

STATE OF FLORIDA  
BOARD OF MEDICINE

Final Order No. DOH-99-0924-DS -MOA Date 7-27-99

IN RE: PETITION FOR DECLARATORY  
STATEMENT OF WILLIAM R. COOK  
AND GARY C. COURVILLE

FILED  
Department of Health  
Angels Hall, AGENCY CLERK  
By *Stephanie J. [Signature]*  
Deputy Agency Clerk

FINAL ORDER

THIS CAUSE came before the Board of Medicine (hereinafter Board) pursuant to §120.565, Florida Statutes, and Rule 28-105, Florida Administrative Code, on April 10, 1999, for the purpose of considering the Petition for Declaratory Statement (Attached as Exhibit A) filed on behalf of William R. Cook, M.D., and Gary C. Courville, M.D. (hereinafter Petitioners). Having considered the petition, the arguments submitted by counsel for the parties, and being otherwise fully advised in the premises, the Board makes the following rulings, findings and conclusions:

PROCEDURAL MATTERS

On February 12, 1999, the Board received Petitioners' Petition for Declaratory Statement. The Petition requests that the Board provide a determination as the impact of Section 458.331(1)(i), Florida Statutes, on the Petitioners as members of a group practice that had entered into a management contract with ProMedco. A copy of an example contract was attached to the Petition. The Petition specifically directed the Board's attention to provisions of the contract that required various payments by the Petitioners, as members of the group practice, to ProMedco. This matter was scheduled to be heard at the next available meeting of the Board. On approximately March 14, 1999, and prior to the Board's meeting, ProMedco of Southwest Florida, Inc., filed a Motion to Intervene and Dismiss the Petition for Declaratory Statement.

ProMedco argued in its Motion that Petitioners had left the group practice discussed in the Petition and were currently in litigation with ProMedco, in the Circuit Court of the Twentieth Judicial Circuit in and for Collier County, Florida, regarding enforcement of the non-competition provisions of the contract that is the subject of the Petition. ProMedco's Motion also asserts that the legal issues raised in the Petition are similar to those currently being considered by the District Court of Appeal for the First District of Florida in the appeal of the Board's prior declaratory statement issued to Magan Bakarania.

The Board granted the Motion to Intervene by ProMedco and determined that based upon Suntide Condominium Association, Inc. v. Division of Florida Land Sales, 504 So. 2d 1343 (Fla. 1st DCA 1987); and Couch v. State Department of Health and Rehabilitative Services, 377 So. 2d 32 (Fla. 1st DCA 1979), it would be inappropriate for it to go forward with consideration of the Petition in light of the existing litigation between the Petitioners and the Intervenor. Furthermore, the Board found it appropriate and prudent to wait for the District Court of Appeal decision on the Bakarania declaratory statement before issuing further declaratory statements on the application of Section 458.331(1)(i), Florida Statutes, to specific management services contracts.

WHEREFORE, the Board hereby GRANTS Intervenor's Motion to Dismiss the Petition for Declaratory Statement and no further ruling shall be made on the Petition.

DONE AND ORDERED this 27<sup>th</sup> day of June, 1999.

BOARD OF MEDICINE

  
JAMES CERDA, M.D.  
CHAIRMAN

NOTICE OF RIGHT TO JUDICIAL REVIEW

A PARTY WHO IS ADVERSELY AFFECTED BY THIS FINAL ORDER IS ENTITLED TO JUDICIAL REVIEW PURSUANT TO SECTION 120.68, FLORIDA STATUTES. REVIEW PROCEEDINGS ARE GOVERNED BY THE FLORIDA RULES OF APPELLATE PROCEDURE. SUCH PROCEEDINGS MAY BE COMMENCED BY FILING ONE COPY OF A NOTICE OF APPEAL WITH THE CLERK OF THE DEPARTMENT OF HEALTH AND A SECOND COPY, ACCOMPANIED BY THE FILING FEES REQUIRED BY LAW, WITH THE DISTRICT COURT OF APPEAL IN THE APPELLATE DISTRICT WHERE THE PARTY RESIDES OR IN THE FIRST DISTRICT COURT OF APPEAL. THE NOTICE OF APPEAL MUST BE FILED AS SET FORTH ABOVE AND WITHIN 30 DAYS OF RENDITION OF THIS FINAL ORDER.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY, that a true and correct copy of the foregoing Final Order has been sent by U.S. Mail to Counsel for Petitioners, Jon D. Parrish, Esquire, Parrish & Moore, P.A., 2171 Pine Ridge Road, Suite D, Naples, Florida 34109 and to Counsel for Intervenor, Steven E. Siff, McDermott, Will & Emery, Suite 2200, 201 South Biscayne Boulevard, Miami, Florida 33131, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

STATE OF FLORIDA  
AGENCY FOR HEALTH CARE ADMINISTRATION  
BOARD OF MEDICINE

RECEIVED

FEB 12 1999

IN RE:

AHCA NO. 7

PETITION FOR DECLARATORY  
STATEMENT OF  
WILLIAM R. COOK, M.D. AND  
GARY C. COURVILLE, M.D.

PETITION FOR DECLARATORY STATEMENT

Pursuant to Section 120.565, Florida Statutes, Petitioners, WILLIAM R. COOK, M.D. and GARY C. COURVILLE, M.D. (the "Petitioners"), by and through undersigned counsel, petition the Board of Medicine for a Declaratory Statement and state:

1. The Petitioners are William R. Cook, M.D. and Gary C. Courville, M.D. For purposes of this Petition, Petitioners' address are that of undersigned counsel.
2. The agency affected by this Petition is the Agency For Health Care Administration, Board of Medicine (the "Board"). The statutory provisions on which this Declaratory Statement is sought are Sections 458.331(1)(g), 458.331(1)(i) and 817.505, Florida Statutes.
3. Petitioners' group practice (the "Practice") entered into, participated in and participated in a long-term management agreement with a practice management company (the "Company") substantially similar to the one attached hereto as Exhibit A, and incorporated herein (the "Agreement"). The Petitioners were

members of the Practice during said participation and are shareholders in the Practice. The Practice consists of approximately thirty-five (35) physicians.

4. The Agreement contains the following relevant provisions:

- a. The Company is required to provide certain management services, including, but not limited to, practice expansion and increasing profits and revenues. The Company proposes to expand the Practice and increase revenues by "developing relationships and affiliations with other physicians, hospitals, networks, HMOs, etc.". Other management services include strategic planning, coordinating managed care relationships, consulting with regard to fee schedules and other management services as requested by the Practice.
- b. The Company will also provide certain operational services to the Practice, including employing personnel, providing facilities and equipment, assisting in developing ancillary services, bookkeeping, billing, collecting and financial reporting.
- c. The company may also provide unspecified ancillary services to which the Practice's physicians may refer.
- d. The Practice must pay the company two separate fees. First, "Clinic Expenses" which consists of essentially all of the actual and incidental expenses incurred by the Company in the provision of the operational services to the Practice by the company including the salary of the Practice's administrator and the salaries of all of the Company's employees that are attributable to the Practice. Second, the Practice must

pay the Company an ongoing monthly "Distribution" equal to fifteen percent (15%) of the Practice's net income each month and thirty percent (30%) of all risk pool surpluses, which includes all hospital incentive funds, specialists incentive funds and funds shared from risk pools paid to the Practice under any risk sharing arrangements. The Practice's net income consists of all of the revenue's generated by or on behalf of the Practice or its physicians as a result of professional medical services furnished to patients, ancillary services provided to patients, pharmaceuticals and other items or supplies sold to patients and other fees or income generated in an inpatient or outpatient setting, regardless of the source, less (i) the Clinic Expenses. Thus, the Distribution is a direct percentage of the total profits generated by the Practice as well as all profits generated as a result of the Company's marketing and management efforts.

5. Section 458.331(1)(f), Florida Statutes, states that physicians are subject to disciplinary action by the Board for "[p]aying or receiving any commission, bonus, kickback, or rebate, or engaging in any split-fee arrangement in any form whatsoever with a physician, organization, agency, or person, either directly or indirectly, for patients referred to providers of health care goods and services ...." Petitioner is concerned that the arrangement provided for in the Agreement violates this prohibition, particularly in light of the Board decisions in *In Re: Bakaramia*, State of Florida, DOH-97-0333 (Nov. 12, 1997) and *The*

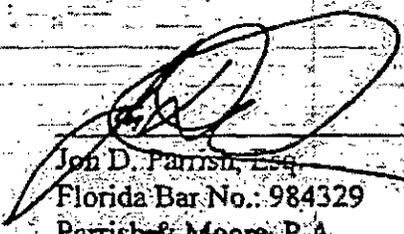
*Petition for Declaratory Statement of Dr. Gary Johnson, M.D. and the Green Clinic, a partnership of professional associates [sic] (July 11, 1992) (the "Bakarania and Johnson Decisions").* The Johnson and Bakarania Decisions concerned physicians or groups who paid or were to pay management fees to a clinic based on a percentage of fees the fees they collected for their professional services. In those decisions, the Board construed the arrangement to violate the above-cited prohibition because the percentage payment did not relate to the cost of the services provided by the managing clinic. The Agreement is similar to the contract in the Bakarania and Johnson Decisions in this regard.

6. Section 458.331(1)(g), Florida Statutes, states that a physician may be disciplined for "[f]ailing to perform any statutory or legal obligation placed upon a licensed physician." Section 817.505(1), Florida Statutes, makes it unlawful for a physician to "[o]ffer or pay any commission, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of patients or patronage from a health care provider or health care facility." Petitioners are concerned that they are subject to discipline by the Board for failing to perform a statutory obligation placed on them by Section 817.505 by engaging in a split-fee arrangement with the Company:

7. In light of the Bakarania and Johnson Decisions and the statutory prohibitions against fee-splitting, Petitioners request that the Board issue a

Declaratory Statement advising Petitioners as to whether they are subject to discipline for participating or continuing to participate in the Agreement and advising them as to the legality of such agreements.

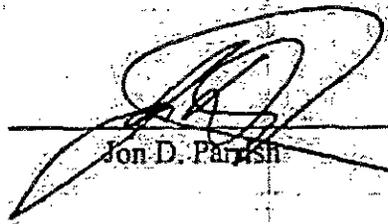
Respectfully submitted,



Jon D. Parrish, Esq.  
Florida Bar No.: 984329  
Parrish & Moore, P.A.  
Counsel for Petitioners  
2171 Pine Ridge Rd., Suite D  
Naples, Florida 34109  
Tele: 941/566-2013

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that an original and one copy of the foregoing Petition for Declaratory Statement has been served via U.S. Mail on Rhonda Bryan, Deputy Clerk, Department of Health, Central Records Unit, 2020 Capitol Circle, S.E., BIN-CO1, Tallahassee, Florida 32399-3251, with a copy to the Board of Medicine, c/o Alan Grossman, Esq., Assistant Attorney General, Plaza 1, The Capitol, Tallahassee, Florida 32399-1050, this 23<sup>rd</sup> day of December, 1998.



Jon D. Parrish

Please disregard  
underlines through-  
out - these were  
made by attorney  
& were not part  
of agreements.

**PROMEDCO MANAGEMENT COMPANY**

**ACQUISITION OF**

**NAPLES MEDICAL CENTER, P.A.**

**AND**

**NAPLES OBSTETRIC & GYNECOLOGY, M.D., P.A.**

**BY**

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

**APRIL 14, 1997**



PROMEDCO MANAGEMENT COMPANY  
PROMEDCO OF SOUTHWEST FLORIDA, INC.

AND

NAPLES MEDICAL CENTER, P.A.  
NAPLES OBSTETRIC & GYNECOLOGY, M.D., P.A.

CLOSING INDEX

ProMedCo Management Company, Inc., ProMedCo of Southwest Florida, Inc. ("ProMedCo-SW"), Naples Medical Center, P.A. ("NMC") and Naples Obstetric & Gynecology, M.D., P.A. ("NOB") Asset Purchase Agreements (the "Acquisition Agreements"), executed on April 4, 1997	1
ProMedCo-SW Undertaking in favor of NMC in the form attached to the NMC Acquisition Agreement as Appendix 2.2	2
ProMedCo-SW Undertaking in favor of NOB in the form attached to the NOB Acquisition Agreement as Appendix 2.2	3
Physician Split Dollar Agreement	4
Physician Collateral Assignment	5
Physician Escrow Agreement	6
Note payable to the Escrow Agent in the form attached to the Split Dollar Agreement	7
Opinion of Boulton, Cummings, Connors & Berry, PLC	8
Memorandum of Understanding dated April 14, 1997 of the NOB/NMC Shareholders	9
Service Agreement executed by NMC	10
Employment Agreement in the form attached to the Acquisition Agreement as Appendix 2.9B between NMC and each of the Physicians	11
General Bill of Sale and Assignment respecting the NMC Assets	12
General Bill of Sale and Assignment respecting the NOB Assets	13
Opinion of Moore & Menkhaus, P.A.	14

Opinion of Waller, Lansden, Dortch & Davis . . . . . 15.

Analysis of Assets to be Transferred and Agreements to be Entered Into,  
Prepared by Value Management Group, dated April 30, 1997 . . . . . 16.

## ASSET PURCHASE AGREEMENT

Asset Purchase Agreement dated as of April 14, 1997, among Naples Medical Center, P.A. a Florida professional corporation ("SELLER"), ProMedCo Management Company, a Delaware corporation ("ProMedCo") and ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), a wholly owned subsidiary of ProMedCo.

### RECITAL

SELLER owns the Assets described in the Common Provisions Attachment attached hereto. ProMedCo, through its subsidiaries, including ProMedCo-SW is engaged in the business of providing medical practice facilities, nonmedical personnel and medical practice management and administrative services.

SELLER desires to sell the Assets to ProMedCo-SW in exchange for the Consideration described herein.

The parties hereby agree as follows:

### ARTICLE 1 DEFINITIONS

"Consideration" means \$3,636,656, as adjusted pursuant to § 2.10.

All other definitions set forth in Article 1 of the Common Provisions Attachment are incorporated herein by reference.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Common Provisions Attachment.

### ARTICLE 2 SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

- 2.1 Sale and Transfer of Assets. }
- 2.2 Assets Free and Clear; Undertaking. }
- 2.3 Excluded Assets. }

Sections 2.2 and 2.3 of the Common Provisions Attachment are incorporated herein by reference.

2.4 Consideration for Sale and Transfer. At the Closing, in consideration for the sale of the Assets to ProMedCo-SW, the following will occur:

- (a) ProMedCo-SW will deliver to SELLER cash via wire transfer in the amount of \$2,949,325 (such cash referred to as the "Initial Portion of Purchase Consideration").



- (b) ProMedCo-SW will execute and deliver to SELLER an executed copy of the Undertaking assuming the liabilities of SELLER set forth therein (such liabilities to include, without limitation, the accounts payable, accrued expenses, accrued payroll, real estate lease obligations, equipment lease obligations relating to useable equipment and other current liabilities determined in accordance with GAAP (collectively the "Assumed Balance Sheet Liabilities") and shall specifically exclude any mortgage or other liabilities related to real estate owned by SELLER and any other long term debt obligations of SELLER except for equipment leases pertaining to equipment currently utilized by SELLER.
- (c) As soon as the Definitive Closing Statement is prepared in accordance with § 2.10(a), ProMedCo-SW shall deliver to SELLER additional consideration of \$687,331, as adjusted pursuant to § 2.10 hereof (the "Second Portion of the Purchase Consideration").

- 2.5 Excluded Liabilities.  
2.6 Allocation of Consideration.  
2.7 Closing.  
2.8 Further Acts and Assurances.  
2.9 Other Transactions at the Closing.  
2.10 Purchase Consideration Adjustments.  
(a) Definitive Closing Statements.  
(b) Closing Financial Condition.

Sections 2.5, 2.6, 2.7, 2.8, 2.9 and 2.10(a) and (b) of the Common Provisions Attachment are incorporated herein by reference.

- (c) **Distribution Funds Adjustments.** If the aggregate of Distribution Funds for SELLER for the year ended December 31, 1996 (based on the assumption that the Service Agreement had been in place during such periods) is more or less than \$9,776,855 ("Targeted Distribution Funds") the Consideration shall be increased or decreased, as the case may be, at the rate of \$1.56 for each \$1 of difference.
- (d) **Accounts Receivable Adjustment.** To the extent that ProMedCo-SW is unable to collect \$2,065,227 from SELLER's Accounts Receivable within 120 days after the Closing, the Cash Consideration shall be reduced on a dollar for dollar basis.
- (e) **Medical Professional Deficiency Adjustment.** To the extent that any of the Medical Professionals fail to execute Medical Professional Employment Agreements, as contemplated by § 2.9(c) of the Common Provisions Attachment, the Cash

Consideration shall be reduced at the rate of \$1.56 for each \$1 of historical ProMedCo Distribution attributable to such Medical Professional as set forth in Appendix 2.10 thereof

Any reduction in the Consideration resulting from this § 2.10 shall be accomplished by first reducing the Balance of the Consideration as provided in clauses (b), (c), (d) and (e) hereof, and if such reductions exhaust the Balance of the Consideration, then SELLER shall return, or cause its shareholders to return, within 10 days after a demand therefor by ProMedCo-SW, sufficient cash from the Initial Portion of the Consideration to satisfy the adjustment.

**ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER**

**3.1 Organization, Corporate Power and Qualification.**

Section 3.1 of the Common Provisions Attachment is hereby incorporated by reference.

**3.2 Capitalization of SELLER.** The authorized capital stock of SELLER consists of 10,000 shares of \$1.00 par value common stock, of which as of the date hereof, 2,800 shares are validly issued and outstanding. There are no voting trusts, proxies, or any other agreements or understandings with respect to the voting stock of SELLER other than the Stockholder Agreement dated October 1, 1992, among SELLER and its Stockholders.

Sections 3.3 through 3.36 of the Common Provisions Attachment are hereby incorporated by reference.

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PROMEDCO AND PROMEDCO-SW**

**ARTICLE 5 COVENANTS OF PROMEDCO AND PROMEDCO-SW**

**ARTICLE 6 COVENANTS OF SELLER**

**ARTICLE 7 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

**ARTICLE 8 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PROMEDCO AND PROMEDCO-SW**

**ARTICLE 9 TERMINATION**

**ARTICLE 10 INDEMNIFICATION**

Articles 3, 4, 5, 6, 7, 8, 9 and 10 of the Common Provisions Attachment are hereby incorporated by reference.

**ARTICLE 11 MISCELLANEOUS**

- 11.1 Expenses.
- 11.2 Employee Transition.
- 11.3 Occasional Sale.

Sections 11.1, 11.2 and 11.3 of the Common Provisions Attachment are hereby incorporated by reference.

11.4 Collection of SELLER's Accounts Receivable. From and after the Closing, ProMedCo-SW shall use commercially reasonable efforts, consistent with the Memorandum of Understanding attached hereto as Appendix 11.4, to collect SELLER's Accounts Receivable. ProMedCo-SW shall be entitled and shall retain the first \$2,065,227 of SELLER's Accounts Receivable collected, and thereafter shall have no right to any portion of SELLER's Accounts Receivable. If, and to the extent, ProMedCo-SW receives payments on SELLER's Accounts Receivable in excess of \$2,065,227 on a cumulative basis, ProMedCo-SW shall remit such payments to SELLER at the end of the month in which they are received.

- 11.5 Non-Assignable Property Interests.
- 11.6 Cooperation by ProMedCo and ProMedCo-SW.
- 11.7 Cooperation by SELLER.
- 11.8 Notices.
- 11.9 Entire Agreement.
- 11.10 Alternative Dispute Resolution.
- 11.11 Governing Law.
- 11.12 Legal Fees and Costs.
- 11.13 Time.
- 11.14 Section Headings.
- 11.15 Waiver.
- 11.16 Nature and Survival of Representations.
- 11.17 Exhibits.
- 11.18 Assignment.
- 11.19 Binding on Successors and Assigns.

- 11.20 Parties in Interest.
- 11.21 Amendments.
- 11.22 Drafting Party.
- 11.23 Counterparts.
- 11.24 Reproduction of Documents.
- 11.25 Press Releases.

Sections 11.5 through 11.25 of the Common Provisions Attachment are hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**PROMEDCO MANAGEMENT COMPANY**

By \_\_\_\_\_  
 Its \_\_\_\_\_  
 Name \_\_\_\_\_

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By \_\_\_\_\_  
 Its \_\_\_\_\_  
 Name \_\_\_\_\_

**NAPLES MEDICAL CENTER, P.A.**

By \_\_\_\_\_  
 Its \_\_\_\_\_  
 Name \_\_\_\_\_

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**PROMEDCO MANAGEMENT COMPANY**

By [Signature]  
 Its Vice President  
 Name Dale K. Edwards

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By [Signature]  
 Its Vice President  
 Name Dale K. Edwards

**NAPLES OBSTETRICS & GYNECOLOGY, M.D., P.A.**

By \_\_\_\_\_  
 Its \_\_\_\_\_  
 Name \_\_\_\_\_

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By [Signature]  
 Its \_\_\_\_\_  
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**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By [Signature]  
 Its \_\_\_\_\_  
 Name \_\_\_\_\_

**NAPLES MEDICAL CENTER, P.A.**

By Charles J. Buysse MD  
 Its PRESIDENT  
 Name Charles J. Buysse, M.D.

### UNANIMOUS CONSENT OF DIRECTORS

The undersigned constituting all of the directors of Naples Medical Center, P.A., a Florida corporation (the "Company"), hereby unanimously (i) consent to, and approve, the foregoing Asset Purchase Agreement and the various Appendices and Exhibits thereto (collectively the "Agreement") and to the transactions contemplated thereby; (ii) ratify the actions of officers of the Company in negotiating, executing and delivering the Agreement; (iii) recommend that the shareholders of the Company authorize the sale of substantially all of the assets of the Company pursuant to the Agreement and (iv) contingent upon authorization of such sale by the shareholders of the Company, authorize the officers of the Company to carry into effect the transactions contemplated by the Agreement, including the taking of any action and the delivery of any document reasonably in furtherance thereof.

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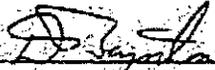
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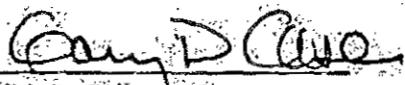
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Dale B. Adamson, M.D.

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Charles J. Buysse, M.D.

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Daniel J. Morris, M.D.

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Michael T. Seals, M.D.

UNANIMOUS CONSENT OF DIRECTORS

The undersigned constituting all of the directors of Naples Medical Center, P.A., a Florida corporation (the "Company"), hereby unanimously (i) consent to, and approve, the foregoing Asset Purchase Agreement and the various Appendices and Exhibits thereto (collectively the "Agreement") and to the transactions contemplated thereby; (ii) ratify the actions of officers of the Company in negotiating, executing and delivering the Agreement; (iii) recommend that the shareholders of the Company authorize the sale of substantially all of the assets of the Company pursuant to the Agreement and (iv) contingent upon authorization of such sale by the shareholders of the Company, authorize the officers of the Company to carry into effect the transactions contemplated by the Agreement, including the taking of any action and the delivery of any document reasonably in furtherance thereof.

\_\_\_\_\_  
Paul J. Shields, M.D.

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Dale B. Adamson, M.D.

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Gary D. Case, M.D.

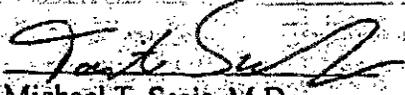
\_\_\_\_\_  
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EFFECTIVE as of the latest date set forth below.

Shareholder

Edwin J. Dean, M.D.  
Date: \_\_\_\_\_

Raymond L. Duncan, M.D.  
Date: \_\_\_\_\_

Paul J. Shields, M.D.  
Date: \_\_\_\_\_

Robert W. Wilson, D.O.  
Date: \_\_\_\_\_

Dale B. Adamson, M.D.  
Date: \_\_\_\_\_

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Douglas L. Boynton, M.D.  
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Matthew P. Powers, M.D.  
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EFFECTIVE as of the latest date set forth below:

Shareholder

  
Edwin J. Dean, M.D.  
Date: 4/22/97

Raymond L. Duncan, M.D.  
Date:

Paul J. Shields, M.D.  
Date:

Robert W. Wilson, D.O.  
Date:

Dale B. Adamson, M.D.  
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Gary C. Courville, M.D.  
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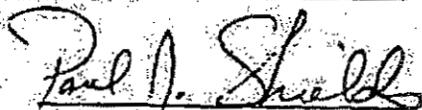
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Edwin J. Dean, M.D.

Date: \_\_\_\_\_

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Date: \_\_\_\_\_



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Robert W. Wilson, D.O.  
Date: \_\_\_\_\_

  
Dale B. Adamson, M.D.  
Date: 4/21/73

Gary C. Courville, M.D.  
Date: \_\_\_\_\_

Douglas L. Boynton, M.D.  
Date: \_\_\_\_\_

Alan S. Galbut, M.D.  
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Date: \_\_\_\_\_

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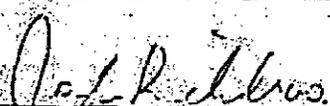
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Alan S. Galbut, M.D.

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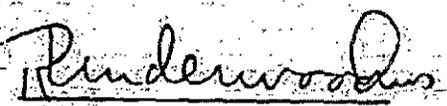
Gary C. Courville, M.D.  
Date: \_\_\_\_\_

Douglas L. Boynton, M.D.  
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Alan S. Galbut, M.D.  
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Joseph Richichi, M.D.  
Date: \_\_\_\_\_

Matthew P. Powers, M.D.  
Date: \_\_\_\_\_

  
C. Richard Underwood, M.D.  
Date: 4/21/97

William R. Cook, M.D.  
Date: \_\_\_\_\_

-7-

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Shareholder

Edwin J. Dean, M.D.  
Date: \_\_\_\_\_

*Raymond L. Duncan MD*  
Raymond L. Duncan, M.D.  
Date: *2-24-97*

Paul J. Shields, M.D.  
Date: \_\_\_\_\_

Robert W. Wilson, D.O.  
Date: \_\_\_\_\_

Dale B. Adamson, M.D.  
Date: \_\_\_\_\_

Gary C. Courville, M.D.  
Date: \_\_\_\_\_

Douglas L. Boynton, M.D.  
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Paul J. Shields, M.D.

Date: \_\_\_\_\_

*Robert W. Wilson, D.O.*

Robert W. Wilson, D.O.

Date: 4/13/97

Dale B. Adamson, M.D.

Date: \_\_\_\_\_

Gary C. Courville, M.D.

Date: \_\_\_\_\_

Douglas L. Boynton, M.D.

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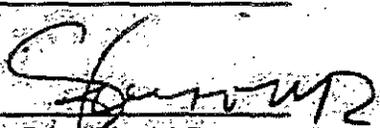
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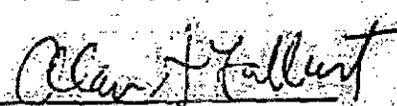
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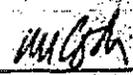
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William R. Cook, M.D.  
Date: 4/ \_\_\_\_\_

Ralph J. Dotson, M.D.  
Date: \_\_\_\_\_

Daniel J. Morris, M.D.  
Date: \_\_\_\_\_

James M. Venable, III, M.D.  
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Terrance A. Havig, M.D.  
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Charles S. Eytel, M.D.  
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Eugene F. Burke, M.D.  
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Albert L. Kerns, M.D.  
Date: \_\_\_\_\_

Kendall L. Wise, M.D.  
Date: \_\_\_\_\_

*Ralph J. Dotson*

Ralph J. Dotson, M.D.

Date: 4/22/97

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Date: \_\_\_\_\_

*Charles J. Buysse MD*  
Charles J. Buysse, M.D.  
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Terrance A. Havig, M.D.  
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Carolyn T. Venable, M.D.  
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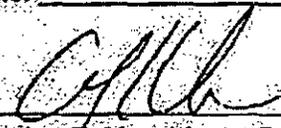
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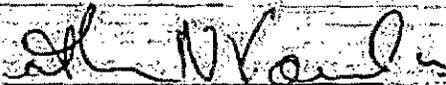
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*Eugene F. Burke MD*  
Eugene F. Burke, M.D.  
Date: 4/4/97

Albert L. Kerns, M.D.  
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Kendall L. Wise, M.D.  
Date: 4-21-97



## ASSET PURCHASE AGREEMENT

Asset Purchase Agreement dated as of April 14, 1997, among Naples Obstetrics & Gynecology, M.D., P.A., a Florida professional corporation ("SELLER"), ProMedCo Management Company, a Delaware corporation ("ProMedCo") and ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), a wholly owned subsidiary of ProMedCo.

### RECITAL

SELLER owns the Assets described in the Common Provisions Attachment attached hereto. ProMedCo, through its subsidiaries, including ProMedCo-SW is engaged in the business of providing medical practice facilities, nonmedical personnel and medical practice management and administrative services.

SELLER desires to sell the Assets to ProMedCo-SW in exchange for the Consideration described herein.

The parties hereby agree as follows:

### ARTICLE 1 DEFINITIONS

"Consideration" means \$859,455, as adjusted pursuant to § 2.10.

All other definitions set forth in Article 1 of the Common Provisions Attachment are incorporated herein by reference.

Capitalized terms not otherwise defined herein shall have the meanings ascribed thereto in the Common Provisions Attachment.

### ARTICLE 2 SALE AND TRANSFER OF ASSETS; CONSIDERATION; CLOSING

- 2.1 Sale and Transfer of Assets. )
- 2.2 Assets Free and Clear; Undertaking. )
- 2.3 Excluded Assets. )

Sections 2.2 and 2.3 of the Common Provisions Attachment are incorporated herein by reference.

2.4 Consideration for Sale and Transfer. At the Closing, in consideration for the sale of the Assets to ProMedCo-SW, the following will occur:

- (a) ProMedCo-SW will deliver to SELLER cash via wire transfer in the amount of \$687,564 (such cash referred to as the "Initial Portion of Purchase Consideration").

- (b) ProMedCo-SW will execute and deliver to SELLER an executed copy of the Undertaking assuming the liabilities of SELLER set forth therein (such liabilities to include, without limitation, the accounts payable, accrued expenses, accrued payroll, real estate lease obligations, equipment lease obligations relating to useable equipment and other current liabilities determined in accordance with GAAP (collectively the "Assumed Balance Sheet Liabilities") and shall specifically exclude any mortgage or other liabilities related to real estate owned by SELLER and any other long term debt obligations of SELLER except for equipment leases pertaining to equipment currently utilized by SELLER.
- (c) As soon as the Definitive Closing Statement is prepared in accordance with § 2.10(a), ProMedCo-SW shall deliver to SELLER additional consideration of \$171,891, as adjusted pursuant to § 2.10 hereof (the "Second Portion of the Purchase Consideration").

- 2.5 Excluded Liabilities.
- 2.6 Allocation of Consideration.
- 2.7 Closing.
- 2.8 Further Acts and Assurances.
- 2.9 Other Transactions at the Closing.
- 2.10 Purchase Consideration Adjustments.
  - (a) Definitive Closing Statements.
  - (b) Closing Financial Condition.

Sections 2.5, 2.6, 2.7, 2.8, 2.9 and 2.10(a) and (b) of the Common Provisions Attachment are incorporated herein by reference.

- (c) **Distribution Funds Adjustments.** If the aggregate of Distribution Funds for SELLER for the twelve months ended December 31, 1996 (based on the assumption that the Service Agreement had been in place during such periods) is more or less than \$2,305,965 ("Targeted Distribution Funds") the Consideration shall be increased or decreased, as the case may be, at the rate of \$1.56 for each \$1 of difference.
- (d) **Accounts Receivable Adjustment.** To the extent that ProMedCo-SW is unable to collect \$530,236 from SELLER's Accounts Receivable within 120 days after the Closing, the Cash Consideration shall be reduced on a dollar for dollar basis.
- (e) **Medical Professional Deficiency Adjustment.** To the extent that any of the Medical Professionals fail to execute Medical Professional Employment Agreements, as contemplated by § 2.9(c) of the Common Provisions Attachment, the Cash

Consideration shall be reduced at the rate of \$1.56 for each \$1 of historical ProMedCo Distribution attributable to such Medical Professional as set forth in Appendix 2.10 thereof.

Any reduction in the Consideration resulting from this § 2.10 shall be accomplished by first reducing the Balance of the Consideration as provided in clauses (b), (c), (d) and (e) hereof, and if such reductions exhaust the Balance of the Consideration, then SELLER shall return, or cause its shareholders to return, within 10 days after a demand therefor by ProMedCo-SW, sufficient cash from the Initial Portion of the Consideration to satisfy the adjustment.

**ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER**

**3.1 Organization, Corporate Power and Qualification.**

Section 3.1 of the Common Provisions Attachment is hereby incorporated by reference.

**3.2 Capitalization of SELLER.** The authorized capital stock of SELLER consists of 12,000 shares of \$1.00 par value common stock, of which as of the date hereof, 6,000 shares are validly issued and outstanding. There are no voting trusts, proxies, or any other agreements or understandings with respect to the voting stock of SELLER other than the Stockholder Agreement, as amended through September 29, 1992, among SELLER and its Stockholders.

Sections 3.3 through 3.36 of the Common Provisions Attachment are hereby incorporated by reference.

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PROMEDCO AND PROMEDCO-SW**

**ARTICLE 5 COVENANTS OF PROMEDCO AND PROMEDCO-SW**

**ARTICLE 6 COVENANTS OF SELLER**

**ARTICLE 7 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER**

**ARTICLE 8 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PROMEDCO AND PROMEDCO-SW**

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**ARTICLE 9 TERMINATION**

**ARTICLE 10 INDEMNIFICATION**

Articles 3, 4, 5, 6, 7, 8, 9 and 10 of the Common Provisions Attachment are hereby incorporated by reference.

**ARTICLE 11 MISCELLANEOUS**

**11.1 Expenses.**

**11.2 Employee Transition.**

**11.3 Occasional Sale.**

Sections 11.1, 11.2 and 11.3 of the Common Provisions Attachment are hereby incorporated by reference.

**11.4 Collection of SELLER's Accounts Receivable.** From and after the Closing, ProMedCo-SW shall use commercially reasonable efforts, consistent with the Memorandum of Understanding attached hereto as Appendix 11.4, to collect SELLER's Accounts Receivable. ProMedCo-SW shall be entitled and shall retain the first \$530,236 of SELLER's Accounts Receivable collected, and thereafter shall have no right to any portion of SELLER's Accounts Receivable. If, and to the extent, ProMedCo-SW receives payments on SELLER's Accounts Receivable in excess of \$530,236 on a cumulative basis, ProMedCo-SW shall remit such payments to SELLER at the end of the month in which they are received.

**11.5 Non-Assignable Property Interests.**

**11.6 Cooperation by ProMedCo and ProMedCo-SW.**

**11.7 Cooperation by SELLER.**

**11.8 Notices.**

**11.9 Entire Agreement.**

**11.10 Alternative Dispute Resolution.**

**11.11 Governing Law.**

**11.12 Legal Fees and Costs.**

**11.13 Time.**

**11.14 Section Headings.**

**11.15 Waiver.**

**11.16 Nature and Survival of Representations.**

**11.17 Exhibits.**

**11.18 Assignment.**

**11.19 Binding on Successors and Assigns.**

- 11.20 Parties in Interest.
- 11.21 Amendments.
- 11.22 Drafting Party.
- 11.23 Counterparts.
- 11.24 Reproduction of Documents.
- 11.25 Press Releases.

Sections 11.5 through 11.25 of the Common Provisions Attachment are hereby incorporated by reference.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the day and year first above written.

**PROMEDCO MANAGEMENT COMPANY**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Name \_\_\_\_\_

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Name \_\_\_\_\_

**NAPLES OBSTETRICS & GYNECOLOGY, M.D., P.A.**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Name \_\_\_\_\_



### UNANIMOUS CONSENT OF SHAREHOLDERS AND DIRECTORS

The undersigned constituting all of the directors and shareholders of Naples Obstetrics & Gynecology, M.D., P.A., a Florida corporation (the "Company"), hereby unanimously (i) consent to and approve, the foregoing Asset Purchase Agreement and the various Appendices and Exhibits thereto (collectively the "Agreement") and to the transactions contemplated thereby; (ii) ratify the actions of officers of the Company in negotiating, executing and delivering the Agreement; (iii) recommend that the shareholders of the Company authorize the sale of substantially all of the assets of the Company pursuant to the Agreement and (iv) authorize the officers of the Company to carry into effect the transactions contemplated by the Agreement, including the taking of any action and the delivery of any document reasonably in furtherance thereof.

Wallace W. McLean, M.D.

Frank J. Adiuton, M.D.

Stephen W. Thompson, M.D.

Kevin J. Collins, M.D.

Thomas A. Beckett, M.D.



**COMMON PROVISIONS ATTACHMENT**

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## COMMON PROVISIONS ATTACHMENT

### ARTICLE I DEFINITIONS

"Affiliate" means with respect to any Party, any entity which controls, is controlled by, or is under common control with such party all as more fully set forth in the rules and regulations of the Securities and Exchange Commission under the Securities Act of 1933, as amended.

"Agreement" means the Asset Purchase Agreement dated April 14, 1997 among SELLER, ProMedCo-SW and ProMedCo Management Company.

"Assets" means the following assets pertaining to SELLER:

- (a) All furnishings, fixtures and equipment owned by SELLER wherever situated;
- (b) All of SELLER's rights, benefits and interests under all contracts and agreements related to the operation of the business of SELLER which are to be assumed by ProMedCo-SW (collectively, the "Contracts"), including without limitation certain real estate leases described in Exhibit 3.8 hereof;
- (c) All licenses and intangible rights related to the business of SELLER;
- (d) All books, records, documents and other writings used in connection with the operation of SELLER's business other than Excluded Assets;
- (e) Subject to the limitation set forth in § 11.4 of the Agreement, all accounts receivable of SELLER with an age of 75 days or less as of the Closing Date ("SELLER's Accounts Receivable");
- (f) All cash (but only to the extent of current liabilities), inventories described in § 3.12 hereof and prepaid expenses of SELLER that will accrue to the benefit of ProMedCo-SW, and
- (g) All other assets, personal or mixed, tangible or intangible, used in connection with the operation of SELLER's business other than the Excluded Assets.

"Assumed Balance Sheet Liabilities" is defined in § 2.4(b) of the Agreement.

"Binding Allocation" is defined in § 2.6.

"Consideration" is defined in Article I of the Agreement.

"COBRA" means Title X of the Consolidated Omnibus Budget Reconciliation Act of 1985, 26 U.S.C. § 162 et seq.

"Clinic Facility" means the clinic facilities located at (i) 400 Eight Street, North, Naples, FL 34102, (ii) 11121 Health Park Boulevard, Suites 800 and 900, Naples, FL 34110, (iii) 775 1st Ave., North, Naples, FL 34102, and (iv) 11181 Health Park Blvd., Suites 1165 and 1170, Naples, FL 34110, and any future clinic facilities established by ProMedCo-SW or NMC.

"Closing" and "Closing Date" are defined in § 2.7.

"Collateral Assignment" is defined in § 2.9(e).

"Code" means the Internal Revenue Code of 1986, as amended.

"Contracts" is defined in the definition of "Assets" above.

"CPA Firm" is defined in § 2.10(a).

"Definitive Closing Statements" is defined in § 2.10.

"Distribution Funds" shall have the meaning ascribed thereto in the Service Agreement.

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

"Escrow Agreement" is defined in § 2.9(f).

"Excluded Assets" is defined in § 2.3.

"Excluded Liabilities" is defined in § 2.5.

"Exhibit Volume" means the volume of Exhibits referred to in this Agreement prepared and delivered by SELLER.

"Final Closing Statement" is defined in § 2.10.

"GAAP" means generally accepted accounting principles.

"Initial Portion of Purchase Consideration" is defined in § 2.4(a) of the Agreement.

"Inventory" means the inventory of SELLER.

"IRS" means the Internal Revenue Service.

"Medical Professional" shall have the meaning ascribed thereto in the Service Agreement.

"NMC" means Naples Medical Center, P.A., a Florida professional corporation.

"NOB" means Naples Obstetrics & Gynecology, M.D., P.A., a Florida professional corporation.

"Pension Plan" and "Pension Plans" means any "employee pension benefit plan" listed in Exhibit 3.22.

"Person" means any individual, corporation, partnership, joint venture, association, joint stock company, trust or unincorporated organization.

"Physician Shareholder" shall have the meaning ascribed thereto in the Service Agreement.

"ProMedCo-SW Distribution" shall have the meaning ascribed thereto in the Service Agreement.

"ProMedCo Management Company" means ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo-SW.

"ProMedCo-SW" means ProMedCo of Southwest Florida, Inc., a Florida corporation.

"Second Portion of the Purchase Consideration" is defined in § 2.4(c) of the Agreement.

"SELLER Financial Statements" is defined in § 3.4 hereof.

"SELLER's Accounts Receivable" is defined in the definition of "Assets" above.

"Service Agreement" means the Services Agreement effective March 1, 1997 between ProMedCo-SW and Naples Medical Center, P.A., a Florida professional association.

"Split Dollar Agreement" is defined in § 2.9(d).

"Undertaking" is defined in § 2.2 hereof.

## ARTICLE 2 SALE AND TRANSFER OF ASSETS: CONSIDERATION; CLOSING

2.1 **Sale and Transfer of Assets.** At the Closing, ProMedCo-SW agrees to purchase from SELLER and SELLER agrees to sell to ProMedCo-SW, the Assets, but not the Excluded Assets.

2.2 **Assets Free and Clear; Undertaking.** The Assets shall be sold free and clear of all liabilities, liens and encumbrances except those liabilities of SELLER expressly assumed or agreed to be discharged by ProMedCo-SW in the Undertaking in the form attached hereto as Appendix 2.2 (the "Undertaking"). Except as provided in the Undertaking, ProMedCo-SW shall not assume any other liability or obligation of SELLER fixed or contingent, disclosed or undisclosed, and SELLER agrees to satisfy, when due, all of its liabilities, indebtedness and obligations not assumed by ProMedCo-SW pursuant to this Agreement and the Undertaking; provided, however, that SELLER shall be entitled to contest in good faith any of such liabilities, indebtedness or obligations by appropriate legal proceedings. ProMedCo-SW will pay, perform and discharge in due course in accordance with their terms all obligations, indebtedness and liabilities of SELLER assumed by it pursuant to the Undertaking, provided, however, that ProMedCo-SW shall be entitled to contest in good faith any of such obligations, indebtedness or liabilities by appropriate legal proceedings.

2.3 **Excluded Assets.** SELLER is not selling and ProMedCo-SW is not purchasing or assuming obligations with respect to the following (collectively the "Excluded Assets"):

- (a) any real estate owned by SELLER;
- (b) SELLER's corporate and fiscal records and patient medical records and other records that SELLER is required by law to retain in its possession; and
- (c) Any other assets described on Appendix 2.3.

2.4 **Consideration for Sale and Transfer.** See Section 2.4 of the Agreement.

