

October 4, 1996

Richard Smith_Fso

Federal Trade Commission 6th and Pennsylvania Avenues, N.W. Room 323 Washington, D.C. 20580

Dear Mr. Smith:

This letter is to confirm your telephone conversation of yesterday with of our firm concerning the reporting requirements under the Hart-Scott-Rodino Premerger Notification Act of the following transaction:

A merger agreement provides that Y will be merged into X with X as the surviving corporation. Each shareholder of Y will receive shares of X stock so that after the merger the Y shareholders will own 91% of X's voting stock. Y has an ultimate parent, B. B will also control,

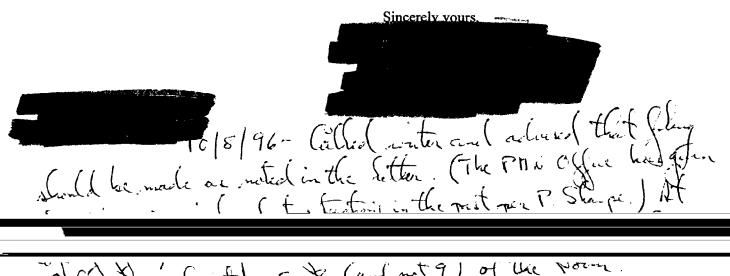
Both in substance and under the rules the transaction would be treated as the acquisition of voting securities of X by B. B, now the controller of Y, will wind up controlling X. Under 16 C.F.R. § 801.2(d)(1)(ii), B will be the person within which surviving corporation X is

Y, will hold 50% or more, or more than \$15 million worth, of X voting securities as a result of

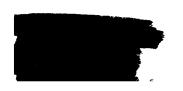
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the acquired person (but only with respect to X as to Items 5-9 of the form as provided by 803.2(c)).

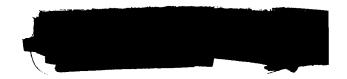
Please contact me at your earliest convenience if this letter in some way does not reflect your office's understanding. We very much appreciate your assistance.



AC) x & for telu 5-8 (and not 9)



John M. Sipple, Jr. October 4, 1996
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Agreement"L. (A redacted copy of the latest draft of the JOC

Under Contine 2 of the TOO 3------

Hospital A and Hospital B. In addition, under Section 6 of the

budget and a capital budget for each hospital, and under Section 6(a) through (c), the JOC would contract with third party payers on behalf of Hospital A and Hospital B and would establish a schedule of rates and fees for goods and services provided by each hospital.

Hospital A and Hospital B would, however, retain ownership of all of their existing assets. Dissolution of the JOC would have no effect on the ownership of the assets. Although the JOC would approve any capital expenditure or disposition of assets greater than \$1,000,000, any newly acquired assets would become the property of the acquiring hospital.

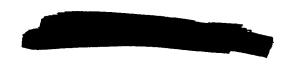
To complete as fully as practicable the financial integration and operation of the two hospitals, the parties have also proposed the sharing of net revenue and net losses. Under Section 9 of the JOC Agreement, Hospital A and Hospital B would share evenly all net revenues. This would be accomplished by having the hospital with the greater net revenues pay, at the end of every year, one-half of the difference between the two hospitals' net revenues to the other hospital.

II. Analysis

The parties believe that the formation of the JOC

for-profit joint venture. The JOC would not constitute a

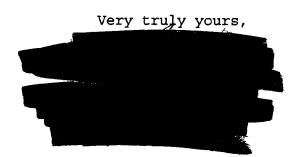
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their corporate existence and would retain ownership of their assets. In addition, neither Hospital A or Hospital B would control the JOC.

It is the parties' understanding that the Premerger

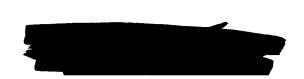
the formation of not-for-profit joint ventures as non-reportable



Enclosure

cc: Richard B. Smith, Esquire

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JOINT OPERATING AGREEMENT

	Agreement is made tand among:	this	day of	
		<u>, a</u>	nonprofit	
corporatio	n (the "Joint Opera	ting Compan	ν ₁₁)	
WHERE care hospi	AS, and tals; and	each own an	d operate licensed	acute
entered in	AS, for the reasons to a certain agreem saction Agreement")	ent dated _		996
oversee and	AS, the Joint Opera d direct the operat with the terms of	ion of serv	ices of	in
set forth t	AS, and the terms upon which f healthcare service	h they shal	l each participate	in the
NOW,	THEREFORE, in consid	deration of	the mutual promise	es and

Section:

"Approved Capital Budget" means, with respect to a Hospital, the capital budget for such Hospital established from time to time by the Joint Operating Company pursuant to Section 6(e) of this Agreement, as the same may be supplemented, amended or modified by the Joint Operating Company.

