

UNOFFICIAL COPY



Doc#: 1332945074 Fee: \$68.00
RHSP Fee: \$9.00 RPRF Fee: \$1.00
Karen A. Yarbrough
Cook County Recorder of Deeds
Date: 11/25/2013 03:15 PM Pg: 1 of 16

THE RIGHTS OF LENDER SET FORTH HEREIN AND IN THE OTHER LOAN DOCUMENTS, INCLUDING THE PRIORITY OF THE LIENS OF LENDER IN THE COLLATERAL, ARE SUBJECT TO THE TERMS OF THE INTERCREDITOR AGREEMENT TO THE EXTENT IT HAS BEEN EXECUTED BY LENDER AND ADVANTAGE CAPITAL COMMUNITY DEVELOPMENT FUND XXV, L.L.C.

MODIFICATION AGREEMENT

This MODIFICATION AGREEMENT (this "Agreement") dated as of October 21, 2013 (and executed as of November 4, 2013), is made and entered into by and among MARQUE MEDICOS, L.L.C., an Illinois limited liability company ("Borrower"), each of the guarantors party hereto (each, a "Guarantor" and collectively, the "Guarantors") and ENTERPRISE SUB-CDE I, LLC, a Delaware limited liability company ("Lender"). This Agreement is based upon the following recitals which are made a material part of this Agreement:

A. Pursuant to the terms and conditions of a certain Credit Agreement (as amended from time to time, the "Credit Agreement"), dated as of October 21, 2013, and made by and among Borrower, Guarantors and Lender, Lender agreed to lend to Borrower the original principal sum of \$2,800,000 (the "Loan"). Capitalized terms not otherwise defined herein shall have the same meaning as in the Credit Agreement.

B. To further evidence the Obligations of Borrower to Lender, Borrower executed and delivered to Lender that certain Promissory Note dated October 21, 2013, executed by Borrower and payable to the order of Lender in the principal amount of \$2,800,000 (the "Note").

C. The Obligations of Borrower to Lender are further evidenced, secured and guaranteed by the following (collectively with the Loan Agreement and the Note and the other Loan Documents (as defined in the Credit Agreement, the "Loan Documents"): (1) that certain Security Agreement dated as of October 21, 2013, executed by Borrower and the Guarantors party thereto for the benefit of Lender (the "Security Agreement"); (2) that certain Illinois Future Advance Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of October 21, 2013, executed by D-Real Estate, LLC, an Illinois limited liability company ("D-Real Estate") for the benefit of Lender, and recorded as document number 1331245060 in the Cook County clerk's office on November 8, 2013 (the "D-Real Estate Mortgage"), encumbering the real property legally described as Parcel A on Exhibit A attached hereto and incorporated herein by reference ("Parcel A"); (3) that certain Illinois Future Advance Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of October

UNOFFICIAL COPY

21, 2013, executed by D-Real Estate Aurora, LLC, an Illinois limited liability company ("Aurora") for the benefit of Lender, and recorded as document number 2013K080043 in the Kane County clerk's office on November 12, 2013 (the "Aurora Mortgage"), encumbering the real property legally described as Parcel B on Exhibit A ("Parcel B"); (4) that certain Illinois Future Advance Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing dated as of October 21, 2013, executed by D-Real Estate 26th Street, LLC, an Illinois limited liability company ("26th") for the benefit of Lender, and recorded as document number 1331245061 in the Cook County clerk's office on November 8, 2013 (the "26th Mortgage", and together with the D-Real Estate Mortgage and the Aurora Mortgage, the "Mortgage"), encumbering the real property legally described as Parcel C on Exhibit A ("Parcel C", and together with Parcel A, Parcel B and the other property described in the Mortgage, the "Mortgaged Property"); (5) certain UCC financing statements; and (6) that certain Continuing Unlimited Guaranty Agreement dated October 21, 2013, executed by Guarantors for the benefit of Lender.

D. Borrower desires to obtain an additional loan from Lender in the principal amount of \$206,616.65 (the "Loan B") as further set forth below.

