including all Plans contributed to, maintained, or sponsored in the past six (6) years by any entity that, together with the Representing Party or any of its Subsidiaries, was or is treated as a single employer under Sections 414(b), 414(c), 414(m), and 414(o) of the Code, or under common control within the meaning of Section 4001(b)(1) of ERISA. For the purposes of this Agreement, the term “Plans” shall mean: (i) employee benefit plans as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”), whether or not funded and whether or not terminated; (ii) employment agreements (exclusive of physician contracts); and (iii) personnel policies or fringe benefit plans, policies, programs, and arrangements, whether or not subject to ERISA, whether or not funded, whether written or unwritten, and whether or not terminated, including without limitation, stock bonus, deferred compensation, pension, severance, bonus, paid time off or vacation, sabbatical, travel, incentive, health, disability, and welfare plans.

**C.** Except as set forth on Schedule 2.16 of the Disclosure Schedule, none of the Plans obligates the Representing Party or any of its Subsidiaries to pay separation, severance, termination, or similar-type benefits solely as a result of any transaction contemplated by this Agreement or solely as a result of a “change in control,” as such term is used in Section 280G of the Code and the regulations promulgated thereunder.



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**D.** Except as set forth on Schedule 2.16, (i) each Plan and all related trusts, insurance contracts, and funds have been maintained, funded, and administered, in all material respects, in compliance with all applicable laws and regulations, including but not limited to ERISA and the Code; (ii) each Plan that is intended to be a qualified retirement plan and its related trust, if any, are qualified under Code Section 401(a) and Code Section 501(a) and have been determined by the Internal Revenue Service to qualify, and nothing has occurred since the latest determination of their qualified status by the Internal Revenue Service to cause the loss of such qualification; (iii) each Plan that is intended to be a tax-deferred annuity plan within the meaning of Code Section 403(b) has been administered in accordance with the provisions of that Section; and (iv) no Plan that is qualified under Code Section 401(a) has ever been merged with or accepted transfers from another Plan under Code Section 414(l).

**E.** As of the Effective Time, the fair market value of the assets of each Plan that is a defined benefit pension plan equals or exceeds the present value of all vested current liabilities as that term is defined in Section 412(1)(7) of the Code. With respect to each Plan that is subject to the funding requirements of Section 412 of the Code and Section 302 of ERISA, all contributions required to have been made for all periods ending prior to or as of the Closing Date (including periods from the first day of the then-current plan year to the Closing Date) have been made, and no accumulated funding deficiency (as defined in Code Section 412(a)) has been incurred, without regard to any waiver granted under Code Section 412. With respect to each other Plan, all required payments, premiums, contributions, and reimbursements for all periods ending prior to or as of the Closing Date have been made within the time due, or adequate accruals therefor have been made in Murphy's financial statements or balance sheet consistent with prior practice. No Plan which is a qualified retirement plan within the meaning of Section 401(a) of the Code has any material unfunded liabilities.

**F.** There have been no prohibited transactions with respect to any Plan which could result in liability to the Representing Party, any of its Subsidiaries, or any of their respective employees. Except as set forth on Schedule 2.16, (i) there has been no breach of fiduciary duty (including violations under Part 4 of Title I of ERISA) with respect to any Plan which could result in material liability to the Representing Party, any of its Subsidiaries, or any of their respective employees; (ii) no action, suit, proceeding, hearing, or investigation relating to any Plan (other than routine claims for benefits) is pending or has been threatened, and neither the Representing Party nor any of its Subsidiaries, nor any of their respective employees, has knowledge of any fact that would reasonably be expected to form the basis for such action, suit, proceeding, hearing, or investigation; and (iii) no matters are currently pending with respect to any Plan under the Employee Plans Compliance Resolution System maintained by the Internal Revenue Service or any similar program maintained by any other government authority.

**G.** Except as disclosed on Schedule 2.16, neither the Representing Party nor any of its Subsidiaries has ever sponsored, maintained, contributed to, had any obligation to contribute to, or had any other liability under or with respect to any Employee Pension Benefit Plan covered by Title IV of ERISA, Section 302 of ERISA, or Section 412 of the Code. Neither the Representing Party nor any of its Subsidiaries has ever had any liability under or with respect to any "multiemployer plan" as defined in Section 3(37) of ERISA or any "multiple employer welfare arrangement" as defined in Section 3(40)(A) of ERISA.





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**H.** Except as disclosed on Schedule 2.16, neither the Representing Party nor any of its Subsidiaries currently or within the prior six (6) years sponsors, maintains, administers, contributes to, has any obligation to contribute to, or has any other liability under or with respect to any Plan which provides health, life, or other coverage for former directors, officers, or employees (or any spouse or former spouse or other dependent thereof), other than benefits required by COBRA or comparable state-mandated health plan continuation coverage.

**I.** Neither the Representing Party nor any of its Subsidiaries has ever maintained a "voluntary employees' beneficiary association" within the meaning of Section 501(c)(9) of the Code or any other "welfare benefit fund" as defined in Section 419(e) of the Code.

**J.** With respect to each Plan that is subject to COBRA and that benefits any current or former employee of the Representing Party or any of its Subsidiaries, the Representing Party or any of its Subsidiaries has complied, in all material respects, with the continuation coverage requirements of COBRA to the extent such requirements are applicable.

**K.** Except as set forth on Schedule 2.16, all reports and information relating to each Plan required to be filed with a government authority have been timely filed and are accurate in all material respects, all reports and information relating to each such Plan required to be disclosed or provided to participants or their beneficiaries have been timely disclosed or provided, and there are no restrictions on the right of the Representing Party or any of its Subsidiaries to terminate or decrease (prospectively) the level of benefits under any Plan after the Effective Time without liability to any participant or beneficiary thereunder (other than for benefits already accrued).