2.5 **Excluded Liabilities.** Except as provided in the Undertaking, SELLER shall remain liable and responsible for the payment or performance as the case may be, of all contracts, leases and other obligations of any nature. Additionally, SELLER shall remain liable and responsible for all suits, claims, indemnities, judgments, stipulation agreements, mortgages, taxes, contingent liabilities and other obligations of SELLER, including, without limitation, any and all investment tax credit recapture, depreciation recapture, recapture or prior period adjustments under Blue Cross, Medicare and Medicaid, all impositions of income tax and other taxes for all time periods prior to and including the Closing; all employee wages, salaries and benefits (excluding accrued vacation and sick leave which shall be assumed by ProMedCo-SW) including, without limitation, retirement payments, COBRA obligations, other accrued employee benefits and rights of SELLER's retirees to participate

in SELLER's medical plans. The obligations described in this Section 2.5 are referred to collectively as the "Excluded Liabilities."

**2.6 Allocation of Consideration.** The parties agree that the consideration paid pursuant to § 2.2 shall be allocated among the Assets by ProMedCo-SW within 120 days after the Closing or by such time as is reasonable under the circumstances; if SELLER agrees with the allocation made by ProMedCo-SW, such allocation shall be binding on the parties as set forth below and if SELLER notifies ProMedCo-SW within 30 days of its disagreement with the allocation, the parties shall engage a mutually agreeable "big six" accounting firm to make the allocation, and the findings of such firm shall be binding on the parties (the allocation which is ultimately binding on the parties pursuant to this sentence is referred to herein as the "Binding Allocation"). The Binding Allocation shall be used by the parties for all purposes including tax, reimbursement and other purposes. Each party hereto agrees that it will report the transaction in accordance with the Binding Allocation, including under Section 1060 of the Code, and that it will not take a position inconsistent with the Binding Allocation except with the written consent of the other party hereto. Each party agrees to cooperate with the other so that the information shown on Form 8594 filed with the IRS by such party will be consistent with the information on the other party's Form 8594. Each party shall pay 50% of the fees and expenses of the accounting firm which makes the Binding Allocation.

**2.7 Closing.** The sale, purchase, and other activities provided for herein (the "Closing") shall take place on April 21, 1997 (the "Closing Date"), at a site designated by ProMedCo-SW. In case the Closing does not take place on the Closing Date, the Closing Date shall be set by mutual agreement between ProMedCo-SW and SELLER; provided, however, that in no event shall the Closing take place later than April 30, 1997 unless extended by mutual agreement.

**2.8 Further Acts and Assurances.** SELLER shall, at any time and from time to time at and after the Closing, upon request of ProMedCo-SW, take any and all steps reasonably necessary to place ProMedCo-SW in possession and operating control of the Assets and the business to be transferred hereunder and will do, execute, acknowledge and deliver, or will cause to be done, executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably required for the transferring and confirming to ProMedCo-SW or to its successors or assigns, or for reducing to possession, any or all of the Assets.

**2.9 Other Transactions at the Closing.** In addition to the transaction set forth above, the following additional transactions shall occur at the Closing:

- (a) NMC and ProMedCo-SW shall enter into a Service Agreement in the form attached hereto as Appendix 2.9A.

- (b) NMC shall enter into employment agreements in the form attached as Appendix 2.9B hereto (the "Medical Professional Employment Agreements") with each of the Medical Professionals associated with SELLER.
- (c) ProMedCo-SW shall formally assume the real property leases described on Appendix 2.9C relating to offices used by SELLER, subject to such having commercially reasonable rentals and other terms. If necessary, ProMedCo shall guaranty such leases.
- (d) ProMedCo-SW shall enter into a Split-Dollar Agreement in the form attached hereto as Appendix 2.9D (the "Split-Dollar Agreement") with each of the shareholders of SELLER.
- (e) Each shareholder of SELLER and ProMedCo-SW shall execute a Collateral Assignment (the "Collateral Assignment") in the form attached hereto as Appendix 2.9E pertaining to the Life Insurance Policy contemplated by the Split-Dollar Agreement.
- (f) ProMedCo-SW, each shareholder of SELLER and an escrow agent mutually agreeable to ProMedCo-SW and SELLER shall enter into an Escrow Agreement (the "Escrow Agreement") in the form attached hereto as Appendix 2.9F.

#### 2.10 Purchase Consideration Adjustments.

- (a) **Definitive Closing Statements.** Within 120 days after the Closing or by such time as is reasonable under the circumstances, ProMedCo-SW shall prepare and deliver to SELLER a final closing statement ("Final Closing Statement") of SELLER as of the Closing Date. ProMedCo-SW covenants that the Final Closing Statement shall be true, complete and accurate and will present fairly the assets and liabilities items set forth in §§ 2.1 and 2.2 hereof as at the Closing, calculated in a manner consistent with the SELLER Financial Statements (as defined in § 3.4), and the requirements of this Agreement. SELLER and its representatives shall be provided access to the books and records of ProMedCo-SW as necessary to verify the accuracy of such calculations. If within 30 business days of receipt of the Final Closing Statement, SELLER fails to deliver to ProMedCo-SW written notice specifying any unacceptable entries on the Final Closing Statements and the reasons therefor, then such Final Closing Statement shall constitute the Definitive Closing Statements. If SELLER timely and duly delivers such notice within 30 business days of receipt thereof, the parties shall attempt in good faith to resolve the differences, and if they are unable to do so, within 20 days thereafter either party may deliver the Final Closing Statement to a "big six"



accounting firm chosen by ProMedCo-SW (the "CPA Firm"), who shall have 20 business days to review the Final Closing Statement and make such adjustments thereto as it deems necessary to ensure that the Final Closing Statement has been prepared in a manner consistent with the SELLER Financial Statements calculated on a consistent basis and the requirements of this Agreement and conform to consistently applied generally accepted accounting principles. The Final Closing Statement as so adjusted shall constitute the Definitive Closing Statement and shall be binding on the parties hereto. If the total amount payable by ProMedCo-SW pursuant to clause (b) below increases from that shown on the Final Closing Statement, ProMedCo-SW shall pay the fees and expenses of the CPA Firm, otherwise such fees and expenses shall be borne by SELLER.

- (b) **Closing Financial Condition:** At the Closing, the current liabilities of SELLER shall be current and paid with no balances in excess of 30 days. If there are any other liabilities that exist at the time of Closing other than equipment and real estate lease obligations specifically assumed pursuant to the Undertaking, the Consideration shall be reduced on a dollar for dollar basis.
- (c) **Distribution Funds Adjustment.** See § 2.10(c) of the Agreement.
- (d) **Accounts Receivable Adjustment.** See § 2.10(d) of the Agreement.
- (e) **Medical Professional Deficiency Adjustment.** See § 2.10(e) of the Agreement.

### ARTICLE 3 REPRESENTATIONS AND WARRANTIES OF SELLER

SELLER hereby represents and warrants to ProMedCo-SW as follows:

**3.1 Organization, Corporate Power and Qualification.** SELLER is a professional corporation duly organized, validly existing and in good standing under the laws of the State of Florida and has full corporate power and authority and all authorizations, licenses and permits necessary to own, lease and operate its properties and assets and to carry on its business as and where it is now being conducted, to enter into this Agreement, and to consummate the transactions contemplated hereby. Each is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or the nature of the business transacted by it makes such qualification necessary. SELLER is qualified to do business in the states and foreign countries listed in Exhibit 3.1A of the Exhibit Volume. No jurisdiction where SELLER is not presently qualified as a foreign corporation has made any assertion that such corporation's business or ownership of property makes qualification as a foreign corporation in such jurisdiction necessary. A copy of the Articles of Incorporation and all amendments thereto as of the date hereof of SELLER

and a copy of its by-laws, as amended to the date hereof (both certified by the Secretary of SELLER), are included as Exhibit 3.1B of the Exhibit Volume and are true, accurate and complete as of the date hereof. SELLER is not in default under or in violation of any provision of its Articles of Incorporation or bylaws.

**3.2 Capitalization of SELLER.** See § 3.2 of the Agreement.

**3.3 Subsidiaries, Affiliates, Affiliated Companies and Joint Venture.** Except as set forth in Exhibit 3.3, SELLER has no direct or indirect ownership interest in, by way of stock ownership or otherwise, any corporation, association or business enterprise.

**3.4 Financial Statements.** Exhibit 3.4 consists of the following financial statements of SELLER: (i) balance sheet of SELLER at December 31, 1996 and the related statement of operations, stockholders' equity and cash flow for the years then ended, together with the audit opinion report thereon of Arthur Andersen & Company, LLP, certified public accountants and (ii) unaudited balance sheet of SELLER at February 28, 1997 and the related statement of operation for the 12 months then ended (such financial statements and the related notes being herein called "SELLER Financial Statements").

The SELLER Financial Statements are true, complete and accurate, have been based upon the information contained in the books and records of SELLER and present fairly the assets, liabilities and financial condition of SELLER as of the dates thereof and the results of its operations for the periods then ended, prepared in conformity with generally accepted accounting principles. The SELLER Financial Statements do not contain any material inaccuracy and do not suffer from any material omissions.

**3.5 Absence of Undisclosed Liabilities.** Except as and to the extent reflected or reserved against in the SELLER Financial Statements and except for commitments and obligations incurred in the ordinary course of business accruing after February 28, 1997, SELLER had, or will have at Closing, no liabilities, claims or obligations (whether accrued, absolute, contingent, unliquidated or otherwise, whether or not known to SELLER or any directors, officers or employees of SELLER, whether due to become payable and regardless of when or by whom asserted).

**3.6 Absence of Certain Recent Changes.** Except as expressly provided in this Agreement or as set forth on Exhibit 3.6 in alphabetical order corresponding to the following subsections, since February 28, 1997, and through the Closing Date, SELLER has not been and will not have:

- (a) except in the usual and ordinary course of its business, consistent with past practice, and in an amount which is usual and normal incurred any indebtedness or other liability.

ties (whether accrued, absolute, contingent or otherwise), guaranteed any indebtedness or sold any of its assets;

- (b) suffered any damage, destruction or loss, whether or not covered by insurance, in excess of \$10,000;
- (c) suffered the resignation or other termination of any management personnel of SELLER, or the loss of or other termination of a business relationship with any material customers or suppliers of SELLER's business;
- (d) increased the regular rate of compensation payable by it to any employee other than normal merit and cost of living increases granted in the ordinary course of business, or increased such compensation by bonus, percentage, compensation service award or similar arrangement theretofore in effect for the benefit of any of its employees, and no such increase is required;
- (e) established or agreed to establish, amended or terminated any pension, retirement or welfare plan or arrangement for the benefit of its employees not theretofore in effect;
- (f) suffered any change in its financial condition, assets, liabilities, operations, prospects or business or suffered any other event or condition of any character which individually or in the aggregate has or might reasonably have a material adverse effect on SELLER;
- (g) experienced any labor organizational efforts, strikes or complaints other than grievance procedures in the ordinary course of business or entered into any collective bargaining agreements with any union;
- (h) made any single capital expenditure which exceeded \$5,000 or made aggregate capital expenditures which exceeded \$10,000;
- (i) except with respect to liens or encumbrances arising by operation of law, permitted or allowed any of the Assets to be subjected to any pledge, lien, security interest, encumbrance, restriction or charge of any kind;
- (j) written down the value of any of the Assets, or written off as uncollectible any notes or accounts receivable, except for write-downs and write-offs in the ordinary course of business and consistent with past practice, none of which are material or revalued any of the Assets;

- (k) paid, discharged or satisfied any claims, liabilities or obligations (absolute, accrued, contingent or otherwise) other than in the usual and ordinary course of business;
- (l) suffered any extraordinary losses, canceled any debts or waived any claims or rights of substantial value, whether or not in the usual and ordinary course of business;
- (m) paid, lent or advanced any amount to, or sold, transferred or leased any properties or assets (real, personal or mixed, tangible or intangible) to, or entered into any agreement or arrangement with, any stockholder of SELLER or any of the officers or directors of SELLER or of any "Affiliate" of any of its officers or directors, except for reimbursement of ordinary and reasonable business expenses related to the business of SELLER and compensation to officers at rates not exceeding the rates of compensation at February 28, 1997;
- (n) amended, terminated or otherwise altered (whether by action or inaction) any contract, agreement or license of significant value to which SELLER is a party, except in the ordinary course of business;
- (o) entered into a material transaction other than in the ordinary course of business or made any change in any method of accounting or accounting practice;
- (p) canceled, or failed to continue, insurance coverages; or
- (q) agreed, whether in writing or otherwise, to take any action described in this § 3.6

**3.7 Title to Assets.** The Assets consisting of owned personal property are subject to no liens or encumbrances except the security interests of record set forth on Exhibit 3.7A of the Exhibit Volume, which Exhibit is a copy of a Uniform Commercial Code ("UCC") search as of a recent date duly obtained by SELLER and which search shows security interests of record relating to such Assets in every place where such security interests are filed and includes copies of all such financing statements. SELLER agrees to remove all security interests reflected on such UCC search, if any, prior to the Closing (except those approved by ProMedCo-SW in writing) and to remove any other security interests filed with respect to such assets between the date of such UCC search and the Closing Date. The bills of sale and the assignments and other instruments to be executed and delivered by SELLER at the Closing will be valid and binding and enforceable in accordance with their respective terms, and will effectively vest in ProMedCo-SW good and marketable title to all the Assets. If SELLER shall fail to remove all such security interests, ProMedCo-SW shall have the right to do so and shall have the right to off-set the cost of doing so against the Consideration payable under § 2.4 of the Agreement.

**3.8 Contracts.** Exhibit 3.8 of the Exhibit Volume contains a copy of each contract, lease, agreement and other instrument to which SELLER is a party or is bound which involves an unperformed commitment or obligation (contingent or otherwise) of more than \$10,000 in the aggregate. Except as noted in such Exhibit: (i) all such contracts, leases and agreements are in full force and effect; (ii) there has been no threatened cancellation thereof; there are no outstanding disputes thereunder; (iii) each is with unrelated third parties and was entered into on an arms-length basis in the ordinary course of business and all will continue to be binding in accordance with their terms after consummation of the transactions contemplated hereby; (iv) there are no contracts, leases, agreements or other instruments to which SELLER is a party or is bound (other than insurance policies) which could either singularly or in the aggregate have an adverse effect on the value of the Assets to ProMedCo-SW; and (v) there are no employment agreements or other agreements to which SELLER is a party or by which SELLER is bound that contain any severance or termination pay liabilities or obligations other than physician employment agreements contemplated by this Agreement or disclosed in Exhibit 3.8.

Except as described in Exhibit 3.8 or the other Schedules hereto (and except for purchase contracts and orders for inventory in the ordinary course of business consistent with past practice), SELLER is not, as of the date of this Agreement, a party to or bound by any:

- (a) material agreement or contract not made in the ordinary course of business;
- (b) employee collective bargaining agreement or other contract with any labor union;
- (c) covenant not to compete;
- (d) lease or similar agreement under which SELLER is a lessor or sublessor of any material real property owned or leased by SELLER or any portion of premises otherwise occupied by SELLER;
- (e) (i) lease or similar agreement under which (A) SELLER is lessee of, or holds or uses, any machinery, equipment, vehicle or other tangible personal property owned by a third party or (B) SELLER is a lessor or sublessor of any tangible personal property owned by any of its shareholders; (ii) continuing contract for the future purchase of materials, supplies or equipment; or (iii) management, service, consulting or other similar type of contract, in any such case which has a future liability in excess of \$10,000, and which is not terminable by SELLER for a cost of less than \$10,000;
- (f) license or other agreement relating in whole or in part to, trademarks (including, but not limited to, any license or other agreement under which SELLER has the right to use any of the same owned or held by a third party).

- (g) agreement or contract under which SELLER has borrowed or lent any money or issued any note, bond, indenture or other evidence of indebtedness or directly or indirectly guaranteed indebtedness, liabilities or obligations of others for an amount in excess of \$10,000 (other than (i) endorsements for the purpose of collection in the ordinary course of business and (ii) advances to employees of SELLER in the ordinary course of business);
- (h) mortgage, pledge, security agreement, deed of trust or other document granting a lien against the Assets (including liens upon properties acquired under conditional sales, capital leases or other title retention or security devices but excluding operating leases);
- (i) other agreement, contract, lease, license, commitment or instrument to which SELLER is a party or by or to which SELLER or any of its assets or businesses are bound or subject, which has an aggregate future liability in excess of \$10,000 and is not terminable by SELLER for a cost of less than \$10,000; or
- (j) any agreement, contract, understanding or business venture with any physician, other provider or any other Person which violates the Medicare/Medicaid Fraud and Abuse amendments or any regulations thereunder adopted by the U.S. Department of Health and Human Services.

**3.9 Burdensome Agreements.** Except as is set forth in Exhibit 3.9 of the Exhibit Volume, SELLER is not a party to, nor are the Assets subject to or bound or affected by, any provision of any order of any court or other agency of government or any indenture, agreement or other instrument or commitment which adversely affects the operations, earnings, assets, properties, liabilities, business or prospects of SELLER or its condition, financial or otherwise.

**3.10 Absence of Related Party Transactions.** Except as disclosed on Exhibit 3.10, neither SELLER nor any officer, director or affiliate of SELLER, has any material direct or indirect financial or economic interest in any competitor or supplier of SELLER. SELLER is not a party to any transaction or proposed transaction, including without limitation the leasing of property, the purchase or sale of materials or goods (except with respect to SELLER's service business) or the furnishing of its services (except as employees of the SELLER), with SELLER or any Affiliate of SELLER, including (without limitation) any family member of a shareholder of SELLER; and SELLER has not directly or indirectly entered into any agreement or commitment which could result in SELLER becoming obligated to provide funds in respect of or to assume any obligation of any such affiliated person or entity. Except as set forth on Exhibit 3.10, there are no debts owing to SELLER by, or any contractual agreements or understandings between SELLER and, any shareholder, director or officer of SELLER, any member of their respective families, or any affiliate or associate of any of the



foregoing individuals, as the term "affiliate" is defined for purposes of the Securities Act of 1933 and the rules and regulations thereunder, and none of the foregoing individuals or any affiliate or associate of them owns any property or rights, tangible or intangible (other than an equitable interest), used in or related to SELLER's business. SELLER is not indebted to any shareholder, officer, director or employee of SELLER, or to any member of their respective families, or to any affiliate or associate of any of the foregoing individuals, in any amount whatsoever, other than for payment of salaries and compensation for services actually rendered to SELLER in the ordinary course of their businesses.

**3.11 Defaults.** Except as disclosed in Exhibit 3.11 SELLER is not in default under, nor has any event occurred which, with the lapse of time or action by a third party, could result in a default under any outstanding indenture, mortgage, contract, instrument or agreement to which SELLER is a party or by which SELLER may be bound or under any provision of the Articles of Incorporation or by-laws of SELLER. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement will not violate any provision of, or result in the breach of, or constitute a default under, any law the violation of which would result in a significant liability to SELLER, or any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal; constitute a violation of or a default under, or a conflict with, any term or provision of the Articles of Incorporation or by-laws of SELLER or any contract, commitment, indenture, lease, instrument or other agreement, or any other restriction of any kind to which SELLER is a party or is bound; or cause, or give any party grounds to cause (with or without notice, the passage of time or both) the maturity of any liability or obligation of SELLER, to be accelerated, or increase any such liability or obligation.

**3.12 Inventory.** The Inventory consists of a quality and quantity usable and saleable in the ordinary course of business and is carried on the balance sheet included in the SELLER Financial Statements at the lower of cost or market, except for items of obsolete materials and materials of below standard quality, all of which have been written down in the balance sheet included in the SELLER Financial Statements to net realizable market value or for which adequate reserves have been provided in the balance sheet included in the SELLER Financial Statements. The present quantity of the Inventory of SELLER is reasonable and warranted in the present circumstances of the business conducted by SELLER. The only transactions related thereto since February 28, 1997 have been additions or sales in the ordinary course of business.

**3.13 Equipment.** All Assets consisting of equipment are well maintained and in good operating condition, except for reasonable wear and tear and except for items which have been written down in the SELLER Financial Statements to a realizable market value or for which adequate reserves have been provided in the SELLER Financial Statements. The present quantity of all such equipment of SELLER is reasonable and warranted in the present course of the business conducted by SELLER and its subsidiaries. The only transactions related thereto since February 28, 1997, have been additions thereto in the ordinary course of business. All equipment with respect to which



equipment lease obligations exist that ProMedCo-SW is to assume under the Undertaking is currently used in the operations of SELLER.

**3.14 Receivables.** The SELLER Receivables are bona fide receivables which represent fees for services rendered or costs incurred for the sales price of medicine, drugs, pharmaceuticals or other products sold and delivered in the ordinary course of business.

**3.15 Permits and Licenses.** Included as Exhibit 3.15 in the Exhibit Volume is a schedule of permits and licenses, listing and briefly describing each permit, license or similar authorization from each governmental authority issued with respect to the operation or ownership of properties by SELLER together with the designation of the respective expiration dates of each, and also listing and briefly describing each association in which SELLER is a member and each association or governmental authority by which SELLER is accredited or otherwise recognized. SELLER is not required to obtain any additional permits, licenses or similar authorizations (including, without limitation, any additional certificates of need) from any governmental authority for the proper conduct of its business or to become a member of or accredited by any association or governmental authority other than those listed on Exhibit 3.15 in the Exhibit Volume. All of such permits, licenses and authorizations will continue to be valid and in full force and effect in accordance with their respective terms after the consummation of the transactions contemplated hereby.

**3.16 Litigation, etc.** Except as set forth in Exhibit 3.16 of the Exhibit Volume, there is no litigation, arbitration, governmental claim, investigation or proceeding pending or threatened against SELLER at law or in equity, before any court, arbitration tribunal or governmental agency. No such proceeding set forth in Exhibit 3.16 concerns the ownership or other rights with respect to the Assets. To the best knowledge of SELLER, there are no facts based on which material claims may be hereafter made against SELLER. Any and all claims arising from incidents on or before the Closing Date shall be the sole responsibility of SELLER and are specifically excluded from the liabilities to be assumed by ProMedCo-SW hereunder. All claims and litigations against SELLER are fully covered by insurance. SELLER shall unconditionally indemnify and hold ProMedCo-SW harmless against any loss or liability including, without limitation, attorney's fees, resulting from any claims or litigation arising out of incidents relating to SELLER which occurred prior to the Closing Date, to the extent such loss or liability is not covered by insurance.

**3.17 Court Orders, Decrees and Laws.** There is not outstanding or threatened any order, writ, injunction or decree of any court, governmental agency or arbitration tribunal against or affecting SELLER or the Assets. SELLER is in compliance with all applicable federal, state and local laws, regulations and administrative orders which are material to the business of SELLER and SELLER has received no notices of alleged violations thereof. No governmental authorities are presently conducting proceedings against SELLER and to the best knowledge of SELLER, no such investigation or proceeding is pending or being threatened.



**3.18 Taxes.** Except as set forth in Exhibit 3.18: (i) all federal, state and other tax returns of SELLER required by law to be filed have been timely filed, and SELLER has paid or provided for all taxes (including taxes on properties, income, franchises, licenses, sales and payrolls) which have become due pursuant to such returns or pursuant to any assessment, except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which SELLER has set aside on its books adequate reserves; (ii) all such tax returns have been prepared in compliance with all applicable laws and regulations and are true and accurate in all respects; (iii) the amounts set up as provisions for taxes (including provision for deferred income taxes) on the SELLER Financial Statements are sufficient for the payment of all unpaid federal, state, county and local taxes accrued for or applicable to all periods (or portions thereof) ending on or before the Closing Date; (iv) there are no tax liens on any of the Assets except those with respect to taxes not yet due and payable and except for any taxes and assessments of which the amount, applicability or validity is currently being contested in good faith by appropriate proceedings and with respect to which SELLER has set aside on its books adequate reserves; (v) there are no pending tax examinations nor has SELLER received a revenue agent's report asserting a tax deficiency; (vi) SELLER does not expect any taxing authority to claim or assess any amount of additional taxes against it; and (vii) no claim has ever been made by a taxing authority in a jurisdiction where SELLER does not file tax returns that SELLER is or may be subject to taxes assessed by such jurisdiction.

**3.19 Immigration Act.** SELLER is in compliance with the terms and provisions of the Immigration Act in all material respects. For each employee (as defined in 8 C.F.R. §274a.1(f)) of SELLER for whom compliance with the Immigration Act by SELLER is required, SELLER has obtained and retained a complete and true copy of each such employee's Form I-9 (Employment Eligibility Verification Form) and all other records or documents prepared, procured or retained by SELLER pursuant to the Immigration Act. There are no violations or potential violations of the Immigration Act by SELLER. SELLER has not been cited, fined, served with a Notice of Intent to Fine or with a Cease and Desist Order, nor, to SELLER's knowledge, has any action or administrative proceeding been initiated or threatened against SELLER, by reason of any actual or alleged failure to comply with the Immigration Act.

**3.20 Program Compliance.** Neither SELLER nor any of its shareholders or employees is a party to, or the beneficiary of, any agreement, contract, understanding or business venture with any provider or referral source which violates the Medicare/Medicaid Fraud and Abuse amendments or any regulations thereunder adopted by the U.S. Department of Health and Human Services or any regulations adopted by any other federal or state agency or which results in overutilization of health care services by patients.

**3.21 Environmental Matters.** Except as disclosed on Exhibit 3.21:

- (a) There are no outstanding violations or any consent decrees entered against SELLER regarding environmental matters, including, but not limited to, matters affecting the emission of air pollutants, the discharge of water pollutants, the management of hazardous or toxic substances or wastes, or noise.
- (b) There are no claimed, threatened or alleged violations with respect to any federal, state or local environmental law, rule, regulation, ordinance, permit, license or authorization, and there are no present discussions with any federal, state or local governmental agency concerning any alleged violation of environmental laws, rules, regulations, ordinances, permits, licenses or authorizations.
- (c) All operations conducted by SELLER have been and are in compliance with all federal, state and local statutes, rules, regulations, ordinances, permits, licenses and authorizations relating to environmental compliance and control.

### 3.22 ERISA.

- (a) Except as listed in Exhibit 3.22 of the Exhibit SELLER has no "employee benefit plans", as such term is defined under Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or any other plan or similar arrangement, written or otherwise, which provides any type of pension or welfare benefit to any of its directors, employees, or former employees.
- (b) With respect to all of the plans listed in Exhibit 3.22 SELLER has delivered to ProMedCo-SW true and exact copies of (i) all plan documents embodying the provisions of such plans, together with all amendments thereto, (ii) all summary plan descriptions and summaries of material modifications pertaining thereto, (iii) copies of the most recent Internal Revenue Service determination letters, if any, relating to such plans, (iv) copies of the last three (3) years' Annual Report (Form 5500 series), as filed with respect to such plans with the Internal Revenue Service, together with all Schedules and attachments thereto, including, without limitation, copies of the plan audits and/or actuarial valuations, (v) copies of all contract administration agreements between SELLER and third party administrators, (vi) copies of all participant-related forms currently in use in connection with such plans including, without limitation, salary reduction agreements and beneficiary designations and (vii) participant-specific claims history for any "welfare benefit plan" (within the meaning of Section 3(1) of ERISA) that has been in existence during any part of the last three years.
- (c) No "prohibited transaction", as such term is defined under Section 4975(c) of the Code or under Section 406 of ERISA, and the respective regulations thereunder, has

occurred or is occurring with respect to any "employee benefit plan" maintained by SELLER or with respect to any trustee or administrator thereof.

**3.23 Pension, etc.**

- (a) No "unfunded accrued liability", as such term is defined under Section 3(30) of ERISA, exists with respect to any "employee pension benefit plan" listed in Exhibit 3.22 (each a "Pension Plan" and collectively the "Pension Plans").
- (b) None of the Pension Plans or any related trusts have been partially or fully terminated (through the complete cessation of contributions thereto or otherwise). In addition there has not occurred any "reportable events", as such term is defined under Section 4043 of ERISA, which could have a material adverse effect on the condition, financial or otherwise, of SELLER.
- (c) Neither any of the Pension Plans nor any related trusts have incurred any "accumulated funding deficiency", as such term is defined under Section 302(a)(2) of ERISA or Section 412(a) of the Code (whether or not waived), since the effective date of ERISA.
- (d) With respect to each Pension Plan, there are not in existence any liabilities other than those liabilities shown on the Annual Reports (Form 5500 series) delivered to ProMedCo-SW in connection herewith. No material change with respect to the matters covered by the most recent Annual Report for each Pension Plan has occurred since the filing date thereof. The terms and operation of each Pension Plan have complied, and are in compliance, with the applicable provisions of ERISA and the Code. All Pension Plans have at all times been and are qualified under Section 401(a) of the Code, except for those Pension Plans set forth in Exhibit 3.23 of the Exhibit Volume. None of the Pension Plans listed in Exhibit 3.22 is unfunded.

**3.24 Employee Matters.** Included as Exhibit 3.24A of the Exhibit Volume is a list of all employees of SELLER together with their annual rates of compensation and a list of all people who were paid bonuses in the last twelve months plus the amount thereof. No written employment agreement to which SELLER is a party or is bound requires longer than a four-week notice before termination or agreement to lend, or guarantee any loan, to an employee or an agreement relating to a bonus, severance pay or similar plan, agreement, arrangement or understanding. Exhibit 3.24B of the Exhibit Volume is a brief description of employee benefits of SELLER.

**3.25 Insurance and Bonds.** Exhibit 3.25A contains a description of all fire, liability and other insurance coverage maintained by SELLER currently in force, including the amounts and losses

and risks covered, all such policies are fully paid as to all premiums heretofore due. Exhibit 3.25C contains a description of all malpractice liability insurance policies of SELLER since January 1, 1995. Except as set forth on Exhibit 3.25C, SELLER has not in the last seven years filed a written application for any insurance coverage which has been denied by an insurance agency or carrier. Exhibit 3.25C sets forth a list of all claims for any insured loss in excess of \$5,000 per occurrence, filed by SELLER during the three year period immediately preceding the date hereof, including, but not limited to, workers compensation, general liability and environmental liability. SELLER is not in material default with respect to any provision contained in any such policy and has not failed to give any notice or present any claim under any such policy in due and timely fashion.

**3.26 Labor Matters.** There are no collective bargaining agreements with any labor union to which SELLER is a party or by which SELLER is bound, and it is not currently negotiating with a labor union. No employees of SELLER have ever petitioned for a representation election. SELLER is in compliance with all applicable laws respecting employment and employment practices, terms and conditions of employment and wages and hours, and is not engaged in any unfair labor practice. There is no unfair labor practice complaint against SELLER pending before the National Labor Relations Board. There is no labor strike, dispute, slowdown or stoppage actually pending or, to its knowledge, threatened against or affecting SELLER. No grievance which might have a material adverse effect on SELLER or the conduct of its business nor any such arbitration proceeding arising out of or under collective bargaining agreements is pending and no claim therefor exists. SELLER has not experienced any employee strikes during the last three years. SELLER will advise ProMedCo-SW of any such labor dispute, petition for representative election or negotiations with any labor union which shall arise before the Closing Date. Except as may be required by §4980B of the Code or applicable state health care continuation coverage statutes, SELLER has no liability under any plan or arrangement which provides welfare benefits, including medical and life insurance, to any current or future retiree or terminated employee.

**3.27 Healthcare Compliance.** SELLER is participating in or otherwise authorized to receive reimbursement from or is a party to Medicare, Medicaid, and other third-party payor programs (collectively "Third Party Payor Programs"). All necessary certifications and contracts required for participation in such programs are in full force and effect and have not been amended or otherwise modified, rescinded, revoked or assigned as of the date hereof, and to the best of SELLER's knowledge, no condition exists or event has occurred which in itself or with the giving of notice or the lapse of time or both would result in the suspension, revocation, impairment, forfeiture or non-renewal of any such Third Party Payor Program. To the best of SELLER's knowledge, SELLER is in full compliance with the requirements of all such Third Party Payor Programs applicable thereto.

**3.28 Facility Compliance.** The Clinic Facility is duly licensed and is lawfully operated in accordance with the requirements of all applicable law and has all necessary authorizations for the use and operation, all of which are in full force and effect. There are no outstanding notices of



deficiencies relating to SELLER issued by any governmental authority or Third Party payor Program requiring conformity or compliance with any applicable law or condition for participation of such governmental authority or Third Party Payor program, and after reasonable and independent inquiry and due diligence and investigation, SELLER has neither received notice nor has any knowledge or reason to believe that such necessary authorizations may be revoked or not renewed in the ordinary course.

**3.29 Improper Payments.** Neither SELLER nor any officer or employee of SELLER has made any bribes, kickbacks or other improper payments on behalf of SELLER or received any such payments from vendors, suppliers or other persons contracting with SELLER.

**3.30 Books of Account; Reports.** The books of account of SELLER in reasonable detail, accurately and fairly reflect its transactions and the disposition of its assets. SELLER has filed all reports and returns required by any law or regulation to be filed by it.

**3.31 No Finders or Brokers.** Neither SELLER nor any officer or director of SELLER or any of its predecessors by merger has engaged any finder or broker in connection with the transactions contemplated hereunder except for the services of Lew Kaufman. Except as provided in § 11.1, SELLER shall indemnify and hold ProMedCo-SW harmless from any liability to Mr. Kaufman in connection with his services relating to the transactions contemplated hereby.

**3.32 Review of Information.** SELLER has been afforded access to all material information concerning ProMedCo and, in addition thereto, has been afforded the opportunity to ask questions of, and receive answers from, ProMedCo concerning the business and properties of ProMedCo and to review any materials relating to ProMedCo.

**3.33 Authority; Binding Effect.** SELLER has full power and authority to enter into this Agreement and, subject to the convening of a stockholders' meeting and the approval of stockholders as required by Florida law, to carry out the transactions contemplated hereby. The Board of Directors of SELLER has taken all action required by law and by SELLER's Articles of Incorporation and by-laws, or otherwise, to authorize the execution and delivery of this Agreement and the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitutes the valid and binding agreement of SELLER enforceable in accordance with its terms.

**3.34 Consents and Approvals of Governmental Authorities.** No characteristic of SELLER or of the nature of its business or operations requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

**3.35 No Adverse Effect.** There is no event or condition of any kind or character pertaining to the business, assets or prospects of SELLER that may adversely affect such business, assets or prospects other than general economic conditions affecting the United States.

**3.36 Disclosure.** No representations and warranties by SELLER in this Agreement and no statement in this Agreement or any document or certificate furnished or to be furnished to ProMedCo and ProMedCo-SW pursuant hereto contains or will contain any untrue statement or omits or will omit to state a fact necessary in order to make the statements contained therein not misleading. SELLER has disclosed to ProMedCo and ProMedCo-SW all facts known to SELLER material to the assets, liabilities, business, operation and property of SELLER. There are no facts known to SELLER not yet disclosed which would adversely affect the future operations of SELLER.

**ARTICLE 4 REPRESENTATIONS AND WARRANTIES OF PROMEDCO AND PROMEDCO-SW**

ProMedCo and ProMedCo-SW hereby represent and warrant as follows:

**4.1 Organization and Standing of ProMedCo and ProMedCo-SW.** ProMedCo and ProMedCo-SW are each corporations duly organized, validly existing and in good standing under the laws of the state of Delaware and Florida, respectively; each has full corporate power and authority to conduct its business as now being conducted; and each is duly qualified to do business in each jurisdiction in which the nature of the property owned or leased or the nature of the business conducted by it requires such qualification.

**4.2 Authority; Binding Effect.** Each of ProMedCo and ProMedCo-SW has corporate power to execute and deliver this Agreement and consummate the transactions contemplated hereby and has taken (or by the Closing Date will have taken) all action required by law, its Articles of Incorporation, by-laws or otherwise to authorize such execution and delivery and the consummation of the transactions contemplated hereby. The execution, delivery, and performance of this Agreement constitutes the valid and binding agreement of each of ProMedCo and ProMedCo-SW enforceable in accordance with its terms (except as the same may be restricted, limited or delayed by applicable bankruptcy or other laws affecting creditors' rights generally and except as to the remedy of specific performance which may not be available under the laws of various jurisdictions) assuming that this Agreement has been duly authorized, delivered and executed by SELLER and constitutes the valid and binding obligation, enforceable against SELLER in accordance with its terms (except as enforceability against SELLER may be restricted, limited or delayed to the same extent as referred to in parenthetical phrase immediately above).

4.3 No Finders or Brokers. Neither ProMedCo, ProMedCo-SW nor any officer or director of either has engaged any finder or broker in connection with the transactions contemplated hereunder.

4.4 Consents and Approvals of Governmental Authorities. No characteristic of ProMedCo or ProMedCo-SW or of the nature of their business or operations requires any consent, approval or authorization of, or declaration, filing or registration with any governmental or regulatory authority in connection with the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

4.5 Pending Litigation. There are no proceedings pending or threatened, against or affecting ProMedCo in any court or before any governmental authority or arbitration board or tribunal which involve the possibility of materially and adversely affecting the properties, business, prospects, profits or condition (financial or otherwise) of ProMedCo considered as a whole.

#### ARTICLE 5 COVENANTS OF PROMEDCO AND PROMEDCO-SW

ProMedCo and ProMedCo-SW hereby covenant and agree as follows:

5.1 Best Efforts to Secure Consents. ProMedCo and ProMedCo-SW shall use their best efforts to secure before the Closing all necessary consents and approvals needed to satisfy all the conditions precedent to the obligations of SELLER hereunder.

5.2 Corporate Action. ProMedCo and ProMedCo-SW will take all necessary corporate and other action and use its best efforts to obtain all consents, approvals and amendments of agreements required of it to carry out the transactions contemplated by this Agreement and to satisfy the conditions specified herein.

5.3 Handling of Documents. With respect to information provided by SELLER pursuant to this Agreement prior to the Closing, ProMedCo and ProMedCo-SW shall keep all such information confidential which is not in the public domain, except to the extent that such information (i) becomes generally available to the public other than as a result of a disclosure directly or indirectly by ProMedCo or ProMedCo-SW, (ii) was known by ProMedCo or ProMedCo-SW on a non-confidential basis prior to disclosure to ProMedCo or ProMedCo-SW by SELLER pursuant to this Agreement or (iii) becomes available to ProMedCo or ProMedCo-SW on a non-confidential basis from a source (other than SELLER) which is entitled to disclose the same, and to exercise the same care in handling such information as it would exercise with similar information of its own.

5.4 Non-Disclosure. ProMedCo and ProMedCo-SW will keep confidential and not disclose to any third party any information relating to the business of SELLER, whether acquired by

ProMedCo or ProMedCo-SW before or after the Closing Date, which SELLER has not made generally available to the public.

5.5 Director. Immediately after the Closing, Charles J. Buysse, M.D., shall be named as a director of ProMedCo for a term expiring in 2000, and ProMedCo shall use its best efforts to have its shareholders reelect Dr. Buysse or to replace Dr. Buysse with a person nominated by the Board of Directors of NMC.

#### ARTICLE 6 COVENANTS OF SELLER

SELLER hereby covenants and agrees as follows:

6.1 Access and Information. Between the date of this Agreement and the Effective Date, SELLER will: (i) provide to ProMedCo-SW and its officers, attorneys, accountants and other representatives, during normal business hours, or otherwise if ProMedCo-SW deems reasonably necessary, free and full access to all of the properties, assets, agreements, commitments, books, records, accounts, tax returns, and documents of SELLER and permit them to make copies thereof; (ii) furnish ProMedCo-SW and its representatives with all information concerning the business, properties and affairs of SELLER as ProMedCo-SW reasonably requests and certified by the officers, if requested; (iii) cause the independent public accountants of SELLER to make available to ProMedCo-SW and its representatives all financial information relating to SELLER requested, including all working papers pertaining to audits and reviews made heretofore by such auditors; (iv) furnish ProMedCo-SW true and complete copies of all financial and operating statements of SELLER; (v) permit access to customers and suppliers for consultation or verification of any information obtained by ProMedCo-SW and use their best efforts to cause such customers and suppliers to cooperate with ProMedCo-SW in such consultation and in verifying such information, and (vi) cause their employees, accountants and attorneys to make disclosure of all material facts known to them affecting the financial condition and business operations of SELLER and to cooperate fully with any audit, review, investigation or examination made by ProMedCo-SW and its representatives, including, without limitation, with respect to:

- (a) The books and records of SELLER;
- (b) The reports of state and federal regulatory examinations;
- (c) Leases, contracts and commitments between the SELLER and any other person;
- (d) Physical examination of the Clinic Facility; and
- (e) Physical examination of the equipment and furnishings within the Clinic Facility.

**6.2 Conduct of Business.** Between the date hereof and the Effective Date, except as otherwise expressly approved in writing by ProMedCo-SW, SELLER shall conduct its business only in the ordinary course thereof consistent with past practice and in such a manner that the representations and warranties contained in Article 3 of this Agreement shall be true and correct at and as of the Effective Date (except for changes contemplated, permitted or required by this Agreement) and so that the conditions to be satisfied by SELLER at the Closing shall have been satisfied. SELLER will, consistent with conducting its business in accordance with reasonable business judgment, preserve the business of the SELLER intact; use its reasonable best efforts to keep available to ProMedCo-SW the services of the present employees of the SELLER (except those dismissed for cause, those who voluntarily discontinue their employment and those whose termination is consented to by ProMedCo-SW) and preserve for ProMedCo-SW the goodwill of the suppliers, patients and others having business relations with the SELLER.

**6.3 Compliance with Agreement.** SELLER shall not undertake any course of action inconsistent with satisfaction of the conditions applicable to it set forth in this Agreement, and shall do all such acts and take all such measures as may be reasonably necessary to comply with the representations, agreements, conditions and other provisions of this Agreement. SELLER shall give ProMedCo-SW prompt written notice of any change in any information contained in the representations and warranties made in Article 3 hereof and on the Exhibits referred to therein (provided, however, that such notice shall not limit ProMedCo-SW's rights under § 8.1 hereof) and of any condition or event which constitutes a default of any covenant or agreement made in Article 6 or in any other section hereof.

**6.4 Best Efforts to Secure Consents.** SELLER shall take the necessary corporate and other action and shall use its reasonable best efforts to secure before the Closing Date all necessary consents and approvals required to carry out the transactions contemplated by the Agreement and to satisfy all other conditions precedent to the obligations of ProMedCo, ProMedCo-SW and SELLER.

**6.5 Unusual Events.** Until the Closing Date, SELLER shall supplement or amend all relevant Exhibits in the Exhibit Volume with respect to any matter thereafter arising or discovered which, if existing or known at the date of this Agreement, would have been required to be set forth or described in such Exhibits; provided, however, that for the purposes of the rights and obligations of the parties hereunder, any such supplemental disclosure shall not be deemed to have been disclosed as of the date SELLER delivers to ProMedCo-SW the Exhibit Volume pursuant to § 9.1 of this Agreement or any other date, and shall not be deemed to amend or supplement any Exhibits or to prevent or cure any misrepresentation, breach of warranty or breach of covenant, unless agreed to in writing by ProMedCo-SW.



**6.6 Interim Financial Statements.** Within 30 days after the end of each calendar month subsequent to the date of this Agreement and prior to the Closing Date, SELLER shall deliver to ProMedCo-SW an unaudited balance sheet of SELLER as of the end of such calendar month together with the related statement of operations. All such financial statements shall fairly present the financial position, results of operations and cash flows for the financial periods indicated, in accordance with generally accepted accounting principles consistently applied except that footnote information may be omitted in such statements, and that such statements shall be subject to normal year-end audit adjustments, but only if such adjustments are of a normal, recurring type and are not material in the aggregate.

