IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * *

SHELDON FREEDMAN MD, PANKAJ BHATANAGAR MD, MATHEW NG MD, and DANIEL BURKHEAD MD,

Petitioners,

vs.

THE HONORABLE JOSEPH HARDY, District Court Judge, Eighth Judicial District Court of the State of Nevada, in and for County of Clark,

Respondent.

MARK J. GARDBERG, ESQ., in his capacity as Receiver for and acting on behalf of, FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company,

Real Party in Interest

Supreme Court Case No.:

District Court Case No. A-17-750926-B

APPELLANTS' APPENDIX
I of IV

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ALPHABETICAL ORDER

Filed / Hearing Date	Document	Vol	Pages
06/12/2017	Affidavit of Service Upon Daniel Burkhead, M.D.	I	AA000011-AA000012
06/12/2017	Affidavit of Service Upon Mathew Ng, M.D.	I	AA000013-AA000014
06/12/2017	Affidavit of Service Upon Pankaj Bhatanagar, M.D.	I	AA000015-999916
06/12/2017	Affidavit of Service Upon Sheldon Freedman, M.D.	I	AA000009-AA000010
12/06/2017	Answer to Second Amended Complaint	I	AA000834-AA000855
02/10/2017	Complaint	I	AA000001-AA00008
06/26/2017	Defendant Daniel Burkhead M.D.'s Motion to Dismiss Complaint	I	AA000030-AA000115
10/25/2017	Defendant Daniel Burkhead M.D.'s Motion to Dismiss Second Amended Complaint	IV	AA000733-AA000744
11/21/2017	Defendant Daniel Burkhead M.D.'s Reply in Support of Motion to Dismiss Second Amended Complaint	IV	AA000811-AA000820
07/20/2017	Defendant Daniel Burkhead M.D.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	II	AA000334-AA000341

06/12/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss	I	AA000017-AA000029
10/23/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss Second Amended Complaint	IV	AA000659-AA000675
08/25/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Reply in Support of Motion to Dismiss	II	AA000374-AA000383
12/15/2017	Defendant Sheldon J. Freedman's Motion for Stay	IV	AA000914-AA000926
06/27/2017	Defendant Sheldon J. Freedman's Motion to Dismiss Pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorney's Fees Pursuant to NRS 18.020	I	AA000116-AA000236
08/16/2017	Defendant Sheldon J. Freedman's Reply to Opposition to Motion to Dismiss Pursuant to N.R.C.P. 12(b)(6) and 12(b)(6) and Reply to Opposition for Attorney's Fees Pursuant to NRS 18.020	II	AA000354-AA000373
11/20/2017	Defendant Sheldon J. Freedman's Reply to Plaintiffs Omnibus Supplemental Opposition to Defendants Various Motions to Dismiss and Associated Joinders	IV	AA000796-AA000796

10/24/2017	Defendant Sheldon J. Freedman's Supplement to Motion to Dismiss Complaint, First Amended Complaint and Second Amended Complaint Pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorneys Fees Pursuant to NRS 18.020	IV	AA000676-AA000732
12/08/2017	Errata to Answer to Second Amended Complaint	IV	AA000868-AA00893
10/26/2017	Errata to Marjorie Belsky MD's Opposition to Motion to Extend Time and Counter-Motion to Dismiss	IV	AA000761-AA00783
07/14/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Defendant Daniel Burkhead M.D.'s Motion to Dismiss Complaint	II	AA000299-AA000310
07/17/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Defendant Sheldon J. Freedman's Motion to Dismiss Pursuant to NRCP 12(b)(5) and 12(b)(6) and for Attorney's Fees Pursuant to NRS 18.020	II	AA000311-AA000333
07/13/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss	II	A000237-AA000298
10/25/2017	Marjorie Belsky, M.D.'s Opposition to Motion to Extend Time and Counter-Motion to Dismiss	IV	AA000745-AA000760

