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LEWIS GLASSER

November 3, 2017

Janice Nguyen
U.S. NRC Region 1
2100 Renaissance Blvd., Suite 100
King of Prussia, PA 19406-2713
janice.nguyen@nrc.gov

03014445

REC'D 11/07/17 AM 07:11

Re: NRC Materials License No. 47-18080-01
Stonewall Jackson Memorial Hospital Company
Weston, WV
NRC Region 1

Dear Ms. Nguyen:

In connection with NRC Materials License No. 47-18080-01 (the "NRC License"), Stonewall Jackson Memorial Hospital Company, a West Virginia non-profit corporation ("SJM"), and Monongalia Health System, Inc., a West Virginia non-profit corporation ("MHS"), submit this letter, including exhibits, with respect to the recent affiliation between SJM and MHS, a transaction that closed on October 1, 2017. SJM and MHS intend that the NRC License be and remain under the control of SJM, the affiliation notwithstanding. Additional information regarding the affiliation is attached hereto as Exhibits 1-6, summarized as follows:

EXHIBIT 1. A letter executed by the respective CEO's of SJM and MHS responding to the questions contained in the NRC's regulations. This letter does not contain any information that is proprietary or confidential.

EXHIBIT 2. An organizational chart reflecting the organization of SJM both pre-closing and post-closing. The chart does not contain any information that is proprietary or confidential.

EXHIBIT 3. The Certificate of Need Decision issued by the West Virginia Health Care Authority approving the underlying transaction. The Decision contains a good discussion of the structure of the transaction and can be read in conjunction with the organizational chart. The Decision does not contain any information that is proprietary or confidential.

EXHIBIT 4. A redacted copy of the Definitive Agreement (the "Agreement") between SJM and MHS. We have included the first two pages of the Agreement to reflect the non-confidential recitals between the parties and the signature pages to evidence that the Agreement was executed by the parties. We redacted the recitals that contain proprietary and

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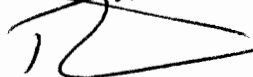
confidential information, as well as the body of the Agreement and its Exhibits and Schedules. The document, as redacted, does not contain any information that is proprietary or confidential and is intended only to demonstrate that the transaction was entered into between the parties.

EXHIBIT 5. An executed copy of the Addendum #1 to the Definitive Agreement that describes the transaction, including, without limitation, confirmation that the affiliation took effect at the time of closing on October 1, 2017, and restricts MHS from taking certain actions regarding the license. The document does not contain any information that is proprietary or confidential.

EXHIBIT 6. A certified copy of SJMH's Amended and Restated Articles of Organization, setting forth the reserved powers of MHS. The Amended and Restated Articles of Organization took effect on October 1, 2017. The document does not contain any information that is proprietary or confidential.

If you or your counsel have any questions or need any further information please feel free to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Casto', written over a horizontal line.

Thomas G. Casto

cc: Charles Sinsel
Client

EXHIBIT 1



1200 J.D. Anderson Drive
Morgantown, WV 26505
304-598-1200 P
monhealth.com

October 25, 2017

Janice Nguyen
U.S. NRC Region 1
2100 Renaissance Blvd., Suite 100
King of Prussia, PA 19406-2713
janice.nguyen@nrc.gov

Re: NRC Materials License No. 47-18080-01
Stonewall Jackson Memorial Hospital
Weston, WV
NRC Region 1

Dear Ms. Nguyen:

Stonewall Jackson Memorial Hospital Company (“SJM”) and Monongalia Health System, Inc. (“MHS”) submit this request for consent with respect to the affiliation between SJM and MHS to the extent such affiliation can be interpreted to result in a transfer of control of the license from SJM to MHS. SJM is a West Virginia non-profit hospital located in Weston, WV. SJM’s NRC Materials License (the “SJM License”) is referenced above. SJM has entered into an agreement with MHS, a West Virginia non-profit corporation located in Morgantown, WV. As a result of the agreement, MHS has become the sole member of SJM. MHS is also the sole member of two other West Virginia hospitals, Monongalia County General Hospital Company and Preston Memorial Hospital Corporation (“Preston Memorial Hospital”), both of which possess NRC licenses. MHS is a known entity to the NRC, having already been found to be so in Safety Evaluation Report, Proposed Change of Control for NRC Byproduct materials License, Number 47-16720-01, Preston Memorial Hospital.

You may recall that on September 27, 2017, your Office of General Counsel reviewed an Addendum (Addendum #1 To the Definitive Agreement) wherein the parties agreed that any reserved powers held by MHS (the “Reserved Powers”) after the transaction is completed will not be exercised in any manner by MHS to in any way directly or indirectly control the SJM License until such time, if any, that this application is approved. After receiving the “No Legal Objection” ruling, the transaction closed on October 1, 2017.

Following up on the ruling and assuming that the Reserved Powers of MHS could be interpreted to permit MHS to transfer control of the SJM License, directly or indirectly, we are hereby submitting the following specific information as required by your regulations and which you sent to me in an e-mail on September 19, 2017:

1. Describe any planned changes in the organization, including but not limited to, transfer of stocks or assets and mergers, change in members on Board of Directors, etc. Provide the new licensee name, mailing address, and contact information, including phone numbers. Clearly identify when the amendment request is due to a name change only.

As a part of the agreement referenced above, MHS became the sole member of SJMH. The assets of SJMH will remain with and under the control of SJMH. There will be no major change in the SJMH Board of Directors with MHS appointing one director to sit on the present Board. Although MHS, as the sole member of SJMH, may exercise the Reserved Powers in connection with SJMH, an Addendum to the Agreement, that was previously disclosed to you and is attached hereto, clearly evidences MHS's explicit agreement to delegate the power to determine corporate policy regarding the direction of the activities under the SJMH License to SJMH. As a result, the control over the SJMH License will remain with SJMH and SJMH will remain the named licensee. There will be no change in the name, mailing address or contact information for the SJMH Licensee.