NOW, THEREFORE, in consideration of the recitals and the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Borrower, Guarantors and Lender hereby agree as follows, notwithstanding anything to the contrary contained in the Loan Documents:

1. Affirmation of Recitals. The recitals are true and correct and incorporated herein by this reference.

2. Agreement to Make Loan B. Borrower hereby agrees to borrow from Lender and Lender hereby agrees to lend to Borrower, Loan B in the principal amount of \$206,616.65. Loan B shall be evidenced by the Promissory Note B in the form of Exhibit B attached hereto ("Note B"). Loan B shall accrue interest at the rate set forth in Section 3.01 of the Credit Agreement and shall mature on the Maturity Date. Loan B shall constitute a part of the Obligations and shall be secured by all of the Collateral. Lender shall be entitled to all of its rights and remedies under the Credit Agreement and the other Loan Documents with respect to Loan B.

3. Amendment to Credit Agreement. The Credit Agreement shall be deemed amended hereby to incorporate Loan B as a part of the Obligations. All references to the "Loan" in the Credit Agreement shall be deemed to mean by the \$2,800,000 Loan referenced in the Credit Agreement and Loan B. All references to "Note" in the Credit Agreement shall be deemed to mean the \$2,800,000 Promissory Note and Note B.

a. Section 2.01 of the Credit Agreement is hereby amended by deleting it in its entirety and inserting the following in lieu thereof:

2.01 Total Credit Facility. Subject to the following terms and conditions of this Agreement, the Lender agrees to make a total credit facility of \$3,006,616.65 available to the Borrower.

b. Section 2.02 of the Credit Agreement is hereby amended by deleting it in its entirety and inserting the following in lieu thereof:

UNOFFICIAL COPY

2.01 The Loan. Lender shall make the Loan to the Borrower in the principal amount of \$3,006,616.65, which shall be evidenced by and repayable in accordance with the terms of the Note. A portion of the Loan in the principal amount of \$2,300,000 was advanced by Lender to MMH on or about September 27, 2011, which amount of the Loan was assumed by Borrower from MMH in connection with the Membership Interest Transfer, as further described in the Recitals to this Agreement. The portion of the Loan evidenced by Note B constitutes accrued and unpaid interest on the above-referenced \$2,300,000 loan, which amount has also been assumed by Borrower from MMH in accordance with the Membership Interest Transfer. The remaining portion of the Loan in the amount of \$500,000 will be advanced by Lender to Borrower in installments. The first installment in the amount of \$400,000 will be advanced by Lender to Borrower as of the date hereof, and the remaining amount will be advanced by Lender to Borrower within ten days of Borrower's request after Borrower has provided to Lender paid receipts for all delinquent real property taxes. The additional \$500,000 of the Loan being made concurrently herewith or after the date hereof will be used by Borrower for the purpose of providing working capital to Borrower and its Affiliates and to pay the costs of Borrower and Lender in connection with the closing of the Loan.

4. Amendment to Other Loan Documents. The remainder of the Credit Agreement and the other Loan Documents are hereby amended to be consistent with the modifications to the Credit Agreement made above. To the extent of a conflict between the terms of the other Loan Documents and the Credit Agreement as herein modified, the terms of the Credit Agreement as herein modified shall control.

5. [intentionally deleted]

6. Release. As additional consideration for the execution and delivery of this Agreement by Lender, Borrower hereby releases and forever discharges Lender (and its agents, servants, employees, directors, officers, attorneys, branches, affiliates, subsidiaries, successors, and assigns and all persons, firms, corporations, and organizations in its behalf) of and from any and all damages, losses, claims, demands, liabilities, obligations, actions and causes of action whatsoever which Borrower may have or claim to have against Lender, as of the date of this Agreement, whether presently known or unknown, and of every nature and extent whatsoever on account of or in any way related to the Loan, including, without limitation, all such loss or damage of any kind heretofore sustained, or that may arise as a consequence of the dealings between the parties up to and including the date hereof. The foregoing agreement on the part of Borrower is contractual, and not a mere recital.

7. Borrower's Representations and Warranties. Borrower and Guarantors hereby represent and warrant to Lender, as of the date of this Agreement, as follows:

6.1 The lien and security interest of the Loan Documents as previously subsisting, has been, is, and shall remain a valid lien and security interest against the Property and other Collateral, enjoying the same or superior priority with respect to other claims upon the Property and other Collateral as prevailed prior to the execution of this Agreement. The Guaranty is in full force and effect and the guaranteed obligations shall include the obligations of Borrower evidenced by Note B. All of the

UNOFFICIAL COPY

Obligations of Borrower and Guarantors under the Credit Agreement, the Guaranty and the other Loan Documents are hereby ratified, confirmed and approved;

6.2 No Default or Event of Default has occurred and is continuing on the date of this Agreement; and

6.3 All resolutions, authorizations or consents on the part of Borrower and Guarantors which are necessary for Borrower to execute and deliver this Agreement and to be bound by the provisions hereof have been obtained and are in full force and effect on the date hereof, and this Agreement constitutes the legal, valid and binding obligation of the Borrower and Guarantors and is enforceable in accordance with the terms hereof.