12/08/2017	Notice of Entry of Order regarding Consolidated Motions to Dismiss	IV	AA000861-AA000868
10/10/2017	Notice of Entry of Order Regarding Defendants Motions to Dismiss	II	AA000388-AA000394
07/24/2017	Notice of Errata to Defendant Daniel Burkhead M.D.'s Reply to Plaintiff's Opposition to Motion to Dismiss Complaint	II	AA000342-AA000353
12/07/2017	Order Regarding Consolidated Motions to Dismiss	IV	AA000856-AA000860
10/10/2017	Order Regarding Defendants' Motions to Dismiss	II	AA000384-AA000387
11/21/2017	Pankaj Bhatnagar, MD and Matthew Ng, MD's Reply in Support of Their Motion to Dismiss Second Amended Complaint	IV	AA000821-AA000833
12/12/2017	Pankaj Bhatnagar, MD and Matthew Ng, MD's Answer to Second Amended Complaint	IV	AA000894-AA000913
11/07/2017	Plaintiff's Omnibus Supplemental Opposition to Defendants' Various Motions to Dismiss and Associated Joinders	IV	AA000784-AA000795
10/10/2017	Second Amended Complaint	III	AA000395-AA000658

CHRONOLOGICAL ORDER

Filed / Hearing Date	Document	Vol	Pages
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06/12/2017	Affidavit of Service Upon Sheldon Freedman, M.D.	I	AA000009-AA000010
06/12/2017	Affidavit of Service Upon Daniel Burkhead, M.D.	I	AA000011-AA000012
06/12/2017	Affidavit of Service Upon Mathew Ng, M.D.	I	AA000013-AA000014
06/12/2017	Affidavit of Service Upon Pankaj Bhatanagar, M.D.	I	AA000015-AA0000916
06/12/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss	I	AA000017-AA000029
06/26/2017	Defendant Daniel Burkhead M.D.'s Motion to Dismiss Complaint	I	AA000030-AA000115
06/27/2017	Defendant Sheldon J. Freedman's Motion to Dismiss pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorney's Fees Pursuant to NRS 18.020	I	AA000116-AA000236
07/13/2017	Flamingo-Pecos Surgery Center, LLC's Opposition to Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss	II	A000237-AA000298

10/23/2017	Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar's Motion to Dismiss Second Amended Complaint	IV	AA000659-AA000675
10/24/2017	Defendant Sheldon J. Freedman's Supplement to Motion to Dismiss Complaint, First Amended Complaint and Second Amended Complaint Pursuant to N.R.C.P. 12(b)(5) and 12(b)(6) and for Attorneys Fees Pursuant to NRS 18.020	IV	AA000676-AA000732
10/25/2017	Defendant Daniel Burkhead M.D.'s Motion to Dismiss Second Amended Complaint	IV	AA000733-AA000744
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11/07/2017	Plaintiff's Omnibus Supplemental Opposition to Defendants' Various Motions to Dismiss and Associated Joinders	IV	AA000784-AA000795
11/20/2017	Defendant Sheldon J. Freedman's Reply to Plaintiffs Omnibus Supplemental Opposition to Defendants Various Motions to Dismiss and Associated Joinders	IV	AA000796-AA000796

11/21/2017	Defendant Daniel Burkhead M.D.'s Reply in Support of Motion to Dismiss Second Amended Complaint	IV	AA000811-AA000820
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12/08/2017	Errata to Answer to Second Amended Complaint	IV	AA000868-AA00893
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12/15/2017	Defendant Sheldon J. Freedman's Motion for Stay	IV	AA000914-000926

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DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff, vs. William Smith MD, an individual; Pankaj Bhatanagar MD, an individual; Marjorie Belsky MD, an individual; Sheldon Freedman MD, an individual; Mathew Ng MD, an individual; Daniel Burkhead MD, an individual; and DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	Case No.: A-17-750926-B Dept. No.: XV **COMPLAINT** **Business Court Requested:** ▪ Claims Arising Under Business Torts **Arbitration Exempt:** ▪ Amount in Controversy Exceeds $50,000 ▪ Action in Equity

Plaintiff Flamingo-Pecos Surgery Center, LLC ("Plaintiff") complains and alleges against the above-named defendants the following:

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THE PARTIES

1. At all times relevant herein, Plaintiff is and has been a limited liability company, organized under the laws of the state of Nevada doing business in Clark County, Nevada.

2. Plaintiff was organized and founded on or about January 9, 2002 and subsequently became the successor-in-interest to all assets and beneficial interests previously held by Hualapai Surgery Center LLC on or about October 12, 2011.

3. At all times relevant herein, Defendant William Smith MD ("Defendant Smith") was an individual residing and/or doing business in Clark County, Nevada.

4. Defendant Smith was a manager, director and/or officer of Plaintiff owing fiduciary and other duties to Plaintiff.

5. At all times relevant herein, Defendant Pankaj Bhatanagar MD ("Defendant Bhatanagar") was an individual residing and/or doing business in Clark County, Nevada.