**L.** There has been made available to Erlanger, with respect to each Plan, the following (if applicable): (i) a copy of the annual report (if required under ERISA) for the last three (3) years (including all schedules and attachments); (ii) a copy of the summary plan description, together with each summary of material modifications, required under ERISA; (iii) a true and complete copy of the written Plan document or, if oral, a summary of the material terms thereof; (iv) all trust agreements, insurance contracts, and similar instruments; (v) copies of all nondiscrimination and top-heavy testing reports for the last three (3) plan years; and (vi) any investment management agreements, administrative services contracts, or similar agreements relating to the ongoing administration and investment.

**M.** Except as reflected on Schedule 2.16, each Plan sponsored by the Representing Party or any of its Subsidiaries is terminable at the discretion of such entity with no more than thirty (30) days' advance notice and without material cost to such entity. The Representing Party and any of its Subsidiaries may, without material cost, withdraw their employees, directors, officers, and consultants from any Plan which is not sponsored by such entity. Except for any vesting or payments required by law resulting from any workforce reductions or Plan terminations directed by Erlanger or as reflected on Schedule 2.16, no Plan has any provision which could increase or accelerate benefits or any provision which could increase liability to Erlanger as a result of the transactions contemplated hereby, alone or together with any other event. Except as reflected on Schedule 2.16, no Plan imposes withdrawal charges, redemption fees, contingent deferred sales charges, or similar expenses triggered by termination of the Plan or cessation of participation or withdrawal of employees thereunder. No officer, director, agent,



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or employee of the Representing Party or any of its Subsidiaries has made any oral or written representation which is inconsistent with the terms of any Plan which may be binding on such Plan, the Representing Party, or any of its Subsidiaries.

**N.** Each nonqualified deferred compensation plan within the meaning of Code Section 409A is in operational and documentary compliance with, or meets an exemption from, Code Section 409A and the applicable guidance issued thereunder.

**O.** Neither the Representing Party nor any of its Subsidiaries has any leased employees within the meaning of Code Section 414(n).

**Section 2.17 Medicare Participation/Accreditation.**

**A.** For purposes of this Section:

**(i)** "Governmental Entity" shall mean any government or any agency, bureau, board, directorate, commission, court, department, official, political subdivision, tribunal, or other instrumentality of any government, whether federal, state, or local, domestic or foreign.

**(ii)** "Person" shall mean an association, a corporation, a limited liability company, an individual, a partnership, a limited liability partnership, a trust, or any other entity or organization, including a Governmental Entity.

**B.** Except as set forth on Schedule 2.17.B, all hospitals or health care providers owned or operated as continuing operations by the Representing Party or any Subsidiary (each, a "Facility," and together, the "Facilities") are eligible to receive payment without restriction under Title XVIII of the Social Security Act ("Medicare") and Title XIX of the Social Security Act ("Medicaid"), and is a "provider" or "supplier" with valid and current provider agreements and with one (1) or more provider numbers with the federal Medicare and Medicaid program of North Carolina (the "Government Programs") through a contractor, a fiscal intermediary, or a carrier, as applicable. Each Facility is in compliance with the conditions of participation for the Government Programs in all material respects and has received all approvals or qualifications necessary for capital reimbursement of the assets of the Representing Party or a Subsidiary, except where the failure to be in such compliance or to have such approvals or qualifications would not individually or in the aggregate have a Material Adverse Effect on the Representing Party or on any of its Subsidiaries. There is not pending, nor to the knowledge of Murphy threatened, any proceeding or investigation under the Government Programs involving Murphy or the Facilities. The cost reports of Murphy and the Facilities for the Government Programs for the fiscal years through __________ required to be filed on or before the date hereof have been properly filed and, to the knowledge of Murphy after reasonable inquiry, are complete and correct in all material respects. Murphy and the Subsidiaries are in material compliance with filing requirements with respect to cost reports of the Facilities and, to the knowledge of Murphy after reasonable inquiry, such reports do not claim, and none of the Facilities have received payment or reimbursement in excess of the amount provided by federal or state law or any applicable agreement, except where excess reimbursement was noted on the cost report. Except for claims, actions, and appeals in the ordinary course of business, there are no material claims, actions, or appeals pending before any commission, board, or agency, including any contractor,





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fiscal intermediary, or carrier, or Governmental Entity, with respect to any Government Program cost reports or claims filed with respect to the Facilities, on or before the date of this Agreement, or any disallowances by any commission, board, or agency in connection with any audit of such cost reports. For the purposes of this Section 2.17.B only, any matter, event, or circumstance that causes a cost, damage, or other expense, individually or in the aggregate, of $100,000.00 or greater shall be included in the definition of a Material Adverse Effect.

**C.** Except as set forth on Schedule 2.17.C, to the knowledge of Murphy after reasonable inquiry, all billing practices of Murphy with respect to the Facilities to all third party payors, including the Government Programs and private insurance companies, have been in compliance with all applicable federal and state laws, regulations, and polices of such third party payors and Government Programs in all material respects, and (to the knowledge of Murphy after reasonable inquiry) neither Murphy nor the Facilities have billed or received any payment or reimbursement in excess of amounts allowed by state or federal law.

**D.** Except as set forth on Schedule 2.17.D, each Facility eligible for such accreditation is accredited by The Joint Commission or other appropriate accreditation agency.