2. Describe any changes in personnel or duties that relate to the licensed program. Include training and experience for new personnel and any changes in the training program.

As noted above, SJMH will remain the named licensee. There will also be no change in the personnel and their duties as they relate to the SJMH License, or the location, facilities, equipment and the radiation safety program as well as those in charge of the program. As a result, there will be no need for training new personnel.

3. Describe any changes in the location, facilities, equipment, radiation safety program, use, possession, waste management, or other procedures that relate to the licensed program.

There will be no changes.

4. Describe the status of the licensee's facilities, equipment, and radiation safety program, including any known contamination and whether decontamination will occur prior to transfer. Include the status of calibrations, leak tests, area surveys, wipe tests, training, quality control, and related records.

All required records regarding the use and possession of licensed materials are current. There have been no known contaminations and the facility has been inspected by West Virginia Office of Environmental Health Programs, Radiological Health Program, as recently as August 28, 2017.

5. If current decommissioning funding plans (DFP) will be changed as a result of the transfer, the revised DFP should be submitted. If other financial assurance documents will be changed as a result of the transfer, confirm that all financial assurance instruments associated with the license will be held in the transferee's name before the license is transferred, and as required by 10 CFR 30.35(f), the licensee must, within 30 days, submit financial instruments reflecting such changes.

There will be no changes.

6. Confirm that all records concerning the safe and effective decommissioning of the facility will be transferred to the transferee or to NRC, as appropriate. These records include documentation of surveys of ambient radiation levels and fixed and/or removable contamination, including methods and sensitivity.

All records will be maintained by SJMH at its current location, which did not change as a result of the closing of the affiliation transaction.

7. Confirm that both transferor and transferee agree to transferring control of the licensed material and activity, and the conditions of transfer, and that the transferee has been made aware of any open inspection items and its responsibility for possible resulting enforcement actions.

As noted, control of the licensed material and activity will remain with SJMH. There are no open inspection items. MHS acknowledges that as the sole member of SJMH it has been made aware that there are no open inspection items and of its responsibility for possible resulting enforcement actions.

8. Confirm that the transferee will abide by all constraints, conditions, requirements, representations, and commitments of the transferor or that the transferee will submit a complete description of the proposed licensed program.

Both SJMH and MHS so confirm.

9. The transferee, in the case of fuel cycle facilities, shall provide documentation showing that it is financially qualified to conduct normal operations. The information can be in the form of income statements and balance sheet forecasts.

SJMH maintains a materials license.

Janice Nguyen
October 20, 2017
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We look forward to working with you through the approval process and hope to receive required consent in connection with SJMH's continuation as the licensee of the SJMH License, albeit subject to the Reserved Powers of its sole member, MHS. If you have any questions please feel free to contact either Thomas G. Casto, SJMH's counsel at 304-345-2000 or Charles A. Sinsel, MHS's counsel, at 304-933-8148.

Sincerely,



Avah Stalnaker, Chief Executive Officer
Stonewall Jackson Memorial Hospital Company



Darryl Duncan, FACHE
President and Chief Executive Officer
Monongalia Health System, Inc.

EXHIBIT 2

<u>Previous Organizational Chart</u>	<u>Present Organizational Chart</u>
<p>Thirty (30) Members of the Stonewall Jackson Memorial Hospital. Members were citizens of the Stonewall Jackson Memorial Hospital service area</p> <p style="text-align: center;">↓</p> <p>Stonewall Jackson Memorial Hospital Board of Directors selected periodically as required by the bylaws by the Members</p> <p style="text-align: center;">↓</p> <p>Stonewall Jackson Memorial Hospital Administration</p>	<p>Monongalia Health System Sole Member</p> <p style="text-align: center;">↓</p> <p>Stonewall Jackson Memorial Hospital Board of Directors are recommended by the existing Stonewall Jackson Memorial Hospital Board of Directors, approved by the Board of Directors of Monongalia Health System, provided that one member shall be designated by Board of Directors of Monongalia Health System to be representative of Monongalia Health System</p> <p style="text-align: center;">↓</p> <p>Stonewall Jackson Memorial Hospital Administration</p>

EXHIBIT 3

**WEST VIRGINIA
HEALTH CARE AUTHORITY**

In re: **Monongalia Health System, Inc.**,
Applicant.

CON File #17-7-11121-A

DECISION

I. JURISDICTION

From 1977 until September 30, 1986, West Virginia participated in the federally funded health planning functions provided for by the National Health Planning and Resources Development Act of 1974. After October 1, 1986, Congress ceased funding the various state agencies known as State Health Planning and Development Agencies and in late 1986 Congress repealed the former provisions of 42 U.S.C. § 300k et seq. However, West Virginia has continued with its state health planning and development functions. Pursuant to W.Va. Code § 16-2D-1 et seq., the state's Certificate of Need (CON) program was created and jurisdiction over that program is vested in the West Virginia Health Care Authority (hereinafter sometimes referred to as the "Authority").

The CON law in West Virginia, W.Va. Code § 16-2D-1 et seq., provides that any proposed new health service as defined therein, shall be subject to review by the Authority prior to the offering or development of the service. The law was effective July 8, 1977.

II. ISSUES

The general issue to be decided is whether the Applicant is subject to CON review and, if so, whether the Authority shall issue a CON for the Applicant's proposed new health service.

III. PROJECT DESCRIPTION

Monongalia Health System, Inc. (MHS) proposes becoming the sole member of Stonewall Jackson Memorial Hospital Company (SJMHC). SJMHC operates a seventy (70) licensed bed acute care hospital and related facilities, consisting of fifty-six (56) medical/surgical beds, six (6) intensive care/critical care unit beds and eight (8) obstetrical beds and is located in and around Weston, Lewis County, West Virginia. SJMHC is a non-profit corporation with members. SJMHC is an affiliate of Stonewall Home Oxygen Therapy, Inc., a for profit, wholly-owned subsidiary. MHS is the parent company of several health care companies serving the communities of North Central West Virginia and surrounding area, including being the sole member of Monongalia County General Hospital Company and Preston Memorial Hospital Corporation.

