

NOVAMED INC
Form PRER14A
March 08, 2011

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**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, D.C. 20549**

**SCHEDULE 14A
(Rule 14a-101)**

**INFORMATION REQUIRED IN PROXY STATEMENT
SCHEDULE 14A INFORMATION**

**PROXY STATEMENT PURSUANT TO SECTION 14(a) OF THE SECURITIES
EXCHANGE ACT OF 1934 (Amendment No. 1)**

Filed by the Registrant

Filed by a Party other than the Registrant

Check the appropriate box:

- Preliminary Proxy Statement
- Confidential, For Use By the Commission Only (as permitted by Rule 14a-6(e)(2))**
- Definitive Proxy Statement
- Definitive Additional Materials
- Soliciting Material Pursuant to Rule 14a-12

NovaMed, Inc.
(Name of Registrant as Specified in its Charter)

Payment of Filing Fee (Check the appropriate box):

- No fee required.
- Fee computed on table below per Exchange Act Rules 14a-6(i)(1) and 0-11.

(1) Title of each class of securities to which transaction applies:

Common stock, par value \$0.01 per share, of NovaMed, Inc. (the NovaMed s common stock)

(2) Aggregate number of securities to which transaction applies:

7,955,379 shares of the NovaMed s common stock and 514,429 options to purchase shares of the NovaMed s common stock

(3) Per unit price or other underlying value of transaction computed pursuant to Exchange Act Rule 0-11 (set forth the amount on which the filing fee is calculated and state how it was determined):

The transaction value was determined based upon the sum of (a) \$13.25 per share of 7,955,379 shares of the NovaMed s common stock and (b) \$13.25 minus the weighted average exercise price of \$6.02 per share underlying options to purchase 514,429 shares of the NovaMed s common stock, all with an exercise price of less

than \$13.25

(4) Proposed maximum aggregate value of the transaction:

\$109,128,093

(5) Total fee paid:

\$12,670

b Fee paid previously with preliminary materials.

o Check box if any part of the fee is offset as provided by Exchange Act Rule 0-11(a)(2) and identify the filing for which the offsetting fee was paid previously. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

(1) Amount Previously Paid:

(2) Form, Schedule or Registration Statement No.:

(3) Filing party:

(4) Date Filed:

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NOVAMED, INC.
333 West Wacker Drive, Suite 1010
Chicago, Illinois 60606

[], 2011

Dear Stockholder:

You are cordially invited to attend a special meeting of the stockholders of NovaMed, Inc. to be held on [], 2011, at [] a.m. [Central time], at [].

At the special meeting, you will be asked to consider and vote upon the adoption of the Agreement and Plan of Merger, dated January 20, 2011, by and among Surgery Center Holdings, Inc., which we refer to as Parent, Wildcat Merger Sub, Inc., which we refer to as Merger Sub, and NovaMed, and approve the merger described in the merger agreement. Pursuant to the merger agreement, Merger Sub will be merged with and into NovaMed, with NovaMed surviving as a wholly-owned subsidiary of Parent. Parent, Merger Sub and Holdings are each controlled by investment funds affiliated with H.I.G. Capital, L.L.C., a private equity firm.

Assuming the holders of a majority of our issued and outstanding shares of NovaMed common stock adopt the merger agreement and approve the merger, and the merger is completed, upon completion of the merger, you will be entitled to receive \$13.25 in cash, without interest, for each share of NovaMed common stock that you own, unless you have sought and properly perfected your appraisal rights under Delaware law. After the merger, you will no longer have an equity interest in NovaMed and will not participate in any potential future earnings and growth of NovaMed. Certain of our officers are expected to exchange a portion of their shares of NovaMed common stock and, in certain instances, invest additional cash consideration, in exchange for equity interests in Surgery Center Holdings, LLC, the majority stockholder of Parent and who we refer to as Holdings, in connection with the merger.

Our Board of Directors, acting on the recommendation of a special committee consisting of C.A. Lance Piccolo, Robert J. Kelly and R. Judd Jessup, has adopted a resolution unanimously adopting the merger agreement and approving the merger. Each member of the special committee is an independent director. **Our Board of Directors has unanimously determined that the merger agreement and the merger are advisable, fair to and in the best interest of NovaMed and our stockholders. Acting on the recommendation of the special committee, our Board of Directors unanimously recommends that you vote FOR the adoption of the merger agreement and approval of the merger.** In arriving at their recommendation, our Board of Directors carefully considered a number of factors described in the accompanying Proxy Statement.