**E.** Neither Murphy nor any of its Subsidiaries nor (to the knowledge of Murphy after reasonable inquiry) any member, director, officer, or employee of Murphy or any of its Subsidiaries, nor any agent acting on behalf of or for the benefit of any of the foregoing, has directly or indirectly in connection with any of the Facilities: (i) offered or paid, solicited or received, any remuneration, in cash or in kind, to or from, or made any financial arrangements with, any past, present, or potential customers, past or present suppliers, patients, physicians, contractors, or third party payors of Murphy or any of the Facilities in order to induce referrals or otherwise generate business or obtain payments from such Persons to the extent any of the foregoing is prohibited by federal or state law; (ii) given or agreed to give, or is aware that there has been made or that there is any agreement to make, any gift or gratuitous payment of any kind, nature, or description (whether in money, property, or services) to any customer or potential customer, supplier, or potential supplier, contractor, third party payor, or any other Person to the extent any of the foregoing is prohibited by federal or state law; (iii) made or agreed to make, or is aware that there has been made, or that there is any agreement to make, any contribution, payment, or gift of funds or property to, or for the private use of, any governmental official, employee, or agent where either the contribution, payment, or gift or the purpose of such contribution, payment, or gift is or was illegal under the laws of the United States or under the law of any state or any other Governmental Entity having jurisdiction over such payment, contribution, or gift; (iv) established or maintained any unrecorded fund or asset for any purpose or made any misleading, false, or artificial entries on any of its books or records for any reason; or (v) made, or agreed to make, or is aware that there has been made, or that there is any agreement to make, any payment to any Person with the intention or understanding that any part of such payment would be used for any purpose other than that described in the documents supporting such payment.

**F.** Neither Murphy nor any of its Subsidiaries, nor (to the knowledge of Murphy after reasonable inquiry) any member, director, officer, or employee of Murphy nor any of its Subsidiaries, is a party to any contract, lease agreement, or other arrangement (including any joint venture or consulting agreement) related to Murphy or any of the Facilities with any





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physician, health care facility, hospital, nursing facility, home health agency, or other Person who is in a position to make or influence referrals to or otherwise generate business for Murphy with respect to any of the Facilities, to provide services, lease space, lease equipment, or engage in any other venture or activity, to the extent that any of the foregoing is prohibited by any federal or state law.

**G.** Each Facility holds all permits, consents, orders, approvals, and licenses required by any Governmental Entity to conduct its business in substantially the manner conducted by such Facility. Neither the Representing Party nor any of its Subsidiaries have received any notice from any Governmental Entity that any Facilities are not in substantial compliance with all of the terms, conditions, and provisions of such permits, consents, approvals, or licenses. The Representing Party heretofore has made available to Erlanger correct and complete copies of all such permits, consents, orders, approvals, and licenses, and all such permits, consents, orders, approvals, and licenses of Murphy and its Subsidiaries are listed on Schedule 2.12 of the Disclosure Schedule. The facilities, equipment, staffing, and operations of the Facilities satisfy the applicable state hospital licensing requirements in all material respects.

**H.** Murphy represents and warrants to Erlanger that neither it nor any of Murphy's Subsidiaries: (i) are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal health care programs"); (ii) are or have been convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) are under investigation or otherwise aware of any circumstances which may result in such party being excluded from participation in the Federal health care programs.

**Section 2.18 Minute and Stock Transfer Books.** The minute books of the Representing Party and its Subsidiaries are true, correct, complete, and current in all material respects, and contain accurate and complete records of all material actions taken by their respective Boards of Directors, and, in the case of for-profit Subsidiaries, their respective shareholders. All signatures contained in such minute books are the true signatures of the persons whose signatures they purport to be. The stock (or other equity) transfer books of each for-profit Subsidiary of the Representing Party are true, correct, complete, and current in all respects.

**Section 2.19 Records.** All records, technical data, asset ledgers, books of account, inventory records, budgets, supplier records, payroll and personnel records, computer programs, correspondence, and other files of the Representing Party and its Subsidiaries are true, accurate, and complete in all material respects and those items that are subject to generally accepted accounting principles have been maintained in all material respects in accordance therewith.

**Section 2.20 Material Misstatements or Omissions.** No representation or warranty of the Representing Party in this Agreement, the Disclosure Schedule, or in any document, statement, certificate, or schedule furnished or to be furnished by the Representing Party pursuant hereto contains or will contain any untrue statement of a material fact necessary to make the statements when read together in their entirety, or facts contained therein or herein, not misleading. All of the representations and warranties of the Representing Party shall be deemed made as of the date of this Agreement and again as of the Closing Date.





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## ARTICLE III. REPRESENTATIONS AND WARRANTIES OF ERLANGER

Subject to the limitations and qualifications set forth in this Agreement, Erlanger represents and warrants to Murphy as follows:

**Section 3.01 Effect of Agreement.** This Agreement is a legal, valid, and binding obligation of Erlanger and is enforceable against it in accordance with its terms. Subject to the satisfaction of the conditions set forth in Section 5.04 below, Erlanger has the absolute and unrestricted right, power, authority, and capacity to enter into this Agreement and to carry out the transactions contemplated by this Agreement, and the execution, delivery, and performance of this Agreement by Erlanger and the consummation of the transactions contemplated hereby by Erlanger will not: (i) require the consent, approval, or authorization of any person, corporation, partnership, joint venture, or other business association or public authority; (ii) violate any provisions of law applicable to Erlanger now or immediately prior to the Effective Time; (iii) with or without the giving of notice or the passage of time, or both, conflict with or result in a breach or termination of any provision of, or constitute a default under, or result in the creation of any lien, charge, or encumbrance upon any of the properties or assets of Erlanger pursuant to any corporate charter, bylaw, indenture, note, bond, pledge, mortgage, deed of trust, lease, license, contract, agreement, commitment, or other instrument or obligation, or any order, judgment, award, decree, statute, ordinance, regulation, or any other restriction of any kind or character, to which Erlanger is a party or by which Erlanger or its assets or properties may be bound; or (iv) result in the acceleration of any indebtedness of Erlanger or increase the rate of interest payable by Erlanger with respect to any indebtedness.