The objective of the project proposed is for MHS to become the sole member of and parent company of SJMHC, exercising reserved powers in connection with the appointment of members of the board of directors, approval of capital expenditures, strategic planning and management services. SJMHC will continue to operate and provide existing services at its various locations.

The proposed project components include:

1. MHS and SJMH approve the affiliation.
2. MHS and SJMH enter into a definitive agreement for the affiliation.
3. Regulatory agencies approve the affiliation.
4. MHS becomes the sole member and parent company of SJMH.
5. MHS has certain reserved powers in connection with the appointment of members of the board of directors, approval of capital expenditures and strategic planning and management services related to general oversight and control over the operations of SJMH.

MHS and SJMH do not anticipate any changes to the delivery of care currently provided by SJMH, other than those expected to result from efficiencies created by the affiliation and service line improvements that in the normal course of business are determined to be feasible after assessment.

The capital expenditure associated with the affiliation is \$50,000.

IV. PROCEDURAL HISTORY

The Letter of Intent was received on June 19, 2017 (Exhibit 1). On June 19, 2017, the Authority acknowledged receipt of the same (Exhibit 2).

On June 29, 2017, the CON application and appropriate filing fee were received (Exhibit 3). On June 29, 2017, the Authority acknowledged receipt of the same (Exhibit 4).

On June 29, 2017, the Authority received a request for affected party status on behalf of St. Joseph's of Buckhannon, Inc. (SJB) (Exhibit 5). On June 29, 2017, the Authority received a request for affected party status on behalf of United Hospital Center (UHC) (Exhibit 6).

The application was declared complete on July 3, 2017 (Exhibit 7). On July 3, 2017, the Authority issued an amended completeness letter (Exhibit 8). On July 18, 2017, the Authority issued the Notice of Review (Exhibit 9).

The Authority received replacement pages to the CON application on July 18, 2017 (Exhibit 10).

V. ANALYSIS OF CRITERIA AND FINDINGS OF FACT

West Virginia Code § 16-2D-12(a) states that a Certificate of Need may only be issued if the proposed new health service is:

1. found to be needed, and
2. except in emergency circumstances . . . , consistent with the State Health Plan, unless there are emergency circumstances that pose a threat to public health.

The two findings above are independent of one another; that is, both must be met and the absence of one of the above requires the Authority to deny the application. See,

Princeton Community Hospital v. State Health Planning and Development Agency, 328 S.E. 2d 164 (W. Va. 1985).

Proposed Service Area

MHS submits that SJMH is located in Weston, Lewis County. MHS further submits that Lewis and Gilmer counties meet the 25% and 10% criteria and are considered to be the primary service area for this CON application. The service area population projections are below.

County	2017	2018	2019	2020	2021
Gilmer	8,252	8,219	8,185	8,151	8,131
Lewis	16,406	16,386	16,365	16,345	16,312

Source: West Virginia Population projection by Counties 2000-2030, Summary Table, Bureau of Business and Economic Research, College of Business and Economics, West Virginia University, March 2017.
CON application: Exhibit 3, Section E, p1.

There are no criteria expressed in the State Health Plan specific to this proposed affiliation. However, the Authority is required to review the financial feasibility of the proposed affiliation. MHS submits the following three-year financial projections demonstrating the financial feasibility of this project.

**STONEWALL JACKSON MEMORIAL HOSPITAL AFFILIATION WITH MONONGALIA
HEALTH SYSTEM, INC.**

Financial Projections for First Three Years of Operations (In Thousands of Dollars)

	Current	Year 1	Year 2	Year 3
Patient Revenue				
Inpatient Services	\$23,215	\$23,564	\$23,919	\$24,279
Outpatient Services	83,743	85,845	88,000	90,208
Gross Patient Revenue	106,958	109,409	111,919	114,487
Deductions from Patient Revenue				
Contractual Discounts	58,622	60,170	61,716	63,299
Bad Debt	972	995	1,017	1,041
Provision for Charity	638	653	668	683
Total Deductions from Revenue	60,232	61,818	63,401	65,023
Net Patient Revenue	46,726	47,591	48,518	49,464
Other Operating Revenue	1,102	1,124	1,147	1,170
Total Operating Revenue	47,828	48,715	49,665	50,634
Operating Expenses				
Salaries and Wages	23,300	23,409	23,877	24,355
Employee Benefits	3,401	3,417	3,485	3,555
Supplies	8,559	8,842	9,134	9,436
Purchased Services	8,759	8,959	9,165	9,375
Depreciation & Amortization	2,609	2,363	2,081	1,886
Interest	15	14	12	12
Management Fee & Other Expenses	1,045	2,041	2,081	2,122
Total Operating Expenses	47,688	49,045	49,835	50,741
Excess Revenue over Expenses from Operations	140	(330)	(170)	(107)
Net Non-Operating Revenue	315	351	357	364
Excess Revenue over Expenses	\$455	\$21	\$187	\$257

Exhibit 3, CON application, Section N-3, p. 2.

The Authority determines that the proposed project is financially feasible.

Other Required Findings:

In addition to the Authority finding that the project is needed and consistent with the State Health Plan under W.Va. Code § 16-2D-12(a), the Authority must make other required findings under W.Va. Code § 16-2D-12(b) and (c).

First, under W.Va. Code § 16-2D-12(b)(1), the Authority must find that superior alternatives to such services in terms of cost, efficiency and appropriateness do not exist and the development of such alternatives is not practicable. MHS submits that the only alternative to the proposed affiliation is maintaining the status quo, which is not a superior alternative for SJMH given the changing health care environment. SJMH needs access to services and financing available through affiliation with a larger provider like MHS. By affiliating with MHS, SJMH will be better aligned to improve continuum of care and manage the overall healthcare delivery system in the service area. Based upon the evidence, the Authority finds that superior alternatives do not exist.