The merger agreement and the merger are described in the accompanying Proxy Statement. A copy of the merger agreement is attached as **Appendix A** to the accompanying Proxy Statement. We urge you to read carefully the accompanying Proxy Statement, including the appendices.

Your vote is important, and it is important that your shares be represented at the special meeting, regardless of the number of shares you hold. **We urge you to submit your proxy card as soon as possible. Even if you plan to attend the special meeting, please sign and promptly return your proxy card in the enclosed postage-paid envelope.** Even if you return a proxy card, if you attend the special meeting, you may revoke your proxy and vote in person.

If you have any questions or need assistance voting your shares of our common stock, please contact [], our proxy solicitor, by calling [] (toll-free) or [] (collect), or [].

Sincerely,

Thomas S. Hall
*President, Chief Executive Officer
and Chairman of the Board of Directors*

NEITHER THE SECURITIES AND EXCHANGE COMMISSION NOR ANY STATE SECURITIES COMMISSION HAS APPROVED OR DISAPPROVED THE MERGER, PASSED UPON THE MERITS OR FAIRNESS OF THE MERGER AGREEMENT OR THE TRANSACTIONS CONTEMPLATED THEREBY, INCLUDING THE PROPOSED MERGER, OR PASSED UPON THE ADEQUACY OR ACCURACY OF THE INFORMATION CONTAINED IN THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

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**NOVAMED, INC.
333 West Wacker Drive, Suite 1010
Chicago, Illinois 60606**

**NOTICE OF SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [], 2011**

NOTICE IS HEREBY GIVEN that a special meeting of stockholders of NovaMed, Inc. will be held at [], on [], 2011, at [] a.m. [Central time], for the following purposes:

1. To consider and vote upon the adoption of the Agreement and Plan of Merger, dated as of January 20, 2011, by and among Surgery Center Holdings, Inc., Wildcat Merger Sub, Inc. and NovaMed, Inc. and the merger described in the merger agreement. Pursuant to the merger agreement, NovaMed will become a wholly-owned subsidiary of Surgery Center Holdings, Inc. and the holders of NovaMed common stock will be entitled to receive \$13.25 in cash, without interest, per share of NovaMed common stock held by them at the effective time of the merger;
2. To approve the adjournment of the special meeting, if necessary or appropriate, to solicit additional proxies in support of Proposal 1 if there are insufficient votes at the time of the special meeting to adopt the merger agreement and approve the merger described in the merger agreement; and
3. To consider and vote upon any other matter that may properly come before the special meeting or any adjournment thereof.

You are entitled to receive notice of and to attend and vote at the special meeting and any postponements or adjournments if you owned shares of NovaMed common stock as of the close of business on [], 2011. To ensure your representation at the special meeting, please complete, date and sign the enclosed proxy card and return it in the enclosed postage-prepaid envelope in time to be received by us prior to the special meeting. Returning your proxy card will not affect your right to revoke your proxy or to attend the special meeting and vote in person.

REGARDLESS OF THE NUMBER OF SHARES YOU OWN, YOUR VOTE IS VERY IMPORTANT. THE MERGER CANNOT BE COMPLETED UNLESS A MAJORITY OF THE OUTSTANDING SHARES OF NOVAMED COMMON STOCK ENTITLED TO VOTE ON THE MERGER ADOPT THE MERGER AGREEMENT AND APPROVE THE MERGER. EVEN IF YOU PLAN TO ATTEND THE SPECIAL MEETING, PLEASE COMPLETE, SIGN AND RETURN THE ENCLOSED PROXY CARD IN THE ENCLOSED POSTAGE-PAID ENVELOPE.

By order of the Board of Directors,

John W. Lawrence, Jr.,
Secretary

Chicago, Illinois
[], 2011

Please do not send your NovaMed common stock certificates to us at this time. If the merger is completed, we will send you instructions regarding the surrender of your certificates.

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NOVAMED, INC.
333 West Wacker Drive, Suite 1010
Chicago, Illinois 60606

**PROXY STATEMENT FOR SPECIAL MEETING OF STOCKHOLDERS
TO BE HELD ON [], 2011**

We are providing these proxy materials to you in connection with the solicitation of proxies by the Board of Directors of NovaMed, Inc. for a special meeting of stockholders to be held on [], 2011 and for any adjournment or postponement thereof. This Proxy Statement provides information that you should read before you vote on the proposals that will be presented to you at the special meeting. The special meeting will be held on [], 2011 at [] a.m. [Central time] at [].