6. Defendant Bhatanagar was a manager, director and/or officer of Plaintiff owing fiduciary and other duties to Plaintiff.

7. At all times relevant herein, Defendant Marjorie Belsky MD ("Defendant Belsky") was an individual residing and/or doing business in Clark County, Nevada.

8. Defendant Belsky was a manager, director and/or officer of Plaintiff owing fiduciary and other duties to Plaintiff.

9. At all times relevant herein, Defendant Sheldon Freedman MD ("Defendant Freedman") was an individual residing and/or doing business in Clark County, Nevada.

10. Defendant Freedman was a manager, director and/or officer of Plaintiff owing fiduciary and other duties to Plaintiff.

11. At all times relevant herein Defendant Mathew Ng MD ("Defendant Ng") was an individual residing and/or doing business in Clark County, Nevada.

12. Defendant Ng was a manager, director and/or officer of Plaintiff owing fiduciary and other duties to Plaintiff.

13. At all times relevant herein Daniel Burkhead MD ("Defendant Burkhead") was an individual residing and/or doing business in Clark County, Nevada.

14. Defendant Burkhead was a manager, director and/or officer of Plaintiff owing fiduciary and other duties to Plaintiff.

15. Certain Doe defendant managers, directors and officers (the "Doe D&O Defendants") are individuals who reside and do business in Clark County, Nevada and who may be liable for the claims and damages alleged herein. The true names of the Doe D&O Defendants 1 through 25 are presently unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the Doe D&O Defendants are legally responsible for the events referred to herein. This complaint will be amended to include them when their true names and capacities become known.

16. Certain Roe Business Entities are business entities doing business in Clark County, Nevada and may be liable for the claims and damages alleged herein. The true names and capacities of defendants Roe Business Entities 1 through 25 are presently unknown to Plaintiff, who therefore sues said defendants by such fictitious names. Plaintiff is informed and believes, and therefore alleges, that each of the defendants designated as Roe Business Entities 1 through 25 are legally responsible for the events referred to herein. This complaint will be amended to include them when their true names and capacities become known.

JURISDICTION & VENUE

17. This Court has jurisdiction because the amount in controversy exceeds $50,000, and because the parties are residents of and/or conduct business in Clark County, Nevada.

18. Venue in Clark County is proper because the defendants are residents of and/or conduct business in Clark County, and because the acts described herein occurred there.

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ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

19. Plaintiff has conducted business in Clark County for many years as an entity associated with a group of surgeons performing surgeries in Clark County, Nevada, including at an ambulatory surgery center located at 10195 West Twain Avenue, Las Vegas, Nevada 89147.

20. Robert J. Barnes ("Barnes") – who has since pled guilty to embezzling and stealing funds from Plaintiff – was Plaintiff's Office Manager.

21. Barnes was hired on or about October 5, 2006 by Defendant Smith, Defendant Bhatanagar, Defendant Belsky, Defendant Freedman, Defendant Ng, Defendant Burkhead, Defendant Manager MD, and/or the D&O Defendants (each of these defendants, collectively, the "Defendants") for the position of Plaintiff's Office Manager.

22. Barnes' functions and responsibilities as Plaintiff's Office Manager extended to Plaintiff's full financial workings, accounts and books.

23. Individually and collectively, Defendants, as managers, directors and officers of Plaintiff, had duties, obligations and responsibilities to Plaintiff during all times relevant to the events referred to herein.

24. Individually and collectively, Defendants failed to conduct the necessary due diligence regarding Barnes and negligently hired Barnes as Plaintiff's Office Manager – effectively putting a criminal in a position to embezzle and steal from Plaintiff.

25. Individually and collectively, Defendants failed to supervise, oversee and/or monitor Barnes for many years during Barnes' crime spree, allowing a criminal to effectuate and conduct his embezzlement and theft from Plaintiff and resulting in substantial damages to and against Plaintiff.

26. Individually and collectively, Defendants negligently supervised, retained, oversaw and/or monitored Barnes for many years during Barnes' crime spree, resulting in substantial damages to and against Plaintiff.

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27. Individually and collectively, Defendants omitted and grossly neglected their duties to Plaintiff as managers, directors and officers with respect to Barnes for many years, resulting in substantial damages to and against Plaintiff.

28. Over many years, Barnes embezzled and stole vast sums of Plaintiff's funds and assets. Barnes admitted in subsequent criminal proceedings (brought by the U.S. Government against Barnes), that Barnes embezzled at least $1.2 million during the course of his crime spree over many years.