**6.7 Departmental Violations.** All notes or notices of violations of law or municipal ordinances, orders or requirements noted in or issued by the departments of buildings, fire, labor, health, or any other state or municipal department having jurisdiction against or affecting the business, property or assets of SELLER shall be complied with prior to the Closing Date. All such notes or notices, after the date hereof and prior to the Closing Date, shall be complied with by SELLER prior to the Closing Date. Upon written request, SELLER shall furnish ProMedCo-SW with an authorization to make the necessary searches for such notes or notices.

**6.8 Assessments.** If, on the Closing Date, the business, property or assets of SELLER are or will be subject to an assessment or assessments which are or may become payable in annual installments, of which the first installment is then a charge or lien, or has been paid, then for the purposes of this Agreement all the unpaid installments of any such assessment, including those which are to become due and payable, shall be paid and discharged by SELLER prior to the Closing Date.

**6.9 Insurance Ratings.** SELLER shall take all action reasonably requested by ProMedCo-SW to enable it to succeed to the Workers' Compensation and Unemployment Insurance ratings, insurance policies, deposits and other interests of SELLER and other ratings for insurance or other purposes established by SELLER. ProMedCo-SW shall not be obligated to succeed to any such rating, insurance policy, deposit or other interest, except as it may elect to do so.

**6.10 Maintain Insurance Coverage.** From the date hereof until the Closing, SELLER shall maintain and cause to be maintained in full force and effect the existing insurance on the Assets and the operations of SELLER and shall provide, upon request by ProMedCo-SW, evidence satisfactory to ProMedCo-SW that such insurance continues to be in effect and that all premiums due have been paid.

**6.11 Exclusive Dealings.** During the period from the date of this Agreement to the Closing Date, or until the earlier termination of this Agreement pursuant to Article 9, SELLER shall refrain from taking any actions, directly or indirectly, to encourage, initiate, or engage in discussions or negotiations with, or provide any information to, any corporation, partnership, person, or other entity

or group, other than ProMedCo-SW, concerning the purchase of SELLER or its assets, or any merger, joint venture or similar transaction involving SELLER and will not enter into any such transaction.

## ARTICLE 7 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF SELLER

All obligations of SELLER which are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein which are to be performed by ProMedCo and ProMedCo-SW at or prior to the Closing and to the fulfillment at, or prior to, the Closing, of each of the following conditions (unless expressly waived in writing by SELLER at any time at or prior to the Closing):

**7.1 Representations and Warranties True.** All of the representations and warranties made by ProMedCo and ProMedCo-SW contained in Article 4 of this Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the date of Closing, and shall be true at and as of the date of Closing in all material respects. ProMedCo and ProMedCo-SW shall have performed and complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by then prior to or at the Closing, and SELLER shall have been furnished with a certificate of the President or any Vice President of ProMedCo and of ProMedCo-SW, dated the Closing Date, in such officer's capacity, certifying to the truth of such representations and warranties as of the Closing and to the fulfillment of such covenants and conditions.

**7.2 Opinions of Counsel.** SELLER shall have been furnished with an opinion dated the Closing Date of Boulton, Cummings, Conners & Berry, PLC, counsel to ProMedCo and ProMedCo-SW, in form and substance satisfactory to SELLER, to the effect set forth as Appendix 7.2 attached hereto. In addition, SELLER's shareholders shall have received a satisfactory opinion of Waller, Lansden, Dortch and Davis, a Professional Limited Liability Company, respecting the Split Dollar Agreement and related instruments.

**7.3 Authority.** All action required to be taken by or on the part of ProMedCo and ProMedCo-SW to authorize the execution, delivery and performance of this Agreement by ProMedCo and ProMedCo-SW and the consummation of the transactions contemplated hereby shall have been duly and validly taken by the Boards of Directors of ProMedCo and ProMedCo-SW.

**7.4 No Obstructive Proceeding.** No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against SELLER, or the officers or directors of SELLER, which seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by

reason of the transactions contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

**7.5 Delivery of Certain Certified Documents.** At the Closing, ProMedCo-SW shall deliver to SELLER copies of the Articles of Incorporation of each of ProMedCo-SW and ProMedCo certified (not more than 30 days prior to the Closing Date) by the appropriate governmental authorities, copies of resolutions of the Board of Directors of and ProMedCo-SW, certified by the secretary or assistant secretary of ProMedCo-SW approving and authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and copies of resolutions of the Board of Directors of ProMedCo, certified by the secretary or assistant secretary of ProMedCo approving the issuance of the ProMedCo Stock and guaranty of this Agreement.

**7.6 Proceedings and Documents Satisfactory.** All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to SELLER pursuant to this Agreement shall be satisfactory in form and substance to SELLER and its counsel acting reasonably and in good faith.

**7.7 No Agency Proceedings.** There shall not be pending or, to the knowledge of ProMedCo or ProMedCo-SW, threatened, any claim, suit, action or other proceeding brought by a governmental agency before any court or governmental agency, seeking to prohibit or restrain the transactions contemplated by this Agreement or material damages in connection therewith.

**7.8 Closing Transactions.** All the transactions described in § 2.9 shall have been consummated simultaneously with the Closing.

**7.9 Whittemore Employment Agreement.** ProMedCo-SW and Douglas Whittemore shall have entered into a mutually agreeable employment agreement.

## ARTICLE 8 CONDITIONS PRECEDENT TO THE OBLIGATIONS OF PROMEDCO AND PROMEDCO-SW

All obligations of ProMedCo and ProMedCo-SW which are to be discharged under this Agreement at the Closing are subject to the performance, at or prior to the Closing, of all covenants and agreements contained herein which are to be performed by SELLER at or prior to the Closing and to the fulfillment at or prior to the Closing of each of the following conditions (unless expressly waived in writing by ProMedCo and ProMedCo-SW at any time at or prior to the Closing):

**8.1 Representations and Warranties True.** All of the representations and warranties of SELLER contained in Article 3 of this Agreement and all of the representations and warranties of Tarrant in the Inducement Agreement shall be true as of the date of this Agreement, shall be deemed to have been made again at and as of the Closing, and shall be true at and as of the date of Closing in all material respects (without taking into account any disclosures made by SELLER to ProMedCo and ProMedCo-SW pursuant to § 6.5 hereof); SELLER shall have performed or complied in all material respects with all covenants and conditions required by this Agreement to be performed or complied with by it prior to or at the Closing, and ProMedCo and ProMedCo-SW shall be furnished with a certificate of the President or any Vice President of SELLER, dated the Closing Date, in such person's corporate capacity, certifying to the truth of such representations and warranties as of the time of the Closing and to the fulfillment of such covenants and conditions.

**8.2 No Obstructive Proceeding.** No action or proceedings shall have been instituted against, and no order, decree or judgment of any court, agency, commission or governmental authority shall be subsisting against ProMedCo or ProMedCo-SW or the officers or directors of ProMedCo or ProMedCo-SW which seeks to, or would, render it unlawful as of the Closing to effect the transactions contemplated hereby in accordance with the terms hereof, and no such action shall seek damages in a material amount by reason of the transaction contemplated hereby. Also, no substantive legal objection to the transactions contemplated by this Agreement shall have been received from or threatened by any governmental department or agency.

**8.3 Opinion of SELLER Counsel.** SELLER shall have delivered to ProMedCo and ProMedCo-SW at the Closing an opinion of Moore & Menkhaus, P.A., counsel to SELLER, dated the Closing Date, in form and substance satisfactory to ProMedCo and ProMedCo-SW, to the effect set forth as Appendix 8.3 attached hereto.

**8.4 Whittemore Employment Agreement.** ProMedCo-SW and Douglas Whittemore shall have entered into a mutually agreeable employment agreement.

**8.5 Consents and Approvals.** Each of the parties to any agreement or instrument under which the transactions contemplated hereby would constitute or result in a default or acceleration of obligations shall have given such consent as may be necessary to permit the consummation of the transactions contemplated hereby without constituting or resulting in a default or acceleration under such agreement or instrument, and any consents required from any public or regulatory agency or organization having jurisdiction shall have been given. Also, ProMedCo-SW shall have received releases, waivers of default and consents to assignment in form satisfactory to it from all parties to contracts and agreements to be assumed by ProMedCo-SW hereunder.

**8.6 Proceedings and Documents Satisfactory.** All proceedings in connection with the transactions contemplated hereby and all certificates and documents delivered to ProMedCo-SW



pursuant to this Agreement shall be satisfactory in form and substance to ProMedCo and ProMedCo-SW and its counsel acting reasonably and in good faith.

**8.7 No Adverse Change.** From the date of this Agreement until the Closing, the operations of SELLER shall have been conducted in the ordinary course of business consistent with past practice and from the date of the SELLER Financial Statements until the Closing no event shall have occurred or have been threatened which has or would have a material and adverse effect upon the financial condition, assets, liabilities, operations, prospects or business of SELLER, and SELLER shall have not sustained any loss or damage to their assets, whether or not insured, or union activity that affects materially and adversely its ability to conduct its business.

**8.8 Delivery of Certain Documents.** At the Closing, SELLER shall have delivered to ProMedCo-SW copies of the Articles of Incorporation of SELLER certified (not more than 30 days prior to the Closing Date) by the appropriate governmental authorities and copies of resolutions of the stockholders of SELLER and of the Board of Directors of SELLER, certified by the secretary of SELLER, approving and authorizing the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

**8.9 Closing Transactions.** All the transactions described in § 2.9 shall have been consummated simultaneously with the Closing.

## ARTICLE 9 TERMINATION

**9.1 Optional Termination.** This Agreement may be terminated and the transactions contemplated hereby abandoned at any time prior to the Effective Date, notwithstanding stockholder approval as follows:

- (a) By the mutual consent of ProMedCo, ProMedCo-SW and SELLER; or
- (b) By SELLER, if any of the conditions set forth in Article 7 shall not have met by April 30, 1997; provided that SELLER shall not be entitled to terminate this Agreement pursuant to this § 9.1(b) if SELLER's willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby; or
- (c) By ProMedCo-SW, if any of the conditions provided in Article 8 hereof have not been met by April 30, 1997; provided that ProMedCo-SW shall not be entitled to terminate this Agreement pursuant to this § 9.1(c) if ProMedCo-SW's willful breach of this Agreement has prevented the consummation of the transactions contemplated hereby.

9.2 **Notice of Abandonment.** In the event of such termination by either ProMedCo and ProMedCo-SW or SELLER pursuant to § 9.1 above, written notice shall forthwith be given to the other party hereto.

9.3 **Mandatory Termination.** If the Closing has not occurred by May 15, 1997, this Agreement shall automatically terminate and no longer be of any force or effect.

9.4 **Termination.** In the event this Agreement is terminated as provided above, ProMedCo and ProMedCo-SW shall deliver to SELLER all documents (and copies thereof in their possession) concerning SELLER and its Affiliates previously delivered by SELLER to ProMedCo and ProMedCo-SW, and except as contemplated by § 11.1, none of the parties nor any of their respective partners, shareholders, directors, or officers shall have any liability to the other party for costs, expenses, loss of anticipated profits, consequential damages, or otherwise, except for any deliberate breach of any of the provisions of this Agreement.

#### ARTICLE 10 INDEMNIFICATION

10.1 **Grant of Indemnity.** SELLER agrees to indemnify, defend and hold ProMedCo and ProMedCo-SW and their Affiliates, and subsidiaries, and its and their respective employees, representatives, officers and agents, harmless from and against any claims, losses, liability, obligations, lawsuits, deficiencies, damages or expense of whatever nature, whether known or unknown, accrued, absolute, contingent or otherwise including (without limitation) interest, penalties, attorneys' fees, costs of investigation and all amounts paid in defense or settlement of the foregoing, suffered or incurred by ProMedCo or ProMedCo-SW as a result of the occurrence of any of the following: (i) the Assets were subject to any liabilities or obligations of any kind, whether accrued, absolute, contingent or otherwise, which are not being specifically assumed by ProMedCo-SW hereunder, including without limitation, liabilities for federal, state, local and other applicable taxes of every kind and description, whether or not said liabilities or obligations are disclosed in Exhibit 3.4; (ii) SELLER did not have title to any of the Assets; (iii) a breach of any obligation, representation, warranty, covenant or agreement made by SELLER in this Agreement or any agreement referred to herein or because any representation or warranty by SELLER contained herein, in any document furnished or required to be furnished pursuant to this Agreement by SELLER to ProMedCo or ProMedCo-SW or any of their representatives, or any documents furnished to ProMedCo and ProMedCo-SW in connection with the Closing hereunder, shall be false; (iv) any litigation arising out of or based upon events or operative facts occurring prior to the Closing Date, in connection with the Assets, whether or not disclosed in Exhibit 3.16; (v) any employee benefits, including pension or retirement benefits, and any severance payments to the employees of SELLER which are or may be assessed as a result of the transactions contemplated by this Agreement, payable to or on behalf of the employees of SELLER as of the Closing Date, or due through the consummation of this Agreement; (vi) any and all liabilities related to any pre-Closing violation of law, regulation or ruling applicable to any employee.

benefit plan and/or any labor or employment practice or policy for which ProMedCo or one of ProMedCo's affiliates assumes sponsorship or otherwise becomes liable for as a successor employer, (vii) unless otherwise specifically agreed in this Agreement, any and all claims, including legal, administrative or creditor claims or actions, in connection with the Assets or their sale or transfer hereunder, if any fact material to any such claim or cause of action pleaded or stated there occurred prior to or on the Closing Date; and (viii) costs and expenses (including reasonable attorneys' fees) incurred by ProMedCo and ProMedCo-SW in connection with any demand, action, suit, proceeding, assessment or judgment incident to any of the foregoing.

### 10.2 Representation, Cooperation and Settlement

- (a) ProMedCo and ProMedCo-SW shall give prompt notice to SELLER of any claim against ProMedCo or ProMedCo-SW which might give rise to a claim based on the indemnity contained in this Article 10, stating the nature and basis of the claim and the amount thereof.
- (b) In the event any claim, action, suit or proceeding is brought against ProMedCo or ProMedCo-SW with respect to which SELLER may have liability under the indemnity contained in this Article 10, ProMedCo and ProMedCo-SW shall permit SELLER to assume the defense of any such claim or any litigation resulting from such claim, provided that ProMedCo and ProMedCo-SW shall not be required to permit SELLER to assume the defense of any third party claim which if not first paid, discharged, or otherwise complied with would result in an interruption or cessation of the conduct of ProMedCo-SW's business or any material part thereof. Failure by SELLER to notify ProMedCo and ProMedCo-SW of its election to defend any such claim or action by a third party within thirty (30) days after notice thereof shall have been given by ProMedCo and ProMedCo-SW, shall be deemed a waiver of any such election. If SELLER assumes the defense of such claim or litigation resulting therefrom, the obligations of SELLER hereunder as to such claim shall include taking all steps reasonably necessary in the defense or settlement of such claim or litigation resulting in the defense or settlement of such claim or litigation resulting therefrom, including the retention of counsel satisfactory to ProMedCo and ProMedCo-SW, and holding ProMedCo and ProMedCo-SW harmless from and against any and all damage resulting from, arising out of, or incurred with respect to any settlement approved by SELLER or any judgment in connection with such claim or litigation resulting therefrom. SELLER shall not, in the defense of such claim or litigation, consent to the entry of any judgment (other than a judgment of dismissal on the merits with costs) except with the written consent of ProMedCo and ProMedCo-SW nor enter into any settlement (except with the written consent of ProMedCo and ProMedCo-SW) which does not include as an unconditional term thereof the giving by the claimant or the

plaintiff to ProMedCo and ProMedCo-SW a release from all liability in respect to such claim or litigation.

- (c) If SELLER shall not assume the defense of any such claim by a third party or litigation resulting therefrom, ProMedCo and ProMedCo-SW may defend against such claim or litigation in such manner as it deems appropriate. SELLER shall, in accordance with the provisions hereof, promptly reimburse ProMedCo and ProMedCo-SW for the amount of any settlement reasonably entered into by ProMedCo and ProMedCo-SW and for all damage incurred by ProMedCo and ProMedCo-SW in connection with the defense against or settlement of such claim or litigation.

**10.3 Remedies Cumulative.** The remedies provided herein shall be cumulative and shall not preclude ProMedCo and ProMedCo-SW from asserting any other rights or seeking any other remedies against SELLER to which ProMedCo and ProMedCo-SW are entitled by law.

## ARTICLE II MISCELLANEOUS

**11.1 Expenses.** All expenses of the preparation of this Agreement and of the transactions contemplated hereby, including, without limitation, counsel fees, accounting fees, investment adviser's fees and disbursements, shall be borne by the respective parties incurring such expense, whether or not such transactions are consummated. ProMedCo shall bear the cost of the audit of NMC and NOB, including SELLER, and up to \$150,000 of the legal and other professional fees and expenses incurred by NMC and NOB, including SELLER, in connection with the negotiation and consummation of the transactions contemplated hereby.

### 11.2 Employee Transition:

- (a) **Termination of Affected Employees.** Effective at the Closing Date, SELLER shall terminate all Affected Employees who shall be given the option of becoming employees of ProMedCo-SW on terms comparable to those in effect immediately prior to the Closing. "Affected Employees" shall mean non-medical employees of SELLER on the Closing Date.
- (b) **Insurance and Benefit Plans.** SELLER shall satisfy, or cause its insurance carriers to satisfy, all claims for medical, health and hospital benefits, whether insured or otherwise (including, but not limited to, workers compensation, life insurance, medical and disability programs), under SELLER's employee benefit plans brought, or incurred, by Affected Employees and former employees of the SELLER prior to the Closing Date, in accordance with the terms and conditions of such employee benefit

plans or applicable workers compensation statutes without interruption as a result of the employment by ProMedCo-SW of any such employees after the Closing Date.

- (c) **Payroll and Payroll Taxes.** SELLER shall make a clean cut-off of payroll and payroll tax reporting with respect to the Affected Employees paying over to the federal, state and city governments those amounts respectively withheld or required to be withheld for periods ending prior to the Closing Date. SELLER shall issue, by the date prescribed by IRS Regulations, Forms W-2 for wages paid to the Closing Date. ProMedCo-SW shall be responsible for all payroll and payroll tax obligations accruing on and after the Closing Date for Affected Employees.
- (d) **Termination Benefits.** SELLER shall be solely responsible for, and shall pay or cause to be paid, severance payments and other termination benefits, if any (not including state unemployment compensation), to Affected Employees who may become entitled to such benefits by reason of any events. If any action on the part of SELLER prior to the Closing or the purchase by ProMedCo-SW of the Assets of SELLER pursuant to this Agreement or the transactions contemplated hereby, shall result in any liability or claim of liability for severance payments or termination benefits, or any liability, forfeiture, fine or other obligation by virtue of any state, federal or local law, such liability or claim of liability shall be the sole responsibility of SELLER, and SELLER shall indemnify and hold harmless ProMedCo-SW for any losses resulting directly or indirectly from such liability or claim. ProMedCo-SW shall be solely responsible for and shall pay or cause to be paid severance payments and other termination benefits, if any, to Affected Employees who may become entitled to such benefits by reason of events occurring after Closing. If any action on the part of ProMedCo-SW after Closing shall result in any liability or claim of liability for severance payments or termination benefits, or any liability, forfeiture, fine or other obligation by virtue of any state, federal or local law, such liability or claim of liability shall be the sole responsibility of ProMedCo-SW, and ProMedCo-SW shall indemnify and hold harmless SELLER for any losses resulting directly or indirectly from such liability or claim.
- (e) **Employee Benefit Plans.** At Closing, neither ProMedCo nor ProMedCo-SW shall assume any responsibility under any employee benefit plans maintained by SELLER other than assuming sponsorship, subject to clause (d) hereof, of SELLER's 401(k) and/or Money Purchase Retirement Plans.

Notwithstanding the foregoing, ProMedCo-SW shall have the right to postpone the actions contemplated by this Section 11.2 to a date after the Closing Date.

**11.3 Occasional Sale.** SELLER, ProMedCo and ProMedCo-SW believe that the transaction contemplated by this Agreement constitute an occasional sale of an entire business and, therefore, the sale of any and all items of tangible personal property to ProMedCo-SW pursuant to this Agreement is exempt from any and all state and local sales and use tax. In the event the transactions contemplated by this Agreement do not qualify for such exemption or other applicable exemption and the State of Florida seeks to collect sale or use tax under the Florida Tax Code, ProMedCo-SW shall be liable and responsible for any such tax. SELLER shall cooperate with ProMedCo-SW in connection with any audit of this transaction regarding the application of the sales tax law thereto.

**11.4 Collection of Accounts Receivable.** See § 11.4 of the Agreement.

**11.5 Non-Assignable Property Interests.**

- (a) To the extent that any lease, contract, permit or other property interest which would otherwise constitute a part of the Assets is not capable of being assigned, transferred or subleased or if such assignment, transfer or sublease or attempted assignment, transfer or sublease would constitute a breach thereof or a violation of any law, decree, order, regulation or other governmental edict, neither this Agreement nor the Closing shall constitute an assignment, transfer or sublease thereof, or an attempted assignment, transfer or sublease thereof.
- (b) To the extent that any lease, contract, permit or other property interest constituting a part of the Assets is not capable of being assigned, transferred or subleased, from and after the Closing Date, and to the extent reasonably possible, SELLER shall make all benefits of such non-assignable interests available to ProMedCo-SW at no charge, cost or expense to ProMedCo-SW.

**11.6 Cooperation by ProMedCo and ProMedCo-SW.** In the event SELLER is required to defend against any action, suit or proceeding arising out of a claim pertaining to the business or operations of SELLER, ProMedCo and ProMedCo-SW shall provide such assistance and cooperation, including, without limitation, witnesses and documentary or other evidence as may reasonably be requested by SELLER in connection with its defense. SELLER shall reimburse ProMedCo and ProMedCo-SW for their reasonable out-of-pocket expenses incurred in providing such assistance and cooperation.

**11.7 Cooperation by SELLER.** In the event ProMedCo or ProMedCo-SW is required to defend against any action, suit or proceeding arising out of a claim pertaining to a liability assumed by ProMedCo-SW pursuant to this Agreement relating to the business or operations of SELLER, SELLER shall provide such assistance and cooperation, including without limitation, witnesses and documentary or other evidence, as may reasonably be requested by ProMedCo-SW in connection

with its defense. ProMedCo-SW shall reimburse SELLER for its reasonable out-of-pocket expenses incurred in providing such assistance.

**11.8 Notices.** All notices, demands and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered in person or mailed by certified mail or registered mail (postage prepaid) or sent by reputable overnight courier service (charges prepaid).

To SELLER: Naples Medical Center, P.A.  
400 Eighth Street, North  
Naples, FL 33940  
Attention: President

with a copy to: David J. Menkhaus  
Moore & Menkhaus, P.A.  
4800 N. Federal Hwy., Suite 210-A  
Boca Raton, FL 33431

To ProMedCo and  
ProMedCo-SW: ProMedCo Management Company  
801 Cherry Street  
Suite 1450  
Fort Worth, TX 76102  
Attention: Chief Executive Officer

with a copy to: John E. Gillmor  
Boult, Cummings, Conners & Berry, PLC  
414 Union Street, Suite 1600  
Nashville, TN 38219

or to such other address as either SELLER or ProMedCo may designate by notice to the other.

**11.9 Entire Agreement.** This Agreement and the Appendices, Exhibits, schedules and documents delivered pursuant hereto constitute the entire contract between the parties hereto pertaining to the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties, and there are no representations, warranties or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification or waiver of this Agreement shall be binding unless executed in writing by the parties to be bound thereby.

11.10 **Alternative Dispute Resolution.** Any dispute, disagreement, claim or controversy arising out of or related to this Agreement (a "Disputed Matter") may, at the option of either party hereto upon written notice to the other party, be submitted to non-binding mediation before a mutually acceptable neutral advisor. To the extent the neutral advisor is compensated, the parties shall each bear half the cost. Any Disputed Matter that is not resolved through mediation will be settled by binding arbitration in accordance with the rules of commercial arbitration of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall occur within Collier County, Florida, unless the parties mutually agree to have such proceedings in some other locale. The arbitrator(s) may in any such proceeding award attorneys' fees and costs to the prevailing party.

11.11 **Governing Law.** THE VALIDITY AND CONSTRUCTION OF THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF FLORIDA.

11.12 **Legal Fees and Costs.** In the event either party elects to incur legal expenses to enforce or interpret any provision of this Agreement, the prevailing party will be entitled to recover such legal expenses, including, without limitation, reasonable attorneys' fees, costs and necessary disbursements, in addition to any other relief to which such party shall be entitled.

11.13 **Time.** Time is of the essence for purposes of each and every provision of this Agreement.

11.14 **Section Headings.** The Section headings are for reference only and shall not limit or control the meaning of any provision of this Agreement.

11.15 **Waiver.** No delay or omission on the part of any party hereto in exercising any right hereunder shall operate as a waiver of such right or any other right under this Agreement.

11.16 **Nature and Survival of Representations.** All statements contained in any certificate delivered by or on behalf of any of the parties to this Agreement pursuant hereto in connection with the transactions contemplated hereby shall be deemed to be representations and warranties made by the respective parties hereunder. The covenants (including the indemnification covenants set forth in Article 10), representations and warranties made by the parties each to the other in this Agreement or pursuant hereto shall survive the transactions contemplated hereby and any investigation made by ProMedCo or ProMedCo-SW until April 30, 1998 except that the representations and warranties set forth in §§ 3.7, 3.16, 3.17, 3.18, 3.20, 3.21 and 3.22 and the indemnity provisions in Article 10, as they relate thereto, shall survive until the expiration of the relevant statute of limitations.

11.17 **Exhibits.** All Exhibits, Appendices, schedules and documents referred to in or attached to this Agreement are integral parts of this Agreement as if fully set forth herein and all

statements appearing therein shall be deemed to be representations. All items disclosed hereunder shall be deemed disclosed only in connection with the specific representation to which they are explicitly referenced.

**11.18 Assignment.** No party hereto shall assign this Agreement without first obtaining the written consent of the other party, except ProMedCo and ProMedCo-SW shall have the right to assign this Agreement to an Affiliate or any institutional lender providing financing to ProMedCo and its subsidiaries.

**11.19 Binding on Successors and Assigns.** Subject to § 11.18, this Agreement shall inure to the benefit of and bind the respective heirs, administrators, successors and assigns of the parties hereto. Nothing expressed or referred to in this Agreement is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors or permitted assigns any legal or equitable right, remedy or claim under or in respect of this Agreement or any provision contained herein, it being the intention of the parties to this Agreement that this Agreement shall be for the sole and exclusive benefit of such parties or such successors and assigns and not for the benefit of any other person.

**11.20 Parties in Interest.** Nothing in this Agreement is intended to confer any right on any person other than the parties to it and their respective successors and assigns, nor is anything in this Agreement intended to modify or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision give any third person any right of subrogation or action over against any party to this Agreement.

**11.21 Amendments.** This Agreement may be amended, but only in writing, signed by the parties hereto, at any time prior to the Closing, before or after approval hereof by the stockholders of SELLER, with respect to any of the terms contained herein, but after such stockholder approval, no amendment shall be made which reduces the consideration per share paid each such stockholder without the further approval of such stockholders. The parties recognize that the Agreement, this Common Provisions Attachment and/or certain of the Appendices thereto and hereto may have to be amended to accomplish the tax and other goals of the parties. In such event, the parties shall cooperate with each other to make such changes while preserving the economic effect contemplated by the Agreement, the Common Provisions Attachment and the Appendices thereto and hereto.

**11.22 Drafting Party.** The provisions of this Agreement, and the documents and instruments referred to herein, have been examined, negotiated, drafted and revised by counsel for each party hereto and no implication shall be drawn nor made against any party hereto by virtue of the drafting of this Agreement.

**11.23 Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be an original, but all of which together shall comprise one and the same instrument.

**11.24 Reproduction of Documents.** This Agreement and all documents relating thereto, including without limitation, consents, waivers and modifications which may hereafter be executed, the Exhibits and documents delivered at the Closing, and financial statements, certificates and other information previously or hereafter furnished to ProMedCo-SW may be reproduced by ProMedCo-SW by any photographic, photostatic, microfilm, microcard, miniature photographic or other similar process and ProMedCo-SW may destroy any original documents so reproduced. SELLER agrees and stipulates that any such reproduction shall be admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original is in existence and whether or not such reproduction was made by ProMedCo-SW in the regular course of business) and that any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

**11.25 Press Releases.** Neither party shall make any press releases or other public announcements relating to this Agreement or the transactions contemplated hereby without the prior written consent of the other. Nothing contained in this Agreement shall prevent any party to this Agreement from furnishing any information to any governmental body or agency or from making a press release, which in its judgement, is required by any Federal or state securities law or regulation.

LIST OF APPENDICES

Number	Description
2.2	Form of Undertaking
2.3	List of Excluded Assets
2.9A	Service Agreement
2.9B	Form of Medical Professional Employment Agreement
2.9C	List of Real Estate Leases to be assumed by ProMedCo-SW
2.9D	Split-Dollar Agreement
2.9E	Collateral Assignment
2.9F	Escrow Agreement
2.10	Historical ProMedCo Distribution Attributable to Medical Professionals
7.2	Form of opinion of ProMedCo-SW's counsel to be delivered at the Closing
8.3	Form of opinion of SELLER's counsel to be delivered at the Closing
11.4	Memorandum of Understanding

LIST OF EXHIBITS

Number	Description
3.1A	List of States in which SELLER is qualified to do business
3.1B	Copies of SELLER's Articles of Incorporation and Bylaws
3.3	Subsidiaries of SELLER
3.4	SELLER Financial Statements
3.6	Exceptions to Absence of Recent Changes Representation
3.8	Recent UCC report on SELLER's Assets
3.8	Contracts
3.9	List of Burdensome Agreements
3.10	Related party transactions
3.11	Exceptions to No Default Representation
3.15	Permits and licenses
3.16	Litigation
3.18	Exceptions to Tax Representation
3.21	Environmental Matters
3.22	List of Employee Benefit Plans
3.23	List of Employee Benefit Plans not qualified under § 401(a) of the Internal Revenue Code
3.24A	List of highly compensated employees
3.24B	Description of Employee Benefits
3.25A	List of Insurance coverages and bonds
3.25B	Description denials of coverage
3.25C	Claims History

## UNDERTAKING

Undertaking dated as of April 22, 1997 ("Undertaking") by ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), in favor of Naples Medical Center, P.A. ("SELLER")

### RECITAL:

By an Asset Purchase Agreement dated as of April 14, 1997 (the "Agreement") between SELLER and ProMedCo-SW, SELLER agreed to sell, convey, transfer and deliver to ProMedCo-SW at the Closing under the Agreement, certain assets (the "Assets") of SELLER in consideration for the payment by ProMedCo-SW to SELLER of the purchase price of the Assets and delivery by ProMedCo-SW to SELLER of an undertaking of the character described below. For the purpose of consummating such Closing, SELLER has delivered to ProMedCo-SW various instruments and has taken other actions to effect such sale, conveyance, transfer and delivery, and ProMedCo-SW has delivered to SELLER the documents required by the Agreement to be so delivered at the Closing. To complete the action required of ProMedCo-SW by the Agreement as full consideration for such sale, conveyance, transfer and delivery, ProMedCo-SW hereby undertakes and agrees as follows:

1. ProMedCo-SW hereby assumes and agrees to pay, perform and discharge the liabilities and obligations of SELLER relating to the Assets described in Schedule 1 hereto, except for liabilities or obligations arising out of any breach of any such obligations by SELLER.

2. ProMedCo-SW assumes and agrees to discharge only the obligations of SELLER set forth in Section 1 above, and no others. Without limiting the generality of the foregoing, ProMedCo-SW specifically does not assume any of the following obligations or liabilities of the SELLER:

- (a) any other liabilities reflected in the SELLER Financial Statements;
- (b) any litigation or other claims involving incidents or courses of conduct prior to the date hereof including, without limitation, any litigation described in Exhibit 3.16 to the Agreement;
- (c) any unfunded liability existing on the date hereof under any pension plan of SELLER.

3. This Undertaking shall inure to the benefit of SELLER, its successors and assigns. The terms defined in the Agreement, unless otherwise defined herein or unless the context otherwise requires, shall have the same defined meanings herein. The sole purpose hereof is to relieve SELLER of certain obligations and not to create third party beneficiary rights. Therefore, this Agreement may be modified by a writing signed by the SELLER and ProMedCo-SW without the consent of any third party.

4. This Undertaking, particularly Section 1 hereof, is not intended to and does not waive, compromise or in any other manner lessen the rights of ProMedCo-SW under the Agreement relating to the representations and warranties of SELLER and its obligations thereunder to indemnify ProMedCo-SW thereunder against various liabilities.

IN WITNESS WHEREOF, ProMedCo-SW has caused this Undertaking to be signed in several counterparts (each of which shall constitute an original hereof) by its duly authorized officer as of the date first above written.

**PROMEDCO OF SOUTHWEST  
FLORIDA, INC.**

By   
Its Vice President  
Name Dale K. Edwards

**GUARANTY**

ProMedCo Management Company, a Delaware corporation ("ProMedCo") which is the sole shareholder of ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), hereby guarantees the performance of ProMedCo-SW under the above Undertaking.

**PROMEDCO MANAGEMENT COMPANY**

By   
Its Vice President  
Name Dale K. Edwards

**SCHEDULE 1**

**TO UNDERTAKING**

1. The Assumed Balance Sheet Liabilities as defined in § 2.4(b) of the Agreement.
2. The contracts and real estate leases and equipment leases of SELLER listed in Exhibit 3.8 to the Agreement.

## UNDERTAKING

Undertaking dated as of April 22, 1997 ("Undertaking") by ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), in favor of Naples Obstetrics & Gynecology, M.D., P.A. ("SELLER")

### RECITAL:

By an Asset Purchase Agreement dated as of April 14, 1997 (the "Agreement") between SELLER and ProMedCo-SW, SELLER agreed to sell, convey, transfer and deliver to ProMedCo-SW at the Closing under the Agreement, certain assets (the "Assets") of SELLER in consideration for the payment by ProMedCo-SW to SELLER of the purchase price of the Assets and delivery by ProMedCo-SW to SELLER of an undertaking of the character described below. For the purpose of consummating such Closing, SELLER has delivered to ProMedCo-SW various instruments and has taken other actions to effect such sale, conveyance, transfer and delivery, and ProMedCo-SW has delivered to SELLER the documents required by the Agreement to be so delivered at the Closing. To complete the action required of ProMedCo-SW by the Agreement as full consideration for such sale, conveyance, transfer and delivery, ProMedCo-SW hereby undertakes and agrees as follows:

1. ProMedCo-SW hereby assumes and agrees to pay, perform and discharge the liabilities and obligations of SELLER relating to the Assets described in Schedule I hereto, except for liabilities or obligations arising out of any breach of any such obligations by SELLER.

2. ProMedCo-SW assumes and agrees to discharge only the obligations of SELLER set forth in Section 1 above, and no others. Without limiting the generality of the foregoing, ProMedCo-SW specifically does not assume any of the following obligations or liabilities of the SELLER:

- (a) any other liabilities reflected in the SELLER Financial Statements;
- (b) any litigation or other claims involving incidents or courses of conduct prior to the date hereof including, without limitation, any litigation described in Exhibit 3.16 to the Agreement;
- (c) any unfunded liability existing on the date hereof under any pension plan of SELLER.

3. This Undertaking shall inure to the benefit of SELLER, its successors and assigns. The terms defined in the Agreement, unless otherwise defined herein or unless the context otherwise requires, shall have the same defined meanings herein. The sole purpose hereof is to relieve SELLER of certain obligations and not to create third party beneficiary rights. Therefore, this Agreement may be modified by a writing signed by the SELLER and ProMedCo-SW without the consent of any third party.

4. This Undertaking, particularly Section 1 hereof, is not intended to and does not waive, compromise or in any other manner lessen the rights of ProMedCo-SW under the Agreement relating to the representations and warranties of SELLER and its obligations thereunder to indemnify ProMedCo-SW thereunder against various liabilities.

IN WITNESS WHEREOF, ProMedCo-SW has caused this Undertaking to be signed in several counterparts (each of which shall constitute an original hereof) by its duly authorized officer as of the date first above written.

**PROMEDCO OF SOUTHWEST  
FLORIDA, INC.**

By   
Its Vice President  
Name Dale K. Edwards

**GUARANTY**

ProMedCo Management Company, a Delaware corporation ("ProMedCo") which is the sole shareholder of ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), hereby guarantees the performance of ProMedCo-SW under the above Undertaking.

**PROMEDCO MANAGEMENT COMPANY**

By   
Its Vice President  
Name Dale K. Edwards

**SCHEDULE I**

**TO UNDERTAKING**

1. The Assumed Balance Sheet Liabilities as defined in § 2.4(b) of the Agreement.
2. The contracts and real estate leases and equipment leases of SELLER listed in Exhibit 3.8 to the Agreement.

**SPLIT-DOLLAR AGREEMENT  
(And Non-Competition and Certain Other Agreements)**

THIS SPLIT-DOLLAR AGREEMENT (And Non-Competition and Certain Other Agreements) (hereinafter the "Agreement" or "NCA") is made and entered into on as of the 23rd day of April, 1997 by and between ProMedCo of Southwest Florida, Inc. a Florida corporation ("ProMedCo-SW") and Gary C. Courville, M.D. ("OWNER").

**RECITALS:**

A. OWNER is a physician is duly licensed and authorized to practice medicine in the State of Florida.

B. ProMedCo-SW has purchased certain assets from and entered into a long term Service Agreement (the "Service Agreement") with NAPLES MEDICAL CENTER, P.A. (hereinafter called "NMC").

C. ProMedCo-SW desires to maximize its investment and its management fees by inducing OWNER to enter into a five year employment agreement with NMC and not to compete with nor raid the employees and or independent contractors of medical practices managed by ProMedCo-SW or its affiliates, thereby reducing the fees that ProMedCo-SW and its affiliates, may potentially earn under the Service Agreement.

D. OWNER is agreeing hereby to (i) enter into a five year employment agreement with NMC and (ii) otherwise comply with the terms and conditions of this Agreement, including without limitation, the Non-Competition provisions hereof set forth in Section 3 below thereby providing a direct benefit to ProMedCo-SW by enhancing the likelihood of NMC's success and the likelihood that ProMedCo-SW will receive the fees under the Service Agreement it anticipates.

E. In consideration for the NCA, and entering into the Employment Agreement with renewal provisions as provided for in the Service Agreement, ProMedCo-SW shall provide OWNER with life insurance protection under a policy that is described in Exhibit A to this Agreement (the "Policy") by paying all of the premiums due on the Policy for the first five years as an additional benefit to OWNER (the "Advanced Premiums"), on the terms and conditions hereinafter set forth.

F. OWNER or his designee is and will be the owner of the Policy and, as such, shall possess the incidents of ownership in and to the Policy; and

G. ProMedCo-SW requires that the Policy be collaterally assigned to it by OWNER in order to secure OWNER's personal covenants, as found in this Agreement, and the repayment of the amounts it will pay towards the premiums on the Policy.

H Capitalized terms not defined herein shall have the meanings ascribed thereto in the Service Agreement.

## AGREEMENTS:

NOW THEREFORE, in consideration of the mutual promises contained in this Agreement, the parties agree as follows:

### SECTION 1 SPLIT DOLLAR PROVISIONS

#### 1.1 Purchase of the Policy

OWNER will apply for the Policy contemporaneously with the execution of this Agreement. The parties agree that they will take all necessary actions to cause the Policy to be issued to OWNER and to cause the Policy to conform to the terms of this Agreement. The parties agree that the Policy will be subject to the terms and conditions of this Agreement and of the Collateral Assignment filed with the insurance company issuing the Policy (the "Insurer") relating to this Policy.

#### 1.2 Incidents of Ownership

OWNER shall be the Policy's sole and absolute owner, and OWNER may exercise all ownership rights and incidents of ownership granted to the Policy's owner by the Insurer, except as may be expressly provided to the contrary in the Collateral Assignment and this Agreement. It is the intention of the parties that OWNER retain all rights that the Policy grants to OWNER thereof, except ProMedCo-SW's right to be repaid the amounts that it pays toward the premiums on the Policy and limitations on Policy loans by OWNER as found in the Collateral Assignment. Specifically, but not limited thereto, ProMedCo-SW may neither have nor exercise any right as collateral assignee of the Policy that could in any way defeat or impair OWNER's right to receive the cash surrender value or the death proceeds of the Policy in excess of the amount due ProMedCo-SW under this Agreement and the Collateral Assignment. All provisions of this Agreement and of the Collateral Assignment shall be construed so as to carry out such intention.

#### 1.3 Escrow Deposit

ProMedCo-SW shall deposit with Trans Financial Bank, N.A. (the "Escrow Holder") in an interest-bearing escrow account cash in the amount of \$170,903 together with its note in the principal amount of \$253,780 payable in three equal annual installments of principal commencing on the first anniversary hereof (the "Premium Escrow"). The note shall be in the form attached hereto as Appendix A. So long as the OWNER is not in breach of a material provision of the NCA, the Escrow

Holder shall pay annually from the Premium Escrow to the Insurer the following amounts on the dates set forth below:

within 25 days of the due date of the initial Premium	\$84,593
within 25 days of the first anniversary of the date the Policy is issued	\$84,593
within 25 days of the second anniversary of the date the Policy is issued	\$84,593
within 25 days of the third anniversary of the date the Policy is issued	\$84,593
within 25 days of the fourth anniversary of the date the Policy is issued	\$84,593

Applied Innovative Monetary Solutions, Inc. or the Insurer shall annually furnish to OWNER, or furnish to ProMedCo-SW for its furnishing to OWNER, a statement of the amount of income reportable by OWNER for federal and state income tax purposes as a result of such premium payments. In the event of the insolvency of ProMedCo-SW or of its parent ProMedCo Management Company, OWNER shall have the right to pay any of the premiums when due. As provided therein, the interest payments on the note, which shall be in the form of options to purchase stock of ProMedCo Management Company, shall be paid directly to OWNER and shall not constitute an asset of the Premium Escrow.

#### 1.4 Right of Repayment

To secure OWNER's performance of his obligations, covenants, and representations under this Agreement and the repayment to ProMedCo-SW of the amount of premiums on the Policy paid by it hereunder, OWNER has, contemporaneously herewith, assigned the Policy to ProMedCo-SW as collateral, under the form used by the Insurer for such assignments (the "Collateral Assignment"), which Collateral Assignment specifically limits ProMedCo-SW's right thereunder to the repayment of the Advanced Premiums in respect of the Policy and restricts certain Policy loans by the OWNER. In no event shall ProMedCo-SW have any right to borrow against the Policy. The Policy's Collateral Assignment shall not be terminated, altered or amended by OWNER without the express written consent of ProMedCo-SW. The parties hereto agree to take all actions necessary to cause such Collateral Assignment to conform to the provisions of this Agreement.

### 1.5 Rights of OWNER in the Policy

1.5.1 Rights of ProMedCo-SW Protected OWNER shall take no action with respect to the Policy that would in any way compromise or jeopardize ProMedCo-SW's right to be repaid the Advanced Premiums, without ProMedCo-SW's express written consent. No action by Insured or Owner shall affect the Collateral Assignment or other rights in favor of ProMedCo-SW.