8. Other Provisions of Loan Documents. Except as herein modified, the Loan Documents shall remain in full force and effect, and all of the terms and provisions of the Loan Documents, as herein modified, are hereby ratified and reaffirmed in all respects. All of the Collateral shall remain subject to the lien, charge and encumbrance of the Loan Documents, and nothing herein contained and nothing done pursuant hereto, shall affect the lien or encumbrance of the Loan Documents, or the priority thereof in relation to other liens or encumbrances affecting the Property, or release or affect the liability of any party or parties whomsoever who may now or hereafter be liable under or on account of the Loan Documents, as herein modified.

9. Conditions to Effectiveness. The agreements of Lender herein are conditioned upon the satisfaction of each and all of the following requirements:

8.1 The full execution and delivery of this Agreement by Borrower, Guarantors and Lender.

8.2 The receipt by Lender of such certificates of good standing, resolutions of the owners or governing body of Borrower as Lender may require to confirm the due execution and delivery of this Agreement and the receipt of all requisite approvals thereof.

10. Miscellaneous. This Agreement shall be binding upon Borrower, Guarantors and Lender, and their respective heirs, personal representatives, successors and assigns. This Agreement may be executed in several counterparts (electronic copies of signatures shall be deemed originals for purposes hereof), each of which shall be deemed an original and all of such counterparts, taken together, shall constitute one and the same agreement, even though all of the parties hereto may not have executed the same counterpart of this Agreement. This Agreement shall be governed by the laws of the State of Missouri. If any provision of this Agreement shall be unlawful, then such provision shall be null and void, but the remainder of this Agreement shall remain in full force and effect and be binding on the parties. This Agreement and the Loan Documents referenced herein contain all of the agreements of the parties relative to the subject matter of this Agreement. Any prior agreements or commitments of Lender, whether oral or written, relating to the subject matter of this Agreement not expressly set forth herein or in the exhibits hereto (if any) are null and void and superseded in their entirety by the provisions hereof. This Agreement shall be binding upon the execution and delivery of this Agreement by the last party to sign. The Mortgage and the other Loan Documents shall be construed in light of the recitals and the Exhibits to the Mortgage and the other Loan Documents contained herein and attached hereto, which are incorporated into and made a part of the Mortgage and the other Loan Documents by this reference.

[See attached signature pages.]

UNOFFICIAL COPY

SIGNATURE PAGE FOR MODIFICATION AGREEMENT

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

“Borrower”

MARQUE MEDICOS, L.L.C., an Illinois limited liability company

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Derrick D. Wallery, President

STATE OF ILLINOIS)

COUNTY OF COOK)

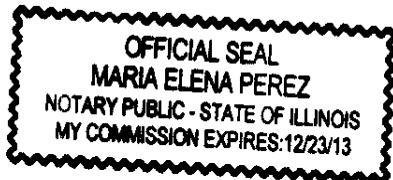
On this 31 day of October in the year 2013 before me, a Notary Public in and for said state, personally appeared Derrick D. Wallery, President of Marque Medicos Management Services Corp., an Illinois corporation, the Manager of Marque Medicos, L.L.C., an Illinois limited liability company, known to me to be the person(s) who executed the within Agreement in behalf of said corporation and limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(SEAL)

My term expires: 12/23/13

[Signature]
Notary Public



SIGNATURES CONTINUED ON FOLLOWING PAGE

UNOFFICIAL COPY

The undersigned Corporate Guarantors are executing this Agreement to express their agreement to be bound by the terms of the Agreement that are applicable to Corporate Guarantors.

Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Medicos Pain & Surgical Specialists, S.C.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Neck & Back Clinic, Ltd.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

D-Real Estate, LLC

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

D-Real Estate Aurora, LLC

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

D-Real Estate 26th Street, LLC

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Marque Medicos Farnsworth, L.L.C.

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Marque Medicos Archer, L.L.C.

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Marque Medicos Kedzie, LLC

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Marque Medicos 26th Street, L.L.C.