29. The United States Government has sought a thirty (30) month sentence in prison for Barnes based on, among other things, Barnes' embezzlement and theft from Plaintiff.

30. Upon discovering Barnes' embezzlement and theft, Defendants individually and collectively failed to take any reasonable steps to protect Plaintiff's interests, assets and funding.

31. Upon discovering Barnes' embezzlement and theft, Defendants individually and collectively failed – for an unreasonably lengthy period of time – to remove Barnes from his position as Office Manager, and to block Barnes' access to Plaintiff's funds and assets, thereby: (a) allowing Barnes to continue his crime spree for some time; (b) failing to limit Plaintiff's potential losses; and (c) exacerbating Plaintiff's actual losses.

32. Upon discovering Barnes' embezzlement and theft, Defendants individually and collectively failed to appropriately audit, investigate, and determine the extent of Barnes' crimes, resulting in substantial damages against Plaintiff.

33. Upon discovering Barnes' embezzlement and theft, Defendants individually and collectively ignored and failed to adhere to their responsibilities and obligations to Plaintiff, resulting in substantial damages against Plaintiff.

34. Defendants individually and collectively failed to protect and preserve Plaintiff's assets, funding and interests with respect to Barnes' criminality and the consequences thereof.

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35. Upon discovering Barnes' embezzlement and theft, Defendants individually and collectively failed to: (a) demand that Barnes return Plaintiff's funds and assets; (b) pursue Barnes; and (c) file a cause of action against Barnes, with such failures resulting in substantial damages against Plaintiff.

FIRST CAUSE OF ACTION

NEGLIGENT HIRING AGAINST ALL DEFENDANTS

36. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 30 above, as if set forth herein.

37. Defendants had a duty to Plaintiff to: (a) conduct reasonable background check and due diligence on Barnes prior to hiring Barnes; and (b) protect Plaintiff from harm resulting from Plaintiff's employment of Barnes.

38. Defendants hired Barnes without conducting a reasonable background check and due diligence to ensure he was fit for the position of Plaintiff's Office Manager.

39. Defendants knew or should have known that Barnes had dangerous propensities and/or would display, initiate and perpetuate criminality.

40. Defendants breached Defendants' duties to Plaintiff with respect to hiring, including the duty to protect Plaintiff from the harm resulting from Plaintiff's employment of Barnes.

41. Defendants' breaches of Defendants' duties to Plaintiff in this regard resulted in substantial damages to and against Plaintiff, in an amount greater than $50,000.

SECOND CAUSE OF ACTION

NEGLIGENT SUPERVISION AGAINST ALL DEFENDANTS

42. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 36 above, as if set forth herein.

43. Defendants had a duty to Plaintiff to supervise, train, and discipline Barnes during his employment as Plaintiff's Office Manager, and to protect Plaintiff from harm resulting from Plaintiff's employment of Barnes.

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44. Defendants failed to supervise, train or discipline Barnes during his employment, and failed to protect Plaintiff from harm resulting from Plaintiff's employment of Barnes – thereby breaching Defendants' duties to Plaintiff.

45. Defendants' breaches of Defendants' duties to Plaintiff in this regard resulted in substantial damages to and against Plaintiff, in an amount greater than $50,000.

THIRD CAUSE OF ACTION

NEGLIGENT RETENTION AGAINST ALL DEFENDANTS

46. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 40 above, as if set forth herein.

47. Defendants had a duty to protect Plaintiff regarding Barnes' continued employment as Plaintiff's Office Manager, especially after Barnes' embezzlement and theft was discovered.

48. Defendants failed to remove Barnes and negligently retained Barnes as Plaintiff's Office Manager, allowing Barnes to continue his embezzlement and theft – thereby breaching Defendants' duties to Plaintiff.

49. Defendants' breaches of Defendants' duties to Plaintiff in this regard resulted in substantial damages to and against Plaintiff, in an amount greater than $50,000.

FOURTH CAUSE OF ACTION

DEFENDANTS' BREACH OF FIDUCIARY DUTY OF CARE TO PLAINTIFF

50. Plaintiff re-alleges each and every allegation set forth in Paragraphs 1 - 44 above, as if set forth herein.

51. As managers, directors and/or officers of Plaintiff, Defendants had a fiduciary duty of care to Plaintiff.

52. Defendants were 'asleep at the wheel' in completely neglecting this duty, and Defendants let Barnes' embezzlement and theft continue unabated.