Second, under W.Va. Code § 16-2D-12(b)(2), the Authority must find that existing facilities providing services similar to those proposed are being utilized in an appropriate and efficient manner. MHS submits that the proposed project involves an existing provider. There will be no change in the services provided. No other providers of acute care services exist in the service area. MHS further submits that the affiliation between MHS and SJMH will promote improved continuum of care to better serve the residents of the

service area and will allow SJMH to continue to deliver health care services. Based upon the evidence, the Authority finds that the criterion is not applicable to the proposed project.

Third, under W.Va. Code § 16-2D-12(b)(3), the Authority must find that in the case of new construction, alternatives to new construction, such as modernization or sharing arrangements, have been considered and have been implemented to the maximum extent practicable. MHS submits that the proposed affiliation does not require new construction. Based upon the evidence, the Authority finds that the criterion is not applicable to the proposed project.

Fourth, under W.Va. Code § 16-2D-12(b)(4), the Authority must find that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service. MHS submits that there are no other providers of acute care services in the service area. The absence of the proposed affiliation may result in services at SJMH suffering which would cause patients to travel farther for services. Based upon the evidence, the Authority finds that patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed new service.

Finally, for each proposed new health service it approves, the Authority must make a written finding, which shall take into account the current accessibility of the facility as a whole, and the extent to which the new health service will meet the criteria in W.Va. Code § 16-2D-12(c), regarding the needs of medically underserved population. MHS submits that it will provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility for financial assistance or for government assistance. MHS further submits that it will not deny services to patients on the basis of ability to pay. MHS

submits that the provision for bad debt and charity care are shown in the financial projections of the CON application. MHS submits that there will be no change in the existing policies and procedures upon implementation of the project. Based upon the evidence, the Authority finds that the proposed project will be accessible to the medically underserved population.

VI. CONCLUSIONS OF LAW

1. The proposed project is reviewable under West Virginia Certificate of Need law.
2. The proposed project is needed.
3. Superior alternatives to the proposed project in terms of costs, efficiency and appropriateness do not exist.
4. Patients will experience serious problems in obtaining care of the type proposed in the absence of the proposed project.
5. The proposed project is consistent with the State Health Plan.
6. The project will serve the medically underserved population.

VII. DECISION

The West Virginia Health Care Authority **APPROVES** the application submitted by **Monongalia Health System, Inc.** to become the sole member of Stonewall Jackson Memorial Hospital Company. The Decision is **CONDITIONED** upon the Applicant submitting annual reports showing the actual utilization and revenue and expenses compared to the projections presented by the Applicant in its application. This condition is applicable for the first three fiscal years of operation.

The capital expenditure associated with the project is **\$50,000**. A Certificate of Need is hereby issued in the form of this Decision.

This Certificate of Need is valid for a period of one (1) year from the date of this Decision. Applicant shall notify the Authority immediately of any anticipated project changes, including cost increases, as outlined in W.Va. C.S.R. § 65-32-14.

At least forty-five days prior to the expiration of this Certificate of Need, the Applicant must submit a report on the progress being made toward completion of the project. At a minimum, the progress report will include the information required by W. Va. C.S.R. § 65-32-13. The progress report must contain a verification signed by the Chief Executive Officer. If the approved project will not be completed prior to the expiration date, a written request for an extension must be submitted.

The Applicant shall incur an obligation for a capital expenditure associated with an approved project within twelve (12) months of issuance of the Certificate of Need.

Upon good cause shown, the Authority may extend the duration of a Certificate of Need for up to six (6) months. If the obligation required to be incurred by W. Va. C.S.R. § 65-32-13.6 is not incurred within eighteen (18) months of the issuance of the Certificate of Need, the Certificate automatically expires.


If the obligation is incurred within the prescribed time period, the Applicant may request a renewal of the Certificate of Need, in writing, in order to complete the project. The request shall contain a verification signed by the Chief Executive Officer. If a request for renewal of a Certificate of Need is not made before its expiration, the Certificate automatically expires.

Also, the Applicant must request a substantial compliance review, in writing, no later than forty-five days prior to licensure or the undertaking of the activity for which a Certificate of Need was issued as provided for in W.Va. C.S.R. § 65-32-16.1 and a copy of the *final cost report* must be filed with the Authority. The request shall contain a verification signed by the Chief Executive Officer. An increase in the capital expenditure above the approved **\$50,000** may be subject to review.

APPEALS

Appeal from this Decision may be taken in accordance with the provisions of W.Va. Code § 16-2D-16, and must be requested in writing and received by the West Virginia Health Care Authority, Office of Judges, Post Office Box 3585, Charleston, West Virginia 25328, within thirty (30) days after the date of this Decision.

Done this 1st day of September, 2017.


Martha Yeager Walker, Chair


Darrell Cummings, Board Member


Charlene Farrell, Board Member *myn*


Robert Gray, Board Member

DISTRIBUTION

C. Gregg Gibbs
Arnett Carbis Toothman LLP

The Honorable Andrew "Mac" Warner
Secretary of State

Jolynn Marra, Director
Health Facility Licensure & Certification

Dennis Garrison, Director, Consumer Advocacy Division
West Virginia Insurance Commission

WCFG/JDW

CON Case File #17-7-11121-A

Monongalia Health System, Inc.