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Marque Medicos Fullerton, L.L.C.

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Medicos Healthcare Services Group, L.L.C.

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Ambulatory Surgical Care Facility, L.L.C.

By: Marque Medicos Management Services Corp.

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

Record Management Solutions, LLC

By: Marque Medicos Management Services Corp., Manager

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

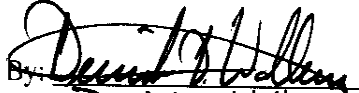
D-Media, LLC

By: Marque Medicos Management Services Corp., Manager

By: *Derrick D. Wallery*
Name: Derrick D. Wallery
Title: President

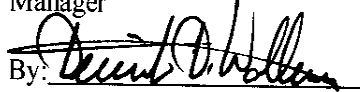
UNOFFICIAL COPY

MARQUE HOLDINGS, LTD., an Illinois corporation

By: 
Name: Derrick D. Wallery
Title: President


MEDICOS La Copa Marque Medicos, LLC

By: Marque Medicos Management Services Corp., Manager

By: 
Name: Derrick D. Wallery
Title: President

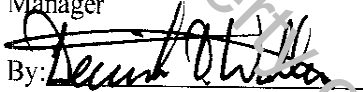
Marque Medicos Dearborn, LLC

By: Marque Medicos Management Services Corp., Manager

By: 
Name: Derrick D. Wallery
Title: President


Marque Medicos, L.L.C.

By: Marque Medicos Management Services Corp., Manager

By: 
Name: Derrick D. Wallery
Title: President

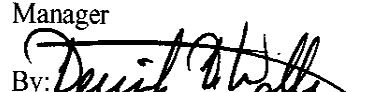
Mexico Quiropractico, LLC

By: Marque Medicos Management Services Corp., Manager

By: 
Name: Derrick D. Wallery
Title: President

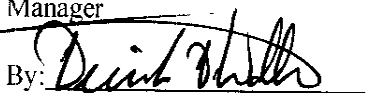
Mi Consejero, LLC


By: Marque Medicos Management Services Corp., Manager

By: 
Name: Derrick D. Wallery
Title: President

Premier Billing Solutions, LLC

By: Marque Medicos Management Services Corp., Manager

By: 
Name: Derrick D. Wallery
Title: President


Derrick D. Wallery, individually

SIGNATURES CONTINUED ON FOLLOWING PAGE

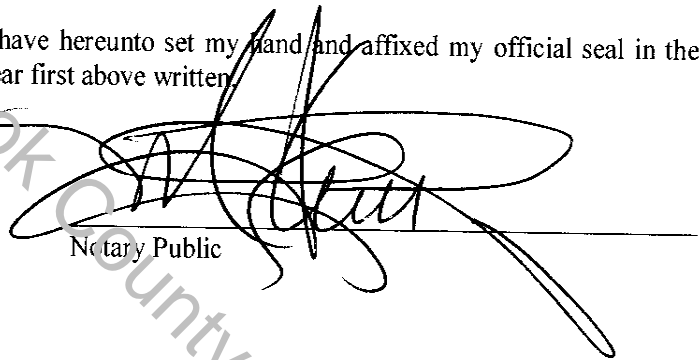
Property Of Cook County Clerk's Office

UNOFFICIAL COPY

STATE OF ILLINOIS)
)
COUNTY OF COOK)

On this ___ day of October in the year 2013 before me, a Notary Public in and for said state, personally appeared Derrick D. Wallery, an individual and President of the following Illinois corporations: Marque Medicos Management Services Corp.; Medicos Pain & Surgical Specialists, S.C.; Neck & Back Clinic, Ltd.; MARQUE MEDICOS HOLDINGS, LTD.; and the President of Marque Medicos Management Services Corp., an Illinois corporation, the Manager of the following Illinois limited liability companies: D-Real Estate, LLC; D-Real Estate Aurora, LLC; D-Real Estate 26th Street, LLC; Marque Medicos Farnsworth, L.L.C.; Marque Medicos Archer, L.L.C.; Marque Medicos Kedzie, LLC; Marque Medicos 26th Street, L.L.C.; Marque Medicos Fullerton, L.L.C.; Medicos Healthcare Services Group, L.L.C.; Ambulatory Surgical Care Facility, L.L.C.; Record Management Solutions, LLC; D-Media, LLC; La Copa Marque Medicos, LLC; Marque Medicos Dearborn, LLC; Marque Medicos, L.L.C.; Mexico Quiropractico, LLC; Mi Consejero, LLC; Premier Billing Solutions, LLC; known to me to be the person(s) who executed the within Agreement in behalf of himself and in behalf of said corporations and limited liability companies and acknowledged to me that he executed the same for the purposes therein stated.