53. Defendants individually and collectively breached Defendants' fiduciary duty of care to Plaintiff by, among other things, failing to: (a) oversee, supervise, monitor and discipline Plaintiff's Office Manager, who was embezzling and stealing from Plaintiff; (b)

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supervise, care for, monitor or review Plaintiff's books, accounts, and finances while Barnes was Plaintiff's Office Manager; (c) expeditiously remove Barnes from the position of Plaintiff's Office Manager upon the discovery of Barnes' embezzlement and theft; (d) audit, investigate and/or determine the extent of Barnes' embezzlement and theft; (e) pursue Barnes on behalf of Plaintiff in order to recover Plaintiff's assets, funding and interests from Barnes; and (f) take appropriate, reasonable and necessary steps to protect Plaintiff's interests vis-à-vis Barnes and certain Defendants.

54. Defendants' individual and collective breaches of Defendants' fiduciary duty of care to Plaintiff resulted in substantial damages to and against Plaintiff, in an amount greater than $50,000.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff demands and prays for relief as follows:

a. For an award of compensatory damages in an amount far in excess of $50,000;

b. For pre- and post-judgment interest, as applicable;

c. For an award of costs and reasonable attorneys' fees; and

d. For such other and further relief as the Court deems just and proper.

Dated this 24th day of January, 2017.

Respectfully Submitted,

/s/ Timothy R. Mulliner

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DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff, vs. William Smith MD, an individual; Pankaj Bhatanagar MD, an individual; Marjorie Belsky MD, an individual; Sheldon Freedman MD, an individual; Mathew Ng MD, an individual; Daniel Burkhead MD, an individual; and DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	Case No.: A-17-750926-B Dept. No.: XV

AFFIDAVIT OF SERVICE UPON SHELDON FREEDMAN, M.D.

AFFIDAVIT OF SERVICE

DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company,

Plaintiff(s)

v.

William Smith MD, an individual; et al.,

Defendant(s)

Case No.:A-17-750926-B
Timothy R. Mulliner, Esq No. 10692
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Attorneys for the Plaintiff

Client File#

I, Adriana Garcia, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint, from MULLINER LAW GROUP, CHTD

That on 6/6/2017 at 7:42 PM at 2181 South Buffalo Drive, Las Vegas, NV 89117-2003 I served Sheldon Freedman, M.D. with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Mrs. Freedman whose relationship is Co-Resident/Spouse.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 50's, Height: 5'9", Weight: 150 lbs., Hair: Blond, Eyes:Blue

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 6/8/17

Adriana Garcia
Registered Work Card# R-090327
State of Nevada

(No Notary Per NRS 53.045)

Service Provided for:
Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
(702) 385-5444
Nevada Lic # 1656

Order#: NV30450
Their File

AOS

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CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff, vs. William Smith MD, an individual; Pankaj Bhatanagar MD, an individual; Marjorie Belsky MD, an individual; Sheldon Freedman MD, an individual; Mathew Ng MD, an individual; Daniel Burkhead MD, an individual; and DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	Case No.: A-17-750926-B Dept. No.: XV

AFFIDAVIT OF SERVICE UPON DANIEL BURKHEAD, M.D.

AFFIDAVIT OF SERVICE

DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company,

Plaintiff(s)

v.

William Smith MD, an individual; et al.,

Defendant(s)

Case No.:A-17-750926-B
Timothy R. Mulliner, Esq No. 10692
MULLINER LAW GROUP, CHTD
101 Convention Center Drive Suite 650
Las vegas, NV 89109
(702) 240-8545
Attorneys for the Plaintiff

Client File#

I, Tanner Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint, from MULLINER LAW GROUP, CHTD

That on 6/6/2017 at 8:15 PM at 70 Glade Hollow Drive, Las Vegas, NV 89135-7886 I served Daniel Burkhead, M.D. with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Melissa Burkhead whose relationship is Co-Resident/Wife.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 40's, Height: 5'9", Weight: 150 lbs., Hair: Blonde, Eyes:Blue

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 6/8/2017

Tanner Trewet
Registered Work Card# R-075655
State of Nevada

(No Notary Per NRS 53.045)

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Nationwide Legal Nevada, LLC
626 S. 7th Street
Las Vegas, NV 89101
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Order #:NV80452
Their File

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Court-Appointed Receiver for Flamingo-Pecos Surgery Center LLC

Todd E. Kennedy (NSB# 6014)
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DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff, vs. William Smith MD, an individual; Pankaj Bhatanagar MD, an individual; Marjorie Belsky MD, an individual; Sheldon Freedman MD, an individual; Mathew Ng MD, an individual; Daniel Burkhead MD, an individual; and DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	Case No.: A-17-750926-B Dept. No.: XV

AFFIDAVIT OF SERVICE UPON MATHEW NG, M.D.