In this Proxy Statement, we refer to NovaMed, Inc. as NovaMed, the Company, we or us. We refer to H.I.G. Capital L.L.C. as H.I.G., Surgery Center Holdings, Inc. as Parent, Wildcat Merger Sub, Inc. as Merger Sub and Surgery Center Holdings, LLC, the majority stockholder of Parent, as Holdings. References in this Proxy Statement to our unaffiliated stockholders refer to holders of NovaMed common stock other than the rollover stockholders (as defined below).

This Proxy Statement and a proxy card are first being mailed on or about [], 2011 to persons or entities who owned shares of NovaMed common stock as of the close of business on [], 2011.

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SUMMARY TERM SHEET

*This summary term sheet presents selected information in this Proxy Statement relating to the merger and may not contain all of the information that is important to you. To understand the merger and the transactions contemplated by the merger agreement fully, you should carefully read this entire document as well as the additional documents to which it refers. For instructions on obtaining more information, see *Where You Can Find More Information* on page 81. We have included page references to direct you to a more complete description of the topics presented in this summary.*

Parties Involved in the Merger (see page 14)

NovaMed, Inc., or NovaMed, is a health care services company and an owner and operator of ambulatory surgery centers (ASCs).

Surgery Center Holdings, Inc., or Parent, is a healthcare services company that acquires, develops and manages free-standing ASCs in partnership with leading physicians. Parent is affiliated with H.I.G. Capital, L.L.C., or H.I.G., a global private equity investment firm that specializes in providing capital to small and medium-sized companies. Upon completion of the merger, NovaMed will be a wholly-owned subsidiary of Parent.

Wildcat Merger Sub, Inc., or Merger Sub, was formed by Parent solely for the purpose of acquiring NovaMed. Upon completion of the merger, Merger Sub will cease to exist.

Surgery Center Holdings, LLC, or Holdings, is the majority stockholder of Parent and is affiliated with H.I.G.

Rollover Stockholders refers collectively to Scott T. Macomber, Thomas J. Chirillo, John P. Hart and John W. Lawrence, Jr., each of whom is a NovaMed common stockholder and an officer of NovaMed. Each of the rollover stockholders has agreed to surrender a portion of their shares of NovaMed common stock to Holdings, which we refer to as the rollover shares, immediately prior to the effective time of the merger plus, in the case of Messrs. Macomber and Hart, invest additional cash consideration, in exchange for equity interests in Holdings. In addition, the rollover stockholders entered into executive securities agreements with Holdings pursuant to which they will be awarded incentive equity awards subject to the terms and conditions of such executive securities agreements. The rollover stockholders will receive cash in an amount equal to the merger consideration for their shares of Company common stock that are not surrendered to Holdings. As a result, immediately following the merger, the rollover stockholders will hold approximately 3.1% (on a fully diluted basis) of Holdings, and indirectly, the Company, after giving effect to the issuance and vesting of all incentive equity awards granted to the rollover stockholders.

The Merger (see page 50)

If the merger is completed, Merger Sub will be merged with and into NovaMed, with NovaMed continuing as the surviving corporation.

If the merger is completed, the following will occur:

your shares will be converted into the right to receive \$13.25 in cash per share, without interest and less any applicable withholding tax;

all of the equity interests in NovaMed will be owned directly by Parent;

immediately following the merger, Parent will continue to be owned by Holdings, and the rollover stockholders will hold approximately 3.1% (on a fully diluted basis) of Holdings, and indirectly, the Company, after giving effect to the issuance and vesting of all incentive equity awards granted to the rollover stockholders;

you will no longer have any interest in NovaMed's future earnings or growth;

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NovaMed will no longer be a public company and NovaMed's common stock will no longer be traded on the NASDAQ Global Select Market; and

we will no longer be required to file periodic and other reports with the Securities and Exchange Commission.

Effects of the Merger on Our Common Stock and Equity Awards (see page 34)

Common Stock. At the effective time of the merger, each share of NovaMed common stock (including shares of vested restricted stock) issued and outstanding immediately prior to the effective time of the merger (other than the rollover shares held by the rollover stockholders and other than the shares of NovaMed common stock held by NovaMed or any subsidiary of NovaMed or Parent or Merger Sub and stockholders who have perfected and not withdrawn a demand for appraisal rights under Delaware law) will be automatically cancelled and converted into the right to receive \$13.25 in cash, without interest.