CON File #17-7-11121-A

EXHIBITS REFERENCE

Exhibit Number	Description	Document Date	Date Rec'd by CON
1	Letter of Intent	06/19/17	06/19/17
2	Acknowledgment of receipt of Letter of Intent	06/19/17	
3	CON application and fee	06/26/17	06/29/17
4	Acknowledgment of receipt of application and fee	06/29/17	
5	Request for Affected Party Status on behalf of St. Joseph's Hospital of Buckhannon, Inc. (SJH)	06/29/17	06/29/17
6	Request for Affected Party Status on behalf of United Hospital Center, Inc. (UHC)	06/29/17	06/29/17
7	Completeness Letter	07/03/17	
8	Amended Completeness Letter	07/03/17	
9	Notice of Review	07/18/17	
10	Replacement Pages	07/18/17	07/18/17

EXHIBIT 4

FINAL

DEFINITIVE AGREEMENT

BY AND BETWEEN

MONONGALIA HEALTH SYSTEM, INC.

AND

STONEWALL JACKSON MEMORIAL HOSPITAL COMPANY

DEFINITIVE AGREEMENT

THIS DEFINITIVE AGREEMENT (this "Agreement") is made as of this 10th day of July, 2017, by and between Monongalia Health System, Inc., a West Virginia nonprofit corporation ("MHS") and Stonewall Jackson Memorial Hospital Company, a West Virginia nonprofit corporation ("Stonewall"). MHS and Stonewall are individually referred to herein as a "Party" and collectively as the "Parties."

RECITALS

WHEREAS, both MHS and Stonewall are nonprofit corporations recognized as exempt from federal income taxation under the Internal Revenue Code of 1986, as amended (the "Code") as further described in this Agreement;

WHEREAS, Stonewall serves Weston, in Lewis County, West Virginia, and surrounding areas, by providing various health care services;

WHEREAS, Stonewall is the sole shareholder of Stonewall Home Oxygen Therapy, Inc. (the "Stonewall Subsidiary"), a for-profit corporation, and holds certain controlling powers with respect to the Stonewall Subsidiary;

WHEREAS, except for the Stonewall Subsidiary, Stonewall has no other affiliates or subsidiaries;

WHEREAS, Stonewall operates an acute care hospital located in Weston, West Virginia (the "Hospital");

[REDACTED]

WHEREAS, the Parties desire, subject to the terms and conditions set forth in this Agreement, to effect an affiliation transaction as described in Article I, below (the "Transaction") and to enter into this Agreement to perform certain covenants following the Transaction;

[REDACTED]

[REDACTED]

WHEREAS, Monongalia County General Hospital Company ("Mon General") operates an acute care hospital and related facilities located in Morgantown, West Virginia, and MHS is the sole member of Mon General;

WHEREAS, Preston Memorial Hospital Corporation (“Preston Memorial”) operates a critical access hospital and related facilities located in Kingwood, West Virginia, and MHS is also the sole member of Preston Memorial;

WHEREAS, the Parties have determined that the Transaction will allow Stonewall, Preston Memorial and Mon General, and their subsidiaries and affiliates, as well as, potentially, additional facilities and their affiliates and subsidiaries, to operate in an integrated fashion, promoting health in their respective communities through more efficient operations, quality enhancement, and better allocation and more cost-effective use of resources, as well as enhanced access to care;

WHEREAS, the Parties have determined that the Transaction would be in the best interests of the communities served by them, including, without limitation, for the reasons set forth above; and

WHEREAS, the Parties have also determined that the Transaction and related transactions contemplated herein are in furtherance of the charitable purposes of Stonewall and MHS, respectively.


NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of the mutual obligations, covenants and obligations hereinafter set forth, the Parties, intending to be mutually bound, hereby agree as follows:

[REDACTED]

[REDACTED PAGES 3-50]

INTENDING TO BE LEGALLY BOUND, the Parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

MONONGALIA HEALTH SYSTEM, INC.

By: 
Name: Darryl L. Duncan, FACHE
Title: President and Chief Executive Officer

STONEWALL JACKSON MEMORIAL HOSPITAL COMPANY

By: _____
Name: Avah L. Stalnaker
Title: Chief Executive Officer

INTENDING TO BE LEGALLY BOUND, the Parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

MONONGALIA HEALTH SYSTEM, INC.

By: _____
Name: Darryl L. Duncan, FACHE
Title: President and Chief Executive Officer

STONEWALL JACKSON MEMORIAL HOSPITAL COMPANY

By: *Avah L. Stalnaker*
Name: Avah L. Stalnaker
Title: Chief Executive Officer

[REDACTED SCHEDULES AND EXHIBITS]

EXHIBIT 5

ADDENDUM #1 TO DEFINITIVE AGREEMENT

THIS ADDENDUM #1 TO DEFINITIVE AGREEMENT (this "First Addendum") made this 29th day of September, 2017 and effective as of October 1, 2017 (the "Effective Date"), by and between MONONGALIA HEALTH SYSTEM, INC., a West Virginia nonprofit corporation ("MHS"), and STONEWALL JACKSON MEMORIAL HOSPITAL COMPANY, a West Virginia nonprofit corporation ("Stonewall"). MHS and Stonewall are individually referred to herein as a "Party" and collectively as the "Parties".

WHEREAS, the Parties entered into a Definitive Agreement made as of July 10, 2017 (the "Definitive Agreement"), with respect to the proposed affiliation of Stonewall with MHS (the "Affiliation");

WHEREAS, the Affiliation will become effective as of the Effective Date and the current members of Stonewall will withdraw and voluntarily resign as members, and MHS will become the sole member of Stonewall;

WHEREAS, Stonewall holds that certain Materials License from the United States Nuclear Regulatory Commission (the "NRC"), numbered 47-18080-01 and expiring September 30, 2024 (the "NRC License");

WHEREAS, The change in membership notwithstanding, SJMH will continue to be a separate legal entity and remain the licensee, owner and operator of its hospital and provider of health care services after the Effective Date, and will remain the obligated party under the NRC License and the transaction does not include a merger or acquisition, and the NRC License of SJMH will not be assigned or transferred as a result thereof unless and until indirect transfer of control thereof is approved by the NRC;

WHEREAS, the Parties now wish to enter into this First Addendum and modify the Definitive Agreement as necessary to reflect the certain modifications to the Definitive Agreement desired between the parties and set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and in consideration of mutual obligations, covenants and obligations hereinafter set forth, the Parties, intending to be mutually bound, hereby as agree as follows:

1. **NRC License**. Notwithstanding anything to the contrary in the Definitive Agreement, or any documents related thereto, neither the Reserved Powers held by MHS (as defined in the Definitive Agreement and enumerated in the Amended and Restated Articles of Incorporation of Stonewall and the Amended and Restated Bylaws of Stonewall) or any other authority of MHS over Stonewall resulting from the Affiliation, shall be exercised in any manner by MHS to in any way, transfer, assign or in any manner dispose of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of the NRC license to any person or by acting to control the direction of activities under, or activities related to compliance with, the requirements of, the NRC License until such time, if any, that the NRC Application (described in Section 2 hereof) is approved, to the extent the Reserved Powers could be interpreted to allow such action. The prohibitions on the action of MHS set forth in this Section shall include, but not necessarily be limited to, any action, direct or indirect, that would result (a) in any change to the radiation safety officer listed in the NRC License; (b) in any change to the personnel involved in licensed activities; (c) in any change to the locations, facilities, and equipment authorized in

the NRC License; (d) in any change to the radiation safety program authorized in the NRC License; (e) in any change in the organization's name listed in the NRC License; or (f) in any change to Stonewall's maintenance of required surveillance records and decommissioning records.

2. **NRC Application.** Stonewall has filed, or will file as expeditiously as is reasonably possible, the necessary application for an indirect change of control of the NRC License (including all necessary attachments and other documents required by the NRC) (the "NRC Application") to seek approval of any indirect transfer of control of the NRC license as may be required.

3. **Definitions.** Capitalized terms used and not otherwise defined in this First Addendum shall have the meanings that are given in the Definitive Agreement when used herein.

4. **No Further Amendments.** Except as provided in or modified by this First Addendum, the Definitive Agreement shall continue and remain in force and effect.

5. **Counterparts.** This First Addendum may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart of a signature page to this First Addendum by facsimile or electronic transmission shall be as effective as delivery of a manually executed counterpart of this First Addendum.

INTENDING TO BE LEGALLY BOUND, the Parties hereto have caused this Addendum to be executed and delivered as of the date first hereinabove written, and effective as of the Effective Date.

MONONGALIA HEALTH SYSTEM, INC.

By: _____

Name: Darryl L. Duncan, FACHE

Title: President and Chief Executive Officer

**STONEWALL JACKSON MEMORIAL HOSPITAL
COMPANY**

By: _____

Name: Avah L. Stalnaker

Title: Chief Executive Officer

EXHIBIT 6

State of West Virginia



Certificate

As Secretary of State of the State of West Virginia, I hereby certify that

Amended and Restated Articles of Incorporation of

STONEWALL JACKSON MEMORIAL HOSPITAL COMPANY

are filed in my office as required by the provisions of the West Virginia Code and are found to conform to law. Therefore, I issue this

AMENDED AND RESTATED ARTICLES OF ORGANIZATION



*Given under my hand and the
Great Seal of the State of
West Virginia on this day of*

September 29, 2017

Mac Warner

Secretary of State

RECEIVED

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SECRETARY OF STATE

**AMENDED AND RESTATED ARTICLES OF INCORPORATION
OF STONEWALL JACKSON MEMORIAL HOSPITAL COMPANY**

FILED

SEP 29 2017

IN THE OFFICE OF
SECRETARY OF STATE

Pursuant to the provisions of § 31E-10-1001 *et seq.* of the West Virginia Code of 1931, as amended, the undersigned Corporation hereby restates and adopts the following Amended and Restated Articles of Incorporation for a West Virginia nonprofit corporation:

1. The name of the Corporation shall be:

Stonewall Jackson Memorial Hospital Company
2. The address and principal office of the Corporation will be located at:

Stonewall Jackson Memorial Hospital Company
230 Hospital Plaza
Weston, West Virginia 26452
3. The physical address of the principal place of business in West Virginia will be located at:

Stonewall Jackson Memorial Hospital Company
230 Hospital Plaza
Weston, West Virginia 26452
4. The name and address of the registered agent to whom notice of process may be sent is:

Avah Stalnaker
Chief Executive Officer
Stonewall Jackson Memorial Hospital Company
230 Hospital Plaza
Weston, West Virginia 26452
5. The Corporation shall be a nonprofit, non-stock corporation under § 31E-1-101 *et seq.* of the Code of West Virginia of 1931, as amended, with Monongalia Health System, Inc. ("MHS") as its sole member. The Corporation shall have no authority to issue stock.
6. The existence of the Corporation is to be perpetual.
7. The purposes for which this Corporation is formed are as follows:
 - a. The Corporation is organized exclusively for charitable, religious, educational and/or scientific purposes, including for such purposes, the making of distributions to organizations that qualify as exempt organizations under Section 501(c)(3) of the Internal Revised Code of 1986, as amended ("Code"), or the corresponding section of any future federal tax code. No part of the net earnings of the Corporation shall inure to the benefit of, or be distributable to, its members, directors, trustees, officers, or other private persons, except that the Corporation shall be authorized and empowered to pay reasonable and fair market compensation for services rendered and to make payments and distributions in furtherance of the purposes set forth in these Articles. No substantial part of the activities of the Corporation shall be the carrying on of propaganda, or otherwise attempting to influence legislation, and the Corporation shall not participate in, or intervene in (including the publishing or distribution of statements), any political campaign on behalf of any candidate for public office. Notwithstanding any other provision of these Articles, the Corporation shall not carry on any other activities not permitted to be carried on (a) by a corporation exempt from federal income tax under section 501(c)(3) of the Code, or corresponding section of any future federal tax code, or (b) by a corporation, contributions to which are deductible under section 170(c)(2) of the Code, or corresponding section of any future federal tax code.