AFFIDAVIT OF SERVICE

DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company,

Plaintiff(s)

v.

William Smith MD, an individual; et al.,

Defendant(s)

Case No.:A-17-750926-B
Timothy R. Mulliner, Esq No. 10692
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(702) 240-8545
Attorneys for the Plaintiff

Client File#

I, Tanner Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint, from MULLINER LAW GROUP, CHTD

That on 6/6/2017 at 8:01 AM at 10757 Rivendell Avenue, Las Vegas, NV 89135-1803 I served Matthew Ng, M.D. with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Matthew Ng, M.D..

That the description of the person actually served is as follows:
Gender: Male, Race: Asian, Age: 35-45, Height: 5'7", Weight: 160 lbs., Hair: Black, Eyes:Brown

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 6/8/2017

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Registered Work Card# R-075655
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Order#:NV80495
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DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff, vs. William Smith MD, an individual; Pankaj Bhatanagar MD, an individual; Marjorie Belsky MD, an individual; Sheldon Freedman MD, an individual; Mathew Ng MD, an individual; Daniel Burkhead MD, an individual; and DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	Case No.: A-17-750926-B Dept. No.: XV

AFFIDAVIT OF SERVICE UPON PANKAJ BHATANAGAR, M.D.

AFFIDAVIT OF SERVICE

DISTRICT COURT
CLARK COUNTY, STATE OF NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company,

Plaintiff(s)

v.

William Smith MD, an individual; et al

Defendant(s)

Case No.:A-17-750926-B
Timothy R. Mulliner, Esq No. 10692
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Attorneys for the Plaintiff

Client File#

I, Tanner Trewet, being sworn, states: That I am a licensed process server registered in Nevada. I received a copy of the Summons; Complaint, from MULLINER LAW GROUP, CHTD

That on 6/6/2017 at 7:48 AM at 202 South Royal Ascot Drive, Las Vegas, NV 89144-4310 I served Pankaj Bhatanagar, M.D. with the above-listed documents by personally delivering a true and correct copy of the documents by leaving with Melissa Bhatanagar whose relationship is Co-Resident/Wife.

That the description of the person actually served is as follows:
Gender: Female, Race: Caucasian, Age: 35-45, Height: 5'6", Weight: 140 lbs., Hair: Blonde, Eyes:Blue

I being duly sworn, states: that all times herein, Affiant was and is over 18 years of age, not a party to or interested in the proceedings in which this Affidavit is made. I declare under perjury that the foregoing is true and correct.

Date: 6/8/2017

Tanner Trewet
Registered Work Card# R-075655
State of Nevada

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Attorneys For Defendants Matthew Ng MD incorrectly named Mathew Ng MD and Pankaj Bhatnagar MD incorrectly named Pankaj Bhatanagar MD

DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC, a Nevada limited liability company;

Plaintiff,

v.

WILLIAM SMITH MD, an individual; PANKAJ BHATANAGAR MD, an individual; MARJORIE BELSKY MD, an individual; SHELDON FREEDMAN MD, an individual; MATHEW NG MD, an individual; DANIEL BURKHEAD MD, an individual; DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25;

Defendants.

Case No. :A-17-750926-B
Dept. No. :XV

DEFENDANTS DR. MATTHEW NG AND DR. PANKAJ BHATNAGAR'S MOTION TO DISMISS

Hearing Date:

Hearing Time:

Defendants Dr. Matthew Ng and Dr. Pankaj Bhatnagar (collectively, the "Defendants"), by and through their attorneys of record at HOLLAND & HART LLP, hereby move this Court to dismiss all claims for relief against the Defendants. Specifically, the Defendants move to dismiss

Plaintiff's negligence based claims and breach of fiduciary duty. This motion is made pursuant to NRCP 12(b)(5) and EDCR 2.20, the Memorandum of Points and Authorities, the pleadings and papers on file herein, and any oral argument this Court may allow.

DATED this 23rd day of June, 2017

HOLLAND & HART LLP

By _____

Bryce K. Kunimoto, Esq.
Robert J. Cassity, Esq.
Erica C. Smit, Esq.
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Attorneys For Defendants Matthew Ng MD and Pankaj Bhatnagar MD

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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES

PLEASE TAKE NOTICE that DR. PANKAJ BHATNAGAR AND DR. MATTHEW NG'S MOTION TO DISMISS will come for hearing before Department XV of the above-entitled Court on the 27 day of July 2017 at 9:00A a.m.

