

## SETTLEMENT AGREEMENT

This Settlement Agreement (Agreement) is entered into among the United States of America, acting through the United States Department of Justice and on behalf of the Office of Inspector General (OIG-HHS) of the Department of Health and Human Services (HHS) (collectively the "United States"), Infirmity Health System, Inc. ("IHS"), Infirmity Medical Clinics, P.C. ("IMC"), IMC-Diagnostic and Medical Clinic, P.C. ("IMC-DMC"), IMC-Northside Clinic, P.C. ("IMC-Northside"), and Diagnostic Physicians Group, P.C. ("DPG"), and Christian M. Heesch ("Relator") (hereafter collectively referred to as "the Parties"), through their authorized representatives. ("Clinic Entities" hereafter collectively refers to IHS, IMC, IMC-DMC, and IMC-Northside.)

### RECITALS

A. IHS is a private, not-for-profit corporation incorporated in the State of Alabama in 1982, with its principal place of business in Mobile, Alabama. IHS is the largest non-governmental health care system in Alabama. IMC is a private, not-for-profit corporation incorporated in the State of Alabama, with its principal place of business in Mobile, Alabama. IMC owns the stock of IMC-DMC and IMC-Northside. IMC-DMC and IMC-Northside are private corporations incorporated by IMC in the State of Alabama. IMC-DMC is a medical clinic with its primary location in Mobile, Alabama. IMC-Northside is a medical clinic with its primary location in Saraland, Alabama. DPG is a private professional corporation incorporated in the State of Alabama in 1988, with its principal place of business in Mobile, Alabama.

B. On July 8, 2011, Relator filed a qui tam action in the United States District Court for the Southern District of Alabama captioned *United States ex rel. Heesch v. Diagnostic Physicians Group, P.C. et al.*, Case 1:11-cv-00364-KD-B (S.D. Ala.), pursuant to the qui tam provisions of the False Claims Act, 31 U.S.C. § 3730(b) (the Civil Action). The United States intervened, in part, in the Civil Action on June 28, 2013, and filed the United States' Complaint in Intervention on August 7, 2013.

C. The United States contends that the Clinic Entities and DPG submitted or caused to be submitted claims for payment to the Medicare Program (Medicare), Title XVIII of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1, and as a result, has certain civil claims against the Clinic Entities and DPG arising from the conduct described in the United States' Complaint in Intervention. That conduct is referred to below as the Covered Conduct.

D. This Settlement Agreement is neither an admission of liability by the Clinic Entities or DPG nor a concession by the United States that its claims are not well founded.

E. Relator claims entitlement under 31 U.S.C. § 3730(d) to a share of the proceeds of this Settlement Agreement and to Relator's reasonable expenses, attorneys' fees and costs.

To avoid the delay, uncertainty, inconvenience, and expense of protracted litigation of the above claims, and in consideration of the mutual promises and obligations of this Settlement Agreement, the Parties agree and covenant as follows:

## TERMS AND CONDITIONS

1. The Clinic Entities and DPG, jointly and severally, shall pay the United States the sum of twenty-four million, five hundred thousand dollars (\$24.5 million), hereinafter “the Settlement Amount,” and interest on the Settlement Amount at a rate of 2.25% from July 16, 2014, through the date on which the Clinic Entities and DPG all have executed this Agreement. Payment shall be made no later than five days from the Effective Date of this Agreement, pursuant to written instructions to be provided by the United States Department of Justice.

2. Conditioned upon the United States receiving the Settlement Amount and accrued interest from the Clinic Entities and DPG, the United States shall pay Relator by electronic funds transfer to Relator’s counsel, Coumanis & York, P.C., pursuant to written instructions provided by Relator’s counsel, 18 percent of the Settlement Amount (and the interest accrued thereon) received from the Clinic Entities and DPG as soon as feasible after receipt of the payment. No amounts shall be due to the Relator on any portion of the Settlement Amount, or accrued interest, until and unless a payment is actually received by the United States.