1.5.2 Right to Borrow Subject to the Collateral Assignment in favor of ProMedCo-SW, OWNER may pledge or assign the Policy, subject to the terms and conditions of this Agreement, in order to secure a loan from the Insurer or from a third party, in an amount which shall not exceed the Policy's cash surrender value (as defined in the Policy) as of the date on which the premiums have been paid subject to the Collateral Assignment and the limitations contained therein. Interest charges on such loan shall be the responsibility of and shall be paid by OWNER. OWNER acknowledges that repayments to ProMedCo-SW under this Agreement, if applicable, shall first be made from the Policy's cash surrender value (as defined in the Policy) if this Agreement is terminated or if OWNER surrenders or cancels the Policy, or from the Policy's death proceeds if OWNER should die while the Policy and this Agreement remain in force, and that if loans on the Policy reduce the cash surrender value to less than the amount due and owing to ProMedCo-SW, the unpaid balance shall be a personal obligation of OWNER in favor of ProMedCo-SW.

1.5.3 Right to Cancel OWNER shall not have the right to surrender or cancel the Policy or to receive the Policy's full cash surrender value directly from the Insurer without the express written consent of ProMedCo-SW. Notwithstanding the foregoing, upon any surrender or cancellation of the Policy, ProMedCo-SW shall have the unqualified right to receive from the Insurer, OWNER, and the Escrow Agent a portion of the cash surrender value equal to the Advanced Premiums which have not otherwise been repaid to ProMedCo-SW, and if such cash surrender value is insufficient to return such amount, OWNER shall be liable for the shortfall.

## SECTION 2

### EMPLOYMENT AGREEMENT

2.1 Covenant to Enter into Employment Agreement OWNER hereby covenants and agrees to enter into a five year employment agreement (the "Employment Agreement") with NMC in the form attached as Appendix 2.9B to the Asset Purchase Agreement dated as of April 14, 1997 among ProMedCo-SW, ProMedCo Management Company, a Delaware corporation, and NMC.

2.2 Premature Termination of Employment Agreement In the event that the Employment Agreement is terminated prior to the end of its initial five year term (i) pursuant to Section 9 thereof by NMC for any reason other than death, Total and Permanent Disability as described in Section 9(e)

thereof or retirement, as approved by the Policy Council, of Employee or (ii) by OWNER for any reason, ProMedCo-SW shall have the rights set forth in Section 4 hereof.

### SECTION 3

#### NON-COMPETITION AGREEMENT

##### 3.1 Non-Competition and Non-Solicitation

- (a) OWNER agrees and covenants that during the Initial Term period of his or her employment under the Employment Agreement plus eighteen (18) months thereafter (for a maximum term of 78 months) (neither the additional 18 months nor the provisions of Section 3.3 hereof shall apply in the event the term of the Employment Agreement is not extended as a result of a decision by the Policy Council pursuant to the first sentence of Section 3 thereof) in any case other than termination as a result of death, Total and Permanent Disability or retirement approved by the Policy Council, OWNER shall not, either directly as a partner, agent, independent contractor, employee or indirectly through a corporation, partnership, limited liability company, affiliate or otherwise:
- (i) establish, operate or provide professional medical services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility other than such offices, clinics or facilities owned, operated, managed, staffed or leased by NMC and/or ProMedCo-SW, or any affiliate thereof unless the payments received by OWNER are included as Net Clinic Revenues under the Service Agreement;
  - (ii) establish, operate or provide physician services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by NMC or other groups with whom ProMedCo-SW has a management contract in Collier, Charlotte or Lee counties or, if greater, within a radius of 30 miles of the Clinic Facility, or within a radius of 30 miles of any present or future medical office, clinic or other health care facility located in Collier, Charlotte or Lee Counties that is operational while OWNER is employed by NMC;
  - (iii) solicit, induce or attempt to induce, in connection with any business competitive with that of NMC or other groups with whom ProMedCo-SW has a management contract in Collier, Charlotte or Lee Counties, patients of any physician associated with NMC or such other group described in the preceding sentence, to leave the care of physicians associated with NMC or other such group; or

(iv) solicit, induce or attempt to induce any employee, consultant or other person associated with NMC or ProMedCo-SW to leave the employment of, or to discontinue their association with NMC, ProMedCo-SW or any other entity with whom ProMedCo-SW has a management contract.

(b) OWNER acknowledges and agrees that the covenants contained in this NCA are necessary to protect the investment of ProMedCo-SW's business, goodwill and business relationship in NMC and/or other entities associated with ProMedCo-SW and ProMedCo-SW's marketing strategy in Collier, Charlotte and Lee Counties and that a breach of these covenants will result in irreparable harm and continuing damage to NMC, other entities with whom ProMedCo-SW has an a management contract and ProMedCo-SW itself. As a result, OWNER agrees that in the event OWNER breaches or threatens to breach such covenants, NMC and ProMedCo-SW shall be entitled to specific performance and/or injunctive or other equitable relief in order to prevent the continuation of such harm, as well as money damages. OWNER waives any requirement for the securing or posting of any bond in connection with the obtaining of such equitable relief. Notwithstanding the foregoing, after the Initial Term under the Employment Agreement, OWNER may obtain release of this NCA by payment of the liquidated damages specified in Section 12(c) of the Employment Agreement (but in no event will this Agreement and the Employment Agreement be read to require such liquidated damages to be paid twice).

(c) OWNER acknowledges and agrees that if OWNER breaches the covenants of this NCA, it will be difficult to calculate the precise amount of ProMedCo-SW damages. As a result, the parties have determined that, in the event of such a breach, ProMedCo-SW's damages shall be the Advanced Premiums paid and ProMedCo-SW shall not be obligated to make any additional payments otherwise due under this NCA. Since OWNER has received split-dollar insurance in consideration of entering into and agreeing to comply with this NCA, and OWNER has breached any portion of this NCA, ProMedCo-SW shall be entitled to exercise its rights under the Collateral Assignment and Escrow Agreement and shall be entitled to recover all or a portion of the Advanced Premiums, the related funds in the Escrow and reduce the note correspondingly.

(d) The parties have attempted to limit the provisions of this NCA only to the extent necessary to protect each party's interests. However, the parties hereby agree that, in the event that any provision, section or subsection of this NCA is adjudged by any court of competent jurisdiction to be void or unenforceable, in whole or in part, such court shall modify and enforce any such

provision, section or subsection to the extent that it believes to be reasonable under the circumstances.

**3.2 Acknowledgments.** OWNER hereby represents and acknowledges as follows:

- (a) All documents, knowledge and information regarding the methods of operation of ProMedCo-SW and NMC, and any affiliate thereof, are highly confidential and constitute trade secrets, including, but not limited to information regarding patient lists, patient solicitation, patient treatment and charging, strategy, financial statements and reports, operating manuals, leases, employment agreements and non-competition agreements, and any and all reports, memoranda or correspondence regarding ProMedCo-SW's and NMC's, and any affiliate thereof, methods of operation (collectively, "Confidential Information");
- (b) OWNER is fully capable of earning a livelihood and practicing in the OWNER's medical field without violating any of the provisions of this Agreement;
- (c) OWNER's ability to earn a livelihood and practice in his or her professional medical field without violating any of the provisions of this NCA was a material condition to the execution of this NCA; and
- (d) Under most, if not all circumstances, patients who have been historically treated by OWNER could be treated by other PHYSICIANS without injury to the patient.

**3.3 Trade Secrets and Confidential Information.** While employed by NMC or any successor or affiliate during the Initial Term of the Employment Agreement, and for 18 months thereafter (however that employment is terminated), OWNER agrees and covenants not to disclose, communicate or misuse, to the detriment or injury of ProMedCo-SW and/or NMC and any affiliate thereof, any Confidential Information to any person or entity not associated with ProMedCo-SW or NMC, and any affiliate thereof, as the case may be, unless required to disclose it by law or, unless such information is generally known or available in the industry or by the person to whom it is communicated. Immediately after the termination of employment by NMC or any successor or affiliate, OWNER shall return any and all Confidential Information he or she has to ProMedCo-SW, and any affiliate thereof.

**SECTION 4  
CERTAIN EVENTS**

In the event of breach by OWNER of a material provision of Section 2 or 3 of this Agreement, ProMedCo-SW shall have the right to enforce its rights under this Agreement, including

without limitation the NCA, and surrender the Policy and receive the cash surrender value thereof and any remaining balance of the Premium Escrow in partial or full satisfaction, as the case may be, of ProMedCo-SW's rights under the this Agreement.

#### SECTION 5 UPON OWNER'S DEATH

Subject to Section 4 above, upon the death of OWNER, ProMedCo-SW and the then owner of the Policy shall promptly take all action necessary to obtain the death benefit provided under the Policy. ProMedCo-SW shall have the unqualified right to receive from the Insurer, the then owner of the Policy and the Escrow Agent a portion of such death benefits equal to the total Advanced Premiums under this Agreement which have not otherwise been repaid to ProMedCo-SW. Such amounts repaid shall not include any interest. The balance of the death benefits provided under the Policy, if any, shall be paid directly to the beneficiary designated by OWNER in the manner and in the amount provided in the Policy's beneficiary designation provisions. In no event shall the amount payable to ProMedCo-SW under this Agreement exceed the amount of the Advanced Premiums. No amount shall be paid from such death benefits to the beneficiary designated by OWNER until the full amount due to ProMedCo-SW has been paid. The parties agree that the beneficiary designation provision of the Policy shall conform and be subject to the provisions of this Agreement.

#### SECTION 6 RELEASE OF COLLATERAL ASSIGNMENT

If the parties mutually agree to terminate this Agreement for sixty (60) days after the date of termination, OWNER shall have the option of obtaining the release of the Collateral Assignment of the Policy to ProMedCo-SW. OWNER may exercise this option by (1) delivery to ProMedCo-SW of a paid-up life insurance policy from the same insurance company, on the life of OWNER, with a death benefit equal to the Advanced Premiums, or (2) repaying ProMedCo-SW the Advanced Premiums; and upon receipt of such policy or payment, ProMedCo-SW shall release the Policy's Collateral Assignment by its execution and delivery of an appropriate instrument of release. If OWNER fails to exercise such option within the said sixty (60) day period, then at ProMedCo-SW's written request, he shall execute any document required by the Insurer to transfer his interest in the Policy to ProMedCo-SW. Alternatively, ProMedCo-SW may enforce its right to be repaid the Advanced Premiums from the Policy's cash surrender value under the Policy's Collateral Assignment, and if the cash surrender value exceeds the amount of such premium payments, the excess will be paid to OWNER.

#### SECTION 7 MISCELLANEOUS

7.1 Binding Agreement. This Agreement is binding on and enforceable by and against the parties, their successors, legal representatives, and assigns.

**7.2 Governing Law.** This Agreement will be governed by and construed according to the laws of the state of Florida.

**7.3 Severability.** No part of this Agreement will be affected if any other nonmaterial part of it is held invalid or unenforceable.

**7.4 Notices.** All notices required or permitted to be given under this Agreement must be given in writing, and will be deemed given when personally delivered or, if earlier, three (3) days after mailing by registered or certified United States Mail, postage prepaid with return receipt requested to:

If to ProMedCo-SW, at:      c/o ProMedCo Management Company  
801 Cherry Street  
Suite 1450  
Fort Worth, TX 76102  
Attention: Chief Executive Officer

If to OWNER, at the address set forth at the foot of this Agreement.

**7.5 Waiver.** Any party's failure to insist on compliance or enforcement of any provision of this Agreement shall neither affect its validity nor enforceability or constitute a waiver of future enforcement of that provision or of any other provision of this Agreement.

**7.6 Copies.** More than one (1) copy of this Agreement may be executed and all parties agree and acknowledge that each executed copy shall be a duplicate original.

7.7 Gender and Number. Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa

Agreed to by each of the undersigned on the date first noted above.

PROMEDCO OF SOUTHWEST FLORIDA, INC

By [Signature]  
Its Vice President

"OWNER" \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

GUARANTY BY PROMEDCO MANAGEMENT COMPANY

All obligations of ProMedCo of Southwest Florida, Inc. set forth in the above Split Dollar Agreement are hereby guaranteed by ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo of Southwest Florida, Inc.

PROMEDCO MANAGEMENT COMPANY

By [Signature]  
Name Dale K. Edwards  
Title Vice President

10.7 Gender and Number. Whenever the context of this Agreement requires, the masculine gender includes the feminine and neuter, and the singular number includes the plural and vice versa.

Agreed to by each of the undersigned on the date first noted above.

PROMEDCO OF SOUTHWEST FLORIDA, INC.

By: \_\_\_\_\_

Its: \_\_\_\_\_

"OWNER"

*G. C. Tourville*

Name G. C. Tourville

Address: 758 Wynnwood Ln

Naples FL 34108

GUARANTY BY PROMEDCO MANAGEMENT COMPANY

All obligations of ProMedCo of Southwest Florida, Inc. set forth in the above Split Dollar Agreement are hereby guaranteed by ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo of Southwest Florida, Inc.

PROMEDCO MANAGEMENT COMPANY

By \_\_\_\_\_

Name \_\_\_\_\_

Title \_\_\_\_\_

APPENDIX A  
FORM OF NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND NO INTEREST THEREIN MAY BE SOLD OR TRANSFERRED WITHOUT REGISTRATION UNDER THE ACT OR AN EXEMPTION THEREFROM.

\$ \_\_\_\_\_

April 22, 1997

FOR VALUE RECEIVED, ProMedCo of Southwest Florida, Inc., a Florida corporation (the "Company"), promises to pay to \_\_\_\_\_ ("Payee") for the principal sum of \_\_\_\_\_ DOLLARS (\$) with out interest thereon. The principal of this Note together with interest thereon shall be due and payable in three equal annual installments commencing on April 22, 1998. Interest at the rate of nine percent (9%) per annum on then outstanding principal balance of this Note shall be paid directly to \_\_\_\_\_ ("Beneficiary") at the same time as the installments of principal in the form of options to purchase \$.01 par value common stock of ProMedCo Management Company, a Delaware corporation, at an exercise price of \$9.00 per share. The number of shares covered by the options issued on each payment date shall be determined by a independent valuation firm acceptable to the Board of Directors of Naples Medical Center, P.A. and the Company. The valuation methodology used by the independent valuation firm shall be one commonly used within the securities industry. Such options shall be delivered directly to the Beneficiary.

All payments of principal on this Note are payable in lawful money of the United States of America at Payee's principal office in Naples, Florida, or at such other place as the holder may designate in writing. The Company expressly waives presentment, notice of protest, and notice of dishonor, and agrees to pay all reasonable costs of collection when incurred, including reasonable attorneys' fees, and expressly agrees that this Note or any payment hereunder may be extended from time to time without, in any way, excusing the obligation of the Company. This Note is to be construed in accordance with the laws of the State of Florida. If any provision of this Note is in conflict with any law of the State of Florida and/or of the United States, or in the event that by reason of acceleration of payment or otherwise an amount of interest in excess of that allowed by the laws of the State of Florida and/or of the United States, or in the event that by reason of acceleration of

## COLLATERAL ASSIGNMENT

For value received and subject to the terms of this Collateral Assignment and the Split-Dollar Agreement (And Non-Competition and Certain Other Agreements dated as of April 23, 1997 (the "NCA") executed contemporaneously herewith, OWNER, as owner ("Owner") of Policy No. \_\_\_\_\_ (the "Policy") issued by ITT Hartford Life Insurance Companies or Pacific Mutual Life Insurance Company (the "Insurer") insuring the life of OWNER, hereby assigns and transfers the Policy to ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), its successors or assigns, subject to all the terms and conditions of the Policy and to all superior liens, if any, which the Insurer may have against the Policy, as collateral security for obligations owed by OWNER to ProMedCo-SW under the NCA.

In addition, the following specific rights in the Policy are included in this Assignment and may be exercised by ProMedCo-SW without the consent of any other party:

- (1) The right to receive any proceeds payable at the death of OWNER in an amount equal to the premiums paid by ProMedCo-SW on the Policy (the "Advanced Premium"). ProMedCo-SW shall not be entitled to receive any interest or charges in addition to repayment of the premiums. Any balance of the proceeds shall be paid as provided in the Policy.
- (2) The right to surrender the Policy by notifying the Insurer in writing with a copy to the OWNER that a breach of any of the material provisions of the NCA has been determined to have occurred by a certified copy of a court judgment in an action between ProMedCo-SW and OWNER, or

their heirs, successors, assigns or personal representatives, together with a certification by the prevailing party that all appeal rights, if any, have expired.

- (3) The right to release this assignment or to reassign ProMedCo-SW's interest under this assignment to the OWNER or to the executors, administrators, successors or assigns of the OWNER upon repayment to ProMedCo-SW of the Advanced Premium by the OWNER.

The parties agree that the beneficiary designation under the Policy shall provide that ProMedCo-SW shall be paid the Advanced Premium on the date of OWNER's death. OWNER shall be entitled to receive loans under the Policy provided the amount of such loans shall not diminish the cash remaining in the Policy below the amount necessary to sustain the amount of death benefit under the Policy equal to the sum of (i) the Advanced Premium, (ii) the aggregate loan balance, plus (iii) funds reasonably necessary to pay all premiums relating to the Policy maintaining such death benefit. ProMedCo-SW shall not be entitled to receive loans under the Policy.

Except as provided above, OWNER retains all rights of ownership in the Policy, the right to change the beneficiary and the right to receive such loans, if any, as may be due during the lifetime of OWNER. Provided none of the events described under paragraph (2) above has occurred, OWNER shall have the authority to exercise any of the rights granted him as owner of the policy.

The Insurer is hereby authorized to recognize ProMedCo-SW's claims to rights hereunder without investigating the reason for any such action by ProMedCo-SW, or the validity or amount of the liabilities for Advanced Premiums, or the existence of any default therein, or the application to be made by ProMedCo-SW of any amounts to be paid to ProMedCo-SW.

payment or otherwise an amount of interest in excess of that allowed by the laws of the State of Florida has accrued or has been collected, then and in that event Payee shall have no liability whatsoever, and the Beneficiary shall not be liable except for the refunding of any interest collected in excess of the prevailing legal rate, it being understood and agreed that this Note is not intended to provide for usurious interest. If the Company fails to pay any installment of principal under this Note as and when due and such failure continues for a period of ten days after the Payee hereof has provided the Company with written notice of such default, if a petition with respect to the Company shall be filed under any federal or state bankruptcy or insolvency law and is not dismissed or discharged within 30 days thereafter or if the Company shall make any general assignment for the benefit of creditors, then the entire unpaid principal and interest on this Note shall at once become due and payable at the option of the Payee. The Company shall have the option to prepay all or any part of the outstanding principal on this Note at any time and from time to time.

No delay or omission by the holder in exercising any right hereunder shall operate as a waiver of such right or any other right of the holder. A waiver on one occasion shall not be construed as a bar to or waiver of any right in the future. None of the provisions hereof and none of the rights of the holder shall be deemed to have been waived by acceptance of any past due amount or by any other indulgence granted to the Company. Time is of the essence of this Note. If any provision of this Note shall be found invalid or unenforceable, all other provisions shall remain in full force and effect to the maximum extent permitted by law.

IN WITNESS WHEREOF, the Company has executed this Note as of the day and year first above written:

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

-5-

**GUARANTY BY PROMEDCO MANAGEMENT COMPANY**

All obligations of ProMedCo of Southwest Florida, Inc. set forth in the above Note are hereby guaranteed by ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo of Southwest Florida, Inc. Such guaranty shall be absolute and unconditional and shall not be affected by any bankruptcy or insolvency of ProMedCo-SW.

**PROMEDCO MANAGEMENT COMPANY**

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

The sole signature of ProMedCo-SW (or any officer of ProMedCo-SW) shall be sufficient for the exercise of its rights hereunder and the exercise of any such right shall, to the extent hereof, operate to release or surrender the interest of all parties claiming any interest in the Policy. The sole receipt of ProMedCo-SW for any sums received shall be a full discharge and release therefor to the Insurer.

Dated as of this 14<sup>th</sup> day of April, 1997.

OWNER:



Name: G. J. COURVILLE

PROMEDCO OF SOUTHWEST FLORIDA, INC.

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

Recorded and filed at the Home Office of \_\_\_\_\_  
this \_\_\_\_\_  
day of April, 1997.

Authorized Signature

The sole signature of ProMedCo-SW (or any officer of ProMedCo-SW) shall be sufficient for the exercise of its rights hereunder and the exercise of any such right shall, to the extent hereof, operate to release or surrender the interest of all parties claiming any interest in the Policy. The sole receipt of ProMedCo-SW for any sums received shall be a full discharge and release therefor to the Insurer.

Dated as of this 23<sup>rd</sup> day of April, 1997.

OWNER:

Name \_\_\_\_\_

PROMEDCO OF SOUTHWEST FLORIDA, INC.

By [Signature]  
Name Dale K. Edwards  
Title Vice President

Recorded and filed at the Home Office of \_\_\_\_\_ this  
day of \_\_\_\_\_ 1997.

Authorized Signature

## ESCROW AGREEMENT

This Escrow Agreement ("Escrow Agreement") is made as of this 23rd day of April 1997 by and among ProMedCo of Southwest Florida, a Florida corporation ("ProMedCo-SW") which is a wholly owned subsidiary of ProMedCo Management Company, a Delaware corporation ("ProMedCo"), GARY C. COURVILLE, M.D. an individual residing in Naples, Florida ("INDIVIDUAL"), and TRANS FINANCIAL BANK N.A. Agent").

### WITNESSETH:

WHEREAS, INDIVIDUAL and ProMedCo-SW have entered into a certain Split-Dollar Agreement (And Non-Competition and Other Agreements) (the "Split-Dollar Agreement"); The aforesaid agreement obligates INDIVIDUAL, among other things, to enter into a five year employment agreement with Naples Medical Center, P.A., to abide by certain covenants not to compete and confidentiality provisions for the direct benefit of ProMedCo-SW in return for ProMedCo-SW's agreement to pay the premiums on life insurance policy number \_\_\_\_\_ insuring the life of INDIVIDUAL (the "Policy") issued by either ITT Hartford Life Insurance Companies or Pacific Mutual Life Insurance Company, as designated by INDIVIDUAL (the "Insurer"); and

WHEREAS, the Split-Dollar Agreement requires ProMedCo-SW to deposit cash and the note described therein in escrow with Escrow Agent or any successor escrow agent at closing to establish the escrow and to contribute to the escrow assets that shall be held therein subject to the claims of ProMedCo-SW's creditors in the event of ProMedCo-SW's insolvency, as herein defined until paid to Insurer at such times as specified in the Split-Dollar Agreement

WHEREAS, it is the intent of the parties that this Escrow Agreement qualify as a rabbi trust under applicable law and its provisions shall be construed consistent with that intent.

NOW, THEREFORE, it is agreed among all the parties:

1. Escrow. As of the date of this Escrow Agreement ProMedCo-SW will deliver to Escrow Agent cash in the amount of \$170,903 and a note with a face amount of \$253,780 which shall constitute the initial principal of the escrow. The principal of the escrow as it exists from time to time shall be referred to as the "Escrow Fund". The term "Escrow Earnings" shall be used to refer to the net earnings and realized appreciation, if any, of the Escrow Fund. Escrow Agent will accept and hold the Escrow Fund and any Escrow Earnings thereon as escrow agent hereunder, and shall make distribution of the Escrow Fund and any Escrow Earnings thereon held by it only in such a manner and at such time as shall be authorized and provided herein. The Escrow Fund of the escrow, and any Escrow Earnings shall be held separate and apart from other funds of the Escrow Agent and shall be used exclusively for the uses and purposes set forth in the Split-Dollar Agreement and the

general creditors of ProMedCo-SW as herein set forth. INDIVIDUAL shall have no preferred claim on, or any beneficial ownership interest in, any assets of the escrow. Escrow Earnings shall be paid to INDIVIDUAL periodically, but not less than annually by Escrow Agent unless otherwise provided in accordance with Section 5 hereof. Any rights created under the Split-Dollar Agreement and this Escrow Agreement shall be mere unsecured contractual rights of the INDIVIDUAL and INDIVIDUAL's heirs and assigns against ProMedCo-SW and any guarantor of its performance. The INDIVIDUAL and his heirs and assigns shall have no preferred claim on, or any beneficial ownership in, any of the assets of this escrow. Any assets held under this Escrow Agreement will be subject to the claims of ProMedCo-SW's general creditors under federal and state law in the event of its insolvency, as defined in paragraph 5 (a) herein.

2. Investment of Escrow Funds. The Escrow Funds may be invested either in money market accounts whose holdings are limited to United States Treasury obligations or in individual securities issued by the United States Treasury, as instructed by INDIVIDUAL, subject to ProMedCo-SW's approval of the investment, provided ProMedCo-SW's approval shall not be withheld if the investments will mature at such dates as will allow the Policy premiums to be paid on or before the time required by Section 3. Any funds awaiting investment for any reason may be deposited in the interest-bearing deposit account that Escrow Agent uses for short-term investments. Escrow Agent shall have no responsibility, or obligation to monitor, or to report to INDIVIDUAL or ProMedCo-SW regarding, the value or credit rating of the investment in the Escrow Fund. Escrow Agent shall not be responsible for any change in the value of the Escrow Fund at any time, including diminution in value rendering the required payments due in Section 3.

3. Delivery of Cash.

a. Escrow Agent shall pay to Insurer from the Escrow Fund the following sums on the following dates for the payment of insurance premiums under the Policy:

within 25 days of the due date of the initial Premium	\$84,593
within 25 days of the first anniversary of the date the Policy is issued	\$84,593
within 25 days of the second anniversary of the date the Policy is issued	\$84,593
within 25 days of the third anniversary of the date the Policy is issued	\$84,593

within 25 days of the \$84,593  
fourth anniversary of the  
date the Policy is issued

Amounts not paid will continue to be held in escrow. Simultaneously with the first payment to the Insurer, Escrow Agreement shall pay to Waller Lansden Dortch & Davis, A Professional Limited Liability Company ("WLDD"), the sum of \$1,910. The remainder of the Escrow Fund after completion of the payments required above shall be paid to INDIVIDUAL. The Escrow Agent shall have no responsibility for determining whether any payment may be made with respect to the Policy without causing the Policy to become a modified endowment contract.

b. Whenever there shall be delivered to Escrow Agent a determination as prescribed below that the Policy has lapsed, been surrendered or has otherwise terminated or failed to remain in force, Escrow Agent shall promptly deliver the Escrow Fund in an amount equal to the principal of the Escrow Funds to ProMedCo-SW and the Escrow Earnings to the INDIVIDUAL. The determination referred to above shall be in the form of a certificate signed by Insurer stating that the Policy has lapsed, been surrendered, canceled, or has otherwise terminated or failed to remain in force.

c. Whenever there shall be delivered to Escrow Agent a certified copy of the INDIVIDUAL's death certificate, Escrow Agent shall promptly deliver the Escrow Fund to ProMedCo-SW and the Escrow Earnings, net of expenses, to the INDIVIDUAL's estate.

d. Whenever there shall be delivered to Escrow Agent a determination, in one of the forms described below, that ProMedCo-SW is entitled to receive the Escrow Fund based upon the occurrence of the breach by INDIVIDUAL of any material provision of the Split Dollar Agreement, or by mutual agreement of the parties, Escrow Agent shall promptly deliver an amount equal to the Escrow Fund, to ProMedCo-SW and the Escrow Earnings to the INDIVIDUAL. The determination referred to above shall be in the form of (1) a certificate signed by ProMedCo-SW and by the INDIVIDUAL, or (2) a certified copy of an arbitration award and an arbitration proceeding instituted by mutual agreement, or (3) a certified copy of a court judgment in an action between ProMedCo-SW and INDIVIDUAL, or their heirs, successors, assigns or personal representatives, together with a certification by the prevailing party that all appeal rights, if any, have expired.

4. Removal of Escrow Agent. The INDIVIDUAL may request the Escrow Agent be removed. In such case, ProMedCo-SW shall name a successor corporate Escrow Agent that is acceptable to the INDIVIDUAL and to ProMedCo-SW. Upon such removal, all reasonable and appropriate fees due Escrow Agent shall be paid by INDIVIDUAL. Upon receiving notice of its removal, Escrow Agent shall promptly deliver the entire balance held hereunder to the successor escrow agent identified by ProMedCo-SW.

5. Escrow Agent Responsibility Regarding Payments to Escrow Beneficiary When ProMedCo-SW is Insolvent.

a. Escrow Agent shall continue payment of premiums on the Policy to Insurer unless ProMedCo-SW is insolvent and Escrow Agent is notified of same by an officer or director of ProMedCo-SW, a person claiming to be a creditor of ProMedCo-SW, a bankruptcy trustee, or other appropriate judicial authority or Escrow Agent has actual knowledge of such insolvency. ProMedCo-SW shall be considered "Insolvent" for purposes of this Escrow Agreement if (i) ProMedCo-SW is unable to pay its debts as they become due or (ii) ProMedCo-SW is subject to a pending proceeding as a debtor under the United States Bankruptcy Code.

b. At all times during the continuance of this Agreement as provided in Paragraph 1 above, the principal and income (until paid to the Insurer or INDIVIDUAL, as herein provided) of the Escrow shall be subject to claims of general creditors of ProMedCo and ProMedCo-SW under federal and state law as set forth below, however, in no event shall the general creditors of ProMedCo-SW have rights greater than ProMedCo-SW.

(i) ProMedCo-SW shall have the duty to promptly inform Escrow Agent in writing of the insolvency of ProMedCo-SW. If a person claiming to be a creditor of ProMedCo-SW alleges in writing to Escrow Agent that ProMedCo-SW has become insolvent, the Trustee shall determine whether ProMedCo-SW is insolvent and, pending such determination, Escrow Agent shall discontinue payment of benefits.

(ii) Unless Escrow Agent has actual knowledge of the insolvency of ProMedCo-SW or has received notice from ProMedCo-SW or a person claiming to be a creditor alleging that ProMedCo-SW is insolvent, Escrow Agent shall have no duty to inquire whether ProMedCo-SW is insolvent. Escrow Agent may in all events rely on such evidence concerning the solvency of ProMedCo and ProMedCo-SW as may be furnished to Escrow Agent and that provides Escrow Agent with a reasonable basis for making a determination concerning the solvency of ProMedCo-SW.

(iii) If at any time Escrow Agent has determined that ProMedCo-SW is insolvent, Escrow Agent shall discontinue payments to Insurer and INDIVIDUAL. In such event, Escrow Agent shall hold the assets of the escrow for the benefit of the general creditors of ProMedCo-SW. Nothing in this Escrow Agreement shall in any way diminish any rights of INDIVIDUAL to pursue INDIVIDUAL's rights as a creditor of ProMedCo-SW with respect to benefits due under the Split-Dollar Agreement or otherwise.

(iv) Escrow Agent shall resume the payment of premiums to Insurer and INDIVIDUAL in accordance with Section 3 of this Escrow Agreement only after Escrow Agent has determined that ProMedCo-SW are not insolvent or is no longer insolvent.

c. Provided that there are sufficient assets, if Escrow Agent discontinues the payment of premiums from the Escrow Fund pursuant to Section 5 (b) hereof and subsequently resumes such payments, the first payment following such discontinuance shall include the aggregate amount of all payments due to be paid to Insurer under the terms of the Split-Dollar Agreement for the period of such discontinuance, less the aggregate amount of any payments made to Insurer by ProMedCo-SW or ProMedCo or INDIVIDUAL in lieu of the payments provided for hereunder during any such period of discontinuance. In the event that INDIVIDUAL has made any payments directly during the period of discontinuance, Escrow Agent shall reimburse INDIVIDUAL the principal amount thereof from the Escrow Fund.

6. Event that the Contemplated Insurance is not Issued

The parties hereto acknowledge and agree that in the event an insurance policy(s) is applied for and, for whatever reason beyond the control of the INDIVIDUAL(s), is not issued as contemplated under this Escrow Agreement and certain related documents, the funds placed into escrow shall be delivered to the individual(s) who were intended to be insured by such policy(s).

7. Event that INDIVIDUAL is Deceased Before Insurance Issued

The parties hereto acknowledge and agree that in the event that INDIVIDUAL dies before the insurance policy is issued as contemplated under this Escrow Agreement and certain related documents, the funds placed into escrow shall be delivered to the estate of the INDIVIDUAL.

8. General

a. This Escrow Agreement shall become effective as of the date hereof, and shall continue in force until the final distribution of the Escrow Fund held by Escrow Agent hereunder or until the INDIVIDUAL and ProMedCo-SW mutually approve the termination of the escrow, prior to the time all payments and distributions have been made. In the event of such a voluntary termination, all assets in the escrow shall be returned to ProMedCo-SW.

b. Escrow Agent shall be paid an annual fee of \$600.00 plus additional fees based on services in amounts agreed upon in advance by the parties and Escrow Agent shall be entitled to reimbursement for all documented out-of-pocket expenses that it incurs with respect to its duties hereunder. The escrow fee is according to a current standard fee schedule in effect at Trans Financial Bank, N.A. and is subject to review and revision at any time. Escrow Agent must advise in writing all parties to the Escrow Agreement of any change in the standard fee schedule to which this account is subject no less than 60 days prior to such change going into effect. Such fees and expenses of the Escrow Agent shall be payable by INDIVIDUAL except that any fees incurred by the Escrow Agent as a result of any actual or alleged insolvency of ProMedCo-SW shall, as between INDIVIDUAL and ProMedCo-SW, be the responsibility of ProMedCo-SW. INDIVIDUAL agrees to indemnify Escrow Agent for all reasonable fees, including attorneys' fees, and any other out-of-pocket costs Escrow Agent incurs as a result of serving as Escrow Agent. If INDIVIDUAL fails to pay such fees, costs and expenses within ninety (90) days after written demand for payment, Escrow Agent shall have a lien on all funds, in preference to all claims and delivery of cash obligations in Section 3, for payment of such fees and expenses. INDIVIDUAL shall be liable to ProMedCo-SW for the amount of any Escrow Agent fees, costs and expenses paid out of the Escrow Fund pursuant to this Section. ProMedCo-SW shall have no responsibility for the payment of any fees, costs or expenses of the Escrow Agent.

c. Escrow Agent's duties are entirely administrative, not discretionary. Escrow Agent shall have those powers conferred on escrow agents and trustees by Florida law, except as otherwise provided or limited herein. Notwithstanding any powers granted to Escrow Agent pursuant to this Escrow Agreement or by applicable law, Escrow Agent shall not have any power that could give this escrow the objective of carrying on a business and dividing the gains therefrom, within the meaning of Section 301.7701-2 of the Procedure and Administrative Regulations promulgated pursuant to the Internal Revenue Code. Escrow Agent shall have no responsibility for selections of or other decisions about investment vehicles or insurance. Its sole duties arise under this Escrow Agreement. It shall have no duties whatsoever arising from any other agreements between, concerning, or affecting INDIVIDUAL and ProMedCo-SW. Escrow Agent shall have no responsibility to ProMedCo-SW or INDIVIDUAL except those specifically provided herein and shall not be responsible for anything done or omitted to be done by it, except for its own gross negligence or willful acts or omissions. ProMedCo-SW and INDIVIDUAL

covenant that they will not commence any action against Escrow Agent, at law, in equity or otherwise, as a result of any action taken or thing done by Escrow Agent pursuant to this Escrow Agreement, or for any distribution made as authorized hereunder, except for Agent's own gross negligence or willful acts or omissions. Escrow Agent shall have no liability for following the instructions contained in this Escrow Agreement or any court or administrative order. Escrow Agent shall have no responsibility for verifying the genuineness, correctness or competence of any such statement, notice, authorization, request, consent, order or other document.

d. Notwithstanding any other provision of the Escrow Agreement, Escrow Agent:

(i) shall be under no duty to institute or defend any action, suit or proceeding, or protest or appeal any court or administrative order, in connection with this Escrow Agreement;

(ii) may refrain from taking any action, other than keeping all property held by it in escrow, if (1) it is uncertain concerning its duties or right under this Escrow Agreement or under any laws or regulations that might affect or override this Escrow Agreement; (2) it receives claims or demands concerning this Escrow Agreement from any person or entity; or (3) receives instructions that might be in conflict with any of the terms of this Escrow Agreement.

(iii) may, but shall not be required to, consult counsel of its own choice about and/or seek judicial resolution in any Florida State Court of any matter in which it is uncertain concerning this Escrow Agreement, with its expenses paid as provided in Section 8(b) of this Escrow Agreement; and

(iv) shall not be responsible for making the payments required by Section 3 to the extent the amount of the Escrow Fund is not sufficient to make such payment.

e. The Escrow Agent shall make provisions for the reporting and withholding of any federal, state or local taxes that may be required to be withheld with respect to the payment of funds to the INDIVIDUAL pursuant to the terms of this Agreement and shall pay or cause to be paid amounts withheld to the appropriate taxing authorities or determine that such amounts have been reported, withheld and paid by ProMedCo-SW. Any amounts paid pursuant to this subparagraph shall be deemed to have been paid to INDIVIDUAL. In the event that the INDIVIDUAL is to receive an "in kind" Escrow Earnings distribution, Escrow Agent shall have the right to require that the INDIVIDUAL remit to Escrow Agent an amount of cash sufficient to satisfy any Federal, state and/or local tax withholding requirements.

f. All distributions required to be made by Escrow Agent to ProMedCo-SW or INDIVIDUAL hereunder shall be made in accordance with written instructions furnished to Escrow Agent as set forth in Section 3, and upon Escrow Agent making all distributions required to be under Section 3 to the Insurer, INDIVIDUAL, ProMedCo-SW, or WLDD, as may be required by the terms of this Escrow Agreement, all distributions so made shall be valid and effectual to discharge liability of Escrow Agent with respect to the application of the proceeds of any distribution made by it.

g. Escrow Agent agrees that ProMedCo-SW and INDIVIDUAL may, by mutual agreement at any time, remove Escrow Agent as escrow agent hereunder, and substitute another bank, Escrow company, or other independent institutional third party therefor, in which event Escrow Agent upon receipt of written notice thereof, shall account for and deliver to such substituted Escrow Agent the Escrow Fund, less any amount then due and unpaid to it for fees, costs and expenses as herein provided for, and Escrow Agent shall thereafter be discharged of all liability hereunder.

h. Escrow Agent may resign from its position as escrow agent upon providing sixty (60) day prior written notice of its resignation to INDIVIDUAL and ProMedCo-SW; provided, however, INDIVIDUAL and ProMedCo-SW shall each have the right to waive the notice period in writing. If INDIVIDUAL and ProMedCo-SW do not by mutual agreement substitute a bank, escrow company, or other independent third party by the end of the sixty (60) day notice period, Escrow Agent shall have the right to petition a court of competent jurisdiction to appoint a successor escrow agent. It is agreed by all parties that the venue shall be the Florida State Courts or Federal District Court of Southern District of Florida, as courts of competent jurisdiction. Payment of attorney's fees and other costs shall be as provided in Section 8(b). Upon accounting for and delivering the Escrow Fund to a successor escrow agent, Escrow Agent shall be discharged of all liability hereunder.

i. All notices, authorizations, requests or demands required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given three (3) days after deposit in the United States Mail, addressed as follows:

To ProMedCo-SW: ProMedCo-SW  
c/o ProMedCo Management Company  
801 Cherry Street  
Suite 1450  
Fort Worth, TX 76102  
Attention: Chief Executive Officer

With a copy to: John E. Gillmor, Esq.  
Boult, Cummings, Conners & Berry, PLC  
414 Union Street, Suite 1600  
Nashville, TN 37219

To INDIVIDUAL at the address at the foot of this Agreement.

With a copy to: David J. Menkhous, Esq.  
Moore & Menkhous, P.A.  
4800 N. Federal Hwy., Suite 210-A  
Boca Raton, FL 33431

To Escrow Agent: Trans Financial Bank, N.A.  
814 Church Street, 5th Floor  
Nashville, TN 37203  
Attention: Tony Scoville

A United States Mail Registered or Certified mail receipt showing mailing in accordance with this Section shall be conclusive, in the absence of other evidence, of the date and fact of mailing. Any notice given hereunder shall be deemed delivered at the time of deposit in the United States Mail. Any party hereto may change the address to which notices are to be delivered by giving to the other parties not less than ten (10) days written notice thereof.

j. This Escrow Agreement does not confer upon any person or entity, other than the parties to it, any legal or equitable rights, remedies or claims.

k. This Escrow Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Florida (excluding its conflicts of law rules).

l. Escrow Agent shall have no responsibility or obligation except as set forth in a writing it signs. This Escrow Agreement may not be modified, amended, rescinded, or terminated except in a writing signed by all parties.

m. This Escrow Agreement shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors (including successor escrow agents) and assigns. Amounts payable to INDIVIDUAL under this Escrow Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subject to attachment, garnishment, levy, execution or other legal or equitable process.

n. This Agreement may be executed in counterparts.

WITNESS, the due execution hereof as of the day and year first above written.

PROMEDCO OF SOUTHWEST FLORIDA, INC.

By: [Signature]  
Name: Dale K. Edwards  
Title: Vice President

OWNER

Address: \_\_\_\_\_

ESCROW AGENT

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

(l) This Escrow Agreement shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors (including successor escrow agents) and assigns.

(m) This Agreement may be executed in counterparts.

WITNESS, the due execution hereof as of the day and year first above written.

PROMEDCO OF SOUTHWEST FLORIDA, INC.

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

OWNER

*[Handwritten Signature]*

Address: 750 University Ln  
Naples FL 34108

ESCROW AGENT

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

**GUARANTY BY PROMEDCO MANAGEMENT COMPANY**

All obligations of ProMedCo of Southwest Florida, Inc. set forth in the above Split Dollar Agreement are hereby guaranteed by ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo of Southwest Florida, Inc.

**PROMEDCO MANAGEMENT COMPANY**

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

l. Escrow Agent shall have no responsibility or obligation except as set forth in a writing it signs. This Escrow Agreement may not be modified, amended, rescinded, or terminated except in a writing signed by all parties.

m. This Escrow Agreement shall inure to the benefit of, and be binding upon the parties hereto and their respective heirs, executors, administrators, personal representatives, successors (including successor escrow agents) and assigns. Amounts payable to INDIVIDUAL under this Escrow Agreement may not be anticipated, assigned (either at law or in equity), alienated, pledged, encumbered or subject to attachment, garnishment, levy, execution or other legal or equitable process.

n. This Agreement may be executed in counterparts.

WITNESS the due execution hereof as of the day and year first above written.

PROMEDCO OF SOUTHWEST FLORIDA, INC.

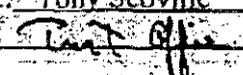
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OWNER

Address: \_\_\_\_\_  
\_\_\_\_\_

ESCROW AGENT

TRANS FINANCIAL BANK, N.A.

By:   
Name: Tony Scoville  
Title: 

PROMEDCO OF SOUTHWEST FLORIDA, INC.  
NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND NO INTEREST THEREIN MAY BE SOLD OR TRANSFERRED WITHOUT REGISTRATION UNDER THE ACT OR AN EXEMPTION THEREFROM.