**Section 3.02 Organization; Power; Good Standing.** Erlanger is a duly organized and validly existing governmental Hospital Authority duly organized under the laws of the State of Tennessee, and has all requisite corporate power and authority to own, lease, and operate its properties, to carry on its business as now being conducted, and to enter into this Agreement and perform its obligations hereunder.

**Section 3.03 Litigation.** There is no claim, action, suit, proceeding, or investigation pending or, to the knowledge of Erlanger, threatened against or affecting Erlanger that has or would reasonably be expected to have a Material Adverse Effect on Erlanger's ability to perform this Agreement or any material aspect of the transactions contemplated hereby.

**Section 3.04 Availability of Funds.** Erlanger has the ability to obtain funds in cash in amounts necessary to fund its obligations under Section 4.07 below and will at the Closing (as defined in Section 4.01) have immediately available funds in cash which are sufficient to pay any other amounts then payable pursuant to this Agreement and to consummate the transactions contemplated by this Agreement.

**Section 3.05 Statements True and Correct.** No representation or warranty of Erlanger in this Agreement or in any document, statement, certificate, or schedule furnished or to be furnished by Erlanger pursuant hereto contains or will contain any untrue statement of a material fact necessary to make the statements when read together in their entirety, or facts contained therein or herein, not misleading. All of the representations and warranties of Erlanger shall be deemed made as of the date of this Agreement and again as of the Closing Date.



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**Section 3.06 Participation in Federal Health Care Programs.** Erlanger represents and warrants to Murphy that neither it nor any of Erlanger's Subsidiaries: (i) are currently excluded, debarred, or otherwise ineligible to participate in the Federal health care programs as defined in 42 U.S.C. § 1320a-7b(f) (the "Federal health care programs"); (ii) are or have been convicted of a criminal offense related to the provision of health care items or services but have not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal health care programs; and (iii) are under investigation or otherwise aware of any circumstances which may result in such party being excluded from participation in the Federal health care programs.

## ARTICLE IV. CERTAIN COVENANTS

**Section 4.01 Closing.** The closing of the Change of Control (the "Closing") shall take place at the offices of Murphy, 3990 East U.S. Highway 64 Alt., Murphy, North Carolina, at 11:00 A.M. on March 30, 2018 (the "Closing Date"), unless the parties hereto agree in writing upon a different time, date, or place. The parties agree that no actions to be taken at the Closing shall be deemed consummated until all actions to be taken at Closing are consummated. The "Effective Time" of the Change of Control shall be 12:00:01 A.M. local time on April 1, 2018.

**Section 4.02 Conduct of Business.** Between the date hereof and the Closing Date, Murphy covenants and agrees that its business and those of its Subsidiaries will be conducted in a manner not materially different from past practice and, except as otherwise approved by Erlanger in writing, only in the ordinary course, and that its financial condition as of the Closing Date shall not be materially and adversely affected when compared to that disclosed by its Balance Sheet.

**Section 4.03 Negative Covenants.** Between the date hereof and the Closing Date, Murphy agrees that, except as otherwise agreed herein, set forth in Schedule 4.03 of the Disclosure Schedule, or pursuant to Erlanger's prior written consent, it will not and will cause each Subsidiary not to:

**A.** Except as expressly permitted herein, amend its present Articles of Incorporation or Bylaws (or other governing documents in the case of Subsidiaries that are not corporations), sell any of its assets or properties except in the ordinary course of business or as expressly permitted herein, or change in any material manner the character of its business;

**B.** Encumber, mortgage, pledge, or suffer any lien to be placed against any of its properties or assets, except in the ordinary course of business;

**C.** Incur any indebtedness for borrowed money other than draws in the ordinary course of business against credit lines existing on the date hereof, or assume, guarantee, endorse, or otherwise become responsible for the obligations of any other individual, firm, or corporation, or make any loans or advances to any individual, firm, or corporation;

**D.** Modify or amend any existing contracts other than agreements amended in the ordinary course of business consistent with past practices (but in no event shall any amendment extend or renew a term of any such contract or agreement), or enter into any contract or agreement that would have been required to be disclosed on Schedule 2.07 of the Disclosure Schedule if it had been in existence on the date of this Agreement;





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**E.** Take any action that would interfere with or prevent performance of this Agreement; or

**F.** Engage in any activity or enter into any transaction that would be inconsistent in any respect with any of the representations, warranties, or covenants of the party set forth in this Agreement.

Erlanger agrees not to take any action described in E. or F. above.

**Section 4.04 Access to Books, Records, and Properties.** Murphy shall afford to Erlanger and its representatives full access to the properties, books, and records of Murphy and its Subsidiaries during normal business hours in order that Erlanger may have full opportunity to make such reasonable investigation as it desires of the affairs of Murphy and its Subsidiaries.

**Section 4.05 Best Efforts.** Each of Erlanger and Murphy shall use its best efforts to: (a) make or obtain all consents, approvals, authorizations, registrations, and filings with all Governmental Entities or administrative agencies as are required in connection with the consummation of the transactions contemplated by this Agreement; and (b) provide such other information and communications to any Governmental Entity as Erlanger, Murphy, or such Governmental Entities may reasonably request. Without limiting the generality of the foregoing, Erlanger and Murphy shall, as promptly as practicable and in cooperation with each other, to the extent necessary, complete and file with the appropriate authorities any documents required by the Government Programs, and obtain all required consents and/or approvals of any third parties necessary for the Change of Control as set forth in this Agreement.