- b. Upon the dissolution of the Corporation, and subject to the applicable provisions of the West Virginia Nonprofit Corporation Act, including, without limitation, provisions in such Act governing the application of donor restricted funds upon dissolution of a nonprofit corporation, the Board of Directors thereof shall, after paying or making provision for the payment of all the debts and liabilities of the Corporation, dispose of all the assets of the Corporation exclusively to MHS or, if not in existence or no longer qualified under Section 501(c)(3) of the Code, to such other organization or organizations organized and operated exclusively for charitable, educational, religious or scientific purposes as shall at the time qualify as an exempt organization or organizations under Section 501(c)(3) of the Code. Under no circumstances shall any of the assets of the Corporation, upon dissolution, be distributed to any entity other than those described above.
- c. The Corporation is organized for the principal purpose of operating a hospital in Lewis County, West Virginia, and providing other health care services and facilities in and outside of Lewis County, West Virginia, for charitable purposes, to provide hospital and other medically related services to sick or injured persons, and to promote the health of the people in the community. The Corporation shall, among other things, operate a full-time emergency room, open to all persons regardless of their ability to pay for services. The Corporation shall provide other indigent care to the best of its abilities, consistent with its financial resources, but may, to the extent required by such resources, limit admissions to those who can pay the cost of their hospitalization, either themselves, through private health insurance, or with the aid of public programs such as Medicare and Medicaid, and otherwise consistent with financial assistance policies adopted by the Corporation from time-to-time. The Corporation shall not restrict the use of its facilities to a particular group of physicians and surgeons, such as a medical partnership or association, to the exclusion of all other qualified and needed doctors. However, the Corporation and the management of the hospital shall exercise discretionary authority in approving the qualifications of those applying for the use of the medical facilities after giving consideration to the size and nature of its facilities as well as other factors.
- d. The Corporation is organized for the further purpose of cooperating, contracting and networking with other health care providers or health-related entities, whether within or outside the State of West Virginia, to promote the general health of the people of the State of West Virginia (and the surrounding states) and the efficient delivery of health care services for such people.
- e. The Corporation may buy, own, sell, hold, lease, sublease, occupy, use and operate real estate and fixtures, equipment, furnishings, furniture and other personal property, or any interest or tenure therein, and generally deal in and traffic by way of ownership, sale, lease, exchange, investment, security or otherwise, real and personal properties in the performance of its charitable purposes, and do and perform all lawful acts and things incident thereto.
- f. The Corporation may sell, assign, lease, exchange, mortgage, pledge, encumber and dispose of, in any manner, all or part of the property and business of the Corporation at any time, including goodwill, assets, privileges and rights of any kind and character, for cash, or upon credit, or in consideration of stocks, bonds or other obligations of any person or corporation.
- g. In general, the Corporation may carry on any business not contrary to the laws of the State of West Virginia and may have and exercise all powers conferred by the laws of West Virginia upon nonprofit corporations formed thereunder; it may do any and all things herein set forth to the same extent as natural persons could do and do such things as principal and agent or in association with others; and it may do any and all things necessary, suitable, convenient, incidental or proper for the accomplishment of all the purposes, objects, powers and business of the Corporation.

- h. The foregoing provisions of these Articles shall be construed as stating powers as well as objects, and the enumeration of specific objects and powers shall not be construed to limit or restrict in any manner the manner of general terms, objects and powers, nor shall the expression of one thing be deemed to exclude another, although it be of like nature not expressed.
 - i. As a means of accomplishing the foregoing purposes, the Corporation shall have the power to do any and all acts hereinbefore set forth, to the same extent and as fully as any natural person might or could do; provided, however, that notwithstanding any provision of these Articles or any provisions of applicable West Virginia law to the contrary, the Corporation shall not have the power to carry on any activities which would cause it to fail to qualify, or to continue to qualify, as (a) a nonprofit corporation under the West Virginia Nonprofit Corporation Act; (b) an organization exempt from Federal Income Tax under Section 501(c)(3) of the Code; or (c) an organization to which contributions are deductible under Code Section 170. The Corporation shall be authorized to solicit, receive, and administer funds for the above purposes.
8. The Board of Directors of the Corporation shall manage and control the business, property and affairs of the Corporation, and shall have all powers and authority necessary to effect such management and control; provided, however, that MHS shall possess those powers of a member of a nonprofit corporation set forth in these Articles and the bylaws of the Corporation, as amended and/or restated from time-to-time, and further as may be provided by contract between the Corporation and MHS, consistent with § 31E-1-101 *et seq.* of the Code of West Virginia of 1931, as amended, and shall have the authority to exercise the following powers with respect to the Corporation and its wholly-owned subsidiary, Stonewall Home Oxygen Therapy, Inc. ("SHOT"), as well as affiliates and subsidiaries of the Corporation hereafter established, which powers shall be exercisable by the Board of Directors of MHS and which constitute powers reserved to MHS:
- a. Approving annual operating and capital budgets of the Corporation, SHOT and any other affiliate or subsidiary;
 - b. Making recommendations to the Corporation's and SHOT's governing boards, and, ultimately, having approval or veto power as to what services are offered at or through the Corporation, SHOT or any other affiliate or subsidiary, including, without limitation, the power to approve the filing of any certificate of need or request for exemption or determination of non-reviewability and other extraordinary filings, and the power to approve or require the addition, revision or discontinuance of any service or services, subject to statutory or regulatory requirements;
 - c. Making recommendations to the Corporation's governing board, or Chief Executive Officer as the case may be, and, ultimately, approving the appointment or directing the removal of the Chief Executive Officer, Assistant Chief Executive Officer, Chief Operating Officer (if any) and Chief Financial Officer;
 - d. Approving non-budgeted expenditures in excess of \$250,000.00 on a cumulative basis and \$100,000.00 on an individual basis in any budget year;
 - e. Approving any amendments to the articles of incorporation or bylaws of the Corporation, SHOT or any other affiliate or subsidiary;
 - f. Directing the Corporation, SHOT or any other affiliate or subsidiary to make capital contributions to MHS to maximize the efficiency and operation of the health care system of MHS, including, but not limited to, the Corporation;
 - g. Approving, upon recommendation by Stonewall's, SHOT's or any other affiliate's or subsidiary's governing board, or rejecting, the election of, and directing the removal of, any member or members of the Corporation's, SHOT's or any affiliate's or

subsidiary's governing board, provided, however, if qualified candidates are available and statutory and regulatory obligations will be met, preference will be given to residents of Lewis, Gilmer and Braxton Counties, West Virginia, except at least one member of the Corporation's governing board will be a representative of MHS designated by MHS;