\$253,780

FOR VALUE RECEIVED, ProMedCo of Southwest Florida, Inc., a Florida corporation (the "Company"), promises to pay to TRANS FINANCIAL BANK, N.A. ("Payee") for the principal sum of DOLLARS (\$253,780) with out interest thereon. The principal of this Note together with interest thereon shall be due and payable in three equal annual installments commencing on April 22, 1998. Interest at the rate of nine percent (9%) per annum on then outstanding principal balance of this Note shall be paid directly to Gary C. Courville, M.D. ("Beneficiary") at the same time as the installments of principal in the form of options to purchase \$.01 par value common stock of ProMedCo Management Company, a Delaware corporation, at an exercise price of \$9.00 per share. The number of shares covered by the options issued on each payment date shall be determined by a independent valuation firm acceptable to the Board of Directors of Naples Medical Center, P.A. and the Company. The valuation methodology used by the independent valuation firm shall be one commonly used within the securities industry. Such options shall be delivered directly to the Beneficiary. If the most recent closing price at which the common stock of ProMedCo Management Company was traded prior to the relevant anniversary is \$9.00 or less, then the Company shall have the right to pay the interest in cash and the Beneficiary shall have the right to demand and receive the interest in cash.

All payments of principal on this Note are payable in lawful money of the United States of America at Payee's principal office in Naples, Florida, or at such other place as the holder may designate in writing. The Company expressly waives presentment, notice of protest, and notice of dishonor, and agrees to pay all reasonable costs of collection when incurred, including reasonable attorneys' fees, and expressly agrees that this Note or any payment hereunder may be extended from time to time without, in any way, excusing the obligation of the Company. This Note is to be construed in accordance with the laws of the State of Florida. If any provision of this Note is in conflict with any law of the State of Florida and/or of the United States, or in the event that by reason of acceleration of payment or otherwise an amount of interest in excess of that allowed by the laws of the State of Florida and/or of the United States, or in the event that by reason of acceleration of payment or otherwise an amount of interest in excess of that allowed by the laws of the State of Florida has accrued or has been collected, then and in that event Payee shall have no liability whatsoever, and the Beneficiary shall not be liable except for the refunding of any interest collected

in excess of the prevailing legal rate, it being understood and agreed that this Note is not intended to provide for usurious interest. If the Company fails to pay any installment of principal under this Note as and when due and such failure continues for a period of ten days after the Payee hereof has provided the Company with written notice of such default, if a petition with respect to the Company shall be filed under any federal or state bankruptcy or insolvency law and is not dismissed or discharged within 30 days thereafter or if the Company shall make any general assignment for the benefit of creditors, then the entire unpaid principal and interest on this Note shall at once become due and payable at the option of the Payee. The Company shall have the option to prepay all or any part of the outstanding principal on this Note at any time and from time to time.

No delay or omission by the holder in exercising any right hereunder shall operate as a waiver of such right or any other right of the holder. A waiver on one occasion shall not be construed as a bar to or waiver of any right in the future. None of the provisions hereof and none of the rights of the holder shall be deemed to have been waived by acceptance of any past due amount or by any other indulgence granted to the Company. Time is of the essence of this Note. If any provision of this Note shall be found invalid or unenforceable, all other provisions shall remain in full force and effect to the maximum extent permitted by law.

IN WITNESS WHEREOF, the Company has executed this Note as of the day and year first above written.

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By [Signature]  
Name Dale K. Edwards  
Its: Vice President

**GUARANTY BY PROMEDCO MANAGEMENT COMPANY.**

All obligations of ProMedCo of Southwest Florida, Inc. set forth in the above Note are hereby guaranteed by ProMedCo Management Company, a Delaware corporation which is the sole shareholder of ProMedCo of Southwest Florida, Inc. Such guaranty shall be absolute and unconditional and shall not be affected by any bankruptcy or insolvency of ProMedCo-SW.

**PROMEDCO MANAGEMENT COMPANY**

By [Signature]  
Name Dale K. Edwards  
Title Vice President

BOULT  
CUMMINGS  
CONNERS  
& BERRY  
P.L.C.

LAW OFFICES  
414 UNION STREET, SUITE 1600  
POST OFFICE BOX 198062  
NASHVILLE, TENNESSEE 37219

TELEPHONE (615) 244-2392  
FACSIMILE (615) 252-2380  
INTERNET Web <http://www.lccb.com/>

April 23, 1997

Naples Medical Center, P.A.  
400 Eighth Street, North  
Naples, FL 33940  
Attention: President

Ladies and Gentlemen:

We have acted as counsel to ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), and ProMedCo Management Company, a Delaware corporation ("ProMedCo") in connection with the preparation of the Asset Purchase Agreement dated as of April 14, 1997 (the "Agreement"), and the Undertaking, between ProMedCo-SW and Naples Medical Center, P.A. ("SELLER") and the guaranty at the foot of the Undertaking executed by ProMedCo (the "ProMedCo Guaranties") and have participated on behalf of ProMedCo-SW and ProMedCo in connection with the purchase by ProMedCo-SW of certain assets from SELLER. The Agreement and Undertaking are collectively referred to herein as the "Acquisition Documents". This Opinion Letter is provided to you at the request of ProMedCo-SW pursuant to Section 7.2 of the Acquisition Agreement. Except as otherwise indicated herein, capitalized terms used in this Opinion Letter are defined as set forth in the Acquisition Agreement or the Accord (see below).

This Opinion Letter is governed by, and shall be interpreted in accordance with, the Legal Opinion Accord (the "Accord") of the ABA Section of Business Law (1991). As a consequence, it is subject to a number of qualifications, exceptions, definitions, limitations on coverage and other limitations, all as more particularly described in the Accord, and this Opinion Letter should be read in conjunction therewith. The attorneys in this firm are licensed to practice law in the State of Tennessee and consequently the law covered by the opinions expressed herein is limited to the Federal Law of the United States, the corporate law of the States of Delaware and Florida and in reliance on public documents issued by the States of Delaware and Florida and certificates of officers of ProMedCo and ProMedCo-SW.

Naples Medical Center, P.A.  
April 23, 1997  
Page 2

We have relied upon factual representations made by ProMedCo-SW in Article 3 of the Acquisition Agreement.

Based upon the foregoing and subject to the foregoing, we are of the opinion that:

1. The Acquisition Documents are enforceable against ProMedCo-SW.
2. The ProMedCo Guaranties are enforceable against ProMedCo.
3. The ProMedCo Stock has been duly authorized, validly issued and is non-assessable.
4. Execution and delivery by ProMedCo-SW of, and performance of its agreements in, the Acquisition Documents and the execution and delivery by ProMedCo of, and performance of its agreements in, ProMedCo Guaranties, do not (i) violate the Constituent Documents, (ii) breach, or result in a default under, any existing obligation of ProMedCo-SW or ProMedCo under contracts dealing with money borrowed by either such corporation known to us, or (iii) breach or otherwise violate any existing obligation of ProMedCo-SW or ProMedCo under Court Orders identified in Article 4 of the Acquisition Agreement and the Schedules pertaining thereto.
5. Execution and delivery by ProMedCo-SW and ProMedCo of, and performance by each such corporation of its agreements in, the Acquisition Documents and ProMedCo Guaranties, as the case may be, do not violate applicable provisions of statutory law or regulation.

The General Qualifications apply to the opinions set forth above.

This Opinion Letter may be relied upon by you only in connection with the transaction and may not be used or relied upon by you or any other person for any purpose whatsoever, except to the extent authorized in the Accord, without in each instance, our prior written consent.

Very truly yours,

BOULT, CUMMINGS, CONNERS & BERRY, PLC

*Boul, Cummings, Connors & Berry, PLC*

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding is made and entered into as of this 14<sup>th</sup> day of April, 1997 by and among Drs. Wallace McLean, Stephen Thompson, Frank Adiutori, Kevin Collins and Thomas Beckett (hereinafter collectively referred to as the "NOB Physicians"), each of whom has heretofore been a stockholder-employee of Naples Obstetrics & Gynecology, M.D., P.A. ("NOB") and all of the stockholder-employees of Naples Medical Center, P.A. ("NMC") (hereinafter collectively referred to as the "NMC Physicians").

### W I T N E S S E T H

WHEREAS, NOB, NMC, the NOB Physicians and the NMC Physicians have each simultaneously entered into transactions with ProMedCo Management Company and ProMedCo of Southwest Florida, Inc. (collectively, "PMC"), pursuant to which PMC has acquired substantially all of the practice assets of NOB and NMC, respectively, and the individual goodwill associated with the respective medical practices of the individual NOB Physicians and NMC Physicians, respectively; and

WHEREAS, PMC has entered into a long-term management services agreement (the "Service Agreement") with NMC pursuant to which PMC will provide all facilities, personnel, management services, access to capital and other practice management services to NMC; and

WHEREAS, the NOB Physicians, the NMC Physicians and PMC all desire to have the NOB Physicians become physician stockholder-employees of NMC and, thereby, obtain the benefits of the Service Agreement; and

WHEREAS, the NOB Physicians and the NMC Physicians wish to memorialize the basic principles upon which the NOB Physicians shall become members of NMC and thereafter carry on their respective medical practices as part of NMC and participate in the governance of NMC;

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct in all material respects and form the basis for this Agreement. In the event that, for whatever reason, either NOB or NMC shall not consummate its pending transactions with PMC, this Agreement shall be null and void ab initio, and neither party shall have any liability of any kind whatsoever to the other.

2. Acquisition of NMC Stock. For and in consideration of the total sum of \$3,100 per NOB Physician, each NOB Physician shall acquire from NMC 100 shares of NMC's \$1.00 par value common stock

*which shall be paid in the form of a non-interest bearing promissory note payable at such time, if ever, as NMC provides evidence to the NOB Physicians that it has used or committed to use the \$3,100 capital contributed from each NMC Physician previously paid for a valid corporate purpose;*

(the "Stock"). Regardless of the number of shares of Stock owned at any time or from time to time by the NOB Physicians in comparison to all shares of Stock outstanding, the NOB Physicians collectively shall have the right to elect one (1) member of the Board of Directors of NMC, for the three (3) year period from the date hereof, and such member shall not be subject to removal or re-election other than by action of the NOB Physicians. Additionally, the NOB Physicians shall have the right, for the initial three (3) years of the term of the Service Agreement, to appoint one of the physician members to the Policy Council (as defined in the Service Agreement).

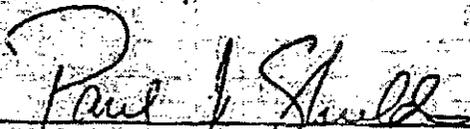
3. Shareholders Agreement. With respect to the NMC Shareholders Agreement dated as of October 1, 1992 (the "Agreement"), the parties acknowledge that the NOB Physicians shall not have any right in or with respect to, nor be bound by or have any liability with respect to any obligations associated with, the business, real estate, other assets or liabilities of Naples Medical & Professional Center, Inc. Consequently, any references in the Agreement to the "Corporation" shall be deemed not to apply with respect to the NOB Physicians. Each NOB Physician hereby covenants and agrees to be bound by the terms of the Agreement and to execute and deliver a joinder or other instrument as reasonably requested by NMC.

The provisions of the Agreement imposing restrictions upon the transferability of the Stock shall apply with full force and effect to the Stock held by the NOB Physicians.

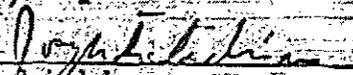
4. Additional Considerations. The parties acknowledge and agree that the foregoing principles and understandings form the basis for their agreements to work together in NMC; however, there may be additional changes or additions to the Agreement which would be mutually beneficial to all parties. Consequently, the NOB Physicians and NMC Physicians agree to work together to identify and negotiate in good faith any necessary amendments with respect thereto.

IN WITNESS WHEREOF, the parties have executed this Memorandum of Understanding as of the day and year first above written.

NMC PHYSICIANS:

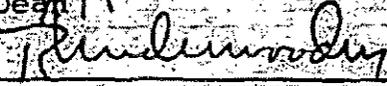
  
Paul J. Shields

  
Douglas L. Boynton

  
Joseph Richichi

  
Dale B. Adamson

  
Ed Dean

  
C. Richard Underwood

*Raymond H. Duncan MD*  
Raymond H. Duncan

*Gary C. [unclear]*  
Gary C. [unclear]

*Matthew P. Powers*  
Matthew P. Powers

*Ralph J. Dawson*  
Ralph J. Dawson

*Gary D. Case*  
Gary D. Case

*Carolyn M. Venable*  
Carolyn M. Venable

*Charles S. Eytel*  
Charles S. Eytel

*Daniel J. Morris*  
Daniel J. Morris

*Catherine N. Kowal*  
Catherine N. Kowal

*Michael T. Seals*  
Michael T. Seals

*Eugene F. Burke*  
Eugene F. Burke

*Robert W. Wilson*  
Robert W. Wilson

*Alan S. Galbut*  
Alan S. Galbut

*William R. Cook*  
William R. Cook

*James M. Venable, III*  
James M. Venable, III

*Charles T. Buisse*  
Charles T. Buisse

*Francis D. Hussey*  
Francis D. Hussey

*Albert L. Kerns*  
Albert L. Kerns

*Jill D. Hickey*  
Jill D. Hickey

*Terrance A. Havig*  
Terrance A. Havig

*Leslie J. Schultze*  
Leslie J. Schultze

*Kendall L. Wise*  
Kendall L. Wise

NOB. PHYSICIANS:

*Wallace McLean*  
Wallace McLean

*Frank Adiutori*  
Frank Adiutori

*Thomas Beckett*  
Thomas Beckett

*Steph Thompson MD*  
Steph Thompson

*Kevin Collins*  
Kevin Collins

Raymond L. Duncan

Robert W. Wilson

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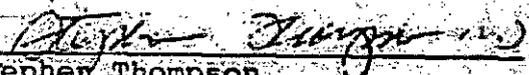
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Thomas Beckett

Stephen Thompson

Kevin Collins

APPENDIX 2.9A

FORM OF SERVICE AGREEMENT

SERVICE AGREEMENT

PROMEDCO OF SOUTHWEST FLORIDA, INC.

AND

NAPLES MEDICAL CENTER, P.A.

Effective March 1, 1997



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## SERVICE AGREEMENT

Service Agreement ("Agreement") dated April 14, 1997, between ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW") and Naples Medical Center, P.A. a Florida professional corporation ("NMC").

### RECITALS:

Subject to the terms and conditions hereof, NMC desires to engage ProMedCo-SW to provide to NMC management services, facilities, personnel, equipment and supplies necessary to operate the Clinic (as defined herein) and ProMedCo-SW desires to accept such engagement.

The parties agree as follows:

### 1. RESPONSIBILITIES OF THE PARTIES

**1.1. General Responsibilities of the Parties.** ProMedCo-SW shall provide NMC with offices, facilities, equipment, supplies, non-professional support personnel, and management and financial advisory services. ProMedCo-SW shall neither exercise control over nor interfere with the physician-patient relationship, which shall be maintained strictly between the physicians of NMC and their patients.

**1.2. NMC's Matters.** NMC shall maintain sole discretion and authority over the financial matters relative to its corporate existence. It shall set compensation levels for NMC Employees. NMC will also be responsible for all other matters pertaining to the operation of NMC.

**1.3. Patient Referrals.** The parties agree that the benefits to NMC do not require, are not payment for, and are not in any way contingent upon the admission, referral or any other arrangement for the provision of any item or service offered by ProMedCo-SW to any of NMC's patients in any facility or laboratory controlled, managed or operated by ProMedCo-SW.

### 2. POLICY COUNCIL

**2.1 Formation and Operation of the Policy Council.** A Policy Council will be established which shall be responsible for the major policies which will serve as the basis for operations of the Clinic. The Policy Council shall consist of eight members. During the first five (5) years, ProMedCo-SW shall designate, at its sole discretion, three members of the Policy Council, one of whom shall be the Administrator of NMC, and who shall have one vote, collectively and NMC at its sole discretion shall designate five members (one of whom shall be a former physician-employee of NOB) who shall have one vote, collectively; thereafter, ProMedCo-SW shall designate four members, one of whom shall be the Administrator of NMC, and who shall have one vote, collectively; and NMC shall designate five (5) members consisting of at least two specialist physicians and at least two primary care physicians, who shall have one vote, collectively. In any discussion respecting the status or compensation of the Administrator of NMC, the Administrator, if a member of the Policy Council, shall absent himself from the meeting. Members of the Policy Council designated by ProMedCo-SW

and by NMC shall be entitled to attend and vote by proxy at any meetings of the Policy Council so long as at least one such representative of the designator is present in person and the most senior member of the group of designees of ProMedCo-SW shall be deemed to hold the proxy of any designee of ProMedCo-SW who is absent from the meeting. Except as may otherwise be provided, the act of a majority of the members of the Policy Council shall be the act of the Policy Council.

**2.2 Duties and Responsibilities of the Policy Council.** During the term of this Agreement, the Policy Council shall have the following duties and responsibilities.

- (a) **Annual Budgets.** All annual capital and operating budgets prepared by ProMedCo-SW, as set forth in Section 3 and employing ProMedCo-SW's financial expertise, shall be subject to the review and approval of the Policy Council, provided, however, ProMedCo-SW shall have final approval of any capital expenditure required by ProMedCo-SW.
- (b) **Administrator.** The selection and retention of the Administrator pursuant to Section 3.1 shall be subject to the reasonable approval of the Policy Council. If NMC is dissatisfied with the services provided by the Administrator, NMC shall refer the matter to the Policy Council. ProMedCo-SW and Policy Council shall in good faith determine whether the performance of the Administrator could be brought to acceptable levels through counsel and assistance, or whether the Administrator should be terminated. ProMedCo-SW shall have the ultimate authority to terminate the Administrator except the initial Administrator, Douglas Whittemore, whose termination shall require approval of the Policy Council.
- (c) **Advertising.** All advertising, marketing, and public relations shall be subject to the prior review and approval of the Policy Council, in compliance with applicable laws and regulations governing professional advertising and in accordance with the standards and medical ethics of the American Medical Association and the Florida Medical Association.
- (d) **Ancillary Services.** The Policy Council shall approve Clinic provided ancillary services based upon the potential profitability of, access to and quality of such services.
- (e) **Capital Improvements and Expansion.** The Policy Council shall determine the priority for any renovation, expansion plans and major equipment expenditures with respect to the Clinic based upon economic feasibility, physician support, productivity and market conditions. Any capital expenditure in excess of \$10,000 shall require the approval of the Policy Council.

- (f) **Exceptions to Inclusion in the Net Revenue Calculation.** The exclusion of any revenue from Net Clinic Revenues, whether now or in the future, shall be subject to the approval of the Policy Council.
- (g) **Grievance Issues.** Subject to the provisions of Section 1.2 of this Agreement, the Policy Council shall consider and make final decisions regarding grievances pertaining to matters not specifically addressed in this Agreement as referred to it by NMC's Board or ProMedCo-SW.
- (h) **Patient Fees.** In consultation with NMC and ProMedCo-SW, the Policy Council shall review and adopt the fee schedule for all physician and ancillary services rendered by the Clinic.
- (i) **Physician Hiring.** The Policy Council, with information and analysis provided by ProMedCo-SW, shall determine the number and type of physicians required for the efficient operation of the Clinic and NMC shall determine the individual physicians to be hired to fill such positions. The approval of ProMedCo-SW shall be required for any variations to the restrictive covenants in any physician employment contract.
- (j) **Provider and Payor Relationships.** The Policy Council shall make the decisions regarding the establishment and maintenance of relationships with institutional health care providers and payors. The Policy Council shall be responsible for approving the allocation of capitation risk pools between the professional and institutional components of these pools to the extent applicable under a payor agreement. ProMedCo-SW and NMC shall use actuarial data from a nationally recognized actuarial firm as agreed to by both parties, for the purposes of allocating capitation funds, for those professional services provided directly by NMC.
- (k) **Strategic Planning.** The Policy Council, with the assistance of ProMedCo-SW, shall develop long-term strategic planning objectives.
- (l) **Determination of Competition.** The Policy Council shall determine which activities by Medical Professionals violate the restrictions of Article 9 hereof and shall determine whether to grant waivers therefrom.

### 3. OBLIGATIONS OF PROMEDCO-SW

During the term of this Agreement, ProMedCo-SW shall provide or arrange for the services set forth in this Section 3, the cost of all of which (other than overhead charges of ProMedCo relating thereto) shall be included in Clinic Expenses. ProMedCo-SW is hereby expressly authorized to perform its services in whatever manner it deems reasonably appropriate, in accordance with policies approved by the Policy Council, and including without limitation, performance of some functions at locations other than the Clinic Facility, provided however, that ProMedCo-SW shall provide NMC with an on-site Administrator (initially Mr. Whittemore) at all times. NMC will not act in a manner

which would prevent ProMedCo-SW from efficiently managing the Clinic Facility operations in a businesslike manner. NMC, through NMC Employees, will provide all medical services. ProMedCo-SW will have no authority, directly or indirectly, to perform, and will not perform, any medical function. ProMedCo-SW may, however, advise NMC as to the relationship between its performance of medical functions and the overall administrative and business functioning of the Clinic.

**3.1 Management and Administration.** During the term of this Agreement, NMC hereby appoints ProMedCo-SW as the sole and exclusive manager and administrator of all non-medical functions and services related to NMC's services at the Clinic. NMC shall perform all medical services, and ProMedCo-SW shall have no authority, directly or indirectly, to perform, and will not perform, any medical function. Without limiting the generality of the foregoing, ProMedCo-SW shall provide the following administrative, management and marketing services as may be required in conjunction with NMC's services at the Clinic. ProMedCo-SW shall hire and supervise an on-site Administrator whose salary and associated costs shall be Clinic Expenses and whose time will be devoted exclusively to NMC and its expansion and development in the area served by NMC, subject to the reasonable approval of the Policy Council, to manage and administer all of the day-to-day business functions of ProMedCo-SW, including without limitation:

**3.1.1 Annual Budgets:** Financial planning and preparation of annual budgets. Annually and at least 30 days prior to the commencement of each fiscal year, ProMedCo-SW shall prepare and deliver to NMC capital and operating budgets reflecting in reasonable detail anticipated revenues and expenses, sources and uses of capital to maintain and enhance NMC's medical practice and Clinic services.

**3.1.2 Financial Statements.** ProMedCo-SW shall prepare monthly and fiscal year unaudited financial statements containing a balance sheet and a statement of income for Clinic operations, which shall be delivered to NMC within 15 days after the close of each calendar month. The fiscal year statement may be examined shall be reviewed by a certified public accountant as selected by ProMedCo-SW in connection with the audit of the financial statements of ProMedCo. If NMC desires an audit in addition to the audit provided by ProMedCo-SW, such an audit would be at NMC's expense.

**3.1.3 Non-Physician Personnel.** ProMedCo-SW will provide all personnel reasonably necessary for the conduct of Clinic operations with the exception of Physician Extenders and Technical Employees. ProMedCo-SW shall determine and cause to be paid the salaries, fringe benefits and any sums withheld for income taxes, unemployment insurance, social security taxes required to be withheld or any other withholding amounts required by applicable law or governmental authority, of all such personnel. Such personnel shall be under the direction, supervision and control of ProMedCo-SW, with those personnel performing patient care services subject to the professional supervision of NMC. If NMC is dissatisfied with the services of any person, NMC shall consult with ProMedCo-SW. ProMedCo-SW shall in good faith determine whether the performance of that employee could be brought to acceptable levels through counsel and assistance, or whether such employee

should be terminated. All of ProMedCo-SW's obligations regarding staff shall be governed by the overriding principle and goal of providing high quality medical care. At ProMedCo-SW's option some or all of the non-physician personnel may be carried on the books of NMC as NMC's employees in which event NMC's costs associated with such employees will be a Clinic Expense.

**3.1.4 Quality Assurance.** ProMedCo-SW will assist NMC in fulfilling its obligation to its patients to maintain high quality medical and professional services, including patient satisfaction programs, employee education, outcomes analysis, clinical protocol development and to implement a risk management program.

**3.1.5 Facilities and Equipment.** ProMedCo-SW will ensure the proper cleanliness of the premises, maintenance and cleanliness of the equipment, furniture and furnishings located on the premises.

**3.1.6 Inventory Control and Purchasing Supplies.** ProMedCo-SW shall order and purchase inventory and supplies, and such other ordinary, necessary or appropriate materials which ProMedCo-SW shall deem to be necessary in the operation of the Clinic, to deliver quality Clinic services in a cost effective manner.

**3.1.7 Managed Care Contracting.** ProMedCo-SW will be responsible for marketing, negotiation, and administering all managed care contracts, subject to the provisions of Section 2.2(j), provided, however, no contract or arrangement regarding the provision of clinical services shall be entered into without NMC's consent.

**3.1.8 Billing and Collections.** ProMedCo-SW shall bill patients and collect all fees for services performed inside or outside the Clinic Facility or arrange for such billing and collection. NMC hereby appoints ProMedCo-SW, for the term hereof, to be its true and lawful attorney-in-fact for the following purposes (i) to bill patients in NMC's name and on its behalf, (ii) to collect accounts receivable resulting from such billing in NMC's name and on its behalf, (iii) to receive payments from Blue Cross and Blue Shield, Medicare, Medicaid, payments from health plans, and all other third party payors; (iv) to receive the cash proceeds of any accounts receivable; (v) to take possession of and endorse in the name of NMC (and/or in the name of an individual physician, such payment intended for purpose of payment of a physician's bill) any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable; and (vi) in accordance with policies adopted by the Policy Council, to initiate legal proceedings in the name of NMC to collect any accounts and monies owed to the Clinic, to enforce the rights of NMC as creditors under any contract or in connection with the rendering of any service, and to contest adjustments and denials by governmental agencies (or its fiscal intermediaries) as third-party payors. All adjustments made for uncollectible accounts, professional courtesies and other activities that do not generate a collectible fee shall be done in a reasonable and consistent manner acceptable to ProMedCo-SW's independent certified public accountants.

**3.1.9 Deposit of Net Clinic Revenues.** During the term of this Agreement, all Net Clinic Revenues collected resulting from the operations of the Clinic shall be deposited directly into a bank account of which NMC shall be the owner ("Account"). ProMedCo-SW and NMC shall maintain their accounting records in such a way as to clearly segregate Net Clinic Revenues from other funds of ProMedCo-SW or NMC. NMC hereby appoints ProMedCo-SW as its true and lawful attorney-in-fact to deposit in the Account all revenues collected. NMC covenants, and shall cause all NMC Employees to covenant, to forward any payments received with respect to Net Clinic Revenues for services provided by NMC and NMC Employees to ProMedCo-SW for deposit. ProMedCo-SW shall have the right to withdraw funds from the Account and all owners of the Account shall execute a revocable standing transfer order ("Transfer Order") under which the bank maintaining the Account shall periodically transfer the entire balance of the Account to a separate bank account owned solely by ProMedCo-SW ("ProMedCo-SW Account"). NMC and ProMedCo-SW hereby agree to execute from time to time such documents and instructions as shall be required by the bank maintaining the Account and mutually agreed upon to effectuate the foregoing provisions and to extend or amend such documents and instructions. Any action by NMC that interferes with the operation of this Section, including, but not limited to, any failure to deposit or have ProMedCo-SW deposit any Net Clinic Revenues into the Account, any withdrawal of any funds from the Account not authorized by the express terms of this Agreement, or any revocation of or attempt to revoke the Transfer Order (otherwise than upon expiration or termination of this Agreement), will constitute a breach of this Agreement and will entitle ProMedCo-SW, in addition to any other remedies that it may have at law or in equity, to seek a court ordered assignment of the following rights:

- (a) To collect accounts receivable resulting from the provision of services to patients of NMC and the NMC Employees;
- (b) To receive payments from patients, third party payor plans, insurance companies, Medicare, Medicaid and all other payors with respect to services rendered by NMC and its NMC Employees;
- (c) To take possession of and endorse any notes, checks, money orders, insurance payments and any other instruments received as payment of such accounts receivable; and
- (d) To collect all revenues of the Clinic.

**3.1.10 Management Information Systems/Computer Systems.** ProMedCo-SW shall supervise and provide information systems that are necessary and appropriate for the operation of the Clinic, all as approved by the Policy Council.

**3.1.11 Legal and Accounting Services.** ProMedCo-SW shall arrange for or render to NMC such business and financial management consultation and advice as may be

reasonably required or requested by NMC and directly related to the operations of the Clinic. ProMedCo-SW shall not be responsible for rendering any legal or tax advice or services or personal financial services to NMC or any employee or agent of NMC.

**3.1.12 Negotiation and Payment of Premiums For All Insurance Products Held By NMC.** ProMedCo-SW shall negotiate for and cause premiums to be paid with respect to the insurance provided for in Section 8. Premiums and deductibles with respect to such policies shall be a Clinic Expense.

**3.1.13 Physician Recruiting.** ProMedCo-SW shall assist NMC in recruiting additional physicians, carrying out such administrative functions as may be appropriate such as advertising for and identifying potential candidates, checking credentials, and arranging interviews; provided, however, NMC shall interview and make the ultimate decision as to the suitability of any physician to become associated with the Clinic. All physicians recruited by ProMedCo-SW and accepted by NMC shall be the sole employees of NMC to the extent such physicians are hired as employees. Any expenses incurred in the recruitment of physicians, including, but not limited to, employment agency fees, relocation and interviewing expenses shall be Clinic Expenses approved by the Policy Council.

**3.1.14 Supervision of Ancillary Services.** ProMedCo-SW shall operate and supervise such ancillary services as approved by the Policy Council.

**3.1.15 Strategic Planning Assistance.** ProMedCo-SW shall assist with and implement the strategic plan as approved by the Policy Council.

**3.1.16 Advertising and Public Relations.** From time to time ProMedCo-SW shall recommend to the Policy Council various advertising and public relations initiatives which shall not be implemented without Policy Council approval.

**3.1.17 Files and Records.** ProMedCo-SW shall supervise and maintain custody of all files and records relating to the operation of the Clinic, including but not limited to accounting, billing, patient medical records, and collection records. Patient medical records shall at all times be and remain the property of NMC and shall be located at Clinic facilities so that they are readily accessible for patient care. The management of all files and records shall comply with applicable state and federal statutes. ProMedCo-SW shall use its reasonable efforts to preserve the confidentiality of patients' medical records and use information contained in such records only for the limited purpose necessary to perform the services set forth herein, provided, however, in no event shall a breach of said confidentiality be deemed a default under this Agreement.

**3.2 Administrator.** ProMedCo-SW shall be responsible for the selection and retention of the Administrator, subject to the provisions of Section 2.2(b).

**3.3 Five Year Business Plan.** Within 180 days following the effective date of the Services Agreement ProMedCo-SW shall prepare, in collaboration with the physician leadership of NMC, a five year business plan. That business plan shall identify growth opportunities and capital and resource requirements for the achievement of these growth opportunities. The business plan shall then be reviewed and, if accepted, approved by the Policy Council. Following this approval, ProMedCo-SW shall prepare and present to the Policy Council an annual budget for the first calendar year of the Services Agreement, including a capital expenditure budget consistent with the five year business plan. Approval by the Policy Council of this annual budget and capital expenditure budget shall initiate a commitment of capital by ProMedCo consistent with the terms of the Services Agreement. This process shall be repeated each calendar year, and on an as needed basis in the event that business conditions change or opportunities arise.

**3.4 Expansion of Clinic.** ProMedCo-SW will pursue various programs to increase revenue and profitability including assisting NMC in adding additional office based procedures, ancillary services and adding additional satellite office(s) as determined by the Policy Council to be beneficial to the Clinic. ProMedCo-SW will also assist in recruiting new physicians and developing relationships and affiliations with other physicians, hospitals, networks, HMOs, etc. To assist in the continued growth and development of the Clinic, ProMedCo-SW may acquire other physician practices. NMC will cooperate with ProMedCo-SW in such expansion efforts and use its reasonable efforts to assist ProMedCo-SW with respect thereto. Without limiting the generality of the foregoing, neither NMC nor ProMedCo-SW will enter into any discussions or agreements with respect to any such matter without the prior consent of the Policy Council. Neither ProMedCo-SW, ProMedCo nor any affiliate of either shall acquire or provide management services to any other medical practices, ancillary providers or medical facilities in Collier, Lee or Charlotte County, other than as a result of combining such entity with NMC on terms and subject to conditions approved by the Policy Council; provided, however, that the foregoing shall not be applicable to any medical practices, ancillary providers or medical facilities in Charlotte County with respect to which ProMedCo had entered into discussions or with which it had a letter of intent on the Effective Date or in the event that a medical practice, ancillary provider or medical facility in Charlotte County shall decline, after exhausting the best and good faith efforts of ProMedCo and NMC, to participate with NMC and the Policy Council shall consent thereto, which consent shall not be unreasonably withheld or conditioned on payment of any consideration to NMC. ProMedCo and ProMedCo-SW shall not be deemed to be in default under this provision if ProMedCo acquires, or is acquired by, an entity with multiple medical facilities both inside and outside of the Collier/Lee/Charlotte County area.

**3.5 Capital.** ProMedCo-SW shall arrange or otherwise provide the capital funds necessary to maintain, expand and otherwise grow NMC, subject to approval of the Policy Council. Any operating capital required by NMC for distinct growth or expansion projects shall be approved by the Policy Council, with repayment terms of that operating capital to ProMedCo also subject to the approval of the Policy Council.

**3.6 Events Excusing Performance.** ProMedCo-SW shall not be liable to NMC for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of

God, unavailability of supplies, or other events over which ProMedCo-SW has no control for so long as such events continue, and for a reasonable amount of time thereafter.

**3.7 Compliance With Applicable Laws.** ProMedCo-SW shall comply with all applicable federal, state and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.

#### **4. OBLIGATIONS OF NMC**

**4.1 Professional Services.** NMC shall provide professional services to patients in compliance at all times with ethical standards, laws and regulations applying to the medical profession. NMC shall also ensure that each physician associated with NMC is licensed by the State of Florida. In the event that any disciplinary actions or medical malpractice actions are initiated against any such physician, NMC shall immediately inform the Administrator of such action and the underlying facts and circumstances. NMC shall carry out a program to monitor the quality of medical care practiced, with ProMedCo-SW's assistance. NMC will cooperate with ProMedCo-SW in taking steps to resolve any utilization review or quality assurance issues which may arise in connection with the Clinic.

**4.2 Employment Of Medical Professional Employees.** NMC shall have complete control of and responsibility for the hiring, compensation, supervision, evaluation and termination of its Medical Professionals, although at the request of NMC, ProMedCo-SW shall consult with NMC regarding such matters. NMC shall enforce formal employee agreements from each of its Medical Professionals hired or contracted, substantially in the form attached to the Asset Purchase Agreements as Appendix 2.9B.

**4.3 NMC Expenses.** NMC shall be solely responsible for the payment of all costs and expenses incurred in connection with NMC operations which are not Clinic Expenses, including, but not limited to, accounting and other professional services fees, salaries and benefits, retirement plan contributions, health, disability and life insurance premiums, payroll taxes, membership in professional associations, continuing medical education, licensing and board certification fees, automobile expenses and expenses associated with provision of cellular telephones for its Physicians Employees and Physician Extenders.

**4.4 Medical Practice.** NMC shall use and occupy the Clinic Facility exclusively for the practice of medicine, and shall comply with all applicable local rules, ordinances and all standards of medical care. It is expressly acknowledged by the parties that the medical practice or practices conducted at the Clinic Facility shall be conducted solely by physicians associated with NMC, and no other physician or medical practitioner shall be permitted to use or occupy the Clinic Facility without the prior written consent of the Policy Council.

4.5 Professional Insurance Eligibility. NMC shall cooperate in the obtaining and retaining of professional liability insurance by assuring that its Medical Professionals are insurable and participating in an ongoing risk management program.

4.6 Employment Of Non-Physician Employees. There will be certain Technical Employees that perform technical functions for NMC. These Technical Employees will remain in the employ of NMC. As provided in Section 3.1.3, ProMedCo-SW will provide payroll and administrative services for such Technical Employees which shall be a Clinic Expense.

4.7 Events Excusing Performance. NMC shall not be liable to ProMedCo-SW for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies, or other events over which NMC has no control for so long as such events continue, and for a reasonable amount of time thereafter.

4.8 Compliance With Applicable Laws. NMC shall comply with all applicable federal, state and local laws, regulations and restrictions in the conduct of its obligations under this Agreement.

4.9 NMC Employee Benefit Plans.

- (a) As of the Effective Date of this Agreement, NMC has in effect the employee welfare benefit plans (as such term is defined in Section 3(1) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA")) and the employee pension benefit plans (as such term is defined in Section 3(2) of ERISA), as set forth in Exhibit 3.22 to the Asset Purchase Agreements.
- (b) NMC shall not enter into any new "employee benefit plan" (as defined in Section 3(3) of ERISA) without the express written consent of ProMedCo-SW. Except as otherwise required by law, NMC shall not materially amend, freeze, terminate or merge any employee welfare or employee benefit plan without the express written consent of ProMedCo-SW unless such action is contemplated by the Asset Purchase Agreements. NMC agrees to make such changes to any employee welfare or employee benefit plan, including the freeze, termination, or merger of such plan, as may be approved by ProMedCo-SW.
- (c) Expenses incurred in connection with any NMC Plan or other employee benefit plan maintained by NMC, including without limitation the compensation of counsel, accountants, corporate trustees and other agents shall be expenses of NMC.
- (d) The contribution and administration expenses for Medical Professionals shall be an expense of NMC. ProMedCo-SW shall make contributions or payments

with respect to any NMC Plan, as a Clinic Expense, on behalf of eligible Technical Employees.

- (e) ProMedCo-SW shall have the sole and exclusive authority to adopt, amend, or terminate any employee benefit plan for the benefit of its employees. ProMedCo-SW shall have the sole and exclusive authority to appoint the trustee, custodian, and administrator of any such plan. In the event the result of any amendment is to reduce the overall compensation of any employee, ProMedCo-SW shall take such steps as may be determined by the Policy Council to make the employee whole.

4.10 **Physician Powers of Attorney.** NMC shall require all Medical Professionals to execute and deliver to ProMedCo-SW powers of attorney, satisfactory in form and substance to ProMedCo-SW and NMC, appointing ProMedCo-SW as attorney-in-fact for each for the purposes set forth in Sections 3.1.8 and 3.1.9, which powers of attorney shall immediately terminate upon termination of this Agreement.

4.11 **Spokesperson.** NMC shall serve as spokesperson for ProMedCo-SW and ProMedCo in Clinic, ProMedCo-SW and ProMedCo development activities. The parties agree that Dr. Charles Buysse or such other Physician Shareholder as the Policy Council shall appoint, shall serve in this capacity on behalf of NMC.

## 5. RECORDS

5.1 **Patient Records.** Upon termination of this Agreement, NMC shall retain all patient medical records maintained by NMC or ProMedCo-SW in the name of NMC. NMC shall, at its option, be entitled to retain copies of financial and accounting records relating to all services performed by NMC.

5.2 **Other Records.** All records relating in any way to the operation of the Clinic which are not the property of NMC under the provisions of Section 5.1 above, shall at all times be the property of ProMedCo-SW.

5.3 **Access to Records.** During the term of this Agreement, and thereafter, NMC or its designee shall upon 24 hours notice have reasonable access during normal business hours to NMC's and ProMedCo-SW's financial records, including, but not limited to, records of collections, expenses and disbursements as kept by ProMedCo-SW in performing ProMedCo-SW's obligations under this Agreement, and NMC may copy any or all such records.

## 6. FACILITIES TO BE PROVIDED BY PROMEDCO-SW

ProMedCo-SW hereby agrees to provide or arrange as a Clinic Expense the offices and facilities for Clinic operations, including but not limited to, the Clinic Facility and all costs of repairs,

maintenance and improvements; utility (telephone, electric, gas, water) expenses, normal janitorial services, related real or personal property lease cost payments and expenses, taxes and insurance, refuse disposal and all other costs and expenses reasonable incurred in conducting operations in the Clinic Facility during the term of this Agreement.

## 7. FINANCIAL ARRANGEMENTS

7.1 **Payments to NMC and ProMedCo-SW.** NMC and ProMedCo-SW agree that the compensation set forth herein is being paid to ProMedCo-SW in consideration of a substantial commitment made by ProMedCo-SW hereunder and that such fees are fair and reasonable. As payment for its services rendered to NMC, each month ProMedCo-SW shall be paid the amount of all Clinic Expenses and the ProMedCo-SW Distribution. In addition, during the first month of the term of this Agreement, ProMedCo-SW shall be paid a special start-up and organizational fee of \$200,000 over and above the ProMedCo-SW Distribution. All Net Clinic Revenues after deduction of Clinic Expenses, the ProMedCo-SW Distribution, and the special start-up and organizational fee shall be referred to as the "NMC Distribution."

7.2 **Distribution.** The amounts to be paid to ProMedCo-SW under this Section 7.2 shall be payable monthly. ProMedCo-SW shall pay to NMC, in accordance with the provisions of Section 7.4, the NMC Distribution amounts on or about the 15th day of such following month. Some amounts may need to be estimated, with Adjustments made as necessary the following month. Any audit adjustments would be made after completion of the fiscal year audit.

7.3 **Clinic Expenses.** Commencing on the Effective Date, ProMedCo-SW shall pay all Clinic Expenses as they fall due (including without limitation any Non-Physician Personnel carried on the books of NMC at the requirement of ProMedCo-SW), provided however, that ProMedCo-SW may, in the name of and on behalf of NMC, contest in good faith any claimed Clinic Expenses as to which there is any dispute regarding the nature, existence or validity of such claimed Clinic Expenses. ProMedCo-SW hereby agrees to indemnify and hold NMC harmless from and against any liability, loss, damages, claims, causes of action and reasonable expenses of NMC resulting from the contest of any Clinic Expenses.

7.4 **Accounts Receivables.** Except for the first month of this Agreement, on approximately the 15th day of each month, ProMedCo-SW shall purchase the accounts receivable of NMC arising during the previous month, by payment of cash, or other readily available funds into an account of NMC. The consideration for the purchase shall be an amount equal to the NMC Distribution for such previous month plus or minus, as the case may be, the Adjustments relating to the month prior thereto. Although it is the intention of the parties that ProMedCo-SW purchase and thereby become owner of the accounts receivable of NMC, in case such purchase shall be ineffective for any reason, NMC, as of the Effective Date of this Agreement, grants and shall cause each Medical Professional to grant to ProMedCo-SW a first priority lien on and security interest in and to any and all interest of NMC and such Medical Professionals in any accounts receivable generated by the medical practice of NMC and the Medical Professional or otherwise generated through the operations of the Clinic,

and all proceeds with respect thereto, to secure the payment to ProMedCo-SW of all such accounts receivable, and this Agreement shall be deemed to be a security agreement to the extent necessary to give effect to the foregoing. In addition, NMC shall cooperate with ProMedCo-SW and execute and deliver, and cause each Medical Professional to execute and deliver, all necessary documents in connection with the pledge of such accounts receivable to ProMedCo-SW or at ProMedCo-SW's option, its lenders. All collections in respect of such accounts receivable shall be deposited in a bank account at a bank designated by ProMedCo-SW. To the extent NMC or any Medical Professional comes into possession of any payments in respect of such accounts receivable, NMC or such Medical Professional shall direct such payments to ProMedCo-SW for deposit in bank accounts designated by ProMedCo-SW.