**Section 4.06 Confidentiality.** The parties acknowledge that they are bound by and hereby ratify and affirm the terms of the Confidentiality and Non-Disclosure Agreement entered into by the parties as of June 28, 2016, as amended on August 19, 2016 and on July 24, 2017 (the "Confidentiality Agreement").

**Section 4.07 Murphy Operations.**

**A.** Management Services Agreement. The Management Services Agreement (the "MSA") by and between Murphy and The Charlotte-Mecklenburg Hospital Authority, d/b/a Carolinas HealthCare System ("CHS"), commencing July 1, 2011, shall be terminated as of the Effective Time.

**B.** General Commitment. Subject to the provisions of Article VI, Erlanger will operate a critical access hospital as defined by Section 1820(b)(2) of the Social Security Act, or a hospital as defined by Section 1861(e) of the Social Security Act, in Murphy, North Carolina, with services, staffing, technology, equipment, and facilities that are consistent with other Erlanger hospitals similar in size and scope of services, for no less than ten (10) years following the Effective Time in the manner set forth in this Section 4.07.

**C.** Service Line Commitments.

**(i)** Erlanger covenants and agrees that it will continue to provide the same or substantially similar clinical hospital services to its patients, including emergency services for





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the indigent, that Murphy has provided prior to the Closing Date and will strive to enhance the stability and viability of Murphy as a critical access hospital following the Change of Control with Erlanger. Notwithstanding the foregoing, the Parties acknowledge that the health care industry is a dynamic and competitive industry, and that market and consumer demands may make it desirable to alter the form, manner, or location in the community in which the health care services and programs of Murphy are provided from time to time following the Closing Date; and, accordingly, Erlanger will have the authority to modify the form, manner, or location within the community in which the health care services and programs of Murphy are provided from time to time. Erlanger will not pursue the elimination of any service line prior to providing advance notice to the Advisory Board of such planned elimination, and Erlanger's rationale therefor.

**(ii)** Erlanger will ensure that as clinical opportunities arise in Murphy's service area, and those opportunities can be fulfilled while maintaining sufficient quality and financial standards, appropriate service lines will be expanded or added based on community needs assessments and by applying the same standards and measures that Erlanger uses in connection with service line planning at other Erlanger hospitals similar in size and scope of services.

**(iii)** Erlanger will ensure that indigent care is available to the population of the area served by Murphy at levels consistent with the charity care policies of other Erlanger hospitals similar in size and scope of services.

**(iv)** Erlanger will not enact financial admission policies that have the effect of denying essential and non-elective medical services or treatment solely because of a patient's immediate inability to pay for the services or treatment.

**(v)** Erlanger will ensure that admission to and services of Murphy are available to beneficiaries of governmental reimbursement programs (Medicaid/Medicare) without discrimination or preference because they are beneficiaries of those programs.

**(vi)** Erlanger understands that Murphy has not required the use of its existing swing beds or swing bed capabilities since approximately 2014 and, based upon Murphy's history regarding the utilization of swing beds or swing bed capabilities, Erlanger currently has no intention of utilizing, developing, or maintaining such swing beds or swing bed capabilities at Murphy. If and to the extent that Erlanger desires to utilize, develop, or maintain swing beds or swing bed capabilities at Murphy, Erlanger will agree to work in good faith and otherwise cooperate with Murphy Rehabilitation, Inc. and Murphy Healthcare Properties LLC, the purchasers of Murphy's nursing home, in an effort to mitigate any potential impact upon such purchasers' investment in a legally appropriate manner.

**D.** Other Operational Commitments. Erlanger will commit to operating Murphy in accordance with the following terms after the Change of Control:

**(i)** Erlanger offers a comprehensive and highly competitive array of benefits, and Murphy's employees retained by Erlanger will maintain positions, wages, and benefits



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comparable with those positions, wages, and benefits paid by Erlanger at other Erlanger hospitals similar in size and scope of services;

**(ii)** Those Murphy employees retained by Erlanger will be given credit for their years of service in Erlanger benefit programs applicable to such employees;

**(iii)** Those Murphy employees retained by Erlanger will have access to all educational and professional development resources made available to similarly situated Erlanger employees, as well as personal and professional development programs;

**(iv)** Erlanger will provide numerous services for the operation of Murphy from Erlanger's corporate offices in order to maximize efficiencies in all operations of the Hospital, and in connection therewith, within its sole discretion, Erlanger will determine, from time to time, which positions will be required on-site at Murphy and which positions will be performed at Erlanger's corporate offices;

**(v)** The Parties acknowledge that Erlanger will continually assess needs to consolidate services being provided at Murphy. In the event that any services are relocated, affected employees will be considered for relocation with those positions, in a manner that is consistent with Erlanger's human resources policies;

**(vi)** The current terms of all physician employment arrangements at Murphy Group Practice, as well as any renewals made in the ordinary course of business prior to the Change of Control, will be honored following the Change of Control, subject to any provisions for termination;

**(vii)** As indicated by community physician needs assessments and as economically feasible and warranted, Erlanger will employ or contract with full-time clinical professional placements at Murphy through the robust recruitment of primary care physicians, physician specialists, and other clinical professionals;