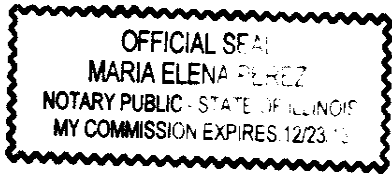
IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written



Notary Public

(SEAL)

My term expires: 12-23-13




Notary Public
Cook County Clerk's Office

UNOFFICIAL COPY

“Lender”

ENTERPRISE SUB-CDE I, LLC, a Delaware limited liability company

By: Enterprise Financial CDE, LLC, a Delaware limited liability company, its Managing Member

By: 
Mitchell L. Baris, Executive Director

STATE OF MISSOURI)
)
COUNTY OF ST. LOUIS)

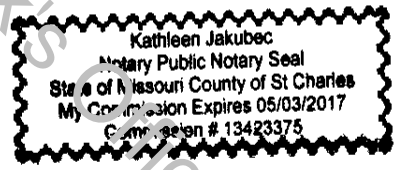
On this 4th day of October, in the year 2013 before me, a Notary Public in and for said state, personally appeared Mitchell L. Baris, Executive Director of Enterprise Financial CDE, LLC, a Delaware limited liability company, the Managing Member of Enterprise Sub-CDE I, LLC, a Delaware limited liability company, known to me to be the person(s) who executed the within Agreement in behalf of said corporation and limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(SEAL)

My term expires: 5-3-17


Notary Public



SIGNATURES CONTINUED ON FOLLOWING PAGE

UNOFFICIAL COPY

The undersigned consents to the foregoing First Modification Agreement.

ADVANTAGE CAPITAL COMMUNITY
DEVELOPMENT FUND XXV, L.L.C., a Delaware
limited liability company

By: Advantage Capital Community Development
Fund, L.L.C., a Louisiana limited liability company, its
Managing Member

By: *Louis T. Dubuque*
Louis T. Dubuque, Authorized Officer

STATE OF MISSOURI)
COUNTY OF ST. LOUIS)

On this ___ day of October in the year 2013 before me, a Notary Public in and for said state, personally appeared Louis T. Dubuque, Authorized Officer of Advantage Capital Community Development Fund, L.L.C., a Louisiana limited liability company, the Managing Member of Advantage Capital Community Development Fund XXV, L.L.C., a Delaware limited liability company, known to me to be the person(s) who executed the within Agreement in behalf of said corporation and limited liability company and acknowledged to me that he executed the same for the purposes therein stated.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal in the County and State aforesaid, the day and year first above written.

(SEAL)

My term expires: 7/17/2017

Adeline Cheung
Notary Public

ADELINE CHEUNG
Notary Public - Notary Seal
State of Missouri
Commissioned for St. Louis County
My Commission Expires: July 17, 2017
Commission Number: 13503675

UNOFFICIAL COPY

EXHIBIT A LEGAL DESCRIPTION

Parcel A:

4176 W. MONTROSE AVENUE, CHICAGO, ILLINOIS:

LOT 2 AND SOUTH ½ OF LOT 3 IN HARTZEN'S RESUBDIVISION OF BLOCK 22 IN IRVING PARK ADDITION IN THE NORTHEAST ¼ OF SECTION 15, TOWNSHIP 40 NORTH RANGE 13, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel B:

3501-3505 W. 16TH STREET, CHICAGO, ILLINOIS:

LOTS 1 AND 2 IN E.A. CUMMINGS AND COMPANY'S RESUBDIVISION OF LOTS 1 TO 100 BOTH INCLUSIVE AND VACATED ALLEYS IN THE SUBDIVISION OF BLOCK 4 IN STEEL'S SUBDIVISION OF THE SOUTH EAST ¼ AND THE EAST ½ OF THE SOUTHWEST ¼ OF SECTION 26, TOWNSHIP 39 NORTH, RANGE 13 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Parcel C:

1281 NORTH FARNSWORTH AVENUE, AURORA, ILLINOIS:

LOTS 14 AND 15 IN BLOCK 1 OF INDIAN CREEK SUBDIVISION OF PART OF SECTION 12, TOWNSHIP 38 NORTH, RANGE 8 EAST OF THIRD PRINCIPAL MERIDIAN, IN THE TOWNSHIP OF AURORA, KANE COUNTY, ILLINOIS.