## 8. INSURANCE AND INDEMNITY

**8.1 Insurance to Be Maintained by ProMedCo-SW.** Throughout the term of this Agreement, ProMedCo-SW will use reasonable efforts to provide and maintain, as a Clinic Expense, comprehensive professional liability insurance for all professional employees of ProMedCo-SW and NMC with limits as determined reasonable by ProMedCo-SW in its national program, comprehensive general liability insurance and property insurance covering the Clinic Facility and operations.

**8.2 Insurance to be Maintained by NMC.** Unless otherwise determined by the Policy Council, throughout the term of this Agreement, NMC shall maintain comprehensive professional liability insurance with limits of not less than \$1,000,000 per claim and with aggregate policy limits of not less than \$3,000,000 per physician with a separate limit for NMC. NMC shall be responsible for all liabilities (including without limitation and excess liabilities) not paid within the limits of such policies (except that all deductibles and premiums incurred pursuant to the first sentence of this Section 8.2 shall be Clinic Expenses). ProMedCo-SW shall have the option of providing such professional liability insurance through an alternative program, provided such program meets the requirements of the Insurance Commissioner of the State of Florida and is approved by the Policy Council. NMC, at its sole expense (i.e., not as a Clinic Expense) shall have the right to obtain such additional professional liability insurance coverages for its Medical Professionals as NMC deems appropriate under the circumstances.

**8.3 Tail Insurance Coverage.** NMC will cause each individual physician associated with the Clinic to enter into an agreement with NMC that upon termination of such physician's relationship with NMC, for any reason, tail insurance coverage will be purchased or otherwise obtained by the individual physician. Such provisions shall be contained in employment agreements, restrictive covenant agreements or other agreements entered into by NMC and the individual physicians, and NMC hereby covenants with ProMedCo-SW to enforce such provisions relating to the tail insurance coverage or to provide such coverage at the expense of NMC.

**8.4 Additional Insured.** NMC and ProMedCo-SW agree to use their reasonable efforts to have each other named as an additional insured on the other's respective professional liability insurance programs at ProMedCo-SW's expense.

**8.5 Indemnification.** NMC shall indemnify, hold harmless and defend ProMedCo-SW, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), to the extent not covered by insurance or the policy deductible (which shall be a Clinic Expense), caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of medical services or any other acts or omissions by NMC and/or its shareholders, agents, employees and/or subcontractors (other than ProMedCo-SW) during the term hereof, including any claim against ProMedCo-SW by a NMC Employee, which claim arises out of such NMC Employees' employment relationship with NMC or as a result of services performed by such NMC Employee, and which claim would typically be covered by worker's compensation. ProMedCo-SW shall indemnify, hold harmless and defend NMC, its officers, directors and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), to the extent not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of any intentional acts, negligent acts or omissions by ProMedCo-SW and/or its shareholders, agents, employees and/or subcontractors (other than NMC) during the term of this Agreement.

**9. RESTRICTIVE COVENANTS AND LIQUIDATED DAMAGES**

The parties recognize that the services to be provided by ProMedCo-SW shall be feasible only if NMC operates an active medical practice to which the physicians associated with NMC devote their full time and attention. To that end:

**9.1 Restrictive Covenants by NMC.** During the term of this Agreement, NMC shall not establish, operate or provide physician services at any medical office, clinic or other health care facility providing services substantially similar to those provided by NMC pursuant to this Agreement anywhere within Collier, Charlotte or Lee counties or, if greater, within a radius of 30 miles of the Clinic Facility, or within a radius of 30 miles of any current or future medical office, clinic or other health care facility from which NMC provides medical services.

**9.2 Restrictive Covenants By Medical Professionals.** NMC shall obtain and enforce formal employment agreements from each of its future Medical Professionals in the form attached as Appendix 2.9B to the Asset Purchase Agreements pursuant to which each such Medical Professional agrees that during the term of such Medical Professional's employment agreement, and for a period of 18 months after any termination of employment with NMC, such Medical Professional will not establish, operate or provide physician services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by NMC pursuant to this Agreement within Collier, Charlotte or Lee counties or, if greater, within a radius of 30 miles of the Clinic Facility or within a radius of 30 miles of any current or future medical office, clinic or other health care facility from which NMC provides medical services and that ProMedCo-SW shall have third-party rights to enforce such agreements. NMC shall also ensure that any of its current Medical Professionals whose employment agreements are extended beyond an initial five year term are subject to the provisions set forth in this paragraph for such extension.



**9.3 Medical Professionals Liquidated Damages.**

- (B) **Release from Restrictive Covenants.** The restrictive covenants as found in the employment agreements described in Section 9.2 of this Agreement will provide that Medical Professionals (existing Medical Professionals with respect to renewal terms thereof, and future Medical Professionals with respect to the initial and renewal terms thereof) may be released from such restrictive covenants by paying Liquidated Damages equal to such physician's income related to the Clinic, as reported to the Internal Revenue Service, for the previous 12 months or the annualized compensation in the event of a partial year.
- (b) **Repayment of Consideration in Certain Events.** In addition, if a Physician Shareholder received any of the Consideration paid by ProMedCo-SW to NMC pursuant to one or more of the Asset Purchase Agreements, and if said Physician Shareholder terminates his or her employment agreement with NMC for any reason (other than death, Total Disability, as defined in the employment agreement between such Physician Shareholder and NMC, or retirement, as approved by the Policy Council) prior to the fifth anniversary of the Closing under the Asset Purchase Agreements, or is terminated by NMC prior to the fifth anniversary of the Closing under the Asset Purchase Agreements, then the Physician Shareholder shall be required to reimburse back to NMC the Consideration received by that physician as a distribution resulting from the Asset Purchase Agreement. Such payments shall be passed on to ProMedCo-SW by NMC simultaneously with the payment thereof by the physician to NMC. All payments made to NMC under this clause (b) shall be first applied to all costs incurred by NMC and/or ProMedCo-SW in the enforcement of the employment agreement for that departing physician and in recruiting a replacement physician for that departing physician. The remainder, if any, shall become an additional service fee to be paid to ProMedCo-SW pursuant to Section 7. The accounting treatment of such funds shall be consistently applied and approved by ProMedCo-SW's independent certified public accountants and the Policy Council.

**9.4 Enforcement.** ProMedCo-SW and NMC acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Section 9 shall be inadequate, either party shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist by law. All parties hereto also waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief. If any provision of Section 9 relating to territory or time described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity, restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity, restricted and/or area of restriction deemed to be reasonable and enforceable by the court shall thereafter be the time period, scope of activity, restricted and/or area of restriction applicable to the restrictive covenant provisions in this Section 9. The invalidity of non-enforceability of this Section 9 in any

respect shall not affect the validity of enforceability of the remainder of this Section 9 or of any other provisions of this Agreement unless the invalid or non-enforceable provisions materially affect the benefits either party would otherwise be entitled to receive under this Section 9 or any other provision of this Agreement.

**9.5 Termination of Restrictive Covenants.** Notwithstanding anything to the contrary contained herein, if this Agreement is terminated pursuant to Section 10.2 herein and if NMC has complied with the requirements of § 10.4, the employment agreement terms contained in this Section 9 shall be null and void and of no force or effect.

## **10. TERM RENEWAL; TERMINATION;**

**10.1 Term and Renewal.** The term of this Agreement shall commence on the Effective Date hereof and shall continue for 40 years, after which it shall automatically renew for five-year terms unless either party provides the other party with at least 12 months but not more than 13 months written notice prior to any renewal date.

**10.2 Termination by NMC.** NMC may terminate this Agreement as follows:

- (i) In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by ProMedCo or ProMedCo-SW, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by ProMedCo or ProMedCo-SW, except for the filing of a petition in involuntary bankruptcy against ProMedCo or ProMedCo-SW which is dismissed within 60 days thereafter, NMC may give notice of the immediate termination of this Agreement.
- (ii) In the event ProMedCo or ProMedCo-SW shall materially default in the performance of any duty or obligation imposed upon it by this Agreement and such default shall continue for a period of 60 days after written notice thereof has been given to ProMedCo-SW by NMC (termination of this Agreement pursuant to this Section 10.2(ii) by NMC shall require the affirmative vote of 66% of the Physician Shareholders).
- (iii) In the event ProMedCo-SW shall fail to remit any portion of the Distribution Funds payments due to NMC as provided in Section 7.2 hereof or to make payments under the note contemplated by the Split Dollar Agreement and such failure to shall continue for a period of 5 business days after written notice thereof, NMC may terminate this Agreement.
- (iv) In the event any person or group of affiliated persons (as such term is used in Sections 13(d) and 14(d) of the Securities Exchange Act of 1934) acquires, through acquisition, tender offer, proxy solicitation, merger or consolidation,

control of voting power of the voting stock of ProMedCo NMC shall have the right to terminate this Agreement within 30 days of being notified of such event upon the affirmative vote of 66% of the Physician Shareholders (during the first five years of this Agreement, such a change of control shall be deemed to have occurred if such person or group of affiliated persons (A) acquires 50% or more of the voting power of such voting stock or (B) acquires substantially all of the stock of ProMedCo held by H. Wayne Posey, Richard E. Ragsdale and E. Thomas Chaney, after the first five years of this Agreement, such a change of control shall be deemed to have occurred, only if such person or group of affiliated persons acquires 50% or more of the voting power of such voting stock).

**10.3 Termination by ProMedCo-SW.** ProMedCo-SW may terminate this Agreement as follows:

- (i) In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by NMC, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors by NMC, except for the filing of a petition in involuntary bankruptcy against NMC which is dismissed within 60 days thereafter, ProMedCo-SW may give notice of the immediate termination of this Agreement.
- (ii) In the event NMC shall materially default in the performance of any duty or obligation imposed upon it by this Agreement or in the event a majority of the Physicians Shareholders shall materially default in the performance of any duty or obligation imposed upon them by this Agreement or by their employment agreements with NMC, and such default shall continue for a period of 60 days after written notice thereof has been given to NMC and such Physician Shareholders by ProMedCo-SW, ProMedCo-SW may terminate this Agreement.

**10.4 Actions After Termination.** In the event that this Agreement shall be terminated, the NMC Distribution and the ProMedCo-SW Distribution shall be paid through the effective date of termination. In addition, the various rights and remedies herein granted to the aggrieved party shall be cumulative and in addition to any others such party may be entitled to by law. The exercise of one or more rights or remedies shall not impair the right of the aggrieved party to exercise any other right or remedy, at law. Upon termination of this Agreement, NMC shall:

**10.4.1 Termination Fees.** Pay ProMedCo-SW, as a termination fee, the amount obtained by multiplying (w) \$14,800,000 by (x) a fraction, the numerator of which is (y) 480 minus the number of full months that shall have elapsed since the Effective Date, and the denominator of which is (z) 480. Notwithstanding the foregoing, NMC shall not be required

to pay such termination fee in the event NMC shall have terminated this Agreement pursuant to § 10.2(i) or 10.2(ii), provided however, for this exception to apply to a termination under § 10.2(iii), (x) NMC shall have given a second 15-day notice of default after expiration of the initial 5-day notice provided for in § 10.2(iii) both to ProMedCo-SW and to Nations Credit, 201 Broad Street, One Canterbury Green, Stamford, CT 06901, Attention: ProMedCo Loan Officer, cc Nations Credit, 1050 Crown Point Parkway, Atlanta, GA 30338, Attention: Jim Babcock who shall have a separate right to cure the default by making the delinquent payment. (y) ProMedCo-SW shall have continued to be in default at the expiration of the 15-day notice period and Nations Credit shall not have made such payment on behalf of ProMedCo-SW, provided, further, that no such second notice shall be required if ProMedCo-SW shall have previously defaulted under § 10.2(ii) less than twelve months prior to the then current default.

10.4.2 Real Estate. Purchase from ProMedCo-SW all real estate, if any, associated with the Clinic and owned by ProMedCo-SW at the then book value thereof.

10.4.3 Improvements. Purchase all improvements, additions or leasehold improvements which have been made by ProMedCo-SW as reflected on ProMedCo-SW's books as of the last day of this Agreement and which relate solely to the performance of its obligations under this Agreement or the properties subleased by ProMedCo-SW, if any.

10.4.4 Debts. Assume all ordinary and necessary debt, contracts, payables and leases which are obligations of ProMedCo-SW and which relate directly to the performance of its obligations under this Agreement or the properties subleased by ProMedCo-SW, if any (i.e., obligations which are included in Clinic Expenses).

10.4.5 Equipment; Inventories; Accounts Receivable; etc. Purchase from ProMedCo-SW at book value as reflected on ProMedCo-SW's books as of the last day of this Agreement:

- (i) Equipment. All of the equipment acquired by ProMedCo-SW pursuant to the Asset Purchase Agreements, including all replacements and additions thereto made by ProMedCo-SW with the approval of the Policy Council pursuant to the performance of its obligations under this Agreement;
- (ii) Inventory. All stock, including inventory, supplies and other tangible assets of ProMedCo-SW relating to NMC operations;
- (iii) Accounts Receivable. All uncollected accounts receivable theretofore purchased by ProMedCo-SW pursuant to Section 7.4 hereof at the book value thereof on ProMedCo-SW's books utilizing the same valuation methodology used to determine the Distribution Funds for the preceding month.

- (iv) **Other Assets.** All other assets of ProMedCo-SW relating to the operations of NMC.

**10.4.6 Closing of Repurchase.** NMC shall pay cash for the repurchased assets. The amount of the purchase price shall be reduced by the amount of debt and liabilities of ProMedCo-SW assumed by NMC and shall be reduced by any payment ProMedCo-SW has failed to make under this Agreement, and except for such debts or as otherwise specifically contemplated herein, ProMedCo-SW shall convey the repurchased assets to NMC free and clear of all liens and encumbrances. NMC and any physician associated with NMC shall execute such documents as may be required to assume the liabilities set forth in Section 10.4.4 and to remove ProMedCo-SW from any liability with respect to such repurchased assets and with respect to any property leased or subleased by ProMedCo-SW. The closing date for the repurchase shall be determined by NMC, but shall in no event occur later than 180 days from the date of the notice of termination. The termination of this Agreement shall become effective upon the closing of the sale of the assets, and upon such termination NMC and its Medical Professionals shall be released from the Restrictive Covenants provided for in Section 9 on such termination. From and after any termination, each party shall provide the other party with reasonable access to books and records then owned by it to permit such requesting party to satisfy reporting and contractual obligations which may be required of it.

## 11. DEFINITIONS

For the purposes of this Agreement, the following definitions shall apply:

**11.1 Adjustments** shall uncollectible accounts, discounts, contractual adjustments, Medicare allowances, Medicaid allowances, and professional courtesies. Adjustments shall be estimated based upon the historical collection experiences of various payment classifications. Adjustments shall be reconciled on a quarterly basis based upon actual collections within these same payment classifications, with any amounts due NMC or ProMedCo, as the case may be, being reflected in the following month's distributions.

**11.2 Asset Purchase Agreements** shall mean the Asset Purchase Agreements dated as of April 14, 1997 among NMC, ProMedCo and ProMedCo-SW, and among Naples Obstetrics & Gynecology, M.D., P.A., ProMedCo and ProMedCo-SW.

**11.3 Clinic** shall mean the medical care services, including, but not limited to the practice of medicine, all ancillary services and businesses, and related healthcare services provided by NMC and the NMC Employees, utilizing the management services of ProMedCo-SW and the Clinic Facility, regardless of the location where such services are rendered.

**11.4 Clinic Expenses** shall mean the amount of all expenses incurred in the operation of the Clinic including, without limitation:

- (i) Salaries, benefits (including contributions under any ProMedCo benefit plan), and other direct costs of all employees of ProMedCo-SW and Technical Employees attributable to NMC.
- (ii) Obligations of ProMedCo-SW or ProMedCo under leases or subleases related to Clinic operations.
- (iii) Interest Expense (at ProMedCo's blended borrowing rate in effect from time to time) on funds provided to ProMedCo-SW by ProMedCo or any outside source to finance or refinance the Clinic Facility or to expand the Clinic services or to acquire any assets approved by the Policy Council.
- (iv) Personal property and intangible taxes assessed against ProMedCo-SW's assets used in connection with the operation of Clinic commencing on the date of this Agreement.
- (v) Malpractice insurance expenses for ProMedCo-SW's operations and for the NMC Employees, as well as any deductibles and non-insured expenses relating to malpractice claims.
- (vi) Other direct expenses (but not corporate overhead of ProMedCo) incurred by ProMedCo-SW in carrying out its obligations under this Agreement.
- (vii) IF
  - (A) fewer than 50 physicians are then employed by NMC without giving effect to the proposed acquisition and if it is proposed to acquire an individual additional physician, or
  - (B) 50 or more physicians are then employed by NMC without giving effect to the proposed acquisition and it is proposed to acquire a group of four or fewer physicians,then amortization, in accordance with generally accepted accounting principles, of intangible asset value resulting from the employment of, merger with, or other acquisition of, such additional physician(s) in the NMC service area as approved by the Policy Council.
- (viii) Depreciation of the assets acquired pursuant to the Asset Purchase Agreements on a straight line basis over the life of such assets as well as depreciation of all assets associated with the operations of NMC purchased after the Effective Date in accordance with ProMedCo's then internal accounting policies.

**11.5 Clinic Expenses shall not include:**

- (i) Corporate overhead charges (which would include costs of personnel, travel and out-of-pocket expenses of persons not specifically employed by ProMedCo-SW) or any other expenses of ProMedCo or any corporation affiliated with ProMedCo other than the kind of items listed above;
- (ii) Any federal or state income taxes;
- (iii) Any expenses which are expressly designated herein as expenses or responsibilities of NMC and/or NMC Employees other than Technical Employees, including without limitation the expenses described in § 4.3;
- (iv) Any amortization expense resulting from the amortization of expenses incurred as shown on ProMedCo's financial statements, in connection with the acquisition and execution of the Asset Purchase Agreements and the execution of this Agreement; and
- (v) Interest expense on indebtedness incurred by ProMedCo-SW or ProMedCo to finance the consideration paid under the Asset Purchase Agreements and/or any related agreement (this subclause is included herein for the sake of clarity only, since the parties hereto agree that such expense is in no way an expense of NMC);
- (vi) Interest expense on indebtedness incurred by ProMedCo-SW or ProMedCo to finance the consideration provided with respect to the Split Dollar Agreements (this subclause is included herein for the sake of clarity only, since the parties hereto agree that such expense is in no way an expense of NMC);
- (vii) Any liabilities, judgments or settlements assessed against NMC or Physician Shareholders in excess of any insurance policy limits.

**11.6 Clinic Facility shall mean the clinic facilities located at (i) 400 Eight Street, North, Naples, FL 34102, (ii) 11121 Health Park Boulevard, Suites 800 and 900, Naples, FL 34110, (iii) 775 1st Ave., North, Naples, FL 34102, and (iv) 11181 Health Park Blvd., Suites 1165 and 1170, Naples, FL 34110, and any substitute facility or additional facility location, whether within or without the Collier/Lee/Charlotte county area, Florida as approved by the Policy Council.**

**11.7 Distribution Funds shall mean those amounts remaining after Clinic Expenses have been deducted from Net Clinic Revenue.**

**11.8 Effective Date shall mean 12:01 a.m. on March 1, 1997.**



11.9 Medical Professional shall mean Physician Shareholders, Physician Employees and Physician Extenders.

11.10 Net Clinic Revenues shall mean NMC's gross billings, including ancillaries and any other revenues that have historically been recorded by NMC, including without limitation revenues arising from any health care services provided by any Medical Professional, as well as non-real estate revenues historically recorded by NMC, less any Adjustments. This specifically excludes Risk Pool Surpluses.

11.11 NMC Employees shall mean all Physician Shareholders, Physician Employees, Physician Extenders and Technical Employees at the relevant dates.

11.12 Opening Balance Sheet shall mean the balance sheet of ProMedCo-SW as of the Effective Date (as defined in the Asset Purchase Agreements), prepared in accordance with GAAP (except for the absence of certain note information), and substantially in the form of the attached Exhibit B subject to adjustments in the Consideration (as defined in the Asset Purchase Agreements).

11.13 Physician Employees shall mean any physician employed by NMC and providing medical services to patients on behalf of NMC, who are not Physician Shareholders.

11.14 Physician Extenders shall mean all non-physician professional employees who provide direct patient care for which a billed charge is generated.

11.15 Physician Shareholders shall mean any physician who is a shareholder of NMC, both as of the date of this Agreement (which said Physician Shareholders are parties to this Agreement) and at any future point in time.

11.16 ProMedCo shall mean ProMedCo Management Company, a Delaware corporation which is sole shareholder of ProMedCo-SW.

11.17 ProMedCo-SW Distribution shall mean 15% of Distribution Funds plus 30% of Risk Pool Surpluses.

11.18 Risk Pool Surpluses shall mean all hospital incentive funds, specialists incentive funds, and funds from shared risk pools paid to NMC under any risk-sharing arrangements. Risk Pool Surpluses shall be calculated by aggregating all risk pools applicable, including making any deductions for pools that are in a deficit position. Notwithstanding the foregoing, Risk Pool Surpluses shall not include any incentive funds for services directly provided by NMC. In addition, the Risk Pool Surpluses shall be determined on a cumulative basis netting all deficits and surpluses for each fiscal year.

11.19 Split-Dollar Agreement shall mean the Split-Dollar Agreements contemplated by Section 2.9 of the Asset Purchase Agreements.

11.20 Technical Employees shall mean technicians who provide services in the diagnostic areas of NMC's practice, such as employees of the Clinic laboratory, radiology technicians and cardiology technicians. All Technical Employees shall be NMC employees.

## 12. GENERAL PROVISIONS

12.1 Independent Contractor. It is acknowledged and agreed that NMC and ProMedCo-SW are at all times acting and performing hereunder as independent contractors. ProMedCo-SW shall neither have nor exercise any control or direction over the methods by which NMC or the NMC Employees practice medicine. ProMedCo-SW shall not, by entering into and performing its obligations under this Agreement, become liable for any of the existing obligations, liabilities or debts of NMC unless otherwise specifically provided for under the terms of this Agreement. ProMedCo-SW will in its management role have only an obligation to exercise reasonable care in the performance of the management services. Neither party shall have any liability whatsoever for damages suffered on account of the willful misconduct or negligence of any employee, agent or independent contractor of the other party. Each party shall be solely responsible for compliance with all state and federal laws pertaining to employment taxes, income withholding, unemployment compensation contributions and other employment related statutes regarding their respective employees, agents and servants.

### 12.2 Proprietary Property.

12.2.1 Each party agrees that the other party's proprietary property shall not be possessed, used or disclosed otherwise than may be necessary for the performance of this Agreement. Each party acknowledges that its violation of this Agreement would cause the other party irreparable harm, and may (without limiting the other party's remedies for such breach) be enjoined at the instance of the other party. Each party agrees that upon termination of this Agreement for any reason, absent the prior written consent of the other party, it shall have no right to and shall cease all use of the other party's proprietary property, and shall return all such proprietary property of the other party in its possession to the other party.

12.2.2 ProMedCo-SW shall be the sole owner and holder of all right, title and interest, to all intellectual property furnished by it under this Agreement, including, but not limited to the trade name "ProMedCo," all computer software, copyright, services mark and trademark right to any material or documents acquired, prepared, purchased or furnished by ProMedCo-SW pursuant to this Agreement. NMC shall have no right, title or interest in or to such material and shall not, in any manner, distribute or use the same without the prior written authorization of ProMedCo-SW, provided, however, that the foregoing shall not restrict NMC from distributing managed care information brochures and materials without the prior written approval of ProMedCo-SW provided no Proprietary Property of ProMedCo-SW is contained therein. Notwithstanding the preceding, however, ProMedCo-SW agrees that NMC shall be entitled to use on a nonexclusive and nontransferable basis for the term of this Agreement the names "Naples Medical Center" and "Naples Obstetrics & Gynecology"

as may be necessary or appropriate in the performance of NMC's services and obligations hereunder.

**12.3 Cooperation.** Each of the parties shall cooperate fully with the other in connection with the performance of their respective duties and obligations under this Agreement.

**12.4 Licenses, Permits and Certificates.** ProMedCo-SW and NMC shall each obtain and maintain in effect, during the term of this Agreement, all licenses, permits and certificates required by law which are applicable to their respective performance pursuant to this Agreement.

**12.5 Compliance with Rules, Regulations and Laws.** ProMedCo-SW and NMC shall comply with all federal and state laws and regulations in performance of their duties and obligations hereunder. Neither party, nor their employees or agents, shall take any action that would jeopardize the other party's participation, if applicable, in any federal or state health program including Medicare and Medicaid. ProMedCo-SW and NMC shall take particular care to ensure that no employee or agent of either party takes any action intended to violate Section 1128B of the Social Security Act with respect to soliciting, receiving, offering or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Title XVIII or XIX of the Social Security Act, or for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Title XVIII or XIX of the Social Security Act.

**12.6 Generally Accepted Accounting Principles (GAAP).** All financial statements and calculations contemplated by this Agreement will be prepared or made in accordance with generally accepted accounting principles consistently applied unless the parties agree otherwise in writing.

**12.7 Notices.** Any notices required or permitted to be given hereunder by either party to the other may be given by personal delivery in writing or by registered or certified mail, postage prepaid, with return receipt requested. Notices shall be addressed to the parties at the addresses appearing on the signature page of the Agreement, but each party may change such party's address by written notice given in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt, mailed notices will be deemed communicated as of three days after mailing.

**12.8 Attorneys' Fees.** ProMedCo-SW and NMC agree that the prevailing party in any legal dispute among the parties hereto shall be entitled to payment of its attorneys' fees by the other party.

**12.9 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction or applicable state or federal law and their implementing regulations to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

**12.10 Arbitration.** Any controversy or claim arising out of or relating to this Agreement or the breach thereof will be settled by binding arbitration in accordance with the rules of commercial arbitration of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof. Such arbitration shall occur within Collier County, Florida, unless the parties mutually agree to have such proceedings in some other locale. The arbitrator(s) may in any such proceeding award attorneys' fees and costs to the prevailing party.

**12.11 Construction of Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties agree that the terms and provisions of this Agreement embody their mutual interest and agreement and that they are not to be construed more liberally in favor of, nor more strictly against, any party hereto.

**12.12 Assignment and Delegation.** ProMedCo-SW shall have the right to assign its rights hereunder to any person, firm or corporation controlling, controlled by or under common control with ProMedCo-SW and to any lending institution, for security purposes or as collateral, from which ProMedCo-SW or ProMedCo obtains financing for itself and as agent. Except as set forth above, neither ProMedCo-SW nor NMC shall have the right to assign their respective rights and obligations hereunder without the written consent of the other party. Neither party shall delegate any of its duties hereunder, except as expressly contemplated herein or as approved by the Policy Council.

**12.13 Confidentiality.** The terms of this Agreement and in particular the provisions regarding compensation, are confidential and shall not be disclosed except as necessary to the performance of this Agreement or as required by law.

**12.14 Waiver.** The waiver of any provision, or of the breach of any provision of this Agreement must be set forth specifically in writing and signed by the waiving party. Any such waiver shall not operate or be deemed to be a waiver of any prior or future breach of such provision or of any other provision.

**12.15 Headings.** The subject headings of the articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**12.16 No Third Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

**12.17 Time is of the Essence.** Time is hereby expressly declared to be of the essence in this Agreement.



**12.18 Modifications of Agreement for Prospective Legal Events.** In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel for both parties in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, or in the event the Florida State Board of Medicine or other authority with legal jurisdiction shall, solely by virtue of this Agreement, initiate an action to revoke, suspend, or restrict the license of any physician retained by NMC to practice medicine in the State of Florida, NMC and ProMedCo-SW shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements between NMC and ProMedCo-SW. In the event it is not possible to amend this Agreement to preserve in all material respects the underlying economic and financial arrangements between NMC and ProMedCo-SW, this Agreement may be terminated by written notice by either party within 90 days from date of such interpretation or action, termination to be effective no sooner than the earlier of 180 days from the date notice of termination is given or the latest possible date specified for such termination in any regulatory order or notice. Termination pursuant to this Section 12.18 by NMC shall require the affirmative vote of a majority of Physician Shareholders.

**12.19 Whole Agreement Modification:** A contract in which the amount involved exceeds \$50,000 in value is not enforceable unless the Agreement is in writing and signed by the party to be bound or by that party's authorized representative. The rights and obligations of the parties hereto shall be determined solely from written agreements. Documents and instruments, and any prior oral agreements between the parties are superseded by and merged into such writings. This Agreement (As amended in writing from time to time), the exhibits, and the schedules delivered pursuant hereto

represent the final agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements by the parties. There are no unwritten oral agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 801 Cherry Street  
Suite 1450  
Fort Worth, TX 76102

**NAPLES MEDICAL CENTER, P.A.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Address: 400 Eighth Street, North  
Naples, FL 33940



prior, contemporaneous, or subsequent oral agreements by the parties. There are no unwritten oral agreements between the parties.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**PROMEDCO OF SOUTHWEST FLORIDA, INC.**

By: [Signature]  
Name: Dale K. Edwards  
Title: Vice President  
Address: 801 Cherry Street  
Suite 1450  
Fort Worth, TX 76102

**NAPLES MEDICAL CENTER, P.A.**

By: [Signature]  
Name: Charles J. Buysse, M.D.  
Title: President  
Address: 400 Eighth Street, North  
Naples, FL 33940

Acknowledgment and Agreement by Physician Shareholders  
to abide by the terms of the Service Agreement

  
Edwin J. Dean, M.D.  
Physician Shareholder

Gary C. Courville, M.D.  
Physician Shareholder

Paul J. Shields, M.D.  
Physician Shareholder

Alan S. Galbut, M.D.  
Physician Shareholder

Dale B. Adamson, M.D.  
Physician Shareholder

Matthew P. Powers, M.D.  
Physician Shareholder

Douglas L. Boynton, M.D.  
Physician Shareholder

William R. Cook, M.D.  
Physician Shareholder

Joseph Richichi, M.D.  
Physician Shareholder

Ralph J. Dotson, M.D.  
Physician Shareholder

C. Richard Underwood, M.D.  
Physician Shareholder

James M. Venable, III, M.D.  
Physician Shareholder

Raymond L. Duncan, M.D.  
Physician Shareholder

Gary D. Case, M.D.  
Physician Shareholder

Robert W. Wilson, D.O.  
Physician Shareholder

Charles J. Buysse, M.D.  
Physician Shareholder

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to abide by the terms of the Service Agreement.

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Physician Shareholder

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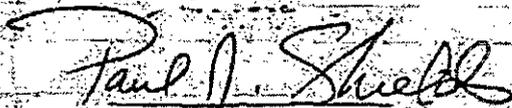
Charles J. Buysse, M.D.  
Physician Shareholder



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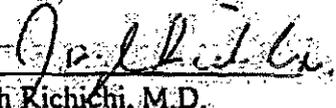
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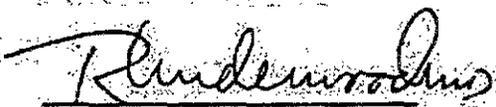
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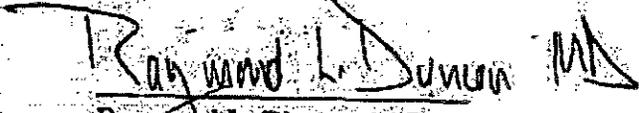
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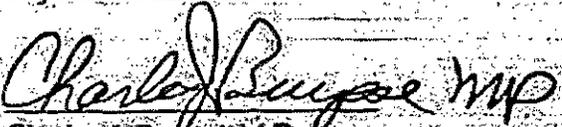
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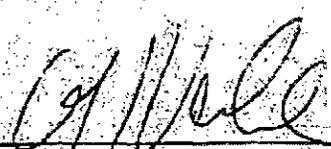
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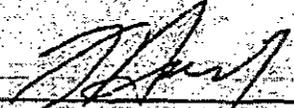
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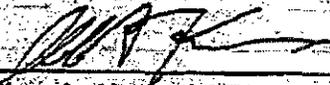
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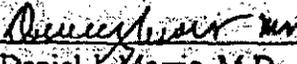
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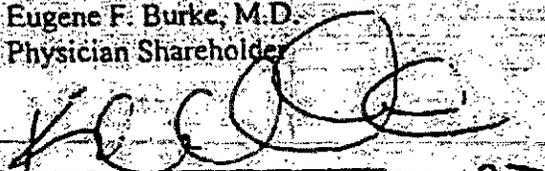
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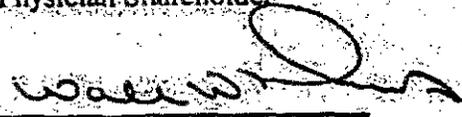
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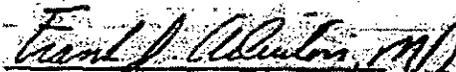
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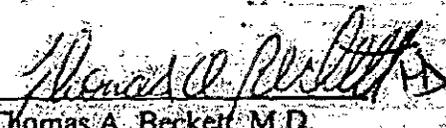
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**GUARANTY**

ProMedCo Management Company, a Delaware corporation (the "Parent") which is the sole shareholder of ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW"), hereby guarantees the performance of ProMedCo-SW under the above Service Agreement.

**PROMEDCO MANAGEMENT COMPANY**

By \_\_\_\_\_  
Its \_\_\_\_\_  
Name \_\_\_\_\_



EXHIBIT "A"

Allocation of Risk Pool Surpluses

ProMedCo-SW shall receive 30% of the Risk Pool Surpluses based on the risk pool surpluses that have occurred during the entire term of this Agreement, including any renewals. ProMedCo shall also be responsible for 30% of any Risk Pool deficits.

The distribution of Risk Pool Surpluses shall be made based upon the following:

In the event that the payor or any entity other than NMC holds the risk pools, and makes a payment to NMC in the form of a Risk Pool Surplus, then 100% of that Risk Pool Surplus shall be distributed no later than 30 days after receipt by NMC. In the event that NMC holds the risk pools, then the distribution of Risk Pool Surpluses shall be made on an annual basis no later than 90 days after the conclusion of each contract year of any relevant payor agreement, and after a full analysis of any Incurred But Not Reported (IBNR) liabilities. Once the final balance of Risk Pool Surpluses has been calculated, 80% of that amount shall be distributed, with the final 20% held for an additional 6 months to pay any additional IBNR or other liabilities. At the end of that 6 months, any funds remaining from the 20% reserved shall be distributed.



## EMPLOYMENT AGREEMENT

THIS EMPLOYMENT AGREEMENT (the "Agreement") is made in duplicate, as of this 14<sup>th</sup> day of April, 1997, by and between NAPLES MEDICAL CENTER, P.A. (hereafter called "NMC"), and GARY C. COURVILLE, M.D. (hereafter called the "Employee").

### RECITALS

A. The Employee is duly licensed and authorized to practice medicine in the State of Florida.

B. NMC is a professional association duly authorized to engage in every aspect of the practice of medicine and all its fields of specialization.

C. NMC and the Employee desire that the Employee be compensated on the basis of his or her individual contribution to the earnings of NMC. Accordingly, NMC and the Employee desire that the compensation of the Employee be computed on the basis of Revenue attributable to the Employee, including diagnostic and other ancillary services, less the direct costs incurred by NMC in providing such services and an equitable allocation of indirect costs and general overhead of NMC. Employee agrees that the 15% management fee of ProMedCo of Southwest Florida, Inc. ("ProMedCo-SW") under that certain Service Agreement with NMC dated as of April 14, 1997 (the "Service Agreement") shall be treated as a direct cost to be charged against his compensation, and that his compensation may be estimated based on his billings, subject to reconciliation as described in the Service Agreement.

D. Capitalized terms not defined herein shall have the meanings ascribed thereto in the Service Agreement.

NOW, THEREFORE, in consideration of the premises and of the promised herein contained, the parties covenant and agree as follows:

#### 1. RECITALS

The above recitals are true and correct and are made a part hereof.

**2. EMPLOYMENT**

NMC agrees to employ the Employee from the date hereof, as a physician, to render, on behalf of NMC, professional medical services (including consulting and advice) to members of the general public. Decisions on the part of NMC regarding creation, renewal or termination of an employment relationship with the Employee shall be made by NMC's Board of Directors, but only with the consent of the Policy Council (as defined in the Service Agreement), and shall not be delegable to any other employee or officer of NMC.

**3. TERM**

The Agreement shall have a term of five (5) years from the date hereof (the "Initial Term"), and shall be automatically renewed for successive one year terms ("Renewal Terms") unless NMC (with the consent of the Policy Council) or the Employee tenders notice in writing to the other sixty (60) days before the expiration of the Initial Term or any Renewal Term that the Agreement shall not be renewed. In addition, this Agreement may be terminated by NMC as hereinafter provided. The Initial Term and any Renewal Terms are hereinafter referred to as the "period of active employment."

**4. COMPENSATION**

During the period of active employment, as defined above, NMC agrees to pay the Employee annually, as compensation for the services of the Employee, as follows:

**(a) Definitions**

- (i) **Revenue** shall mean the Net Clinic Revenues of NMC attributable to the Employee or to nursing or technical employees of NMC acting at the direction and under the supervision of the Employee.
- (ii) **Direct Costs** shall include all expenses of NMC directly attributable to the provision of professional services by the Employee, and shall include, without limitation, each of the following: (1) rent for the office and examination space used by the Employee; (2) compensation and employee benefits paid to nursing or technical employees of NMC or ProMedCo-SW acting at the sole direction or control of the Employee in proportion to the hours of service provided to the Employee; (3) costs of equipment and supplies utilized in the Employee's practice; (4) costs incurred by NMC in providing ancillary services at the direction of the Employee, including, without limitation, costs of performing x-ray, ultrasound, and similar diagnostic procedures; (5) malpractice insurance premiums for coverage for the Employee in the amount of \$1,000,000 per incident and \$3,000,000 in the aggregate, by an insurance carrier selected by NMC, and any deductible amounts paid on account of claims against the Employee; (6) memberships in professional organizations,

books, and subscriptions to professional publications; (7) expenses of continuing medical education, including, without limitation, tuition, food, lodging and transportation; (8) expenses of automobiles provided for the Employee's exclusive use, if any; (9) all payroll and unemployment taxes incurred by NMC upon the compensation of the Employee; (10) ordinary and necessary travel and entertainment expenses incurred in furtherance of the practice of the Employee, and not for the benefits of the entire group; and (11) ProMedCo-SW's 15% management fee as applied to Employee's Monthly Compensation (as defined below).

(iii) **Indirect Costs** shall mean the expenses of NMC which cannot be directly attributed to the activities of the Employee, including, without limitation the following: (1) compensation and employee benefits paid to the administrator and the administrative staff of ProMedCo-SW dedicated to NMC under the Service Agreement; (2) rents allocable to the common areas of the premises used by NMC; (3) travel and entertainment expenses incurred at the request of NMC and for the benefit of the entire group; (4) utilities, including water, gas, electricity, telephone, sewer, garbage, disposal, and similar services; (5) expenses of premises and public liability insurance and casualty insurance covering the premises of NMC; (6) costs of office equipment used in the management and administration of NMC; (7) the costs of acquiring, operating, and maintaining laboratory, diagnostic, physical therapy and rehabilitation and ambulatory surgical facilities by NMC. The Indirect Costs shall be apportioned on a fair and equitable basis (as determined by NMC's Board of Directors) among the physician-Employees, except that Indirect Costs pertaining to diagnostic equipment shall be apportioned on the basis of utilization of that equipment.

(b) **Monthly Compensation**: The Employee shall receive monthly compensation in an amount equal to the Revenue, less (i) the Direct Costs, and (ii) the Employee's portion of the Indirect Costs (the "Monthly Compensation"). The amount of the Employee's Monthly Compensation shall be computed within 15 days after the end of each month. Any adjustments to be made to Monthly Compensation based on Revenues, Direct Costs or Indirect Costs accruing after the fifteenth (15th) day of the following month shall be made in the next Monthly Compensation payment after the additional Revenues or Costs accrue.

(c) **Monthly Advances**: NMC shall withhold from the Monthly Compensation the Employee and NMC portion of FICA and Medicare payroll taxes, and shall withhold federal income taxes in accordance with the Employee's directions provided with the Employee's Form W-2.

**5. DUTIES OF NMC**

The Employee shall be furnished with an office, examination room or rooms and furniture adequate for the performance of his duties hereunder. NMC shall also furnish the Employee with professional malpractice liability insurance for the period of active employment, and "tail" insurance following the termination of employment in the event that Employee shall have remained an employee of NMC for the entire Initial Term, in amounts to be agreed upon among the parties. In the event of termination of or by the Employee prior to expiration of the Initial Term, Employee shall be responsible for obtaining such "tail" coverage for NMC at Employee's sole cost and expense.

**6. FEES AND PATIENTS**

All fees, compensation, monies and other things of value received or realized as a result of the rendition of professional medical services by the Employee shall belong to or be paid and delivered to NMC. The Employee hereby assigns to NMC the Employee's rights to payment for services performed by the Employee during the term of this Agreement, and agrees to cooperation with NMC and to execute any additional documents requested by NMC in order to confirm, ratify, or effectuate this assignment. Pursuant to the Service Agreement, ProMedCo-SW shall bill patients and collect all fees for services performed inside or outside the Clinic Facility by Employee, or shall arrange for such billing and collection. Employee hereby appoints ProMedCo-SW, for the term hereof, to be its true and lawful attorney-in-fact for the following purposes (i) to bill patients in Employee's name and on its behalf, (ii) to collect accounts receivable resulting from such billing in Employee's name and on its behalf, (iii) to receive payments from Blue Cross and Blue Shield, Medicare, Medicaid, payments from health plans, and all other third party payors, (iv) to receive the cash proceeds of any accounts receivable; (v) to take possession of and endorse in the name of Employee any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable; and (vi) in accordance with policies adopted by the Policy Council, to initiate legal proceedings in the name of Employee to collect any accounts and monies owed to the Clinic, to enforce the rights of Employee as creditor under any contract or in connection with the rendering of any service, and to contest adjustments and denials by governmental agencies (or its fiscal intermediaries) as third-party payors.

**7. DUTIES OF EMPLOYEE**

The Employee accepts employment with NMC on the terms and conditions herein set forth and agrees that during the period of active employment, as defined above, he will devote his full business time and attention to the rendition of professional medical services on behalf of NMC and to the furtherance of NMC's best interests. The Employee agrees that in the rendition of such professional medical services and in all aspects of his employment, he will comply with such reasonable policies, standards and regulations of NMC as are from time to time established, and will carry out any duties to the best of his professional ability. The Employee agrees to fully carry out any duties that NMC may give him, provided that such duties are not in conflict with applicable standards of medical practice in Naples, Florida.

8 **LICENSE REVOCATION**

If the Employee for any reason ceases to be a physician in good standing and duly licensed or otherwise legally authorized within the State of Florida to render the same professional service as NMC, then, in any such event, all employment and relationship of the Employee with NMC shall automatically and immediately stand completely severed and terminated.