3. Conditioned upon the Clinic Entities and DPG’s full payment of the Settlement Amount and the accrued interest, and subject to the exceptions in Paragraph 6 below (concerning excluded claims), the United States releases the Clinic Entities and DPG, together with their current and former parent corporations, direct and indirect subsidiaries, brother or sister corporations, components and divisions (collectively, the Affiliated Companies); current or former owners; and officers, directors, agents, servants, and employees; and the successors and assigns of any of them (collectively, the

“Released Individuals and Entities”), from any civil or administrative monetary claim the United States has for the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733; the Civil Monetary Penalties Law, 42 U.S.C. § 1320a-7a; the Program Fraud Civil Remedies Act, 31 U.S.C. §§ 3801-3812; the civil money penalty provisions of the Physician Self-Referral Law, 42 U.S.C. §§ 1395nn(g)(3) and (4); any statutory provision for which the Civil Division of the Department of Justice has actual and present authority to assert and compromise, pursuant to 28 C.F.R. Part O, Subpart I, Section 0.45(D); and, the common law theories of payment by mistake, unjust enrichment, and fraud.

4. Conditioned upon the Clinic Entities and DPG’s full payment of the Settlement Amount, and subject to the exceptions in Paragraph 6 below (concerning excluded claims), Relator, for himself and for his heirs, successors, attorneys, agents, and assigns, releases the Clinic Entities, DPG, and the other Released Individuals and Entities from any claim the Relator has on behalf of the United States or himself, whether in law or equity or otherwise, arising out of the Covered Conduct under the False Claims Act, 31 U.S.C. §§ 3729-3733, except with respect to Relator’s claims against the Clinic Entities and DPG for attorneys’ fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d), and Relator’s pending claims for relief from retaliatory actions against DPG pursuant to 31 U.S.C. § 3730(h).

5. In consideration of the obligations of the Clinic Entities and DPG in this Agreement and the Corporate Integrity Agreement (CIA) entered into between OIG-HHS and IHS, and conditioned upon the Clinic Entities and DPG’s full payment of the Settlement Amount, the OIG-HHS agrees to release and refrain from instituting,

directing, or maintaining any administrative action seeking exclusion from Medicare, Medicaid, and other Federal health care programs (as defined in 42 U.S.C. § 1320a-7b(f)) against the Clinic Entities, the other entities subject to the CIA (which includes all subsidiaries and/or affiliates of IHS that are health care entities in which IHS has a majority ownership or control interest, including, but not limited to, physician practices, acute-care hospitals, rehabilitation hospitals, outpatient facilities, and medical clinics operated by IHS), and DPG under 42 U.S.C. § 1320a-7a (Civil Monetary Penalties Law) or 42 U.S.C. § 1320a-7(b)(7) (permissive exclusion for fraud, kickbacks, and other prohibited activities) for the Covered Conduct, except as reserved in Paragraph 6 below (concerning excluded claims), and as reserved in this Paragraph. The OIG-HHS expressly reserves all rights to comply with any statutory obligations to exclude the Clinic Entities, the other entities subject to the CIA, and DPG from Medicare, Medicaid, and other Federal health care programs under 42 U.S.C. § 1320a-7(a) (mandatory exclusion) based upon the Covered Conduct. Nothing in this Paragraph precludes the OIG-HHS from taking action against entities or persons, or for conduct and practices, for which claims have been reserved in Paragraph 6 below.