Stock Options. At the effective time of the merger, each unexercised NovaMed common stock option, whether vested or unvested, that is outstanding immediately prior to the effective time of the merger shall be cancelled at the effective time of the merger, with the holder of such NovaMed common stock option becoming entitled to receive, in full satisfaction of the rights of the holder of such NovaMed common stock option, an amount in cash equal to (A) the excess, if any, of (1) \$13.25 over (2) the exercise price per share of NovaMed common stock subject to such NovaMed common stock option multiplied by (B) the number of shares of NovaMed common stock subject to such NovaMed common stock option. To clarify the treatment of each of the unexercised NovaMed common stock options, we will enter into an option cancellation agreement with each holder of a NovaMed common stock option prior to the effective time of the merger that will only become effective upon the consummation of the merger.

Unvested Restricted Stock. At the effective time of the merger, each unvested NovaMed restricted share of common stock that is outstanding immediately prior to the effective time of the merger shall be cancelled, with the holder of such unvested NovaMed restricted share of common stock becoming entitled to receive, in full satisfaction of the rights of such holder with respect thereto, an amount in cash equal to \$13.25 multiplied by the maximum number of shares of NovaMed common stock subject to such restricted share of NovaMed common stock immediately prior to the effective time of the merger.

Employee Stock Purchase Plan. With respect to NovaMed's Employee Stock Purchase Plan (the "Purchase Plan"), our Board of Directors adopted resolutions and took other actions to (A) limit participation to those employees who are participants on the date of the merger agreement; (B) provide that no Option Period (as defined in the Purchase Plan) shall be commenced after the date of the merger agreement; (C) provide that if, with respect to an Option Period in effect on the date of the merger agreement, the effective time of the merger occurs prior to the Exercise Date (as defined in the Purchase Plan) for such Option Period, upon the effective time of the merger, each purchase right under the Purchase Plan outstanding immediately prior to the effective time of the merger shall be exercised to purchase from NovaMed whole shares of NovaMed's common stock (subject to the provisions of the Purchase Plan regarding the maximum number and value of shares purchasable per participant) at the applicable price determined under the terms of the Purchase Plan for the then outstanding Option Period using such date on which the effective time of the merger occurs as the final Exercise Date for such Option Period, and any remaining accumulated but unused payroll deductions shall be distributed to the relevant participants without interest as promptly as practicable following the Effective Time; and (D) terminate the Purchase Plan, effective upon the earlier of the Purchase Date (as defined in the Purchase Plan) for the Option Period in effect on the date of the merger agreement and the effective time of the merger.

Recommendation of our Board of Directors (see page 22)

Our Board of Directors unanimously adopted the merger agreement and approved the merger and determined that it is advisable, fair to and in the best interest of NovaMed and its stockholders. **Our Board of Directors unanimously recommends that you vote FOR adoption of the merger agreement and approval of the merger.**

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Reasons for the Recommendation of our Board of Directors (see page 23)

After careful consideration of various factors described in the section entitled "The Merger - Reasons for Recommendation of our Board of Directors" beginning on page 23, including the recommendation of a special committee of our Board of Directors consisting of independent directors, our Board of Directors unanimously (A) approved and declared advisable the merger agreement, the merger and the other transactions contemplated by the merger agreement, (B) declared that it is in the best interests of the Company and the stockholders of the Company that the Company enter into the merger agreement and consummate the merger and the other transactions contemplated by the merger agreement, (C) declared that the terms of the merger are fair to the Company and the Company's stockholders and (D) directed the merger agreement to be submitted to the Company's stockholders and recommended that the Company's stockholders adopt the merger agreement and approve the merger.

In considering the recommendation of our Board of Directors with respect to the proposal to adopt the merger agreement and approve the merger, you should be aware that our directors and executive officers have interests in the merger that are different from, or in addition to, yours. Our Board of Directors was aware of and considered these interests, among other matters, in evaluating and negotiating the merger agreement and the merger and in recommending that the merger agreement be adopted by the stockholders of the Company. See the section entitled "The Merger - Interests of Certain Persons in the Merger" beginning on page 38.

Our Board of Directors recommends that you vote FOR the proposal to adopt the merger agreement and approve the merger and FOR the proposal to adjourn the special meeting, if necessary or appropriate, to solicit additional proxies.

Opinion of William Blair & Company, L.L.C. (see page 26)

In connection with the merger, our Board of Directors received the opinion of William Blair & Company, L.L.C., or William Blair, as to the fairness, from a financial point of view as of the date of the opinion, to NovaMed's common stockholders (excluding the rollover stockholders, Parent, Merger Sub and their respective affiliates) of the merger consideration to be received by such holders. The full text of William Blair's opinion is attached to this Proxy Statement as **Appendix B**. You are encouraged to read that opinion carefully for a description of the assumptions made, matters considered and limitations and qualifications on the review undertaken.