9 **TERMINATION FOR CAUSE**

This Agreement may be terminated by NMC, but only with the consent of the Policy Council, at any time upon the occurrence of one or more of the following events:

- (a) If, within thirty (30) days after the Board of Directors of NMC sends to the Employee written notice of misconduct ("Notice of Misconduct"), the Employee shall fail to cure such Misconduct. For purpose of this Agreement, "Misconduct" shall include: (1) the participation of the Employee in conduct amounting to an act of fraud, dishonesty, or similar misconduct in the rendition of medical services; (2) any illegal activity of the Employee or other activity, whether or not relating to the practice of medicine, which would, if known to members of the public, hold NMC out to public approbation, ridicule, or condemnation. If NMC fails to issue a Notice of Misconduct within ten (10) days of learning of an event of Misconduct, then NMC shall be deemed to have waived any objections to such event of Misconduct (but not to later instances of similar Misconduct); or
- (b) Revocation or suspension of the Employee's DEA/BNDD drug number; the abuse by the Employee of alcohol or controlled substances in such manner which, in the sole determination of NMC, is or may become detrimental to the patients of NMC; or
- (c) In the event the Employee shall be convicted of a criminal offense punishable by imprisonment for more than one (1) year, or for which the Employee's license to practice medicine in the State of Florida or right to participate in the Medicare or Medicaid program may be suspended or revoked. The Employee may be suspended from active employment, in the discretion of NMC, without compensation during the period of suspension, if the Employee is arrested for an offense punishable by more than (1) year of imprisonment. In the event that the charges are dropped or reduced to an offense punishable by less than one (1) year of imprisonment, such suspension shall be lifted, provided that the Employee's license to practice medicine in the State of Florida remains in good standing; or
- (d) If, after notice of default and a reasonable time to cure said default, the Employee shall fail or refuse to faithfully or diligently perform the provisions of this Agreement or the usual and customary duties of his employment; or

- (e) In the event of the Total and Permanent Disability of the Employee. For the purposes of this Agreement, "Total and Permanent Disability" shall mean a disability, either mental or physical, of such a degree and nature that the Employee is rendered incapable of efficiently performing the Employee's ordinary duties as an employee of NMC for a period of six (6) consecutive months, and that such disability is expected to be of a permanent nature. Any periods of disability not separated by thirty (30) days of full time employment performing his normal duties hereunder shall be considered a single period of disability.
- (f) In the event of Employee's retirement, provided that (i) Employee shall have given NMC not less than one year's prior notice of his intended date of retirement, (ii) the Employee shall have participated with NMC and an approved replacement physician-employee or other arrangement satisfactory to the Policy Council in a transition of Employee's patients over a period of not less than six (6) months, and (iii) the Employee shall have entered into a non-compete and non-solicitation agreement with NMC in form and substance satisfactory to the Policy Council, in its sole discretion.

#### 10. PAYMENT UPON TERMINATION OF EMPLOYMENT

In the event of the termination of the employment of Employee for any reason whatsoever, NMC shall pay to the Employee an amount equal to the Revenue of the Employee, less the Direct Costs, and less the Indirect Costs accrued through the effective date of termination to the extent not previously included in Monthly Compensation. Such amount shall be payable ninety (90) days after the effective date of the Employee's termination. In the event that the Employee is indebted to NMC on the effective date of the Employee's termination, NMC may deduct from the Monthly Compensation the amount of such indebtedness.

#### 11. PROMEDCO-SW CONSIDERATION

In the event that this Agreement is terminated prior to the end of the Initial Term (i) pursuant to Section 9 by NMC for any reason other than death, Total and Permanent Disability as described in Section 9(e) hereof or retirement, as approved by the Policy Council, of Employee or (ii) by Employee for any reason, Employee shall return (the "Refund") to NMC the Consideration received by that Employee (or any entity other than NMC in which Employee has an ownership interest) as a result of the sale of assets under the Asset Purchase Agreement, and NMC shall refund such amount to ProMedCo-SW which shall use such payments as reimbursement for all costs incurred by ProMedCo-SW in the enforcement of the this agreement and in recruiting a replacement physician for Employee. The remainder, if any, shall be applied as an additional service fee to be paid to ProMedCo-SW pursuant to Service Agreement. The accounting treatment of such funds shall be consistently applied and approved by ProMedCo-SW's independent certified public accountants and the Policy Council.

Employee acknowledges and agrees that in the event of Employee's breach of this Agreement or Employee's voluntary termination of his or her employment during the Initial Term, it would be difficult to calculate the precise amount of damages, and for that reason the parties have determined that the Refund will be appropriate liquidated damages for such actions during the Initial Term hereof. The Refund shall be due as of the date of the breach of the Agreement by Employee giving rise to such termination for cause or the date of Employee's voluntary termination of his employment, as the case may be. NMC shall have the right to withhold from amounts otherwise due Employee under this or any other agreement with Employee such portion of the Refund not paid immediately by Employee and to pursue such other remedies as it may be entitled to at law or equity. Employee hereby appoints ProMedCo-SW as its attorney in fact to cause such Refund. ProMedCo-SW shall be entitled to specific performance and other equitable relief to enforce the Refund. This provision is in addition to the rights of NMC pursuant to Section 12 of this Agreement. ProMedCo-SW shall have third party beneficiary rights to enforce this Section 11 and, when and if applicable by renewal, during any Renewal Term, Sections 12 and 15.

## 12. NON-COMPETITION AND NON-SOLICITATION.

- (a) Employee agrees and covenants that during any Renewal Term of this Agreement and for a period of 18 months thereafter (neither the additional 18 months nor the provisions of Section 15 hereof shall apply in the event the term of this Agreement is not extended as a result of a decision by the Policy Council pursuant to the first sentence of Section 3 hereof), Employee shall not, either directly as a partner, agent, independent contractor, employee or indirectly through a corporation, partnership, affiliate, subsidiary or otherwise:
- (i) establish, operate or provide professional medical services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility other than such offices, clinics or facilities owned, operated, managed, staffed or leased by NMC or ProMedCo-SW, or any affiliate thereof unless the payments received by Employee are included as Net Clinic Revenues under the Service Agreement,
  - (ii) establish, operate or provide physician services at any medical office, clinic or outpatient and/or ambulatory treatment or diagnostic facility providing services substantially similar to those provided by NMC in Collier, Charlotte or Lee counties or, if greater, within a radius of 30 miles of Clinic Facility, or within a radius of 30 miles of any present or future medical office, clinic or other health care facility from which NMC provides medical services,
  - (iii) solicit, induce or attempt to induce, in connection with any business competitive with that of NMC, patients of any physician associated with NMC to leave the care of physicians associated with NMC; or

- (iv) solicit, induce or attempt to induce any employee, consultant or other persons associated with NMC or ProMedCo-SW to leave the employment of, or to discontinue their association with NMC or ProMedCo-SW, or any affiliate thereof.
- (b) Employee acknowledges and agrees that the covenants contained in Section 12(a) are necessary to protect the business and goodwill of NMC and ProMedCo-SW and that a breach of these covenants will result in irreparable harm and continuing damage to NMC and ProMedCo-SW. As a result, Employee agrees that in the event Employee breaches or threatens to breach such covenants, NMC and ProMedCo-SW shall be entitled to specific performance and/or injunctive or other equitable relief in order to prevent the continuation of such harm, as well as money damages. Employee waives any requirement for the securing or posting of any bond in connection with the obtaining of any such equitable relief.
- (c) Employee acknowledges and agrees that if Employee breaches the covenants contained in Section 12(a) and NMC or ProMedCo-SW is unable for any reason to obtain a restraining order from a court of competent jurisdiction within 30 days after application enjoining the breach by Employee, it will be difficult to calculate the precise amount of NMC's damages. As a result, the parties have determined that, in the event of such a breach, NMC's damages shall be equal to liquidated damages equal to such physician's income related to the Clinic, as reported to the Internal Revenue Service, for the previous 12 months or the annualized compensation in the event of a partial year. Notwithstanding any other provision of this Section 12 to the contrary, upon payment of such liquidated damages (which may be initiated by Employee), Employee shall be released from the provisions of Section 12(a).
- (d) The parties have attempted to limit the provisions of this Section 12 only to the extent necessary to protect each party's interests. However, the parties hereby agree that, in the event that any provision, section or subsection of this Section 12 is adjudged by any court of competent jurisdiction to be void or unenforceable, in whole or part, such court shall modify and enforce any such provision, section or subsection to the extent that it believes to be reasonable under the circumstances.

### 13. AGENCY

The Employee shall have no authority to enter into any contracts binding upon NMC, or to create any obligations on the part of NMC, except such as shall be specifically authorized by NMC.

14. **ACKNOWLEDGMENTS.** Employee hereby represents and acknowledges as follows:

- (a) All documents, knowledge and information regarding the methods of operation of NMC and ProMedCo-SW, and any affiliate thereof, are highly confidential and constitute trade secrets, including, but not limited to information regarding patient lists, patient solicitation, patient treatment and charging, financial statements and reports, operating manuals, leases, employment agreements, and any and all reports, memoranda or correspondence regarding NMC's and ProMedCo-SW's, and any affiliate thereof, methods of operation (collectively, "Confidential Information");
- (b) Employee is fully capable of earning a livelihood and practicing in Employee's professional medical field without violating any of the provisions of this Agreement;
- (c) Employee's ability to earn a livelihood and practice in his or her professional medical field without violating any of the provisions of this Agreement was a material condition to the execution of this Agreement; and
- (d) Under most circumstances, patients who have been historically treated by Employee could be treated by other physicians without injury to the patient.

15. **TRADE SECRETS AND CONFIDENTIAL INFORMATION.** Employee agrees and covenants not to disclose, communicate or misuses, to the detriment or injury of NMC or ProMedCo-SW and any affiliate thereof, any Confidential Information to any person or entity not associated with NMC or ProMedCo-SW and any affiliate thereof, other than his or her attorneys or accountants who shall also agree not to disclose such information without the written consent of NMC or ProMedCo-SW, and any affiliate thereof, as the case may be, unless required to disclose it by law or, unless such information is generally known or available in the industry, or by the person to whom it is communicated; provided however, this sentence shall only be applicable during Renewal Terms of this Agreement. Immediately after the earlier of the termination of this Agreement or such time as Employee shall cease to be associated with NMC, Employee shall return any and all Confidential Information to the possession of NMC and/or ProMedCo-SW, and any affiliate thereof.

16. **CASE RECORDS AND HISTORIES.** All case records, case histories, x-ray films and personal and regular files concerning patients of NMC or patients consulted, interviewed or treated and cared for by Employee, and any accounts receivable with respect thereto, shall belong to and remain the property of NMC.

17. **NOTICES**

Any notice required or permitted to be given under this Agreement shall be sufficient if in writing, and if sent by registered mail to his residence in the case of the Employee, or to the principal office in the case of NMC.

18. OTHER AGREEMENTS

The Employee, together with others, is a party to (a) that certain Shareholders' Agreement among the shareholders of NMC and NMC, as amended, and (b) the Services Agreement. It is the intent of the parties that this Agreement, the Services Agreement and the Shareholders' Agreement shall be construed consistently with each other. However, in the event of an inconsistency between this Agreement and the Shareholders' Agreement this Agreement shall control, and in the event of any inconsistency involving the Services Agreement, the Services Agreement shall control.

19. ENTIRE AGREEMENT

This instrument and the other instruments referred to herein contain the entire agreement of the parties. It may not be changed orally but only by an agreement approved in writing in advance by the Policy Council signed by the party against whom enforcement of any waiver, change, modification, extension or discharge is sought. This Agreement replaces any prior employment agreement between the parties.

20. CHANGES IN LAW

In the event of any change in law or government regulations, which adversely affects the amount or payment of reimbursement for services provided pursuant to this Agreement, or changes significantly the method by which such reimbursement is to be billed by NMC or distributed as compensation to the Employee, or which renders any provision of this Agreement illegal or casts reasonable doubt upon the legality of any provision herein, then the affected provisions of this

The provisions of this Agreement are separable. If any one of the provisions of this Agreement is held invalid by a court of competent jurisdiction or is voided or nullified, the remaining provisions and paragraphs shall continue in full force and effect and shall be binding on the parties so as to carry out the intent and purpose of the parties as nearly as possible.

**22 BINDING EFFECT**

This Agreement shall be binding upon each of the parties, their heirs, representatives, successors and assigns. Each of the parties does hereby bind himself, his heirs, representatives, successors, and assigns to perform the intent and purpose of this Agreement.

**23 ASSIGNMENT**

This Agreement may be assigned by NMC with prior notice to the Employee.

**24 ARBITRATION.** Any dispute arising out of this Agreement shall be settled by a single arbitrator, sitting in Collier County, Florida who is mutually agreeable to both parties, and applying the rules and regulations of the American Arbitration Association. The parties hereto agree to be bound by the arbitrator's decision. Judgement may be entered in any court having jurisdiction. The arbitrator may in any such proceeding award attorneys' fees and costs to the prevailing party.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the date first above written.

**NMC:**  
**NAPLES MEDICAL CENTER, P.A.**

**EMPLOYEE:**

By: Charles J. Bussse MD  
Name: Charles J. Bussse, MD  
Title: President

Name: \_\_\_\_\_

Agreement may be amended by NMC's Board of Directors in such manner as most nearly conforms to the prior intent and effect of this Agreement or the affected provisions, and as long as such amendment is applied non-discriminatory to all physician-employees. Employee shall be bound thereby.

**21. SEVERABILITY**

The provisions of this Agreement are separable. If any one of the provisions of this Agreement is held invalid by a court of competent jurisdiction or is voided or nullified, the remaining provisions and paragraphs shall continue in full force and effect and shall be binding on the parties so as to carry out the intent and purpose of the parties as nearly as possible.

**22. BINDING EFFECT**

This Agreement shall be binding upon each of the parties, their heirs, representatives, successors and assigns. Each of the parties does hereby bind himself, his heirs, representatives, successors, and assigns to perform the intent and purpose of this Agreement.

**23. ASSIGNMENT**

This Agreement may be assigned by NMC with prior notice to the Employee.

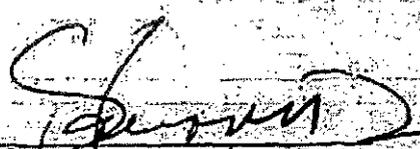
**24. ARBITRATION.** Any dispute arising out of this Agreement shall be settled by a single arbitrator, sitting in Collier County, Florida who is mutually agreeable to both parties, and applying the rules and regulations of the American Arbitration Association. The parties hereto agree to be bound by the arbitrator's decision. Judgement may be entered in any court having jurisdiction. The arbitrator may in any such proceeding award attorneys' fees and costs to the prevailing party.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date first above written.

NMC:  
NAPLES MEDICAL CENTER, P.A.

EMPLOYEE:

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

  
Name: Gary Louville 692197

**NAPLES MEDICAL CENTER, P.A.  
BILL OF SALE AND ASSIGNMENT**

**BILL OF SALE AND ASSIGNMENT** dated as of April 14, 1997, from Naples Medical Center, P.A., a Florida corporation ("NMC"), to ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW").

**RECITAL:**

Pursuant to the Asset Purchase Agreement dated as of April 14, 1997 (the "Acquisition Agreement") among NMC, ProMedCo-SW and ProMedCo Management Company, a Delaware corporation ("ProMedCo"), NMC agreed to transfer and deliver to ProMedCo-SW at the Closing under the Acquisition Agreement, certain assets ("Assets") of NMC as described in the Acquisition Agreement. NMC hereby sells, conveys, transfers and assigns to, and vests in, ProMedCo-SW, its successors and assigns forever, all of NMC's right, title and interest, legal or equitable, in and to the Assets.

**TO HAVE AND TO HOLD**, all of the foregoing Assets, unto ProMedCo, its successors and assigns forever.

1. NMC hereby constitutes and appoints ProMedCo-SW, its successors and assigns, as NMC's true and lawful attorney, with full power of substitution, in NMC's name and stead, but on behalf and for the benefit of ProMedCo-SW, its successors and assigns, to demand and receive any and all of the Assets, and to give receipts and releases for them respecting the same, and any part thereof, and from time to time to institute and prosecute in NMC's name, or otherwise, at the expense and for the benefit of ProMedCo-SW, its successors and assigns, any and all proceedings at law, in equity or otherwise, which ProMedCo-SW, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Assets or for the collection and enforcement of any claim or right of any kind hereby sold, conveyed, transferred and assigned, or intended so to be, and to do all acts and things in relation to the assets which ProMedCo-SW, its successors or assigns shall deem desirable. NMC hereby declaring that the foregoing powers are coupled with an interest and shall be irrevocable by NMC or by its dissolution or in any manner or for any reason whatsoever.

2. Nothing in this instrument, express or implied is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than ProMedCo-SW and its successors and assigns, any remedy or claim under or by reason of this instrument or any term covenant or condition hereof, and all the terms, covenants and conditions, promises and agreements in this instrument contained shall be for the sole and exclusive benefit of ProMedCo-SW and its successors and assigns.

3. This instrument is executed by, and shall be binding upon NMC, its successors and assigns, for the uses and purposes above set forth and referred to, effective immediately upon its delivery to ProMedCo-SW irrespective of the date of its execution.

NMC has caused this BILL OF SALE AND ASSIGNMENT to be signed by a duly authorized officer.

NAPLES MEDICAL CENTER, P.A.

Attest:

By Charles D. Buysse MD  
Name: Charles D. Buysse, Jr. M.D.  
Title: President

Douglas K. Boynton  
Name: Douglas K. Boynton, M.D.  
Title: Secretary

**NAPLES OBSTETRIC & GYNECOLOGY, M.D., P.A.  
BILL OF SALE AND ASSIGNMENT**

**BILL OF SALE AND ASSIGNMENT** dated as of April 14, 1997, from Naples Obstetric & Gynecology, M.D., P.A., a Florida corporation ("NOB"), to ProMedCo of Southwest Florida, Inc., a Florida corporation ("ProMedCo-SW").

**RECITAL:**

Pursuant to the Asset Purchase Agreement dated as of April 14, 1997 (the "Acquisition Agreement") among NOB, ProMedCo-SW and ProMedCo Management Company, a Delaware corporation ("ProMedCo"), NOB agreed to transfer and deliver to ProMedCo-SW at the Closing under the Acquisition Agreement, certain assets ("Assets") of NOB as described in the Acquisition Agreement. NOB hereby sells, conveys, transfers and assigns to, and vests in, ProMedCo-SW, its successors and assigns forever, all of NOB's right, title and interest, legal or equitable, in and to the Assets.

**TO HAVE AND TO HOLD**, all of the foregoing Assets, unto ProMedCo, its successors and assigns forever.

1. NOB hereby constitutes and appoints ProMedCo-SW, its successors and assigns, as NOB's true and lawful attorney, with full power of substitution, in NOB's name and stead, but on behalf and for the benefit of ProMedCo-SW, its successors and assigns, to demand and receive any and all of the Assets, and to give receipts and releases for them respecting the same, and any part thereof, and from time to time to institute and prosecute in NOB's name, or otherwise, at the expense and for the benefit of ProMedCo-SW, its successors and assigns, any and all proceedings at law, in equity or otherwise, which ProMedCo-SW, its successors and assigns, may deem proper for the collection or reduction to possession of any of the Assets or for the collection and enforcement of any claim or right of any kind hereby sold, conveyed, transferred and assigned, or intended so to be, and to do all acts and things in relation to the assets which ProMedCo-SW, its successors or assigns shall deem desirable, NOB hereby declaring that the foregoing powers are coupled with an interest and shall be irrevocable by NOB or by its dissolution or in any manner or for any reason whatsoever.

2. Nothing in this instrument, express or implied is intended or shall be construed to confer upon, or give to, any person, firm or corporation other than ProMedCo-SW and its successors and assigns, any remedy or claim under or by reason of this instrument or any term, covenant or condition hereof, and all the terms, covenants and conditions, promises and agreements in this instrument contained shall be for the sole and exclusive benefit of ProMedCo-SW and its successors and assigns.

3. This instrument is executed by, and shall be binding upon NOB, its successors and assigns, for the uses and purposes above set forth and referred to, effective immediately upon its delivery to ProMedCo-SW irrespective of the date of its execution.

NOB has caused this BILL OF SALE AND ASSIGNMENT to be signed by a duly authorized officer:

NAPLES OBSTETRIC & GYNECOLOGY, M.D., P.A.

Attest:

By: Steph Thompson MD  
Name: Steph Thompson MD  
Title: Vice President

[Signature]  
Name: Walter [unclear]  
Title: President

MOORE & MENKHAUS, P.A.

ATTORNEYS AT LAW

4800 N. FORT MEADOW

SUITE 210-A

BONN RAJON, FLORIDA 33434-3170

(407) 303-7070

FAX (407) 303-6511

(407) 303-6511

April 22, 1997

PromedCo Management Company  
PromedCo of Southwest Florida, Inc.  
801 Cherry Street, Suite 1450  
Fort Worth, TX 76102

Re: Acquisition of Certain Assets of Naples Medical Center,  
P.A. ("NMC") by PromedCo of Southwest Florida, Inc.  
("PMC-SW")

Gentlemen:

In our capacity as special counsel to NMC, we have examined and are familiar with certain documents with respect to the above-referenced transaction, including without limitation the Asset Purchase Agreement of even date herewith (the "Asset Purchase Agreement") by and among PMC-SW and PromedCo Management Company (collectively, "Purchaser"), and NMC, and the Service Agreement (as defined therein). In connection therewith, and pursuant to the requirements of Section 8.3 of the Asset Purchase Agreement, this opinion is provided to you as special counsel to NMC.

In connection with our opinion, we have also examined such statutory provisions and court decisions, originals or copies, the authenticity of which has been established to our satisfaction, of such other documents, records, statements, instruments and certificates of public officials, and of the officers of NMC, as we have deemed necessary and relevant to render the opinions herein set forth. As to any questions of fact material to our opinion, we have, when relevant facts were not independently established, relied upon certificates of NMC in the form attached hereto.

Based upon the foregoing, we are of the opinion that:

1. NMC is a corporation, duly organized, validly existing and in good standing under the laws of the State of Florida, with full corporate power to carry on its business as now being conducted, and to enter into the Asset Purchase Agreement and to carry out the transactions contemplated thereby. NMC is duly qualified and in good standing in each other jurisdiction in which the character of the properties owned by it or the nature of the activities conducted by it make such qualification necessary.

2. The authorized capital stock of NMC consists of shares of

PromedCo Management Co.

April 22, 1997

Page 2

common stock, \$1.00 par value, of which 2,800 shares were issued and outstanding as of the record date for determining the stockholders of NMC entitled to vote at the meeting of NMC stockholders called to vote upon the sale of assets contemplated by the Asset Purchase Agreement.

3. The execution, delivery and performance of the Asset Purchase Agreement and the Service Agreement have been duly authorized and approved by all requisite action of NMC's Board of Directors and stockholders, and neither the execution, delivery, nor performance of the Asset Purchase Agreement or Service Agreement by NMC violates any provision of its Articles of Incorporation or by-laws, or the provisions of any indenture, agreement or other instrument to which NMC is a party, and the Asset Purchase Agreement and Service Agreement have each been duly authorized, executed and delivered by NMC and constitute the valid and binding obligations of NMC, enforceable against NMC in accordance with their respective terms (except as enforceability may be restricted, limited, or delayed by bankruptcy, insolvency, moratorium or similar laws affecting or relating to the enforcement of creditors' rights in general and except as the enforceability of any provision of the Asset Purchase Agreement or Service Agreement may be limited by general principles of equity, regardless of whether enforceability is considered in a proceeding at law or in equity).

4. All other corporate actions and proceedings required by law or the Asset Purchase Agreement to be taken by NMC at or prior to the Closing thereunder in connection with the Asset Purchase Agreement and the transactions provided for therein have been duly and validly taken.

5. Except as disclosed in Exhibit 3.17, we do not know of any litigation, administrative, arbitration, other proceeding, or governmental, regulatory or accrediting agency investigation, pending or threatened against, or relating to, NMC or its subsidiaries or the properties or business thereof or the transactions contemplated by the Asset Purchase Agreement.

6. Except as disclosed on Appendix 2.2 or in Exhibit 3.8 to the Asset Purchase Agreement, and based solely upon the UCC lien searches included therein, there are no mortgages, pledges, liens, charges, or other encumbrances upon any of the real or personal property of NMC or its subsidiaries.

7. NMC has complete and unrestricted power and the unqualified right to sell, assign, transfer and deliver the Assets to Purchaser, and upon consummation of the transfer, Purchaser will have valid, good and marketable title to the Assets.

PromedCo Management Co.  
April 22, 1997  
Page 3

8. No facts have come to our attention which would lead us to believe that any representation or warranty of NMC contained in the Asset Purchase Agreement or any Exhibit thereto is incorrect.

9. The relationships created by the Service Agreement will not result in the unauthorized practice of medicine by PMC-SW.

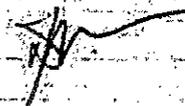
10. The UCC-1 financing statements in connection with the sale of Accounts Receivable by NMC to Purchaser have been filed in all places necessary to create a security interest in such Accounts Receivable in favor of Purchaser in the event that such sale is deemed not to have transferred title thereto; provided, however, that no opinion is expressed as to the transferability of Medicare and Medicaid Accounts Receivable.

11. The Employment Agreements have been duly executed and delivered by the Employee parties thereto and each Employment Agreement constitutes the valid and binding obligation of such Employee enforceable against such Employee in accordance with its terms (except as enforceability may be restricted, limited, or delayed by bankruptcy, insolvency, moratorium or similar laws affecting or relating to the enforcement of creditors' rights in general and except as the enforceability of any provision of such Employment Agreement may be subject to general principles of equity, regardless of whether enforceability is considered in a proceeding at law or in equity).

The foregoing opinions are rendered solely for your use and benefit in connection with the above-referenced transaction, and may not be relied upon by you for any other purpose or by any other person for any purpose. We assume no obligation to update our opinions in the event of any changes in facts, circumstances or laws or interpretation occurring after the date hereof.

Very truly yours,

Thomas E. Arnold, P.A.



**WALLER LANSDEN DORTCH & DAVIS**

A PROFESSIONAL LIMITED LIABILITY COMPANY

NASHVILLE CITY CENTER

511 UNION STREET, SUITE 2100

POST OFFICE BOX 198966

NASHVILLE, TENNESSEE 37218-8966

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(615) 244-6888

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808 SOUTH MAIN STREET

P.O. Box 1038

COLUMBIA, TN 38402-1038

(615) 389-6031

April 23, 1997

Gary C. Courville, M.D.  
758 Lynnmore Lane  
Naples, Florida 34108

Re: Federal Income Tax Consequences - Split-Dollar Life Insurance Benefit  
as Compensation for Execution of Split-Dollar Agreement and Agreement  
to Execute an Employment Agreement

Dear Dr. Courville:

We have acted as special tax counsel to AIMS of Nashville, LLC in connection with the issuance to you of a split-dollar variable life insurance policy (the "Policy") by either Hartford Life Insurance Companies ("Hartford") or Pacific Mutual Life Insurance Company ("Pacific"). The Policy is being issued to you contemporaneously with the sale of the assets of Naples Medical Center, P.A., a Florida professional corporation (the "Center"), and Naples Obstetrics & Gynecology, M.D., P.A., a Florida professional corporation ("Obstetrics"), to ProMedCo of Southwest Florida, Inc., a Florida corporation (the "Company"). We are rendering to you, with the consent of AIMS of Nashville, LLC, this opinion regarding certain of the federal income tax consequences to you with respect to the Company's split-dollar life insurance payments and the potential increase in the cash surrender value of the Policy.

**Facts**

We understand that the relevant facts, which have not been independently verified, are as follows. To the extent that the actual facts vary from those stated herein, our legal opinion cannot be relied upon.

You are a licensed physician who has been conducting your practice as part of the medical group constituting the Center or Obstetrics. The Center and Obstetrics have entered into Asset Purchase Agreements, each dated as of April 14, 1997 (collectively the "Asset Purchase Agreement"), with the Company, pursuant to which the Center and Obstetrics will sell certain of their assets to the Company.

Pursuant to the Asset Purchase Agreement, the aggregate purchase for the assets was \$4,496,111, subject to certain post-closing adjustments. Such consideration was determined by arms-length negotiation and, in the case of the Center, supported by an independent valuation prepared by Value Management Group. We understand, but have not verified, that a certified public accountant in Naples, Florida provided valuation support to Obstetrics.

WALLER LANSDEN DORTCH & DAVIS  
A PROFESSIONAL LIMITED LIABILITY COMPANY

Gary C. Courville, M.D.

April 23, 1997

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Concurrently with the sale of the assets by the Center and Obstetrics to the Company, you have applied for a variable life insurance policy from Hartford or Pacific. Pursuant to the terms of the Policy, certain scheduled premium payments must be made and optional premium payments can be made from time to time. The Policy provides for flexible periodic premium payments. It is anticipated that the premiums for the first five years will be paid by the Company through the "Escrow" (as defined below). Any additional premiums that are required will be paid by you if the Policy is not to lapse. The Policy will not pay dividends to the owner. No waiver of premiums for disability, accidental death benefit, or other optional coverage are applicable. Policy earnings and losses will be internally credited to the Policy's cash surrender value in accordance with the terms of the Policy.

You individually entered into a Split-Dollar Agreement (the "Split-Dollar Agreement") with the Company, which contains certain non-competition, confidentiality and non-solicitation provisions. In addition, the Split-Dollar Agreement requires you to execute an Employment Agreement with the Center in a form satisfactory to the Company. As consideration for your obligations under the Split-Dollar Agreement (including your agreement to enter into the Employment Agreement), the Company has committed to pay specified amounts with respect to the first five annual premiums on the Policy. The Company has created a rabbi trust escrow account (the "Escrow") with TransFinancial Bank, N.A. (the "Escrow Agent") and has funded the Escrow with sufficient cash to pay two-years' premiums and a promissory note in the face amount of the remaining three premiums. The Escrow Agent will remit cash to the insurance company as provided in the rabbi trust agreement (the "Escrow Agreement"). Amounts in the Escrow are subject to claims of the Company's general creditors.

You have entered into a collateral assignment agreement ("Collateral Assignment") with the Company to assign the Policy to the Company. Pursuant to the Collateral Assignment, the Company has the right to recoup its total aggregate premium payments ("Advanced Premiums") from any death benefits payable under the Policy, and, in the event you breach the Split-Dollar Agreement, the Company has the right to cease making premium payments and to surrender the Policy to recoup the Advanced Premiums. In this event, the Escrow terminates. In addition, in the event of your breach of the Split-Dollar Agreement, you are liable for any Advanced Premiums not otherwise recouped by the Company.

Pursuant to the Employment Agreement with the Center, you are to provide services to the Center for a five-year period. Pursuant to the Split-Dollar Agreement, during such employment term and for a period of 18 months thereafter, you are: (i) prohibited from soliciting employees of the Company to leave the employment of the Company; (ii) prohibited from competing with the Company in specific geographic areas; (iii) restricted from acquiring any ownership interest in competitors; and (iv) prohibited from disclosing certain confidential information.

Upon the termination of the non-competition, non-solicitation, and confidentiality periods, you may, at your option: (i) leave the Policy and Collateral Assignment in place; (ii) repay to the Company the total amount of the Advanced Premiums; or (iii) acquire a new paid-up life insurance policy from the same insurance company with a death benefit equal to the Advanced Premiums and substitute the Collateral Assignment on the Policy for a collateral assignment on the new policy. In the event that you permit the Policy to lapse without the

Gary C. Courville, M.D.

April 23, 1997

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Company either having: (i) a collateral assignment on a paid-up life insurance policy from the same insurance company in the face amount of the Advanced Premiums; or (ii) a cash payment equal to the Advanced Premiums, you personally will be liable to the Company for the Advanced Premiums, unless the Company has itself breached the Split-Dollar Agreement, to the extent that the unencumbered cash surrender value is insufficient to pay the Company an amount equal to the Advanced Premiums.

#### Assumptions

In rendering the opinion set forth herein, we have examined and relied upon originals or copies, certified or otherwise identified to our satisfaction, of the following:

- (1) The Split-Dollar Agreement;
- (2) The Collateral Assignment;
- (3) The Employment Agreement;
- (4) The Escrow Agreement (Rabbi Trust);
- (5) A specimen of the Policy; and
- (6) A certificate as to certain facts executed by you.

In addition, we have examined such other documents, agreements, and certificates and made such investigations of law and fact as we have deemed necessary or appropriate as a basis for the opinion set forth below.

In our examination, we have assumed the genuineness of all signatures, the legal capacity of natural persons, the authenticity of all documents submitted to us as originals, the conformity to original documents of all documents submitted to us as certified or photostatic copies, and the authenticity of the originals of such copies. As to any facts material to this opinion which we did not independently establish or verify, we have relied upon statements and representations made by you and by the Company and its officers and other representatives and of public officials and have assumed that such matters remain true and correct through the date hereof.

In rendering the opinion set forth herein, we have assumed the premium payments for the Policy are made solely in consideration of your obligations under the Split-Dollar Agreement. We have also assumed, without any independent analysis or verification that: (i) the Policy is a life insurance contract as defined in Section 7702 of the Internal Revenue Code (the "Code") and is not a Modified Endowment Contract (a "Modified Endowment Contract") (as defined in the Code), and that future actions taken with respect to the Policy will not cause it to become a Modified Endowment Contract or cause it to lose its status as a life insurance policy; and (ii) you will timely make a proper Section 83(b) under the Code each year the Company (either directly or through the Escrow Agent) makes a payment on the Policy.

Gary C. Courville, M.D.

April 23, 1997

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We have assumed that the Split Dollar Agreement, the Escrow Agreement, the Employment Agreement, and the Collateral Assignment are each executed in the form attached to this opinion and will not be amended. We have also assumed that the Policy is issued in the form of the specimen we have examined.

We assume that the consideration paid by the Company under the Asset Purchase Agreement for the assets of the Center and Obstetrics represents the fair market value of the assets. We understand that independent valuation support for the value of the sale of assets was obtained with respect to the Center's assets and may have been obtained with respect to Obstetrics' assets. We have not verified such support and assume that such valuation support is accurate. We also assume that the consideration received by you under the Employment Agreement represents full and fair consideration for the services rendered thereunder. We further assume that the split-dollar benefit relates solely to the services called for in the Split-Dollar Agreement and represents the full and fair consideration for such services. We have not made any independent examination of the sufficiency of the consideration of the components of the transactions discussed in this opinion.

We have assumed that:

- (i) The execution, delivery, and performance by the parties of all the documents relating to the transactions described in or contemplated by the Split-Dollar Agreement will not conflict with, contravene, violate, or constitute a default under any lease, indenture, instrument, or other agreement to which such parties or their properties are subject, any rule, law, or regulation which the parties are subject, or any judicial or administrative order or decree of any governmental authority.
- (ii) No authorization, consent, or other approval of, notice to or filing with any court, governmental authority, or regulatory body is required to authorize or is required in connection with the execution, delivery, or performance by the parties of any document to which any party is a party or to the transactions contemplated thereby.
- (iii) There is no action, suit, or proceeding pending or threatened against or affecting the parties before any court, governmental department, or other authority, which purports to affect the legality, validity, or enforceability of any document or the transactions contemplated by the Split-Dollar Agreement.
- (iv) Each document executed by the parties in connection with the transactions contemplated by the Split-Dollar Agreement is a valid, legal, and binding obligation of each party thereto enforceable against such parties in accordance with its terms.

Gary C. Courville, M.D.

April 23, 1997

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### Opinion

It is our opinion, subject to the facts, assumptions, and qualifications stated herein, that it is more likely than not that the following are the primary federal income tax consequences to you with respect to the Company's split-dollar life insurance payments on the Policy:

1. The measure of the taxable benefit to you with respect to the face amount of the Policy and its cash surrender value, and the only amount includable in income with respect to such amount of insurance during each year the Policy is in force will be the "Economic Benefit" (as defined herein) of the split-dollar insurance paid for by the Company on your behalf.
2. The contribution by you of any portion of the premiums could reduce the economic benefit received by you, and could completely eliminate any Economic Benefit.
3. Upon any surrender or cancellation of the Policy, you will be required to include in your gross income the amount of any cash or the value of any property received or deemed to be received by you from such surrender or cancellation in excess of premiums paid by you (as opposed to Advanced Premiums paid by the Company directly or through the Escrow).
4. Loans made to you under the Policy in the future, provided you have no specific intent to borrow such funds at the time the Policy is issued, will not be taxable to you if they otherwise qualify as loans for federal income tax purposes.
5. Upon your death, the beneficiary of the Policy will receive the death benefits (net of the return of the Advanced Premiums to the Company and payment of any Policy loans) income tax free if the Policy is then in force.

We call to your attention that the Internal Revenue Service ("Service") has indicated (in Technical Advice Memorandum 9604001) that, to the extent that the cash surrender value of the Policy is in excess of the Advanced Premiums which the Company is entitled to recover pursuant to the Collateral Assignment, such excess will be treated as income to you at such time. However, the validity or invalidity of the Service's position has not been the subject of any judicial determination. Moreover, Technical Advice Memorandum 9604001 did not address the effect of a Section 83(b) election on the Service's analysis. If the issues were litigated, we believe that it is more likely than not that the opinion stated herein will prevail. Neither the Service nor the courts are bound by our opinion.

### Discussion

Initially, any analysis of the federal income tax consequences of service-related split-dollar life insurance arrangements should begin with the original text of Revenue Ruling 55-713, 1955-2 C.B. 23 ("Rev. Rul. 55-713") in which the Service concluded that the substance of a split-dollar life insurance arrangement in which the employer paid the annual increases in

Gary C. Courville, M.D.

April 23, 1997

Page 6

the cash surrender value of the split dollar life insurance policy and the employee paid the balance of the payment due, was essentially the same as if the employer had made annual loans, without interest, to the participating employee in an amount equal to the annual increases in cash surrender value in the subject policies. At the time this ruling was issued, such interest-free loans did not generate interest income or expense to the parties. Accordingly, under Rev. Rul. 55-713 making the money available to pay premiums equal to the cash surrender value did not result in realized income to the employee nor was a deduction available to the employer.

Rev. Rul. 55-713 was subsequently revoked, and replaced by the seminal ruling in this area: Revenue Ruling 64-328, 1964-2 C.B. 11 ("Rev. Rul. 64-328"), which is generally considered the definitive source for analysis of the federal income tax consequences of service-related split-dollar arrangements. The wisdom of the revocation of Rev. Rul. 55-713, from a tax policy perspective, may be questionable; however, we believe that its revocation and the subsequent published rulings establish the analytical framework for analyzing and determining the federal income tax consequences of split-dollar insurance arrangements.

In reviewing two major types of split-dollar arrangements, the Service indicated in Rev. Rul. 64-328 that the employer "in form" enters into a contract designed to provide current life insurance protection to the employee from year to year, without cost to the employee to the extent that the employer's payments and the earnings thereon are sufficient to do so. Accordingly, the Service indicated that even if the arrangement utilized a method other than the collateral assignment method, it would not be treated as an actual loan.

Rev. Rul. 64-328 involved an equity split-dollar policy in which the cash surrender value could exceed the advanced premiums. In that ruling, the Service stated: "The employer is entitled to receive, out of the proceeds of the policy, an amount equal to the cash surrender value, or at least a sufficient part thereof to equal the funds it has provided for premium payments." In that ruling, the Service held that the taxable Economic Benefit was the value of the insurance protection provided in excess of the amount paid by the insured.

In determining the value of the current yearly insurance benefit thus provided, which is the economic benefit currently taxable each year to the insured (to the extent not paid by the insured), Rev. Rul. 64-328 directed utilization of what is known as the "PS-58" values, as determined pursuant to Rev. Rul. 55-747, 1955-2 C. B. 222, as updated from time to time. Subsequently the Service ruled that, in computing the economic benefit, the taxpayer could use the lower of the PS-58 value or the currently published premium rates charged by the insurer for individual one-year term life insurance available to all standard risks, and meeting the requirements specified in Revenue Ruling 66-110 1966-1 C. B. 12. ("Rev. Rul. 66-110") Such calculated economic benefit, or with respect to additional insurance, if any, purchased within the Policy, perhaps the actual cost of such additional insurance, and with respect to a joint life policy, pursuant to the "Greenburg Formula" which converts individual PS-58 values to survivorship PS-58 values, such calculated value will be the economic benefit ("Economic Benefit").

In 1986, Congress enacted Code Section 7872 which imputes interest income to an employee or an independent contractor who receives a loan at below market interest rates

Gary C. Courville, M.D.

April 23, 1997

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from, respectively, an employer or principal. It is possible that the Service could reconsider its ruling in Rev. Rul. 64-328 and conclude that the substance of the proposed arrangement is a loan from the Company to you with the consequence that in each year you will be required to recognize income equal to interest imputed on the loan at 120% of the "applicable federal rate" (as defined in Code Section 7872). The Committee reports to Code Section 7872 provide, however, that the provisions thereof do not define, and do not alter prior law relating to, what transactions are, or are not, to be treated as loans. Accordingly, in order for the Service to apply Code Section 7872 to the instant situation, Rev. Rul. 64-328 would have to be revoked. Based on the conclusions of Rev. Rul. 64-328, we believe that it is more likely than not that the transaction does not constitute a loan subject to Code Section 7872. There can be no assurance, however, that the Service will agree or will not revoke Rev. Rul. 64-328 in the future and apply the below market interest loan rules of Code Section 7872 to the transaction either prospectively, retrospectively or both.

Since 1964, the Service's position has been that a split-dollar life insurance arrangement is in substance, regardless of structure, a method by which an employer advances funds representing, in part, the investment element in a life insurance contract and permits such funds and the earnings thereon to be utilized to provide each year for current life insurance on the life of an employee. Accordingly, in the opinion of the Service, the tax effect of such an arrangement for the financing of the cost of life insurance is that the investment element (paid by the employer) and the earnings thereon are applied to provide current life insurance protection on the life of the employee each year without cost to the employee, to the extent that such funds are sufficient to do so.

The Service also concluded, however, that the employee was required to include in gross income each year the Economic Benefit (computed as described above) of the one-year term cost of the life insurance protection. The Service also concluded that the receipt of the death proceeds by the employee's beneficiary and the employer were tax-free because the same "would be obtained if the transaction were cast in some other form resulting in a similar benefit to the employee." Rev. Rul. 64-328.

In Rev. Rul. 66-110, the Service modified Rev. Rul. 64-328 to provide that an employee, in addition to being taxed upon the Economic Benefit of the insurance, would also be taxable upon any "other benefits" provided under the arrangement to the employee. The ruling states in pertinent part: "However the employee may receive other benefits, such as cash dividends or additional life insurance, the value of which would likewise be includable in the employees gross income."

There is an argument, based upon Rev. Rul. 66-110, that any "equity" or "excess policy values" (the excess of the policy's cash value over the premiums paid by the employer) is a taxable benefit. Such a theory appears, however, inconsistent with Code Section 72, which generally governs the income taxation of the increase in the value of a life insurance policy during the insured's life and which clearly provides that an insured is not taxable upon policy equity absent policy surrender or cancellation of the policy. It has been argued that Code Section 72 does not apply in the employment context, but only to individual policy ownership. Nevertheless, it is our belief that, under the logic of the Service's published rulings, it is more likely than not that you will only be subject to federal income tax on the

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Economic Benefit associated with the Policy, but that the Economic Benefit will continue each year for the life of the Policy, or until the Advanced Premiums have been repaid. To the extent that the face value of the Policy increases over time through the purchase of additional term insurance within the Policy, it is unclear whether the actual cost of such additional coverage or the standard computation of the Economic Benefit amount (as discussed above) applies to measure the taxable income to the insured. We have been informed, but have not verified, that the actual cost of additional term insurance within the Policy will generally be less than the standard Economic Benefit amount, because, among other reasons, there is no commission inside the Policy on such increases.