DATED this 23rd day of June, 2017

Bryce K. Kunimoto, Esq.
Robert J. Cassity, Esq.
Erica C. Smit, Esq.
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Attorneys for Defendant Dr. Pankaj Bhatnagar and Dr. Matthew Ng.

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MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS

I.

INTRODUCTION

Defendants Dr. Pankaj Bhatnagar and Dr. Matthew Ng (collectively "Defendants"), former officers of Plaintiff Flamingo-Pecos Surgery Center, LLC are also victims of the despicable conduct caused by Robert Barnes, the Plaintiff's former officer manager, who embezzled monies from the Plaintiff. Though there are no allegations of any intentional misconduct by Defendants, the Plaintiff seeks to shift liability to the Defendants for the intentional wrongful conduct of Plaintiff's former officer manager.

Here, Plaintiff has alleged claims based on negligence and breach of fiduciary duty.

The negligence claims must be dismissed under the economic loss doctrine because negligence claims must result in physical injury to Plaintiff's person or property. Money is not

considered property. Economic injury cannot serve as a basis for a negligence claim. The Nevada Supreme Court previously held that "[b]ecause [Plaintiff's] claimed damages are purely economic in nature, the district court erred in failing to dismiss [Plaintiff's] negligence claim pursuant to the economic loss doctrine."

Furthermore, even if Plaintiff could allege physical injury to person or property (which it cannot), Plaintiff's claims for negligent hiring/supervision/retention must be dismissed because these claims impose liability only on an employer (as opposed to the employee). The Complaint does not allege the Defendants were the employer of Mr. Barnes, but instead acknowledges through the Complaint that Mr. Barnes "was Plaintiff's Office Manager" (Comp. ¶¶ 20, 22, 24, 48, 53) and that Mr. Barnes' employment was with Plaintiff (*Id.* at ¶¶ 37, 43, 44 "Plaintiff's employment of Barnes")(See also *Id.* at ¶ 47 "Barnes continued employment as Plaintiff's Office Manager").

In addition, Plaintiff's claim for breach of fiduciary duty of care must also be dismissed as a matter of law because the Complaint does not plead particularized allegations that overcome the powerful statutory protections afforded to business decisions made by Nevada officers and directors. First, the Complaint does not plead with particularity allegations to overcome the basic and express statutory presumption that that "Directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." NRS 78.138(3). Second, the Complaint does not plead with particularized allegations that either Dr. Ng or Dr. Bhatnagar engaged in "intentional misconduct, fraud or a knowing violation of law" (See NRS 78.138(7)) which is necessary to overcome the business judgment rule. Rather, Plaintiff alleges that the Defendants were merely "asleep at the wheel."

Accordingly, Plaintiff's claims based in negligence and breach of fiduciary duty must be dismissed as a matter of law.

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II.

SUMMARY OF PLAINTIFF'S ALLEGATIONS[1]

Plaintiff alleges that Dr. Pankaj Bhatnagar[2] and Dr. Matthew Ng[3] were both managers, directors and/or officers of the Plaintiff. Comp. ¶¶ 6, 12. Plaintiff has conducted business in Clark County for many years as an entity associated with a group of surgeons performing surgeries at an ambulatory surgery center located at 10195 West Twain Avenue, Las Vegas, Nevada 89147. *Id.* at ¶ 19. Robert J. Barnes ("Barnes") was the Plaintiff's office manager (*Id.* ¶¶ 20, 22, 24, 48, 53) and he has since pled guilty to embezzlement and stealing funds from Plaintiff. *Id.* at ¶ 20.