The Special Meeting (see page 15)

Date, Time and Place (see page 15). The special meeting of NovaMed common stockholders will be held on [], 2011, at [] a.m. [Central time], at [].

Matters to be Considered (see page 15). At the special meeting, you will be asked to approve a proposal to adopt the merger agreement and approve the merger described in the merger agreement. You may also be asked to vote to adjourn the special meeting, if necessary, to solicit additional proxies in support of the proposal to adopt the merger agreement and approve the merger.

Record Date, Outstanding Voting Securities, Voting Rights and Quorum (see page 15). You are entitled to vote at the special meeting if you owned shares of NovaMed common stock at the close of business on [], 2011, which NovaMed has set as the record date for the special meeting. As of the record date, there were [] holders of record of NovaMed common stock and [] shares of NovaMed common stock outstanding. The

presence, in person or by proxy, of holders of record of a majority of the issued and outstanding shares of NovaMed common stock entitled to vote on the matters to be presented at the special meeting will constitute a quorum.

Required Votes (see page 16). Adoption of the merger agreement and approval of the merger requires the affirmative vote of a majority of the outstanding shares entitled to vote on the merger. Each outstanding share of NovaMed common stock entitles its owner to one vote. Our directors and executive officers entered into voting agreements with Parent pursuant to which they have agreed to vote their respective shares of

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NovaMed common stock, which represent in the aggregate approximately 10.5% of the outstanding shares of NovaMed common stock, in favor of the adoption of the merger agreement and approval of the merger and have granted Parent a proxy to vote such shares in the event such directors and officers fail to do so. The full text of the form of voting agreement is attached to this Proxy Statement as **Appendix C**.

Voting (see page 16). You may attend the special meeting and vote in person or you may complete, sign and date the enclosed proxy card and return it in the enclosed self-addressed postage pre-paid envelope. Returning your proxy card will not affect your right to attend the special meeting and vote in person or to revoke your proxy. If your shares are held in street name by a bank or brokerage firm, your bank or brokerage firm forwarded these proxy materials, as well as a voting instruction card, to you. Please follow the instructions on the voting instruction card to vote your shares.

Interests of Certain Persons in the Merger (see page 38)

Directors and Officers. Some of our directors and officers may have interests in the merger that are different from, or in addition to, the interests of our stockholders generally. These interests may include the cash-out of options, the removal of restrictions on restricted stock, the right to receive certain severance payments as a result of the merger and the right to continued indemnification and insurance coverage by NovaMed after the merger. In addition, it is expected that certain of the executive officers of NovaMed immediately prior to the merger will continue to serve as consultants of Parent following completion of the merger, and such officers will be entitled to receive a weekly consulting retainer. See the section entitled *Interests of Certain Persons in the Merger Consulting Agreements* beginning on page 44. In addition, our directors and executive officers entered into voting agreements with Parent pursuant to which they have agreed to vote their respective shares of NovaMed common stock, which represents in the aggregate approximately 10.5% of the outstanding shares of NovaMed common stock, in favor of the adoption of the merger agreement and approval of the merger and have granted Parent a proxy to vote such shares in the event the directors and officers fail to do so. The full text of the form of voting agreement is attached to this Proxy Statement as **Appendix C**.

Rollover Stockholders. The rollover stockholders have agreed to surrender a portion of their shares of NovaMed common stock to Holdings immediately prior to the effective time of the merger plus, in the case of Messrs. Macomber and Hart, invest additional cash consideration, in exchange for equity interests in Holdings. In addition, the rollover stockholders entered into executive securities agreements with Holdings pursuant to which they will be awarded incentive equity awards subject to the terms and conditions of such executive securities agreements. The rollover stockholders will receive cash in an amount equal to the merger consideration for their shares of Company common stock that are not surrendered to Holdings. As a result, immediately following the merger, the rollover stockholders will hold approximately 3.1% (on a fully diluted basis) of Holdings, and indirectly, the Company, after giving effect to the issuance and vesting of all incentive equity awards granted to the rollover stockholders.

In addition, as part of the transactions contemplated by the merger agreement, Parent entered into new employment agreements with each of the rollover stockholders providing that the rollover stockholders shall remain employed by Parent after the effective time of the merger and will each be granted incentive equity awards in Holdings. These employment agreements become effective only upon the effective time of the merger and will replace each of the current employment agreements between the Company and each such rollover stockholder. These employment agreements will not be effective and will have no force or effect in the event the merger agreement is terminated in accordance with its terms. See the section entitled *Interests of Certain Persons in the Merger Rollover Stockholders Employment with the Surviving Corporation Post-Merger* beginning on page 45.