6. Notwithstanding the releases given in paragraphs 3, 4 and 5 of this Agreement, or any other term of this Agreement, the following claims of the United States and/or Relator are specifically reserved and are not released:

- a. Any liability arising under Title 26, U.S. Code (Internal Revenue Code);
- b. Any criminal liability;

- c. Except as explicitly stated in this Agreement, any administrative liability, including mandatory exclusion from Federal health care programs;
- d. Any liability to the United States (or its agencies) for any conduct other than the Covered Conduct;
- e. Any liability based upon obligations created by this Agreement;
- f. Any liability for express or implied warranty claims or other claims for defective or deficient products or services, including quality of goods and services;
- g. Any liability for failure to deliver goods or services due;
- h. Any liability for personal injury or property damage or for other consequential damages arising from the Covered Conduct;
- i. Any liability of individuals; and
- j. Relator's claims against the Clinic Entities and DPG for attorneys' fees, expenses, and costs pursuant to 31 U.S.C. § 3730(d), and Relator's pending claims for relief from retaliatory actions pursuant to 31 U.S.C. § 3730(h).

7. Relator and his heirs, successors, attorneys, agents, and assigns shall not object to this Agreement but agree and confirm that this Agreement is fair, adequate, and reasonable under all the circumstances, pursuant to 31 U.S.C. § 3730(c)(2)(B). Conditioned upon Relator's receipt of the payments owed in Paragraph 2, Relator and his heirs, successors, attorneys, agents, and assigns fully and finally release, waive, and forever discharge the United States, its agencies, officers, agents, employees, and

servants, from any claims arising from the filing of the Civil Action or under 31 U.S.C. § 3730, and from any claims to a share of the proceeds of this Agreement and/or the Civil Action, subject to the exceptions in Paragraph 6 above (concerning excluded claims).

8. The Clinic Entities and DPG waive and shall not assert any defenses the Clinic Entities and DPG may have to any criminal prosecution or administrative action relating to the Covered Conduct that may be based in whole or in part on a contention that, under the Double Jeopardy Clause in the Fifth Amendment of the Constitution, or under the Excessive Fines Clause in the Eighth Amendment of the Constitution, this Agreement bars a remedy sought in such criminal prosecution or administrative action. Nothing in this paragraph or any other provision of this Agreement constitutes an agreement by the United States concerning the characterization of the Settlement Amount for purposes of the Internal Revenue laws, Title 26 of the United States Code.

9. The Clinic Entities, DPG and the other Released Individuals and Entities fully and finally release the United States, its agencies, officers, agents, employees, and servants, and Relator, his heirs, successors, attorneys, agents, and assigns, from any claims (including attorney's fees, costs, and expenses of every kind and however denominated) that the Clinic Entities, DPG, and/or the other Released Individuals and Entities have asserted, could have asserted, or may assert in the future against the United States, its agencies, officers, agents, employees, and servants, and Relator, his heirs, successors, attorneys, agents, and assigns, related to the Covered Conduct and the United States' investigation and prosecution thereof.

10. The Settlement Amount shall not be decreased as a result of the denial of claims for payment now being withheld from payment by any Medicare contractor (e.g., Medicare Administrative Contractor, fiscal intermediary, carrier) or any state payer, related to the Covered Conduct; and the Clinic Entities and DPG agree not to resubmit to any Medicare contractor or any state payer any previously denied claims related to the Covered Conduct, and agree not to appeal any such denials of claims.

11. The Clinic Entities and DPG agree to the following:

a. Unallowable Costs Defined: All costs (as defined in the Federal Acquisition Regulation, 48 C.F.R. § 31.205-47; and in Titles XVIII and XIX of the Social Security Act, 42 U.S.C. §§ 1395-1395kkk-1 and 1396-1396w-5; and the regulations and official program directives promulgated thereunder) incurred by or on behalf of the Clinic Entities and DPG, their present or former officers, directors, employees, shareholders, and agents in connection with:

- (1) the matters covered by this Agreement;
- (2) the United States' audit(s) and civil investigation(s) of the matters covered by this Agreement;
- (3) the Clinic Entities and DPG's investigation, defense, and corrective actions undertaken in response to the United States' audit(s) and civil investigation(s) in connection with the matters covered by this Agreement (including attorney's fees);
- (4) the negotiation and performance of this Agreement;
- (5) the payment the Clinic Entities and DPG make to the United States pursuant to this Agreement and any payments that the Clinic