UNOFFICIAL COPY

EXHIBIT B
Promissory Note B

[see attached]

Property of Cook County Clerks Office

A large, dense, black scribble consisting of many overlapping, diagonal strokes, likely used to redact information or as a placeholder for a signature or stamp.

UNOFFICIAL COPY

PAYMENT OF THIS PROMISSORY NOTE IS GOVERNED BY AN INTERCREDITOR AGREEMENT (AS DEFINED IN THE CREDIT AGREEMENT).

PROMISSORY NOTE B

St. Louis, Missouri
US \$206,616.65

October 21, 2013

For value received, the undersigned, MARQUE MEDICOS, L.L.C., an Illinois limited liability company ("Borrower"), hereby promises to pay to the order of ENTERPRISE SUB-CDE I, LLC, a Delaware limited liability company (the "Lender"), in lawful money of the United States of America, the principal sum of Two Hundred Six Thousand Six Hundred Sixteen and 65/100 Dollars (\$206,616.65), together with interest from and after the date hereof on the unpaid principal balance outstanding at the rate provided for in the Credit Agreement (as hereinafter defined).

This Promissory Note (this "Note") is the Promissory Note B referred to in, and is issued pursuant to, that certain Credit Agreement between the Borrower and the Lender dated even date herewith, as amended by that certain First Modification Agreement also dated as of even date herewith (as further amended from time to time, the "Credit Agreement"), and is entitled to all of the benefits and security of the Credit Agreement. All of the terms, covenants and conditions of the Credit Agreement and all other instruments evidencing or securing the indebtedness hereunder are hereby made a part of this Note and are deemed incorporated herein in full. Capitalized terms used herein, unless otherwise specifically defined in this Note, shall have the meanings ascribed to them in the Credit Agreement.

This Note is secured by the Collateral described in the Credit Agreement.

Interest hereunder shall be computed on the basis of actual days elapsed over the period of a 360-day year; that is, by applying the ratio of the interest rate over a year of three hundred sixty (360) days multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. All interest payable under this Note is computed using this method. This calculation method results in a higher effective interest rate than the numeric interest rate stated in the Credit Agreement. Upon or after the occurrence and during the continuation of any Event of Default, the outstanding principal balance of this Note shall bear interest at a variable rate per annum equal to the Default Rate until the principal balance of this Note is paid in full.

In no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof or otherwise, shall the amount paid or agreed to be paid to the Lender for the use, forbearance or detention of money advanced hereunder exceed the highest lawful rate permissible under any law which a court of competent jurisdiction may deem applicable hereto.

For so long as no Event of Default shall have occurred under the Credit Agreement, the principal amount and accrued interest of this Note shall be due and payable on the dates and in the manner hereinafter set forth:

Commencing on December 25, 2013, and continuing on the 25th day of the last month of each calendar quarter through and including the quarter in which the Maturity Date occurs, accrued interest at the Current Pay Interest Rate on the entire outstanding principal balance hereof shall be payable,

UNOFFICIAL COPY

computed through the last calendar day of the quarter in which such payment becomes due (the first interest payment shall also include interest accrued from the date hereof);

On the Maturity Date, accrued interest at the PIK Interest Rate, plus a final principal payment equal to the entire unpaid principal balance hereof, together with any and all other accrued interest thereon and any other amounts due hereunder shall be immediately payable.

Payments of principal and interest shall be made by ACH deposit to the Lender by crediting before 12:00 noon, St. Louis, Missouri time, on the appropriate due date, at its offices in St. Louis, Missouri or in such other manner as the Lender may elect from time to time. If any payment is due on a day other than a Business Day, such payment shall be due on the next succeeding Business Day.

Following the second anniversary of the date hereof, the Borrower may prepay this Note, in whole or in part, at any time without premium or penalty, together with accrued interest on the principal amount so prepaid at the prepayment date. If Borrower prepays any of the outstanding principal balance prior to the first anniversary of the date hereof, Borrower shall be obligated to pay a prepayment premium in an amount equal to five percent (5.0%) of the principal amount being prepaid. If Borrower prepays any of the outstanding principal balance after the first anniversary of the date hereof but prior to the second anniversary of the date hereof, Borrower shall be obligated to pay a prepayment premium in an amount equal to three percent (3.0%) of the principal amount being prepaid. Any partial prepayment shall be applied to principal installments of this Note in the inverse order of their maturities. Partial prepayments (other than mandatory prepayments required pursuant to the terms of the Credit Agreement) shall be made by Borrower in \$100,000.00 increments.