Conduct of Business (see page 54)

NovaMed, Parent and Merger Sub have agreed to take certain actions between the date of the merger agreement and the effective time of the merger, including using reasonable best efforts to consummate the merger and using best efforts to obtain certain consents from, and give certain notices to, governmental authorities and third parties.

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We have also agreed to refrain from certain enumerated actions without Parent's consent, including actions that are outside the ordinary course of our business.

Parent has agreed to use its reasonable best efforts to maintain in effect its debt and equity commitment letters and consummate the financing contemplated by the debt and equity commitment letters. In addition, Parent has agreed, for a period of twelve months following the closing of the merger, to maintain the compensation (including base salary and incentive and bonus opportunities) of the NovaMed employees who continue to be employed by the surviving corporation and to maintain 401(k) and health and welfare benefits plans that are materially no less favorable in the aggregate than our current benefits and policies.

No Solicitation of Takeover Proposals (see page 58)

NovaMed agreed that it shall not, and shall not permit its controlled affiliates or permit its or any of its controlled affiliates' directors, officers, employees, investment bankers, attorneys, accountants or other advisors or representatives, whom we refer to collectively as 'representatives,' to, directly or indirectly:

solicit, initiate, propose or encourage, or take any other action to knowingly facilitate, any Takeover Proposal (as defined on page 61) or any inquiries or offers or the making of any proposal or any other efforts or attempt that could reasonably be expected to lead to a Takeover Proposal;

enter into, continue or otherwise participate in any communications or negotiations regarding, or furnish to any person or entity (other than Parent, Merger Sub or any of their representatives) any information with respect to, or otherwise knowingly cooperate in any way with any person or entity (other than Parent, Merger Sub or any of their representatives) with respect to, any Takeover Proposal or any inquiries or offers or the making of any proposal or any other efforts or attempt that could reasonably be expected to lead to a Takeover Proposal;

grant a waiver under Section 203 of the Delaware General Corporation Law, or the DGCL, or any other takeover law or enter into any contract with respect to or that may reasonably be expected to lead to any Takeover Proposal, or otherwise endorse, any Takeover Proposal; or

resolve to do any of the foregoing.

NovaMed also agreed that it shall, and shall cause its subsidiaries and direct its representatives to, immediately cease and terminate all existing activities, communications and negotiations with any person or entity conducted prior to the date of the merger agreement with respect to any Takeover Proposal (including, but not limited to, access to any electronic or other data room) and shall request the prompt return or destruction of all confidential information previously furnished in connection therewith. If we receive an unsolicited Takeover Proposal, then we must promptly notify Parent of the proposal's material terms and conditions and the identity of the person or entity making such proposal.

Notwithstanding the restrictions described above, if, at any time prior to the adoption of the merger agreement and approval of the merger by NovaMed's common stockholders, we receive an unsolicited Takeover Proposal and our Board of Directors determines in good faith (after consultation with its outside legal counsel and a financial advisor of nationally recognized reputation) that such Takeover Proposal constitutes or is reasonably likely to lead to a Superior Proposal (as defined on page 61) and that failure to respond to such Takeover Proposal would be inconsistent with its fiduciary duties to our stockholders under applicable law, then we may, and may permit and authorize our affiliates and our and their respective representatives to, (i) furnish

information with respect to NovaMed and its subsidiaries to a person or entity making such bona fide written Takeover Proposal (and its representatives) pursuant to a confidentiality agreement with standstill provisions identical in all substantive respects to, and which otherwise contains terms that are no less favorable to us than, those contained in its confidentiality agreement with Parent and (ii) participate in discussions or negotiations with the person making such Takeover Proposal (and its representatives) regarding such Takeover Proposal, so long as the Company complies with certain terms of the merger agreement.