Entities and DPG may make to Relator, including costs and attorneys' fees; and

(6) the negotiation of, and obligations undertaken pursuant to the CIA to:

- (i) retain an independent review organization to perform annual reviews as described in Section III of the CIA; and
- (ii) prepare and submit reports to the OIG-HHS

are unallowable costs for government contracting purposes and under the Medicare Program, Medicaid Program, TRICARE Program, and Federal Employees Health Benefits Program (FEHBP) (hereinafter referred to as Unallowable Costs). However, nothing in paragraph 11.a.(6) that may apply to the obligations undertaken pursuant to the CIA affects the status of costs that are not allowable based on any other authority applicable to the Clinic Entities and DPG.

b. Future Treatment of Unallowable Costs: Unallowable Costs shall be separately determined and accounted for in non-reimbursable cost centers by the Clinic Entities and DPG, and the Clinic Entities and DPG shall not charge such Unallowable Costs directly or indirectly to any contracts with the United States or any State Medicaid program, or seek payment for such Unallowable Costs through any cost report, cost statement, information statement, or payment request submitted by the Clinic Entities and DPG or any of their subsidiaries or affiliates to the Medicare, Medicaid, TRICARE, or FEHBP Programs.

c. Treatment of Unallowable Costs Previously Submitted for Payment: the Clinic Entities and DPG further agree that within 90 days of the Effective Date of this

Agreement, they shall identify to applicable Medicare and TRICARE fiscal intermediaries, carriers, and/or contractors, and Medicaid and FEHBP fiscal agents, any Unallowable Costs (as defined in this Paragraph) included in payments previously sought from the United States, or any State Medicaid program, including, but not limited to, payments sought in any cost reports, cost statements, information reports, or payment requests already submitted by the Clinic Entities and DPG or any of their subsidiaries or affiliates, and shall request, and agree, that such cost reports, cost statements, information reports, or payment requests, even if already settled, be adjusted to account for the effect of the inclusion of the Unallowable Costs. The Clinic Entities and DPG agree that the United States, at a minimum, shall be entitled to recoup from the Clinic Entities and DPG any overpayment plus applicable interest and penalties as a result of the inclusion of such Unallowable Costs on previously-submitted cost reports, information reports, cost statements, or requests for payment.

Any payments due after the adjustments have been made shall be paid to the United States pursuant to the direction of the Department of Justice and/or the affected agencies. The United States reserves its rights to disagree with any calculations submitted by the Clinic Entities and DPG or any of their subsidiaries or affiliates on the effect of inclusion of Unallowable Costs (as defined in this Paragraph) on the Clinic Entities and DPG or any of their subsidiaries' or affiliates' cost reports, cost statements, or information reports.

d. Nothing in this Agreement shall constitute a waiver of the rights of the United States to audit, examine, or re-examine the Clinic Entities and DPG's books

and records to determine that no Unallowable Costs have been claimed in accordance with the provisions of this Paragraph.

12. This Agreement is intended to be for the benefit of the Parties only. The Parties do not release any claims against any other person or entity, except to the extent provided for in Paragraphs 3, 4, 5, and 9 above, and Paragraph 13 below.

13. The Clinic Entities and DPG agree that they waive and shall not seek payment for any of the health care billings covered by this Agreement from any health care beneficiaries or their parents, sponsors, legally responsible individuals, or third party payors based upon the claims defined as Covered Conduct.

14. Upon receipt of the payment described in Paragraph 1, above, the Parties shall promptly sign and file in the Civil Action a Joint Motion for Dismissal with Prejudice of the United States' Complaint in Intervention in the Civil Action pursuant to Rule 41(a)(1).

15. Except as set forth in Paragraphs 4 and 6(j) above, each Party shall bear its own legal and other costs incurred in connection with this matter, including the preparation and performance of this Agreement.