The termination of the Credit Agreement or the occurrence of an Event of Default shall entitle the Lender, at its option, to declare the then outstanding principal balance and accrued and unpaid interest thereon to be, and the same shall thereupon become, immediately due and payable without notice to or demand upon the Borrower, all of which the Borrower hereby expressly waives.

Time is of the essence of this Note. To the fullest extent permitted by applicable law, the Borrower, for itself and its successors and assigns, expressly waives presentment, demand, protest, notice of dishonor, and any and all other notices, demands and consents in connection with the delivery, acceptance, performance, default or enforcement of this Note, and hereby consents to any extensions of time, renewals, releases or any parties to or guarantors of this Note, waivers and any other modifications that may be granted or consented to by the Lender from time to time in respect of the time of payment or any other provision of this Note.

Wherever possible each provision of this Note shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or remaining provisions of this Note. No delay or failure on the part of the Lender in the exercise of any right or remedy hereunder shall operate as a waiver thereof, nor as an acquiescence in any default, nor shall any single or partial exercise by the Lender of any right or remedy preclude any other right or remedy. The Lender, at its option, may enforce its rights against any collateral securing this Note without enforcing its rights against the Borrower, any guarantor of the indebtedness evidenced hereby or any other property or indebtedness due or to become due to the Borrower. The Borrower agrees that, without releasing or impairing the Borrower's liability hereunder, the Lender may at any time release, surrender, substitute or exchange any collateral securing this Note and may at any time release any party primarily or secondarily liable for the indebtedness evidenced by this Note.

UNOFFICIAL COPY

This Note shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Missouri.

BORROWER HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY (WHICH LENDER ALSO WAIVES) IN ANY ACTION, SUIT, PROCEEDING OR COUNTERCLAIM OF ANY KIND ARISING OUT OF OR RELATING TO THIS NOTE OR ANY OF THE LOAN DOCUMENTS, THE COLLATERAL, OR LENDER'S CONDUCT IN RESPECT OF ANY OF THE FOREGOING.

The Lender shall be permitted to cause, at its sole cost and expense, a refinancing of the outstanding principal balance of this Note using a QLICI made by an affiliate of Lender. In the event Lender exercises such right, Borrower shall promptly execute a substitute promissory note and corresponding loan documents (and/or amendments to existing Loan Documents) in favor of the new lender in form and substance reasonably requested by Lender.

The Lender may assign to one or more parties all or a portion of its rights under this Note without Borrower's consent. In the event of an assignment of all of its rights, the Lender may transfer this Note to the assignee. Borrower shall execute such new promissory notes and other documents in connection with such assignment as Lender shall reasonably request. After any such assignment or transfer, the Lender shall be forever relieved and fully discharged from any liability or responsibility in the matter (except that which may result from the gross negligence or willful misconduct of Lender), and the Lender shall retain all rights and powers hereby given with respect to property not so transferred. The Lender may sell participations to one or more lenders or other entities in or to all or a portion of its rights under this Note; provided, however, that the Lender shall remain the holder of this Note and accordingly Maker shall continue to deal solely and directly with the Lender in connection with the Lender's rights under this Note. The Lender may, in connection with any assignment or participation or proposed assignment or proposed participation, disclose to the assignee or participant or proposed assignee or proposed participant any information relating to Maker furnished to the Lender by or on behalf of Maker; provided that, prior to any such disclosure, the assignee or participant or proposed assignee or proposed participant shall agree to preserve the confidentiality of any confidential information related to Maker received by it from Lender.

[remainder of page intentionally left blank – signature page follows]

UNOFFICIAL COPY

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed and delivered by its duly authorized representative as of the date first above written.

MARQUE MEDICOS, L.L.C., an Illinois limited liability company

By: Marque Medicos Management Services Corp.

By: _____
Derrick D. Wallery, President

[SIGNATURE PAGE TO \$206,616.65 PROMISSORY NOTE IN FAVOR OF ENTERPRISE SUB-CDE I, LLC]