- h. Approving the merger of or with, or consolidation by, the Corporation, SHOT or any other affiliate or subsidiary;
- i. Approving the sale, lease, exchange, mortgage, pledge or other disposition of all or substantially all of the Corporation's, SHOT's or any other affiliate's or subsidiary's property or assets;
- j. Approving a plan of distribution for the Corporation, SHOT or any other affiliate or subsidiary;
- k. Approving a plan of distribution for the Corporation's, SHOT's or any other affiliate's or subsidiary's assets;
- l. Intervening in the Corporation's, SHOT's or any other affiliate's or subsidiary's operations if performance and/or commercially reasonable financial targets are not met (such intervention to include, without limitation, prohibiting certain activities or expenditures; imposing management control over financial, operating or other matters; supervising management; changing management; directing asset management; providing direct loans or assistance; or other intervention);
- m. Directing inter-company transfers of cash, property or assets between the Corporation, SHOT or any other affiliate or subsidiary and MHS;
- n. Requiring the Corporation, SHOT and any other affiliate or subsidiary to participate in key strategic affiliations with third parties to maximize the efficiency and operation of the health care system of MHS, including, but not limited to, the Corporation;
- o. Requiring the Corporation, SHOT and any other affiliate or subsidiary to participate in managed care contracts, value-based payment programs and global pricing or payment arrangements to maximize the efficiency and operation of the health care system of MHS, including, but not limited to, the Corporation;
- p. Making recommendations to the Corporation's Board of Directors on, and, ultimately, approving, rejecting or modifying, strategic plans for the Corporation;
- q. Approving any incurrence of debt in the amount of \$250,000.00 or greater, by the Corporation, SHOT or any other affiliate or subsidiary;
- r. Approving any non-budgeted sale or other disposition of the Corporation's, SHOT's or any other affiliate's or subsidiary's assets in excess of \$250,000.00 on an individual basis;
- s. Approving all of the Corporation's, SHOT's or any other affiliate's or subsidiary's joint venture arrangements with accountable care organizations, group purchasing organizations, health insurers, health maintenance organizations, health plans, or other organizations or entities;
- t. Approving all academic and other key strategic affiliations between the Corporation, SHOT or any other affiliate or subsidiary with entities outside MHS; and
- u. Approving the dissolution of the Corporation, SHOT or any other affiliate or subsidiary.

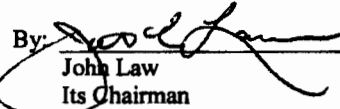
Provided, however, the above reserved powers in favor of MHS are expressly subject to the following:

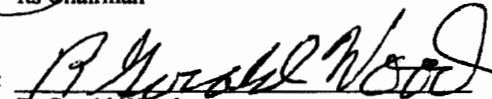
- a. MHS will consult with the Board of Directors of the Corporation prior to making, directing or approving any change in the corporate mission statement of the Corporation;
- b. MHS will consult with the governing board of the Corporation or SHOT, as applicable, prior to making, directing or approving any change in the name of the Corporation or SHOT;
- c. MHS will consult with the Board of Directors of the Corporation prior to making, directing or approving any change in tax-exempt status of the Corporation; and
- d. Certain of the reserved powers of MHS set forth in this Section 8 are further subject to limitations and qualifications in, and other requirements of, that certain Definitive Agreement dated July 10, 2017 (the "Definitive Agreement"), by and between MHS and the Corporation, including, without limitation, with respect to the enforcement of the Definitive Agreement, for so long as, but only for so long as, such limitations and other requirements of the Definitive Agreement remain in effect in accordance with the terms thereof, and it is further recognized that MHS may, by other written contract with the Corporation, agree to certain additional limitations and parameters on such reserved powers.

9. The number, qualifications, election, tenure, succession, powers and duties of the members of the Board of Directors shall be as provided herein and in the Bylaws of the Corporation.

IN WITNESS WHEREOF, the undersigned, for the purpose of amending and restating the Articles of Incorporation of Stonewall Jackson Memorial Hospital Company under the laws of the State of West Virginia, do make and file these Amended and Restated Articles of Incorporation, which supersede the Articles of Incorporation of the Corporation and any amendments thereto and/or restatements thereof, approved and adopted the 22nd day of September, 2017, but effective October 1, 2017, at 12:01 a.m.

Stonewall Jackson Memorial Hospital Company

By: 
John Law
Its Chairman

By: 
R. Gerald Wood
Its Secretary

Certification

This Certificate to the Amended and Restated Articles of Incorporation of Stonewall Jackson Memorial Hospital Company, a West Virginia nonprofit corporation, is herein executed by the Corporation. The undersigned hereby certifies that these Amended and Restated of Articles of Incorporation have been duly adopted and approved by the Board of Directors of the Corporation pursuant to and as required by the provisions of Section 31E-10-1001 *et seq.* of the Code of West Virginia of 1931, as amended, by greater than a two thirds vote of the Board of Directors of the Corporation present at a meeting at which a quorum was present on the 22nd day of September, 2017, but effective at 12:01 a.m. on October 1, 2017. There were no members of the Corporation entitled to vote thereon and, thus, approval of members was not required.

Stonewall Jackson Memorial Hospital Company

By: 

R. Gerald Wood
Its Secretary