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Conditions to the Merger (see page 66)

Completion of the merger depends upon the parties meeting or waiving a number of conditions, including the following:

adoption of the merger agreement and approval of the merger described in the merger agreement at the special meeting by holders of a majority of the issued and outstanding shares of NovaMed common stock entitled to vote on the adoption and approval;

the expiration or termination of the applicable waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the HSR Act), and any other applicable antitrust law;

the absence of any law or governmental order prohibiting the consummation of the merger or any pending claim, suit or proceeding by any governmental authority seeking to prohibit the consummation of the merger;

the material accuracy of the parties' representations and warranties and the parties' compliance with the covenants and agreements set forth in the merger agreement;

the absence of a material adverse effect on the Company, as that term is defined in the merger agreement;

the exercise of appraisal rights and preservation of the right to seek appraisal by holders of not more than 7.5% of NovaMed's outstanding common stock;

the delivery by the Company to Parent of payoff and release letters from the holders of certain indebtedness for borrowed money of the Company and its subsidiaries outstanding as of the closing, and releases of all liens securing such indebtedness;

the making by NovaMed of certain specified regulatory notices and the receipt by NovaMed of certain specified regulatory consents and approvals, except to the extent that the facilities for which all such notices have not been delivered or all such consents and approvals have not been obtained represented \$1,500,000 or less of earnings before interest, taxes, depreciation and amortization (less minority interest expense) for the applicable facilities during the twelve-months ended November 30, 2010. Earnings before interest, taxes, depreciation and amortization (less minority interest expense) shall be calculated based on the Company's consolidated financial statements for the period ending November 30, 2010 prepared in accordance with United States generally accepted accounting principles, calculated and applied consistent with the Company's past practices; and

other customary closing conditions.

Termination (see page 68)

Under certain circumstances, the merger agreement may be terminated and the merger may be abandoned at any time prior to the effective time of the merger, whether before or after adoption of the merger agreement and approval of the merger by our stockholders. If the merger agreement is terminated, there will be no liability on the part of NovaMed, Merger Sub or Parent, except for the payment of the termination fees and expenses as described below and in the section entitled "The Merger Agreement - Termination Fees" beginning on page 70.

Termination Fees (see page 70)

Termination Fees Payable by the Company. NovaMed is obligated to pay Parent's designee a termination fee of \$4,368,000 if any of the following occur:

Parent or Merger Sub terminates the merger agreement because (i) an Adverse Recommendation Change (as defined on page 60) has occurred, (ii) we or any of our representatives have intentionally breached the no solicitation provisions of the merger agreement or (iii) for any reason we have failed to convene and complete the special meeting of the Company's stockholders described in this Proxy Statement within

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45 days of the date that this Proxy Statement is cleared by the SEC unless the Company has entered in to an Acquisition Agreement (as defined on page 60) or an Adverse Recommendation Change has occurred;

we terminate the merger agreement in order to accept a superior acquisition proposal; or

(i) a person or entity makes or publicly proposes a Takeover Proposal (substituting 50% for the 15% thresholds set forth in the definition of Takeover Proposal) or publicly announces an intent (whether or not conditional) to make a Takeover Proposal, (ii) the merger agreement is terminated (A) by Parent or the Company prior to May 20, 2011 (the Termination Date) (or, June 20, 2011 if, prior to May 20, 2011, the Company has not delivered to Parent written evidence that the Company has delivered all of the notices to, and obtained all of the consents and approvals of, certain specified third parties, and Parent has elected to extend the termination date to June 20, 2011) or (B) by Parent or the Company if the holders of a majority of NovaMed s outstanding common stock have not adopted the merger agreement and approved the merger at the special meeting of stockholders described in this Proxy Statement, or (C) by Parent if the Company has not satisfied the closing conditions regarding the accuracy of the Company s representations, warranties or covenants, and (iii) within 12 months after termination of the merger agreement, NovaMed enters into any Acquisition Agreement or other definitive agreement or contract providing for, or shall have consummated or publicly approved or recommended to the stockholders of the Company, any Takeover Proposal (whether or not the Takeover Proposal was the same Takeover Proposal referred to in clause (i)).

Parent is obligated to pay us a reverse termination fee of \$6,552,000 if Parent and Merger Sub fail to close the merger because of a failure to receive financing (other than if solely due to a failure by guarantor to fund its commitment pursuant to the equity commitment letter) that, together with the amount of equity financing committed pursuant to the equity commitment letter, is sufficient to fund the merger and the other transactions contemplated by the merger agreement or because of their refusal to accept a new financing commitment that provides for at least the same amount of financing as the commitment letters and on terms that are not materially less favorable to Parent than the commitment letters and Parent and Merger Sub are not otherwise in material and willful breach of the merger agreement (a Non-Breach Financing Failure).