16. Each party and signatory to this Agreement represents that it freely and voluntarily enters in to this Agreement without any degree of duress or compulsion.

17. This Agreement is governed by the laws of the United States. The exclusive jurisdiction and venue for any dispute relating to this Agreement is the United States District Court for the Southern District of Alabama. For purposes of construing this Agreement, this Agreement shall be deemed to have been drafted by all Parties to

this Agreement and shall not, therefore, be construed against any Party for that reason in any subsequent dispute.

18. This Agreement constitutes the complete agreement between the Parties. This Agreement may not be amended except by written consent of the Parties.

19. The undersigned counsel represent and warrant that they are fully authorized to execute this Agreement on behalf of the persons and entities indicated below.

20. This Agreement may be executed in counterparts, each of which constitutes an original and all of which constitute one and the same Agreement.

21. This Agreement is binding on successors, transferees, heirs, and assigns of the Clinic Entities and DPG.

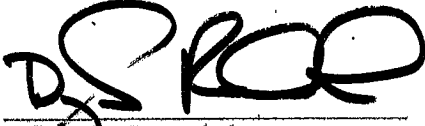
22. This Agreement is binding on Relator's successors, transferees, heirs, and assigns.

23. All parties consent to the United States' disclosure of this Agreement, and information about this Agreement, to the public.

24. This Agreement is effective on the date of signature of the last signatory to the Agreement (Effective Date of this Agreement). Facsimiles of signatures shall constitute acceptable, binding signatures for purposes of this Agreement.

THE UNITED STATES OF AMERICA

DATED: 7/21/14

BY: 

Douglas Rosenthal  
Kimberly Friday  
Kavitha J. Babu  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

DATED: 7-18-14

BY: 

Deidre L. Colson  
Greg A. Bordenkircher  
Christopher J. Bodnar  
Assistant United States Attorneys  
Southern District of Alabama

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Robert K. DeConti  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

INFIRMARY HEALTH SYSTEM INC.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for Infirmary Health System, Inc.

THE UNITED STATES OF AMERICA

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

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Kimberly Friday  
Kavitha J. Babu  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

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Greg A. Bordenkircher  
Christopher J. Bodnar  
Assistant United States Attorneys  
Southern District of Alabama

DATED: 7/18/14

BY: Robert K. DeConti

Robert K. DeConti  
Assistant Inspector General for Legal Affairs  
Office of Counsel to the  
Inspector General  
Office of Inspector General  
United States Department of  
Health and Human Services

INFIRMARY HEALTH SYSTEM INC.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for Infirmary Health System, Inc.

**THE UNITED STATES OF AMERICA**

**DATED:** \_\_\_\_\_

**BY:** \_\_\_\_\_  
Douglas Rosenthal  
Kimberly Friday  
Kavitha J. Babu  
Trial Attorneys  
Commercial Litigation Branch  
Civil Division  
United States Department of Justice

**DATED:** \_\_\_\_\_

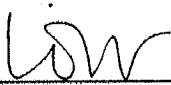
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Assistant United States Attorneys  
Southern District of Alabama


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**BY:** \_\_\_\_\_  
Robert K. DeConti  
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Office of Inspector General  
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**INFIRMARY HEALTH SYSTEM INC.**

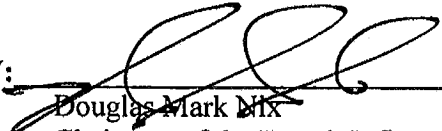
**DATED:** 7/18/14

**BY:**   
Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for Infirmiry Health System, Inc.

DATED: 7/18/2014 BY:   
Douglas Mark Nix  
President and Chief Executive Officer, Infirmiry  
Health System, Inc.