"Approved Operating Budget" means, with respect to a Hospital, the operating budget for such Hospital established from time to time by the Joint Operating Company pursuant to Section

JOHNE OPERACTING COMPANY

"Bonds" means, with respect to a Hospital, bonds of the Healthcare Facilities Financing Authority issued and outstanding with respect to and for the benefit of such Hospital.

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by tamb may be amended in accordance with their terms

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revised from time to time.

"COO" means the Executive Vice President and Chief Operating

"Effective Date" means that date established as such in

qains, earnings or consideration derived for or in respect of

Agreement.

"Hospital" means

and "Hospitals" means

and

"JOC Budget" means the operating budget of the Joint

amended or modified.

"JOC Capital Budget" means the capital budget of the Joint Operating Company adopted from time to time in accordance with Section 8(c) of this Agreement, as the same may be supplemented, amended or modified.

in the Preamble to this Agreement.

"Major Clinical Service" means, with respect to a Hospital, a clinical service (whether organized as a department, division or other operating unit) (i) which has involved the expenditure of more than \$1.000.000 of operating expense, or the generation

anticipated to involve expenditures in such amount, or to generate patient revenues in such amount. in any of the next

three (3) succeeding years, or (iii) the initiation of which, or the closure of which, would require a Certificate of Need under law.

"Net Revenues" means Revenues minus Excluded Revenues.

"Party" means

or the Joint Operating Company.

"Permissible Election" shall have the meaning given such term in Section 14 of this Agreement.

"Permitted Liens" means the liens, encumbrances, charges, restrictions and other matters identified on Exhibit B to this Agreement.

"Revenues" means all revenues or income, determined in accordance with generally accepted accounting principles, other than interest, non-operating gains and losses, extraordinary itemporal continues and account and accounts and accounts are referrable and accounts are referrable and accounts and accounts are referrable accounts.

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shall have the meaning set forth in the Preamble to this Agreement.

shall have the meaning set forth in the Preamble to this Agreement.

"Termination Event" shall have the meaning given such term in Section 14 of this Agreement.

"Transaction Agreement" shall have the meaning set forth in the second Recital of this Agreement.

- 2. Provision of Management Services.
 - (a) The Joint Operating Company, through its CEO,

name the CEO as its president and chief executive officer, and, as such, he or she shall perform the duties incident to that office.

(b) The Joint Operating Company, through its COO, shall provide senior executive management services, reporting to and as directed by the CEO, to each of the Hospitals. Each

officer and se euch .. he or che chall nerform the duties

planning functions of the Hospitals and shall provide, or arrange for the provision of, all strategic and other planning services for the Hospitals. Without limiting the generality of the foregoing, such services shall include . . .

(d) The Joint Operating Company shall assume the treasury functions of the Hospitals and shall provide, or arrange for the provision of all treasury and related services for the Hospitals. Without limiting the generality of the foregoing,

and financial planning.

- (e) The Joint Operating Company shall provide such other management and administrative services to the Hospital as it may, from time to time, deem appropriate. Subject to the provisions of Section 7 of this Agreement, the Hospitals hereby grant to the Joint Operating Company the authority to perform any such services, and shall cooperate with the Joint Operating Company in the orderly transfer of operations relating to such services.
- 3. Reallocation of Certain Clinical Services. The Hospitals agree that clinical services offered by them shall be allocated initially as set forth in Exhibit C to this Agreement. To the extent that such allocation reflects a closure of a service at a Hospital, or a transfer of a service from a Hospital, such Hospital shall promptly initiate and diligently proceed with, in cooperation with the other Hospital and with the

Joint Operating Company, all necessary and appropriate action (including, without limitation, seeking all necessary regulatory approvals) efficiently and economically to effectuate such closure or transfer. To the extent that such allocation reflects an opening of a service at a Hospital, or a transfer of a service to a Hospital, such Hospital shall promptly initiate, and diligently proceed with, in cooperation with the Joint Operating Company, all necessary and appropriate action (including, without limitation, seeking all necessary regulatory approvals) efficiently and economically to effectuate such opening or transfer.