**(viii)** As indicated by community physician needs assessments and as economically feasible and warranted, Erlanger will recruit physicians and other clinical professionals to replace physicians leaving Murphy's service area, whether by retirement or otherwise;

**(ix)** Erlanger will develop physician leadership and integrate physicians into the Hospital's operations to the same extent and in accordance with the same standards applied by Erlanger at other Erlanger hospitals similar in size and scope of services;

**(x)** Erlanger will survey physician engagement at the Hospital in the same manner and on the same schedule as at other Erlanger hospitals similar in size and scope of services, and Erlanger will use survey results to design efforts to improve physician engagement to the same extent and in accordance with the same standards applied by Erlanger at other Erlanger hospitals similar in size and scope of services;





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**(xi)** Erlanger will complete the transition of Murphy, including Murphy Group Practice, to the integrated EPIC EMR system on or by December 31, 2018, and with the least amount of disruption to Murphy and upon sufficient training of clinical staff and physicians; and

**(xii)** Murphy will have access to population health care pathways and care models to improve the health of its patients. Erlanger also will utilize and deploy an appropriate suite of information technology tools to support population health efforts in Cherokee, Clay, and Graham Counties.

**E.** Financial Commitments.

**(i)** As of the Effective Time, Murphy will pay off the outstanding long-term debt owed by Murphy listed in Schedule 4.07.E(i) with the effect that such debt no longer will remain as an obligation of Murphy following the Closing Date.

**(ii)** Schedule 4.07.E(ii) contains a summary of recently completed estimates for Murphy's capital needs over the next five (5) years. Regarding such capital needs, within Erlanger's discretion, Erlanger will work with Murphy's Chief Executive Officer and other Hospital leadership in order to develop a strategic plan for the Hospital's success, which plan will be integrated into Erlanger's annual capital expenditure cycle to the same extent and in accordance with the same standards applied by Erlanger at other Erlanger hospitals similar in size and scope of services.

**(iii)** Erlanger shall pay, or cause to be paid, reasonable costs and expenses charged by CHS to Murphy specifically incident to the transition and Change of Control accomplished by this Agreement.

**Section 4.08 Foundation.** The articles of incorporation and bylaws of the Murphy Medical Center Foundation, a North Carolina nonprofit corporation (the "Foundation") will be amended to reorganize the Foundation by creating a new, self-perpetuating board of directors. It is expected that the Foundation will continue its support of community health initiatives for the Murphy service area, but the Foundation will not be a controlled affiliate of Erlanger. The Foundation will have reserved powers to enforce certain provisions of this Agreement related to the commitments of Erlanger as more particularly described in Section 4.07 hereof.

**Section 4.09 Prohibited Amendment.** Subject to the provisions of Article VI, Erlanger agrees that, following the Closing Date, it shall not, without the approval of the Board of Directors of the Foundation, cause the amendment of the Articles of Incorporation or Bylaws of Murphy in any respect that would breach the agreements set forth in this Agreement, and specifically Sections 1.01, 1.02, 1.03, 4.07, and 4.08 above.

## ARTICLE V. CONDITIONS PRECEDENT TO THE OBLIGATIONS OF THE PARTIES

The obligations of each party to consummate the transactions contemplated by this Agreement are, except to the extent expressly waived in writing by a party, subject to the satisfaction at or prior to the Closing Date of each of the following conditions:



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**Section 5.01 Accuracy of Representations and Warranties.** The representations and warranties of the other party set forth in this Agreement shall have been true and correct on the date of this Agreement and shall be true and correct in all material respects on and as of the Closing Date, with the same force and effect as though made on and as of the Closing Date, except as affected by the transactions contemplated hereby, and there shall be delivered to each party at the Closing a certificate to such effect signed by an executive officer of the other party.

**Section 5.02 Performance of Agreements.** The other party shall have performed in all material respects all obligations and agreements and complied in all material respects with all covenants and conditions contained in this Agreement to be performed or complied with by such party at or prior to the Closing Date, and there shall be delivered to each party at the Closing a certificate to such effect signed by an executive officer of the other party.

**Section 5.03 Actual or Threatened Actions.** There shall not be any actual or, in the opinion of the party whose obligations are conditioned upon this Section 5.03, threatened actions or proceedings by or before any court or other governmental body or agency which shall seek to restrain, prohibit, or invalidate the transactions contemplated by this Agreement or which might affect the right of Erlanger or Murphy to own, operate, or control a material portion of its assets after the Closing Date.

**Section 5.04 Necessary Consents; Notices.** All authorizations, consents, and approvals by any third parties, including all federal, state, and local regulatory bodies and officials, that are necessary for the consummation of the transactions contemplated by this Agreement shall have been received and shall be in full force and effect. All necessary filings, declarations, and notices of the other party with or to third parties also shall have been made or given.

**Section 5.05 Resolutions of the Boards.** Each party shall have received from the other party a certified copy of resolutions of its Boards of Directors approving this Agreement and authorizing the consummation of the transactions contemplated hereby in the manner required by applicable law.

**Absence of Material Adverse Change.** There shall have occurred no event or circumstance that would reasonably be expected to have a Material Adverse Effect and there shall have been no material adverse change in the financial condition, business, or properties of Erlanger from the date hereof through the Closing Date.

## ARTICLE VI. TERMINATION OF AGREEMENT

**Section 6.01 Conditions for Termination Between Effective Date and Closing Date.** Notwithstanding anything to the contrary herein, this Agreement may be terminated and the transactions hereby may be abandoned:

**A.** By the mutual consent of the Board of Directors of Murphy and the Board of Trustees of Erlanger at any time prior to the Closing Date;

**B.** By action of the Board of Directors of Murphy and the Board of Trustees of Erlanger if the Change of Control has not been consummated on or before April 1, 2018;





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**C.** By action of the Board of Directors of Murphy if there exists a material breach of any representation, warranty, covenant, or agreement made by Erlanger under this Agreement; or

**D.** By action of the Board of Trustees of Erlanger if there exists a material breach of any representation, warranty, covenant, or agreement made by Murphy under this Agreement.