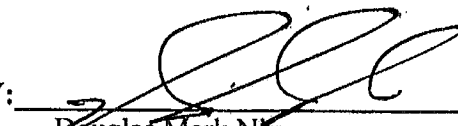
**INFIRMARY MEDICAL CLINICS, P.C.**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for Infirmiry Medical Clinics, P.C.

DATED: 7/18/2014 BY:   
Douglas Mark Nix  
Chairman of the Board, Infirmiry Medical Clinics,  
P.C.

**IMC - DIAGNOSTIC AND MEDICAL CLINIC, P.C.**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for IMC - Diagnostic and Medical Clinic,  
P.C.

DATED: 7/18/2014 BY:   
Douglas Mark Nix  
Vice President, IMC - Diagnostic and Medical  
Clinic, P.C.

**IMC - NORTHSIDE CLINIC, P.C.**

DATED: \_\_\_\_\_ BY: \_\_\_\_\_  
Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for IMC - Northside Clinic, P.C.



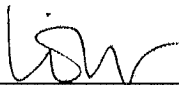
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Health System, Inc.

**INFIRMARY MEDICAL CLINICS, P.C.**

DATED: 7/18/14

BY:  \_\_\_\_\_

Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for Infirmiry Medical Clinics, P.C.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Douglas Mark Nix  
Chairman of the Board, Infirmiry Medical Clinics,  
P.C.

**IMC – DIAGNOSTIC AND MEDICAL CLINIC, P.C.**

DATED: 7/18/14

BY:  \_\_\_\_\_

Lisa M. Noller  
Foley & Lardner, LLP  
Counsel for IMC - Diagnostic and Medical Clinic,  
P.C.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Douglas Mark Nix  
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**IMC – NORTHSIDE CLINIC, P.C.**

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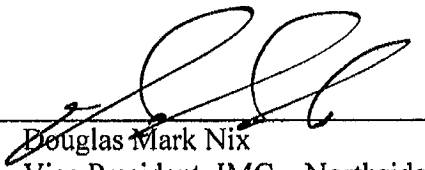
BY:  \_\_\_\_\_

Lisa M. Noller  
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Counsel for IMC – Northside Clinic, P.C.

DATED:

7/18/2014

BY:



Douglas Mark Nix  
Vice President, IMC – Northside Clinic, P.C.

**DIAGNOSTIC PHYSICIANS GROUP, P.C.**

DATED:

\_\_\_\_\_

BY:

\_\_\_\_\_

Daniel Martin  
Jones Walker LLP  
Counsel for Diagnostic Physicians Group, P.C.

DATED:

\_\_\_\_\_

BY:

\_\_\_\_\_

Marc Gottlieb, M.D.  
Diagnostic Physicians Group, P.C.

**CHRISTIAN M. HEESCH**

DATED:

\_\_\_\_\_

BY:

\_\_\_\_\_

Dr. Christian M. Heesch

DATED:

\_\_\_\_\_

BY:

\_\_\_\_\_

Christ Coumanis  
David York  
Coumanis and York, P.C.  
Counsel for Christian M. Heesch

DATED: \_\_\_\_\_

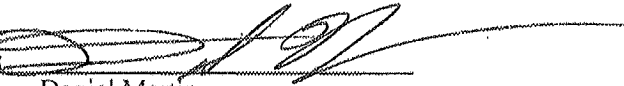
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Douglas Mark Nix  
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DIAGNOSTIC PHYSICIANS GROUP, P.C.


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CHRISTIAN M. HEESCH

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BY: \_\_\_\_\_

Dr. Christian M. Heesch

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

Christ Coumanis  
David York  
Coumanis and York, P.C.  
Counsel for Christian M. Heesch

Counsel for IMC - Northside, P.C.

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Douglas Mark Nix  
Vice President, Infirmiry Medical Clinic –  
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Dr. Christian M. Heesch

DATED: 7/18/14

BY:  \_\_\_\_\_

Christ Coumanis  
David York  
Coumanis and York, P.C.  
Counsel for Christian M. Heesch