4. Future Allocations of Clinical Services. The Hospitals agree that the Joint Operating Company, in accordance with the Bylaws, may, at any time and from time to time, direct the allocation or reallocation of clinical services in addition to, or in a manner different from, the allocation described in Section 3 of this Agreement. To the extent that such allocation reflects a closure of a service at a Hospital, or a transfer of a service from a Hospital, such Hospital shall promptly initiate and diligently proceed with, in cooperation with the other Hospital and with the Joint Operating Company, all necessary and appropriate action (including, without limitation, seeking all necessary regulatory approvals) efficiently and economically to effectuate such closure or transfer. To the extent that such allocation reflects an opening of a service at a Hospital, or a

approvals) efficiently and economically to effectuate such opening or transfer.

5. Restrictions on Mospital Actions. Except to the extent approved by the Joint Operating Company, neither Hospital shall:

- (a) Initiate or implement any new Major Clinical Service.
- (b) Close or terminate any Major Clinical Service existing on the date of this Agreement.
 - (c) Expand any clinical service if such expansion

expenditures in excess of \$1,000,000 in the aggregate over the next ensuing three-year period; or

- (ii) involve an anticipated or projected increase in operating expenses attributable to such service of more than ______ % per year in any year over the next ensuing three-year period.
- (d) Except as reflected in the Approved Capital

of capital expenditures) in excess of \$1,000,000.

(e) Incur or assume, whether directly or by way of guarantee or otherwise, any debt or obligation, including (without limitation) indebtedness for money borrowed or purchase

its properties or assets having a fair market value, recorded value on its books and records or selling price in excess of \$1,000,000.

- (g) Permit or allow any of its properties or assets to be subject to any mortgage pledge lien security interest or
- (h) Make or incur, or commit to the making or incurring of, any expense not provided for in the Approved Operating Budget.
- (i) Terminate its affiliation with for the training of physicians and surgeons; or enter into or establish any program for the teaching or training of physicians or surgeons with an institution or organization other than
- (j) Enter into or establish any programmatic or clinical affiliation with any institution (including any hospital, university or research or educational institution) not affiliated with or approved by
- (k) Merge with or into, or consolidate with, any corporation or other entity.
- (1) Contribute or transfer, without adequate consideration, funds to any corporation or other entity.
- (m) Change the corporate membership of the Hospital; or amend its Certificate of Incorporation or Bylaws, or in any other manner, modify the governance structure of the Hospital; or grapt any governance sights, including any rights in governance of the Hospital, to any person or entity.
 - (n) Establish any subsidiary corporation.

[Others? Chargos_other than as approved? Contracts exceeding stated duration? Hiring/firing key personnel?]

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(a) The Joint Operating Company shall establish, from time to time, the schedule of rates and charges for goods and services, and use of facilities, furnished by the Hospital. Subject to the provisions of subsection (b) of this Section, and subject further to customary policies and procedures with regard to (i) healthcare services to the indigent, (ii) the write-off of uncollectible accounts, and (iii) other immaterial write-offs or discounts consistent with past practice, each Hospital shall charge in accordance with such established schedule.

(b) The Joint Operating Company from time to time may

- (c) Each Hospital hereby authorizes the Joint Operating Company to execute and deliver, as its agent, and on its behalf, contracts with third-party payors for the delivery of healthcare services by the Hospital in accordance with the provisions of such contracts. Each Hospital shall execute and deliver to the Joint Operating Committee such further instruments and documents as the Joint Operating Company may request to confirm, or otherwise, with respect to the authority granted by this subsection.
- (d) The Joint Operating Company at any time, or from time to time, incur indebtedness on its behalf and on behalf of the Hospitals, or either of them. It may, in its discretion, pledge the revenues of the Hospitals and grant a security interest in accounts receivable of the Hospitals and the proceeds thereof for the purpose of securing any such indebtedness. Each Hospital shall, upon request of the Joint Operating Company, execute and deliver such instruments or documents, and take such other actions, as the Joint Operating Company may deem necessary or appropriate to carry out the provisions of this subsection.
 - (e) The Joint Operating Company shall annually

Hosps: 1

- 7. Ethical Matters. The Joint Operating Company and each understand and acknowledge that ' is a Catholic institution and that and its personnel are bound by the canons. Notwithstanding any other term or provision of this Agreement:
- (a) Neither the Joint Operating Company nor

(i) refrain from conducting any activities or performing any act which, by virtue of their relationship with , would cause to be in violation of the Canons, or (ii) promptly adopt, and proceed with all practicable diligence to implement, a plan to restructure the conduct of such activities or acts in such a manner that upon such implementation, shall not be in yielation of the Canons.

which they believe, in their good faith exercise of judgment, may raise issues or concerns under the Canons, and (ii) shall use its best efforts to keep the Joint Operating Company and apprised of the requirements of the Canons and shall consult with them regarding such requirements.