**Section 6.02 Conditions for Termination Following Closing Date.** Notwithstanding anything to the contrary herein, Erlanger's commitments under this Agreement may be terminated as follows:

**A.** Immediately, with ninety (90) days' prior written notice to the Foundation, upon the occurrence of a material adverse change in the Hospital's critical access hospital status or designation, or the associated reimbursement, caused by a change in applicable law, rule, regulation, or policy of the state or federal governments, and not by Erlanger; or

**B.** Immediately, with ninety (90) days' prior written notice to the Foundation, upon the occurrence of a material adverse change in health insurance regulations or third party reimbursement payment methodologies which render the continued operation of the Hospital as required under this Agreement financially infeasible or impracticable. For the purposes of this subsection B, a "material adverse change" is any change that results in a cumulative decrease over any three (3)-year period of twenty percent (20%) or more in average payment rates for the same or similar health care services provided under the Hospital's then current participating provider agreements with governmental and commercial payors which cover at least a majority of the patients then served by the Hospital; or

**C.** At any time following the third (3rd) anniversary of the Closing Date, if and to the extent that Erlanger determines that its continued operation of the Hospital is no longer financially feasible. For the purposes of this subsection C, a determination that the continued operation of the Hospital is no longer financially feasible may occur upon the completion of the following process.

In the event that Erlanger determines that its continued operation of the Hospital is no longer financially feasible as described in this subsection C, Erlanger immediately shall notify the Foundation of such change and provide documentation supporting the existence of such change to the Foundation. The Foundation then shall have the option to retain a qualified third party health care consulting firm (the "Consultant"), mutually approved by the Foundation and Erlanger, to analyze the documentation supporting the material adverse change based upon prevailing applicable industry standards and practices. In no event may the Consultant's analysis extend beyond forty-five (45) days from the date upon which it receives the documentation from Erlanger. In the event that the Consultant and the Foundation agree with Erlanger's notice hereunder, then Erlanger may terminate its commitments under this Agreement, provided that Erlanger first advises the Foundation of its plans to provide, or arrange to provide, health care services to the community. In the event that the Consultant and the Foundation, on the one hand, and Erlanger on the other hand, do not agree with Erlanger's notice hereunder, then the Foundation and Erlanger shall submit the matter to mediation as required by Section 7.02 hereof. The purpose of the mediation shall be to provide a forum to explain the differences of opinion

and to seek a good faith resolution of the same; however, in any event, following the completion of such mediation, Erlanger's final determination shall prevail.

**Section 6.03 Effect of Termination under Section 6.02.** Termination of Erlanger's commitments under this Agreement in accordance with Section 6.02 shall terminate all rights and obligations of Erlanger with respect to Murphy, and with respect to the Foundation in accordance with the provisions of Section 4.08 of this Agreement.

## ARTICLE VII. MISCELLANEOUS PROVISIONS

**Section 7.01 Survival of Representations and Covenants.** None of the representations, warranties, or covenants of the parties set forth in this Agreement shall survive the Closing hereunder, except for the covenants set forth in Sections 1.01, 1.02, 1.03, 4.07, 4.08, 4.09, 6.01, 6.02, and 6.03, which shall survive the Closing indefinitely unless this Agreement is terminated in accordance with the provisions of Sections 6.01 or 6.02 hereof, in which case the covenants set forth in Sections 4.07 and 4.09 then also shall terminate.

**Section 7.02 Mediation.** Except for the parties' right to seek injunctive relief or other equitable relief, which action may be brought in any court of competent jurisdiction, when any controversy or claim arising out of this Agreement is not capable of being resolved by the parties pursuant to other provisions of this Agreement, the controversy or claim shall be submitted, within thirty (30) days of the submission of a written request by either party, for non-binding mediation in accordance with the American Health Lawyers Association Agreement to Mediate. The mediation will be held in Murphy, North Carolina. Each party to the mediation shall make a good faith attempt to resolve the dispute. The parties agree that the discussions and negotiations made during the course of the mediation shall remain confidential and shall not be admissible in any subsequent court proceeding. The costs of mediation shall be shared equally by the parties involved.

**Section 7.03 Venue.** The venue for any litigation between the parties hereto arising out of or resulting from this Agreement is Cherokee County, North Carolina, and the parties hereto irrevocably submit themselves to the jurisdiction of the General Court of Justice in Cherokee County, North Carolina, and waive any right that they have or may have to any other jurisdiction.

**Section 7.04 Limitation of Liability.** Neither Erlanger, nor its Trustees, officers, directors, employees, agents, counsel, accountants, and consultants (the "Erlanger Parties") shall be liable to Murphy, the Foundation, or any other entity affiliated therewith (the "Murphy Parties"), whether a claim be in tort, contract, or otherwise, for (a) monetary damages in excess of One Hundred Thousand Dollars ($100,000.00), or (b) consequential, special, indirect, incidental, punitive, or exemplary loss, damage, or expense relating to a breach of this Agreement, even if advised of the possibility of such damages. Notwithstanding the above or anything in this Agreement to the contrary, however, the Murphy Parties shall be entitled, as a matter of right, to the specific performance of Erlanger's duties, obligations, responsibilities, and commitments under this Agreement, and the Murphy Parties shall be entitled to an injunction or injunctions, specific performance, or other equitable relief in any court of competent jurisdiction in order to prevent breaches of this Agreement and to enforce specifically the terms and conditions hereof,





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without the posting of a bond as a condition to remedy any such breach. Each of the parties hereto hereby waives any and all defenses it may have on the grounds of lack of jurisdiction or competence of the court to grant such an injunction or other equitable relief. In addition to all rights and remedies to which the Murphy Parties may be entitled, if the Murphy Parties prevail in any legal action hereunder, the Murphy Parties shall be entitled to the payment by Erlanger of its reasonable attorneys' fees and costs associated with such legal action.