Subsequent to the above-referenced rulings in the split-dollar area, the Code was amended to deal with transfers of property, subject to restrictions, to employees or independent contractors in connection with the performance of services. The refraining from performance of services is also considered the performance of services within the meaning of Code Section 83. See Code Section 83(a) and Treasury Regulation Section 1.83-3(f). Code Section 83 governs the taxation of transfers of property in connection with the performance of services. Treasury Regulation Section 1.83-1(a)(2) provides that the cost of life insurance protection under a life insurance policy is taxable generally under Code Section 61 during the period such contract remains substantially nonvested. Treasury Regulation Section 1.83-1(a)(2) further provides that the cost of the insurance protection under a life insurance policy is the reasonable net premium cost of the current life insurance protection, and cites Treasury Regulation Section 1.72-16(b)(3).

In Technical Advice Memorandum 9604001, the Service held that the "property" which was transferred, for Code Section 83 purposes, in a split-dollar life insurance arrangement, included the economic benefit of the insurance protection. Consequently, regardless of whether the Policy is "vested" or "nonvested," you will be subject to income taxation each year on the Economic Benefit associated with the Policy to the extent you are not required to actually make payments of such amount. In that Technical Advice Memorandum, the Service also held, with little analysis or rationale, that the cash value of the policy in excess of the amount required to be returned upon the termination of the arrangement was an additional taxable benefit which was properly includable in taxable income. Such a conclusion is, however, in our opinion, more likely than not inconsistent with Code Section 72, which generally governs the taxation of life insurance policies, inconsistent with Rev. Rul. 64-328, and inconsistent with the treatment of other transfers of property under Code Section 83, if the Code Section 83(b) elections are timely made. It should be noted that Technical Advice Memorandum 9604001 did not address the impact of a Code Section 83(b) election. Consequently, the presence of an election under Code Section 83(b) would present a factual situation potentially distinguishable on that basis from the factual situation described in Technical Advice Memorandum 9604001. In addition, Technical Advice Memorandum 9604001 did not address the effect of a decline in cash surrender value.

Technical Advice Memorandum 9604001 clearly indicates that the Service may challenge split-dollar arrangements if and when the cash surrender value exceeds the amounts due the employer or other payor. It is not, however, precedent binding upon the courts.

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A PROFESSIONAL LIMITED LIABILITY COMPANY

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Upon the date the Collateral Assignment of the Policy is terminated through the payment of an amount equal to the Advanced Premiums, the generation of a taxable Economic Benefit to you each year will stop. We believe that it is more likely than not that there will be no gain or loss for federal tax purposes to you by virtue of paying the Advanced Premiums to the Company from funds generated independent of the Policy or from bona fide loans from the Policy.

Provided that you have no present intention of borrowing a significant amount of the cash surrender value of the Policy during the initial years of the Policy, we believe that it is more likely than not that loans under the Policy will not be taxable to you for federal income tax purposes as long as they qualify as loans for federal tax purposes and as long as such loans do not cause the Policy to become a modified endowment contract (as defined in Code Section 7702). If you make substantial borrowings from the Policy during the years soon after the Policy is issued, the Service may take the position that the Policy and/or related transactions are sham transactions, with the result that the entire value would be taxed to you. We render no opinion as to whether the Service would be successful with such an argument as such argument would likely be particularly factually sensitive. Upon any surrender or cancellation of the Policy, however, you will be required to include in federal gross income any amounts of cash or the value of any property received or deemed received, including amounts used to pay Policy loans in excess of the premiums, if any, which you have paid with respect to the Policy.

Qualifications:

The opinion set forth herein is based upon the existing provisions of the Code, currently published and generally available Treasury Regulations, currently published and generally available administrative positions of the Internal Revenue Service contained in Revenue Rulings and Revenue Procedures, and judicial decisions published, generally available, and in effect as of the date of this opinion letter, any of which could be changed at any time. Any such change could be retroactive with respect to transactions entered into prior to the date of such change and would necessitate a reevaluation of our conclusions and the analysis set forth herein. No assurance can be provided as to the effect upon our opinion of any such change. By rendering our opinion, we do not undertake to advise you of any changes in such laws, other authority, or facts which may occur after the date hereof.

We understand that Registration Statements pertaining to the Policy have been filed by Hartford and Pacific with the Securities and Exchange Commission and have been declared effective by the Commission. We also understand that no stop order has been issued by the Commission regarding such Registration Statements. We express no opinion on the compliance with the Securities Act of 1933 or applicable state securities or "blue sky" laws of the Registration Statements, the Prospectus, dated May 1, 1996, included in the Hartford Registration Statement, or the Prospectus, dated May 1, 1996, included in the Pacific Registration Statement. Copies of each Prospectus have been furnished to you. The Hartford Prospectus was prepared by Hartford and the contents thereof have been reviewed by Lynda Godkin, Associate General Counsel of Hartford. The Pacific Prospectus was prepared by Pacific and the contents thereof have been reviewed by Dechert Price & Rhoads, counsel for

WALLER LANSDEN DORTCH & DAVIS

A PROFESSIONAL LIMITED LIABILITY COMPANY

Gary C. Courville, M.D.

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Pacific, as well as Pacific's General Counsel. We did not assist in the preparation of either Prospectus and do not take any responsibility for the statements made therein.

We have not acted for any person, including you, in the formulation, negotiation, or implementation of the economic transaction of which the issuance of the Policy is a part, or any other contemporaneous transaction, and understand that you have been represented by independent business, tax and legal advisors.

We express no opinion regarding any other opinions, or the matters addressed therein, which you may be receiving or have received in connection with the transactions contemplated by or consummated in connection with or contemporaneously with the Split-Dollar Agreement. Our opinion is limited exclusively to those matters on which we have expressly stated our opinion herein.

We have assumed, and do not express any opinion upon, the enforceability of all agreements relative to the transactions described in this opinion. No investigation has been made into, nor are any assurances given as to, the economic viability or economic performance of any of the parties, including the issuer of the Policy or the Policy itself. No advice is given as to the impact of any state or local laws, including state or local tax laws.

Should you cease to be the owner of the Policy, additional gift, estate, and/or income tax consequences may result. We express no opinion as to such consequences, and you should obtain competent tax advice prior to any transfer, partial withdrawal, termination of ownership, conversion into a paid-up or extended term policy, or substitution of collateral assignment of the Policy.

Our opinion is limited to the matters set forth above and is an expression of our professional judgment, rather than a guarantee or other assurance that the matters discussed herein will ultimately be determined in a manner favorable to you. This opinion is being furnished only to you solely for your benefit in connection with your Split-Dollar Agreement, and may not be used or relied upon by anyone else for any other purpose, and may not be circulated, quoted or otherwise referred to without our express written consent.

Very truly yours,

Waller Lansden Dortch & Davis, A Professional  
Limited Liability Company

**NAPLES MEDICAL CENTER, P.A.**  
**Analysis of Assets to be Transferred and**  
**Agreements to be Entered Into**  
**April 30, 1997**

 VALUE MANAGEMENT GROUP

1st. Forest Plaza  
2222 Merit Drive, Suite 1380  
Dallas, Texas 75251  
(72) 385-9999  
(72) 385-9816 FAX

Business and Financial Advisors to Healthcare

April 30, 1997

Charles Buysse, Jr., M.D.  
Naples Medical Center, P.A.  
8<sup>th</sup> Street North  
Naples, Florida 34102

Dear Dr. Buysse:

As requested, we have completed our analysis of the assets to be transferred and agreements to be entered into, in the contemplated transaction involving Naples Medical Center, P.A. (the Clinic), the physicians currently employed by the clinic, and ProMedCo of Southwest Florida, Inc. (ProMedCo-SW), a Florida Corporation. Our analysis has been completed for management planning purposes. The results of our valuation study should not be used, in whole or in part, for any other purpose or distributed to third parties, other than the IRS, without the express written consent of Value Management Group, LLC.

A summary of our findings is included as Exhibit I to this report. We have relied on representations by management that the financial data described in the following schedules provides a reasonable representation of the historical operations of the Clinic. Our analysis relies on historical financial data and discussions with Clinic and ProMedCo-SW management concerning historical and future operations. Our analysis also relies, in large part, on the currently unexecuted Asset Purchase Agreement, Service Agreement, Employment Agreements and Split Dollar Agreement (and Non-Competition and certain other agreements, the Non-Compete Agreement).

Based on our understanding of the proposed transaction, fixed assets and accounts receivable will be transferred from the Clinic to ProMedCo-SW. In addition, consideration in the form of split dollar insurance will be provided to the physicians currently employed by the Clinic in exchange for the physicians entering into five year Employment Agreements with the Clinic and entering into Non-Compete Agreements with ProMedCo-SW. The following provides a summary of our estimate of value for each asset category contemplated for transfer as part of the proposed transactions.

Charles Buysse, Jr., M.D.  
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### *Fixed Assets*

Based on our discussions with Clinic Management and review of the fixed assets listing, we have estimated the value of the fixed assets at \$456,007.

### *Accounts Receivable*

Through provisions for Purchase Consideration Adjustments, the Asset Purchase Agreement establishes the value of the Accounts Receivable at \$2,065,227. Should the buyer not collect \$2,065,227, an adjustment is made to the Second Portion of the Purchase Consideration in an amount equal to the amount not collected. All amounts over \$2,065,227 will be returned to the seller. As a result of the provisions for Accounts Receivable included in the Asset Purchase Agreement, we have estimated the value of Accounts Receivable at \$2,065,227.

### *Trained Work Force*

The Asset Purchase Agreement requires the seller to terminate all non-medical employees. The buyer will offer the employees employment on similar terms. This represents an asset that will be transferred to the buyer, as the buyer will not have to train new employees for similar positions.

Exhibit II demonstrates the analysis used to estimate the value of the trained work force. All employees and salaries from the February 15, 1997 payroll were utilized to estimate the annual salaries for the employees. This listing includes all personnel except physicians. The amount of time, depending on the type of employee, to fully train the employees is estimated and all employees are assumed to be approximately 50% productive during the estimated training period. The amount of salary paid while unproductive during training is obtained by multiplying the annual salary by the amount of training time and the lack of productivity. Benefits are then added to the amount of salary paid, while unproductive during training, to arrive at the Cost to Train.

In an asset purchase, the buyer is allowed to amortize this intangible asset over a fifteen-year period. As a result, a tax amortization benefit is gained by the buyer and is added to the total cost to train. Our analysis assumes a 15% discount rate and 40% tax rate. The value of the trained work force is estimated at \$535,510.

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### *Physicians Entering Into Employment Agreements*

The Asset Purchase Agreement calls for each physician to sign employment agreements with the Clinic at the closing of the transaction. By entering into the Employment Agreement with the Clinic, the physician commits to a 15% management fee being charged against the earnings generated by the physician over the term of the employment agreement. This fee generates cash flow for ProMedCo-SW, and in turn, represents value to ProMedCo-SW.

The initial term of the Employment Agreement is five years. The penalty under the Employment Agreement for termination within the first term of the Employment Agreement is the physician must return all consideration received from the Clinic as a result of the sale of certain Clinic assets to ProMedCo-SW. In addition, a breach of the Employment Agreement will trigger a breach of the Non-Compete Agreement and will result in the imposition of liquidating damages to ProMedCo-SW equal to the amount of the advanced premium paid by ProMedCo-SW under the breaching physician's Non-Compete Agreement. As a result of the combined penalties, it is highly unlikely that the physicians will terminate their employment during the first five-year period. In order to estimate the cash flow that will be attributable to the physicians for signing the Employment Agreement, we have projected the revenues and expenses for the clinic over the initial term of the Employment Agreement.

Exhibit III-A contains our projections for the practice assuming the current physician base. Based on conversations with management, revenue growth for the Naples market will be supported by strong population growth over the next several years. In addition, the lack of managed care in the market should allow for modest pricing growth. Total Revenue growth from 1995 to 1996 was over 15%. Based on these factors, our projections assume that average revenue per physician will increase approximately 10% each year throughout the projection period.

As revenues increase the operating expense profile for the Clinic is projected to improve slightly from 47% in 1996 to 38% in Year 5. Over the initial term of the employment agreement, net cash flows are expected to increase from \$852,978 in Year 1 to \$1,154,591 in Year 5.

Exhibit III-B contains our estimate of value for the physicians entering into the employment agreement. The cash flows over the initial term of the employment agreement are adjusted for the required return on working capital, fixed assets and Trained Work Force and are then discounted back to present value using a discount rate of 15%. Including the amortization benefit, the value of the physicians entering into the employment agreement is estimated at \$2,432,167.

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### *Non-Compete Agreements*

Under the Non-Compete Agreements with ProMedCo-SW, each physician is not allowed to compete for a period of eighteen months following the termination of the five-year term of their employment agreement. However, medical professionals can be released from the non-competes provision of the Non-Compete Agreements by paying liquidated damages equal to the previous twelve months salary. Because of the penalties inherent in breaching the Employment Agreements and Non-Compete Agreements prior to the end of the initial term, our analysis assumes that the non-competes provisions for the physicians would be relevant during the eighteen-month period following the initial term of the Employment Agreement.

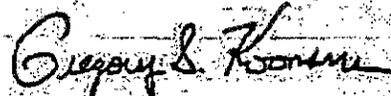
Exhibit III-B demonstrates our assumption that liquidating damages under the Non-Compete Agreement are paid at the beginning of Year 6 and discounts this payment back to present value. Including the amortization benefit, the value of the Non-Compete Agreements is estimated at \$9,238,170.

### *Management Services Agreement/Other Clinic Goodwill*

We estimate the value of the Management Services Agreement and Other Clinic Goodwill at \$765,204.

We appreciate the opportunity to serve you on this project, should you have any questions concerning our analysis, please feel free to contact Greg Koonsman or Todd Sorensen at (972) 385-9999.

Sincerely,



Gregory S. Koonsman, CFA  
Value Management Group

**EXHIBIT 1**  
**NANDES MEDICAL CENTER, P.A.**  
**ASSETS TRANSFERRED SUMMARY**  
**PRELIMINARY REPORT - SUBJECT TO CHANGE**

Estimated Value for Net Fixed Assets Transferred Historic of Fixed Asset Value	456,007
Estimated Value for Accounts Receivable Transferred Based on Collections Assured in Asset Purchase Agreement	2,065,227
Estimated Value for Nanades Medical Center, P.A. - Trained Work Force Transferred Based on Estimate of Cost to Train Current Employees	535,510
Estimated Value for Entering into Employment Agreement Based on Incremental Value Attributable to Entering into Employment Agreement	2,434,167
Estimated Value for Entering into Non-Compete Agreement Based on Incremental Value Attributable to Non-Compete Agreement	9,238,170
Estimated Value for MS/NNMC Goodwill	765,204
Estimated Total Value of Above	<u>15,492,285</u>
Total Consideration	
Total Payments by ProMedCo - SW	14,508,291
Total Liabilities Assumed by ProMedCo - SW Total Consideration	<u>983,994</u> <u>15,492,285</u>

**EXHIBIT D**  
**NAVIES MEDICAL CENTER, FA**  
**ESTIMATED TRAINED FORCE VALUE**  
**PERMANENT DRAFT REPORT - SUBJECT TO CHANGE**

Reported Time in Years to Train	Global Assumptions
0.08	Benefit Factor
0.17	Discount Rate
0.17	Income Tax Rate (Blended Federal & State)
0.17	Amortization Period (Years)
0.17	PVIFA (Tax Amort/Benefit)
0.17	Tax Amortization Benefit
0.25	
0.08	
0.08	
0.08	
0.08	

Name	Position	Hire Date	Salary/Week	Estimated Salary	Estimated FTE	Training Time	Prod. In Training	Cost to Train
Aldrostr, Ethel	File Clerk	8/1/89	\$7.50	\$15,600	1.00	0.08	0.50	\$787
Ammons, S. Pam	LPN	6/3/86	\$15.68	\$32,614	1.00	0.17	0.50	\$3,280
Aizemull, Olga	Receptionist	12/10/95	\$9.00	\$18,720	1.00	0.17	0.50	\$1,888
Ashbrook, Kelly	Insurance	7/19/95	\$11.75	\$24,440	1.00	0.17	0.50	\$2,461
Avies, Dina	LPN	9/23/96	\$11.00	\$22,880	1.00	0.17	0.50	\$2,307
Basile, Marianne	LPN	7/26/78	\$11.05	\$22,984	1.00	0.17	0.50	\$2,318
Banks, Cheryl	LPN	8/31/95	\$13.00	\$27,040	1.00	0.17	0.50	\$2,727
Beckel, Karen	Insurance	9/12/95	\$10.00	\$20,800	1.00	0.17	0.50	\$2,097
Bentley, Carol	Receptionist	2/15/89	\$11.75	\$24,440	1.00	0.17	0.50	\$2,461
Burnell, Donna	Receptionist	10/8/96	\$6.50	\$13,520	1.00	0.17	0.50	\$1,361
Heinold, Christine	Receptionist	6/27/88	\$12.51	\$26,021	1.00	0.17	0.50	\$2,621
Hubert, Theresa	Receptionist	12/21/81	\$15.00	\$31,200	1.00	0.17	0.50	\$3,136
Hunt, Catherine	Receptionist	9/2/89	\$11.75	\$24,440	1.00	0.17	0.50	\$2,461
Juanita, Angela	Central Supply Clerk	2/6/90	\$8.27	\$17,202	1.00	0.08	0.50	\$867
Jeanuck, Bernadette	Medical Asst.	5/8/90	\$10.45	\$21,776	1.00	0.17	0.50	\$2,192
Johnson, Barbara	Insurance	10/29/70	\$14.49	\$30,139	1.00	0.17	0.50	\$3,019
Johnson, Patricia	Insurance	9/5/95	\$11.50	\$23,920	1.00	0.17	0.50	\$2,412
Thickett, Carol	Medical Asst.	1/26/97	\$8.00	\$16,640	1.00	0.17	0.50	\$1,678
Hill, Janelle	Receptionist	10/21/96	\$8.00	\$16,640	1.00	0.17	0.50	\$1,678
Hider, David	Audiologist	4/18/94	\$11,040	\$11,040	1.00	0.17	0.50	\$3,110

ALL THE ABOVE INFORMATION IS CONFIDENTIAL

BRE ANALYSIS

**EXHIBIT II**  
**NAYLES MEDICAL CENTER, P.A.**  
**ESTIMATED TRAINED WORK FORCE VALUE**  
**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

Estimated Time in Years to Train	Global Assumptions
Clerks	Benefit Factor 0.21
LPN	Discount Rate 13.0%
Receptionist	Income Tax Rate (Blended Federal & State) 40.0%
Insurance	Amortization Period (Years) 15.0
Medical Asst.	PVIFA (Tax Admont Benefit) 5,847.4
Auxiliary Technicians	Tax Amortization Benefit 1,184.7
RN	
Accounting	
Medical Transcriptionist	
Administrative Assistant	
Data Entry	

Name	Position	Hire Date	Salary/Week	Estimated Salary	Estimated FTE	Training Time	Prod In Training	Cost to Train
Budter, Sandra	Medical Asst.	1/15/92	\$10.50	\$21,840	1.00	0.17	0.50	\$2,202
Carbo, Ana	Medical Records Clerk	5/3/95	\$6.25	\$13,000	1.00	0.08	0.50	\$655
Carris, Zulma	Receptionist	8/26/96	\$8.50	\$17,680	1.00	0.17	0.50	\$1,783
Chiquell, Alison	Ultrasound Tech	3/7/94	\$32.00	\$45,760	1.00	0.17	0.50	\$4,614
Collins, Shari	EKG Tech	8/26/96	\$8.45	\$17,576	1.00	0.17	0.50	\$1,772
Couyers, Dale	Receptionist	5/13/91	\$15.17	\$31,554	1.00	0.17	0.50	\$3,182
Coville, Heidi	Insurance	12/26/96	\$15.00	\$31,200	1.00	0.17	0.50	\$3,146
Crut, Sharon	Receptionist	4/1/83	\$13.65	\$28,392	1.00	0.17	0.50	\$2,863
Croston, Paula	Receptionist	1/17/97	\$8.50	\$17,680	1.00	0.17	0.50	\$1,783
Dalek, Janice	LPN	10/17/95	\$12.40	\$25,792	1.00	0.17	0.50	\$2,601
Dean, Jennifer	Receptionist	10/27/94	\$13.50	\$28,080	1.00	0.17	0.50	\$2,831
Deon, Lorella	Receptionist	12/1/94	\$6.00	\$12,480	1.00	0.17	0.50	\$1,258
Deaver, Vicki	Medical Asst.	9/7/87	\$10.50	\$21,840	1.00	0.17	0.50	\$2,202
Depp, Alarides	Medical Transcriptionist	3/6/90	\$13.50	\$28,080	1.00	0.08	0.50	\$1,416
Delora, Christine	Receptionist	6/3/96	\$9.00	\$18,720	1.00	0.17	0.50	\$1,888
Duke, Jeanine	LPN	6/9/95	\$12.08	\$25,126	1.00	0.17	0.50	\$2,513
Juthan, Claudette	Receptionist	8/5/93	\$9.50	\$19,760	1.00	0.17	0.50	\$1,992
Palmore, Brenda	Secretary - X-ray dept	1/2/95	\$7.75	\$16,120	1.00	0.08	0.50	\$813
Pinight, Wendy	RN	3/15/93	\$17.85	\$37,128	1.00	0.17	0.50	\$3,744
Ferris, Maurice	Receptionist	1/23/97	\$7.50	\$15,600	1.00	0.17	0.50	\$1,573

**EXHIBIT II**  
**HAYLES MERICAL CENTER, P.A.**  
**ESTIMATED TRAINED WORKFORCE VALUE**  
**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

Estimated Value in Years to Train	Global Assumptions
0.08	Benefit Factor
0.17	Discount Rate
0.17	Income Tax Rate (Blended Federal & State)
0.17	Amortization Period (Years)
0.17	PVIFA (Tax Amort. Benefit)
0.17	Tax Amortization Benefit
0.25	
0.08	
0.08	
0.08	

Name	Position	Hire Date	Salary/Wage	Estimated Salary	Estimated FTE	Training Time	Prod. In Training	Cost to Train
Field, Suzanne	Insurance	6/20/96	\$11.50	\$23,920	1.00	0.17	0.50	\$2,412
Fields, Beth	Medical Records Clerk	9/16/96	\$6.00	\$12,480	1.00	0.08	0.50	\$629
Ford, Karyn	Medical Asst.	2/4/93	\$10.50	\$21,840	1.00	0.17	0.50	\$2,202
Fruin, Kathleen	Insurance	10/29/96	\$10.00	\$20,800	1.00	0.17	0.50	\$2,097
Furlong, Emil	LPN	10/16/95	\$11.90	\$24,752	1.00	0.17	0.50	\$2,496
Godoy, Laura	Receptionist	9/28/92	\$10.69	\$22,235	1.00	0.17	0.50	\$2,242
Gordon, Karen	Accounting	1/1/93	\$16.03	\$33,342	1.00	0.25	0.50	\$5,043
Gubert, Deanna	Receptionist	1/23/95	\$8.24	\$17,139	1.00	0.17	0.50	\$1,728
Hall, Rachel	Receptionist	8/18/86	\$11.20	\$23,296	1.00	0.17	0.50	\$2,349
Harral, Barbara	Receptionist	1/1/96	\$10.75	\$22,360	1.00	0.17	0.50	\$2,255
Hartman, Carol	RN	9/1/94	\$19.00	\$39,520	1.00	0.17	0.50	\$3,985
Haven, James	Consultant	7/8/91		\$44,000	1.00	0.50	0.50	\$13,310
Heny, Elaine	EKG	2/13/95	\$8.45	\$17,576	1.00	0.17	0.50	\$1,772
Holmes, Virginia	Account Payable	1/28/75	\$13.46	\$27,997	1.00	0.25	0.50	\$4,235
Hoover, Denny	Data Processing Mgr	8/23/85	\$	\$41,000	1.00	0.50	0.50	\$12,403
Hughes, Ellen	Receptionist	12/27/94	\$9.00	\$18,720	1.00	0.17	0.50	\$1,888
Hughes, Mary	Data Processing Operator	4/11/77	\$13.00	\$27,040	1.00	0.17	0.50	\$2,727
Hunt, Chen	Insurance	5/13/96	\$7.50	\$15,600	1.00	0.17	0.50	\$1,573
Hunt, Catherine	Receptionist	1/22/97	\$8.00	\$16,640	1.00	0.17	0.50	\$1,678
Hunter, Susan	Receptionist	12/21/95	\$9.00	\$18,720	1.00	0.17	0.50	\$1,888



**EXHIBIT II**  
**NAPLES MEDICAL CENTER, P.A.**  
**ESTIMATED TRAINED WORK FORCE VALUE**  
**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

Retirement Time in Years to Train:	Global Assumptions
Clerks	Benefit Factor 0.21
LPN	Discount Rate 15.0%
Receptionists	Income Tax Rate (Blended Federal & State) 40.0%
Insurance	Amortization Period (Years) 15.0
Medical Asst.	PVIPA (Tax Amort. Benefit) 5.8074
Auxiliary Technicians	Tax Amortization Benefit 1.1847
RN	
Accounting	
Medical Transcriptionist	
Administrative Assistant	
Data Entry	

Name	Position	Hire Date	Salary/Wages	Estimated FTE	Training Time	Prof. In Training	Cost to Train
Medina, Yolande	Medical Asst.	11/7/83	\$10.50	1.00	0.17	0.50	\$2,202
Melenhor, Mary	Switchboard Operator	9/7/93	\$7.50	1.00	0.17	0.50	\$1,573
Melendez, Sara	Medical Records Supervisor	3/25/85	\$13.62	1.00	0.17	0.50	\$2,857
Mercil, Lisa	RN	11/4/95	\$13.50	1.00	0.17	0.50	\$2,831
Moore, Deborah	LPN	12/30/96	\$12.00	1.00	0.17	0.50	\$2,517
Oden, Terry	Insurance	5/20/96	\$10.75	1.00	0.17	0.50	\$2,255
Odum, Tonya	Receptionist	10/7/96	\$9.25	1.00	0.17	0.50	\$1,940
Oldziej, Agnieszka	Director of Insurance	6/26/78	\$16.35	1.00	0.50	0.50	\$10,287
Pace, Emily	RN	6/24/96	\$15.00	1.00	0.17	0.50	\$3,146
Patterson, Nancy	X-ray Tech	1/11/93	\$16.65	1.00	0.17	0.50	\$3,492
Pedler, Ruth	Office Asst.	9/1/89	\$5.94	1.00	0.08	0.50	\$623
Phelps, Ingeous	Receptionist	10/2/95	\$11.50	1.00	0.17	0.50	\$2,412
Phelps, Kathleen	Human Resources Director	6/25/84	\$25.00	1.00	0.50	0.50	\$15,125
Pinter, Denise	RN	12/1/87	\$13.00	1.00	0.17	0.50	\$5,262
Poller, Julie M.	LPN	4/22/96	\$12.00	1.00	0.17	0.50	\$2,727
Povlitz, Judith	LPN	9/25/96	\$12.00	1.00	0.17	0.50	\$2,517
Provest, Colleen	LPN	9/13/84	\$12.00	1.00	0.17	0.50	\$2,517
Pugh, Linda	Medical Records Clerk	9/17/91	\$6.62	1.00	0.08	0.50	\$694
Richardson, Kathleen	Receptionist	12/26/96	\$9.50	1.00	0.17	0.50	\$1,992
Richardson, Margaret	Receptionist	1/6/95	\$9.65	1.00	0.17	0.50	\$2,024

VALUE MANAGEMENT GROUP - CONFIDENTIAL

**EXHIBIT II  
NAVAES MEDICAL CENTER, P.A.  
ESTIMATED TRAINED WORK FORCE VALUE  
PREFERRABILITY DATA REPORT - SUBJECT TO CHANGE**

Estimated Time in Years to Train:		Global Assumptions:	
Clerks	0.08	Benefit Factor	0.21
LPN	0.17	Discount Rate	15.0%
Receptionist	0.17	Income Tax Rate (Blended Federal & State)	40.0%
Insurance	0.17	Amortization Period (Years)	15.0
Medical Asst.	0.17	PVIFA (Tax Amort. Benefit)	5.874
Assoc. Hlth. Technicians	0.17	Tax Amortization Benefit	1.1847
RN	0.25		
Accounting	0.08		
Medical Transcriptionist	0.08		
Administrative Assistant	0.08		
Data Entry	0.08		

Name	Position	Blue Date	Salary/Wage	Estimated Salary	Estimated RTE	Training Time	Prod. In Training	Cost to Train
Rivas, Jo Ann	Insurance LPN	12/11/95	\$12.00	\$24,960	1.00	0.17	0.50	\$2,517
Kobis, Debra	Secretary - x-ray dept	9/1/96	\$9.25	\$19,240	1.00	0.17	0.50	\$1,940
Kueby, Johnny		10/10/94	\$6.75	\$14,040	1.00	0.08	0.50	\$708
Schlegel, Alvy	RN	4/1/86	\$21.45	\$44,616	1.00	0.17	0.50	\$4,499
Schweissinger, Peggy	LPN	11/5/85	\$13.00	\$27,040	1.00	0.17	0.50	\$2,727
Selzinger, Wendy	Accountant	10/7/96		\$25,000	1.00	0.25	0.50	\$3,781
Shoenaker, Mary	Receptionist	5/19/92	\$10.20	\$21,216	1.00	0.17	0.50	\$2,139
Skropis, Anthony	Physician Asst	3/25/96	\$7.00	\$14,560	1.00	1.00	0.50	\$35,997
Small, Melissa	Medical Asst	5/20/96	\$12.27	\$25,522	1.00	0.17	0.50	\$1,468
Smith, Bonnie	LPN	11/29/90	\$12.30	\$25,584	1.00	0.17	0.50	\$2,573
Switchee, Jeanne	Receptionist	7/10/78	\$10.00	\$20,800	1.00	0.17	0.50	\$2,580
Sprague, Patricia	Insurance	10/7/96		\$27,040	1.00	0.17	0.50	\$2,097
Stratton, Biogdon, Sheryl	Audiologist	10/2/95	\$9.50	\$19,760	1.00	0.17	0.50	\$2,727
Tanner, Peggy	Receptionist	2/18/96	\$9.35	\$19,448	1.00	0.08	0.50	\$1,992
Tynihan, Louanne	Medical Records Wk Clerk	12/23/86	\$10.00	\$20,800	1.00	0.17	0.50	\$2,097
Tygor, Diana	Insurance	8/23/93	\$11.60	\$28,288	1.00	0.17	0.50	\$2,852
Tull, Deborah	Medical Records Asst. Supv's	11/1/76	\$7.55	\$15,704	1.00	0.17	0.50	\$1,583
Vaccaro, Myrta	Maintenance	8/20/90	\$11.00	\$22,880	1.00	0.08	0.50	\$1,156
Villanueva, Rafael		10/19/95	\$8.00	\$16,640	1.00	0.50	0.50	\$5,034
Walker, Ruthanne		12/2/96						

**EXHIBIT II**  
**NAPLES MEDICAL CENTER, P.A.**  
**ESTIMATED TRAINED WORK FORCE VALUE**  
**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

Name	Position	Title Date	Salary/Week	Estimated Salary	Estimated FTS	Training Time	Prod. In Training	Cost to Train	Estimated Time in Years to Train	Global Assumptions			
										Benefit Factor	Discount Rate	Income Tax Rate (Blended Federal & State)	Amortization Period (Years)
Waller, Tracy	Dish Entry	6/3/96	\$7.75	\$16,120	1.00	0.08	0.50	\$813	0.08	0.21	15.0%	40.0%	1.50
Weekley, Mury Ann	Insurance	5/12/83	\$10.87	\$22,610	1.00	0.17	0.50	\$2,280	0.17	0.17	15.0%	40.0%	1.50
Weeks, Deborah	CT Tech	10/20/96	\$17.50	\$36,400	1.00	0.17	0.50	\$3,670	0.17	0.17	15.0%	40.0%	1.50
Weeks, Judith	Receptionist	10/2/94	\$9.00	\$18,720	1.00	0.17	0.50	\$1,888	0.17	0.17	15.0%	40.0%	1.50
Weeks, Tonya	Insurance	4/28/94	\$9.00	\$18,720	1.00	0.17	0.50	\$1,888	0.17	0.17	15.0%	40.0%	1.50
Wells, Yvonne	ARNP	10/1/96	\$12.60	\$59,500	1.00	1.00	0.50	\$35,997	0.25	0.25	15.0%	40.0%	1.50
White, Barbara	Receptionist	3/15/93	\$12.60	\$26,208	1.00	0.17	0.50	\$2,643	0.08	0.08	15.0%	40.0%	1.50
Whitmore, Douglas	Administrator	6/3/87	\$12.60	\$126,000	1.00	0.50	0.50	\$38,115	0.08	0.08	15.0%	40.0%	1.50
Wylie, Harold	X-ray Tech	10/10/77	\$19.15	\$39,790	1.00	0.17	0.50	\$4,012	0.08	0.08	15.0%	40.0%	1.50
Zacucha, Laura	Accountant	11/10/95	\$19.15	\$28,000	1.00	0.25	0.50	\$4,235	0.08	0.08	15.0%	40.0%	1.50
<b>Totals</b>				<b>\$3,333,442</b>		<b>130.00</b>		<b>\$452,008</b>					
								<b>\$83,502</b>					
								<b>\$535,510</b>					

Source: Practice Information

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FTR ANALYSIS

EXHIBIT III-A  
 NAPLES MEDICAL CENTER, P.A.  
 DISCOUNTED CASH FLOW ASSUMPTIONS  
 (CALCULATED BY: [Name])

PRELIMINARY DEBIT REPORT - SUBJECT TO CHANGE

REVENUE SUMMARY:	Discounted 1994	Projections				
		Year 1	Year 2	Year 3	Year 4	Year 5
Revenue	16,372,581	20,218,379	22,211,107	24,414,438	26,598,881	29,209,870
Total Net Fee Income (Specialty Revenue) Co-Insured	16,372,581	20,218,379	22,211,107	24,414,438	26,598,881	29,209,870
Total Operating Expenses Average Operating Expenses per Provider % Growth	16,372,581 \$192,677	10,210,279 551,916 10.0%	12,211,107 571,210 10.0%	14,414,438 578,438 10.0%	16,598,881 667,738 10.0%	18,209,870 824,472 10.0%
Number of Providers	31.0	31.0	31.0	31.0	31.0	31.0
<b>PROVIDER COMPENSATION ASSUMPTIONS:</b>						
Number of Physicians	31.0	31.0	31.0	31.0	31.0	31.0
Physician Compensation Salary-based Product-based Total	9,146,115 9,146,115	9,346,749 9,346,749	10,043,100 10,043,100	12,281,431 12,281,431	13,971,463 13,971,463	15,683,816 15,683,816
Total Physician Compensation	9,146,115	9,346,749	10,043,100	12,281,431	13,971,463	15,683,816
% of Total Revenue	55.9%	46.2%	45.2%	50.3%	52.4%	53.7%

ALL INFORMATION CONTAINED HEREIN IS UNCLASSIFIED  
 DATE 01/14/01 BY 60322/UC/BAW

DISCOUNTED CASH FLOW ASSUMPTIONS

**EXHIBIT III-A**  
**NATOPS MEDICAL CENTER, P.A.**  
**DISCOUNTED CASH FLOW ASSUMPTIONS**  
**SCENARIO: Current/Specified Only**

**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

EXPENSE ASSUMPTIONS	Budgeted Base Year	1996	Projections					
			Return 1996	Year 1	Year 2	Year 3	Year 4	Year 5
Operating Expenses: Public Safety, IT, Legal & Insurance Utility, Telephone, Repairs & Benefits Food, Rent & Lease Expenses Office Supplies Medical Supplies Personnel & Administration Professional & Administrative Expenses Investment & Amortization Expense Interest Expense Marketing Expenses		66,000,000	5,070,000	5,222,153	5,370,218	5,490,150	5,705,334	5,873,445
		13,314,000	1,680,328	1,827,478	1,977,443	2,075,211	2,186,854	2,293,339
		8,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
		1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000	1,000,000
<b>Total Operating Expenses</b>		<b>86,314,000</b>	<b>8,750,328</b>	<b>9,127,142</b>	<b>9,462,593</b>	<b>9,771,104</b>	<b>10,372,107</b>	<b>11,138,239</b>

VAHUP MANAGEMENT GROUP - CONFIDENTIAL

DISCOUNTED CASH FLOW ASSUMPTIONS

**EXHIBIT III-A**  
**NAPLES MEDICAL CENTER, P.A.**  
**DISCOUNTED CASH FLOW ASSUMPTIONS**

*STRAIGHT LINE - Current Market Value Only*

**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

PRE-RETIREMENT ASSUMPTIONS:	Estimate	Projections				
		Year 1	Year 2	Year 3	Year 4	Year 5
Number of Providers (Physician & Medical Personnel)	310	310	310	310	310	310
PT/PA/other	419	419	419	419	419	419
INACTIVE	130,000	130,000	130,000	130,000	130,000	130,000
Average Salary & Ben. Btu per FTE	39,000	40,170	41,335	42,517	43,705	45,217
Grand	5,014,022	5,232,123	5,318,786	5,510,110	5,700,330	5,897,253

DEFERRATION SCHEDULE:	Total Annual/Amort. (Book Value)	Projections				
		Year 1	Year 2	Year 3	Year 4	Year 5
Retirement/Depreciation % per	\$ 416,007	101,235	101,235	101,235	101,235	96,687
Special Expenditures per Year (displaced on a straight-line basis)	7.0	100,000	100,000	100,000	100,000	100,000
Local Depreciation	4.1	7,143	7,143	7,143	7,143	7,143
Resolving Costs						
	\$ 40,000 for each physician year	108,478	122,763	137,049	151,735	174,937

GROWTH ASSUMPTIONS:	Discount Rate	Terminal Growth Rate				
		Year 1	Year 2	Year 3	Year 4	Year 5
Income Tax (Rate of Interest & State)	13.0%					
Accumulated Working Capital Requirements	48.0%					
Normalized Working Capital	10.0%					
Amortization Period (Years)	15.0					
WVPA (Tax Amort. District)	3.00%					
Tax Amortization Rate/yr	2.10%					

VALUATION AND REPORT NUMBER - CONFIDENTIAL

DISCOUNTED CASH FLOW ASSUMPTIONS



**NABLES MEDICAL CENTER, P.A.**  
**VALHATTON ANALYSIS**  
**SCENARIO: Current Physicians Only**

**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

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Complete A/B/C Interest Rates

Cash Flow Adjustment

Item: Depreciation & Amortization  
 Less: Required Annual Capital Expenditures & Working Expenses  
 Net Disposition of Cash Flow

Balance On 1/1/86

Working Capital  
 Fixed Assets  
 Terminal Value Expense  
 Total

Interest Rates	Interest Rates					Terminal Year
	Year 1	Year 2	Year 3	Year 4	Year 5	
10%	1,018,032	1,182,745	1,300,848	1,459,843	1,640,421	218,788
12%	108,478	128,392	147,649	171,366	198,973	116,973
(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)	(100,000)
(187,729)	(202,103)	(227,212)	(244,544)	(261,970)	(282,983)	(100,583)
63,310	64,183	67,159	71,157	74,051	78,051	1,032,051
390,136	233,478	306,817	402,492	482,844	482,844	
62,461	63,401	65,091	67,401	70,341	73,921	
10,327	10,327	10,327	10,327	10,327	10,327	
431,827	407,197	313,542	319,276	392,576	392,576	

VALHATTON MANAGEMENT GROUP - COMMERCIAL  
 VALHATTON MEDICAL CENTER

VALHATTON ANALYSIS

**NAPLES MEDICAL CENTER, P.A.**  
**VALUATION ANALYSIS**  
**SCENARIO: Current Physician Only**

**PRELIMINARY DRAFT REPORT - SUBJECT TO CHANGE**

Item	Quantity	Year					Total
		Year 1	Year 2	Year 3	Year 4	Year 5	
<b>Operating Expenses:</b>							
- Office Salaries, Wages & Benefits	100,000	100,000	100,000	100,000	100,000	100,000	100,000
- Physical Building	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Clinic Supplies	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Auxiliary Services & Supplies	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Other Medical Costs	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Insurance	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- General & Administrative	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Identifying Expenses	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>Operating Margin</b>	18,000	18,000	18,000	18,000	18,000	18,000	18,000
<b>Other Income (Expenses)</b>							
- The Distribution Expense	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Physician Compensation & Benefits	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Hospital Compensation & Benefits	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Provider Benefits	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Total Provider Compensation	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>Change in Net Income Taxes</b>	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>Federal &amp; State Income Tax Expense</b>	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
<b>Income After Income Taxes</b>	18,000	18,000	18,000	18,000	18,000	18,000	18,000
<b>Costs Paid/Expenses:</b>							
- Plant Depreciation & Amortization	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Leasehold Improvements	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Land - Working Capital Improvement	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%
- Miscellaneous Land Pay	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%	0.00%

VALUATION ANALYSIS  
 CONFIDENTIAL

VALUATION ANALYSIS

**EXHIBIT III-B  
 NAVES MEDICAL CENTER, P.A.  
 ESTIMATED VALUE FOR ENTERING INTO EMPLOYMENT AGREEMENT AND NON-COMPETE AGREEMENT  
 TERMINATION/DRAFT REPORT - SUBJECT TO CHANGE**

Discount Rate	15.0%
Income Tax Rate (Blended Federal & State)	40.0%
Growth in Year 6 and Year 7	5.0%
Amortization Period (Years)	15.0
PVIFA (Tax Amort. Benefit)	5.8274
Tax Amortization Benefit	1.1847

Assuming all physicians are employed for five years and their gross liquidating damages for release from non-competes

	Year 1	Year 2	Year 3	Year 4	Year 5	Year 6
Cash Flows Attributable to Clinical Physicians	835,580	968,806	1,115,150	1,275,957	1,406,601	
Net Present Value (NPV) of Cash Flows	(451,882)	(482,197)	(515,544)	(552,226)	(592,576)	(633,886)
1 liquidating Damages Beginning of Year 6 (85% of Year 5 PDE)						13,683,886
Incremental Cash Flows	383,698	486,608	599,606	723,731	814,025	15,683,886
Present Value Factor	0.5	1.5	2.5	3.5	4.5	5.0
Present Value of Cash Flows	357,801	394,578	422,786	443,747	434,008	7,797,663
Sum of Present Values - Years 1-5	2,052,920					
Amortization Benefit	379,247					
Total	2,432,167					
Sum of Present Values - Year 6	7,797,663					
Amortization Benefit	1,440,507					
Total	9,238,170					
Estimated Value for Entering into Employment Agreement						
Estimated Value for Non-Compete						