The amount of the reverse termination fee will be \$10,920,000, however, if the Company terminates the merger agreement in circumstances not involving a Non-Breach Financing Failure and on or after the later of (i) the 75th day following the date of the merger agreement, (ii) the 30th day after the mailing of this Proxy Statement to the Company s stockholders or (iii) the third business day after the Company has delivered to Parent written evidence that the Company has delivered all of the specified notices to, and obtained all of the specified consents and approvals of, certain specified third parties (provided, that, on and after May 19, 2011 (or June 19, 2011 in the event Parent has extended the Termination Date pursuant to the merger agreement), all such notices, consents and approvals shall be deemed to have been obtained and written evidence delivered for purposes of this clause (iii) (but not for purposes of determining whether all of the conditions to the obligations of Parent and Merger Sub to consummate the merger in Section 6.1 and Section 6.2 of the merger agreement (regarding compliance with representations, warranties and covenants) have been satisfied or waived)), if (x) all of the conditions to the obligations of Parent and Merger Sub to consummate the merger set forth in Section 6.1 and Section 6.2 of the merger agreement (regarding compliance with representations, warranties and covenants) have been satisfied or waived by Parent and Merger Sub in writing (other than those conditions that by their nature are to be satisfied at the Closing, provided the Company is then able to satisfy such conditions), and the Company has certified to Parent in writing that such conditions have been satisfied and the Company is prepared to satisfy those conditions at the Closing and (y) Parent and Merger Sub shall have breached their obligation to cause the merger to be consummated within ten business days after the date the closing is required to take place pursuant to the merger agreement.

Appraisal Rights (see page 73)

Pursuant to Section 262 of the DGCL, if you do not vote in favor of the adoption of the merger agreement and approval of the merger and you instead follow the appropriate procedures for demanding and perfecting appraisal rights as described on pages 73 through 75 and in **Appendix D**, you will receive a cash payment for the fair value of your shares of NovaMed common stock, as determined by a Delaware Court of Chancery, instead of the \$13.25 per share merger consideration to be received by our stockholders pursuant to the

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merger agreement. The fair value of NovaMed common stock may be more than, less than or equal to the \$13.25 merger consideration you would have received for each of your shares pursuant to the merger agreement if you had not exercised your appraisal rights.

Generally, in order to exercise appraisal rights, among other things:

you must NOT vote in favor of adoption of the merger agreement and approval of the merger; and

you must make written demand for appraisal in compliance with Delaware law PRIOR to the vote of our stockholders to adopt the merger agreement and approve the merger.

Merely abstaining or voting against the adoption of the merger agreement and approval of the merger will not preserve your appraisal rights under Delaware law. **Appendix D** to this Proxy Statement contains the Delaware statute relating to your appraisal rights. **If you want to exercise your appraisal rights, please read and carefully follow the procedures described on pages 73 through 75 and in Appendix D. Failure to take all of the steps required under Delaware law may result in the loss of your appraisal rights.**

Material U.S. Federal Income Tax Consequences (see page 47)

The receipt of \$13.25 in cash by our stockholders for each outstanding share of NovaMed common stock will be a taxable transaction for U.S. federal income tax purposes. Each of our stockholders generally will recognize taxable gain or loss, measured by the difference, if any, between the stockholder's amount realized in the merger of \$13.25 per share and the tax basis of each share of NovaMed common stock owned by such stockholder.

Litigation (see page 50)

Since the announcement of the proposed merger, four putative class actions have been filed against the Company, the members of its board of directors, Parent and Merger Sub. Three of these actions have been filed in the Court of Chancery of the State of Delaware. One was filed in the Circuit Court of Cook County, Illinois but was subsequently dismissed by the plaintiff without prejudice. The three actions in the Court of Chancery of the State of Delaware have been consolidated as *In re NovaMed, Inc. Shareholder Litigation*, C.A. No. 6151-VCP (the Delaware Action). The plaintiffs in the Delaware Action allege, among other things, that the members of our Board of Directors breached their fiduciary duties by failing to maximize the value to be received by our stockholders and by failing to disclose all material information necessary for our stockholders to make an informed decision regarding the merger and that Parent and the Merger Sub aided and abetted our Board of Directors' breach of fiduciary duties. The Court has scheduled a hearing for April 4, 2011 on the plaintiffs' anticipated motion for a preliminary injunction barring the defendants from consummating the proposed transaction. We believe the allegations in the Delaware Action are without merit and intend to vigorously defend the action.

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QUESTIONS AND ANSWERS ABOUT THE SPECIAL MEETING AND THE MERGER

The following questions and answers are intended to address briefly some commonly asked questions regarding the special meeting and the merger and other matters to be considered by NovaMed's common stockholders at the special