**Section 7.05 Brokerage.** Each of Murphy and Erlanger represents and warrants to the other that it has not dealt with any business broker, real estate agent, finder, or other third party broker or intermediary in connection with the subject of this Agreement or the transactions contemplated hereby.

**Section 7.06 Expenses.** Erlanger and Murphy shall bear its own expenses in connection with the accounting, legal, and professional services required in the negotiation and preparation of this Agreement and the Exhibits thereto, and the consummation of the transactions provided for in this Agreement.

**Section 7.07 Governing Law.** This Agreement and the transactions contemplated herein shall be governed by, interpreted, construed, and enforced in accordance with the laws of the State of North Carolina applicable to contracts made and to be performed entirely within the State of North Carolina.

**Section 7.08 Entire Agreement.** This Agreement (including the Schedules and any subsidiary documents incorporated herein as Exhibits) contains the entire agreement of the parties with respect to the subject matter hereof. Notwithstanding the foregoing, the parties acknowledge that they are bound by the terms of the Confidentiality Agreement, other than in cases in which it conflicts with the terms of this Agreement in which instances the terms of this Agreement shall prevail.

**Section 7.09 Amendments and Modifications.** This Agreement shall not be modified, amended, or changed in any respect except in writing duly signed by the parties hereto and each party hereby waives any right to amend this Agreement in any other way.

**Section 7.10 Assignment.** Neither party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other party.

**Section 7.11 Captions.** Captions in this Agreement are solely for the purposes of identification and shall not in any manner alter or vary the interpretation or construction of this Agreement.

**Section 7.12 Execution in Counterparts.** This Agreement may be executed in more than one (1) counterpart, each of which shall be deemed to be an original, but all of which shall be deemed to constitute one (1) instrument. It shall not be necessary for all parties to have signed the same counterpart provided that all parties have signed at least one (1) counterpart.

**Section 7.13 Number and Gender.** Throughout this Agreement, wherever the context so requires, the singular shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa.



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**Section 7.14 Notices.** All notices or other communications that are required or permitted hereunder shall be given in writing and shall be given either by personal delivery or by FedEx or other overnight courier, shall be deemed to have been given when personally delivered, or when deposited with charges prepaid with FedEx or other nationally recognized overnight courier service, addressed to the respective parties as follows:

| | |
|---|---|
| **Murphy:** | Murphy Medical Center, Inc.<br>3990 East U.S. Highway 64 Alt.<br>Murphy, North Carolina 28906<br>Attn: Chairman, Board of Directors |
| **With a copy (which shall not constitute notice) to:** | Robert L. Wilson, Jr.<br>Nelson Mullins Riley & Scarborough LLP<br>GlenLake One / 2nd Floor<br>4140 Parklake Avenue<br>Raleigh, NC 27612 |
| **Erlanger:** | Chattanooga-Hamilton County Hospital Authority, d/b/a Erlanger Health System<br>975 E. 3rd Street<br>Chattanooga, TN 37403<br>Attn: Chief Executive Officer |
| **With a copy (which shall not constitute notice) to:** | Jeffrey Woodard<br>Chief Legal Officer<br>Erlanger Health System<br>975 E. 3rd Street<br>Chattanooga, TN 37403 |

Any party may by notice change the address to which notice or other communications to such party are to be delivered or mailed.

**Section 7.15 Successors and Assigns.** All of the terms and provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their successors, and, to the extent permitted herein, their assigns. Other than the Foundation, as set forth in Section 4.08 hereof, no third parties are intended to benefit from the terms and provisions hereof or from any representation, warranty, covenant, or obligation set forth herein or in any schedule, exhibit, or other writing delivered pursuant hereto.

**Section 7.16 Public Announcement.** No party shall make any public announcement relating to the Change of Control or the transactions contemplated by this Agreement without the prior written consent of the other parties.



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IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed this Agreement on the day and year first above written.

**MURPHY MEDICAL CENTER, INC.,** a North Carolina nonprofit corporation

By:____________________________________
Tom O'Brien
Chairman of the Board of Directors

**SOUTHWESTERN HEALTH SYSTEM, INC.,** a North Carolina nonprofit corporation

By:____________________________________
Tom O'Brien
Chairman of the Board of Directors

**THE TOWN OF MURPHY HOSPITAL AUTHORITY**, a North Carolina hospital authority organized pursuant to the provisions of the North Carolina Hospital Authorities Act

By:____________________________________
Tom O'Brien
Chairman of the Board of Commissioners

**CHATTANOOGA-HAMILTON COUNTY HOSPITAL AUTHORITY, D/B/A ERLANGER HEALTH SYSTEM**, a Tennessee governmental Hospital Authority

By:____________________________________
Kevin M. Spiegel, FACHE
Chief Executive Officer

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# EXHIBIT A

## AMENDMENT TO ARTICLES OF INCORPORATION OF MURPHY

Attached.

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# EXHIBIT B

## AMENDED AND RESTATED BYLAWS OF MURPHY

Attached.

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