8. Funding of the Joint Operating Company.

Directors), the sum of \$_____.

(b) The Joint Operating Company shall adopt periodically the JOC Budget and may, from time to time amend or rupn Lorge the JOC Budget and DOC Budget and Toc Budget and the JOC Budget and Toc Budget and

(30) days (or at such other time as the Joint Operating Company

DUTHE OPERATING COMPANY ONE NATE (1/2) OF SUCH AMOUNT.

(c) The Joint Operating Company shall adopt

Budget shall include the Joint Operating Company's proposed method of financing capital expenditures and the amount (if any)

time and in the manner directed by the Joint Operating Company.

9. Sharing and Allocation of Net Revenues. believe that each Hospital brings equal strengths and advantages

- (a) Each Hospital shall charge for its services, etc., in accordance with the provisions of this Agreement and shall separately collect its own Revenues.
- (b) Each Hospital shall separately pay its own expenses in accordance with the terms of this Agreement.
- (c) As soon as practicable after the end of each year during the term hereof (including any renewal term) each Hospital shall determine, in accordance with generally accepted accounting principles, its Net Revenues for such year. [Or, the JOC shall determine???] Within thirty (30) days after such determination (or at such other time and in such manner as the Joint Operating Company may direct) the Hospital having the greater Net Revenues for such year shall pay to the other Hospital one half (1/2) of the difference between their respective Net Revenues for such year.
- 10. <u>Participation in</u> shall each participate in the hospital network established by Each

operating company to be necessary or desirable:

(b) Each Hospital shall pledge its Revenues as security for payment of Bonds issued with respect to the other Hospital.

- 12. Sharing of Information. Each Hospital shall furnish to the other and to the Joint Operating Company such reports and information with respect to the activities and operations of such Hospital, its finances and any other matters relevant to the subject matter of this Agreement in such manner and form, and at such times, as the Joint Operating Company may direct.
- 13. <u>Cooperation: Further Assurances</u>. Each Hospital agrees

with the Joint Operating Company, in all relevant respects to better carry out the purposes of this Agreement.

14. Term; Termination; Default.

For the reasons set forth in Exhibit _____ attached hereto, this Agreement may not be terminated or modified except in accordance with the provisions of such Exhibit.

15. <u>Amendment</u>. This Agreement may not be amended except by an instrument in writing executed and delivered by the Parties.

printe termentar or ather communication required or

transmission (with telephone confirmation of receipt) or five (5) days after dispatch by registered or certified mail, postage preprid or the dispatch by enurior which

Attention: Chairperson of the Board,

If to

Attention: Chairperson of the Board

If to the Joint Operating Company:

Attention: President and Chief Executive Officer

or such other address as shall be furnished in writing by any <u>Party in accordance with the provisions of this Section</u>.

17. <u>Waiver</u>. Any Party may (a) extend the time for the performance of any of the obligations or other acts of the other Parties, (b) waive any inaccuracies in the representations and warranties contained herein or in any certificate or other document delivered pursuant hereto, or (c) waive compliance with

agreement on the part of a Party to any such extension or waiver shall be valid if set forth in an instrument in writing signed on behalf of such Party.

- 18. <u>Headings</u>. The descriptive headings of the several Sections hereof are inserted for convenience only and do not
- 19. Applicable Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of
- 20. <u>Assignment</u>. This Agreement and all the provisions hereof shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

 Note this description of the assigned by any Party without the prior written consent of the other Parties.

more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

27. Entime Assessment Whis Assessment (including the

them, with respect to the subject matter hereof, (b) supersedes all other agreements and understandings, both written and oral, among the Parties, or any of them, with respect thereto, and (c) except to the extent otherwise expressly provided herein, is not intended to confer upon any other person or entity any right or remedy hereunder.

IN WITNESS WHEREOF, each of the Parties has caused this Agreement to be executed in its name and on its behalf by its

·	
By:	By:
Chairperson of the Board	President and Chief Executive Officer
By:	By: President and Chief Executive Officer
By: [Name] Chairperson of the Board	By: President and Chief Executive Officer

EXHIBIT A

EXCLUDED REVENUES: GOODS, SERVICES AND PROCEDURES

[List]

EXHIBIT B

PERMITTED LIENS

I. With respect to

<u> Principal diameter Dender de Dende</u>

11. WITH TESPECT TO

[Identify liens of Bonds and other matters]

EXHIBIT C CLINIC SERVICE ALLOCATION PLANT

EXHIBIT D FORM OF HOSPITAL SPONSOR AGREEMENT