Plaintiff alleges that the Defendants hired Mr. Barnes on October 5, 2006 for the position of Plaintiff's office manager. *Id.* at ¶ 21. Plaintiff concedes that Mr. Barnes' employer was the Plaintiff. *Id.* at ¶¶ 37, 43, 44 and 47. Mr. Barnes' functions and responsibilities extended to Plaintiff's full financial workings, accounts and books. *Id.* at ¶ 22. Plaintiff alleges that the Defendants failed to conduct the necessary due diligence regarding Barnes and negligently hired him as Plaintiff's Office Manager. *Id.* at ¶ 24. Plaintiff alleges that Defendants failed to supervise, oversee and/or monitor Barnes for many years during Barnes' crime spree, allowing a criminal to effectuate and conduct his embezzlement and theft from Plaintiff. *Id.* at ¶ 25. Plaintiff alleges that the Defendants failed – for an unreasonably lengthy period of time – to remove Barnes from his position as Office Manager, and to block Barnes' access to Plaintiff's funds and assets. *Id.* at ¶ 31. Plaintiff alleges that Defendants were "asleep at the wheel" by allowing Barnes' embezzlement and theft continue unabated. *Id.* at ¶ 52. Barnes admitted in subsequent criminal proceedings (brought by the U.S. Government against Barnes) that Barnes embezzled at least $1.2 million during the course of his crime spree over many years. *Id.* at ¶ 28. Upon discovery Barnes' embezzlement and theft, Defendants failed to (a) demand that Barnes

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[1] To be clear, Defendants vehemently dispute the numerous false allegations asserted in the Complaint. For purposes of considering the instant motion, however, the factual allegations are presented as alleged.

[2] Plaintiff's Complaint incorrectly spelled Dr. Bhatnagar.

[3] Plaintiff's Complaint incorrectly spelled Dr. Matthew Ng.

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return Plaintiff's funds and assets; (b) pursue Barnes; and (c) file a cause of action against Barnes, with such failures resulting in substantial damages against Plaintiff. *Id.* at ¶ 35.

III.

LEGAL ANALYSIS

A. Legal Standard Under Rule 12(b)(5)

Rule 12(b)(5) of the Nevada Rules of Civil Procedure ("NRCP") specifically provides that the defense of failure to state a claim upon which relief can be granted may be made by motion. *Gull v. Hoalst*, 77 Nev. 54, 59, 359 P.2d 383, 385 (1961); NRCP 12(b)(5). In *Buzz Stew, LLC v. City of North Las Vegas*, 124 Nev. 224, 227–28, 181 P.3d 670, 672 (2008), the Nevada Supreme Court stated that when ruling on a motion to dismiss, the Court must "recognize all factual allegations in [the plaintiff's] complaint as true and draw all inferences in its favor." However, only "fair" inferences arising from the pleading must be accepted by the court. *Simpson v. Mars, Inc.*, 113 Nev. 188, 190, 929 P.2d 966, 967 (1997). In addition, the court need not accept as true conclusory allegations or legal characterizations of counsel. *See Western Mining Council v. Watt*, 643 F.2d 618, 624 (9th Cir. 1981) (interpreting substantively identical FED. R. CIV. P. 12(b)(6)). Dismissal for failure to state a claim "can be based on the lack of a cognizable legal theory or the absence of sufficient facts alleged under a cognizable legal theory." *E.g., Balistreri v. Pacifica Police Dept.*, 901 F.2d 696, 699 (9th Cir. 1990) (quoting *Conley v. Gibson*, 355 U.S. 41, 45-46 (1957)).

B. Plaintiff's Negligence Based Claims Must Be Dismissed Because They are Barred Under the Economic Loss Doctrine.

Absent injury to person or property, a plaintiff may not recover in negligence for economic loss. Here, Plaintiff's Complaint includes claims for Negligent Hiring Against All Defendants (First Cause of Action), Negligent Supervision Against All Defendants (Second Cause of Action) and Negligent Retention Against All Defendants (Third Cause of Action). All of these three claims are based on negligence but yet Plaintiff's alleged damages are pure monetary losses. Specifically, Plaintiff alleges that "Barnes embezzled and stole vast sums of

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Plaintiff's funds and assets [totaling] at least $1.2 million during the course of his crime spree over many years." Comp., ¶ 28.

Plaintiff's negligence based claims must be dismissed under Rule 12(b)(5) because the Complaint does not allege that Plaintiff suffered any physical injury to its person or property. The Nevada Supreme Court has held that "[t]he well established common law rule is that absent [] any injury to person or property, a plaintiff may not recover in negligence for economic loss." *Local Joint Executive Bd. of Las Vegas, Culinary Workers Union, Local No. 226 v. Stern*, 98 Nev. 409, 411, 651 P.2d 637, 638 (1982)(*citing Robins Dry Dock & Repair Co., v. Flint*, 275 U.S. 303, 48 S.Ct 14 (1927). The starting point in Nevada for the Economic Loss Doctrine is *Stern*, which expressly applied the doctrine for the first time and set forth in its underlying rationale.

Since *Stern*, the Nevada Supreme Court has many times reaffirmed the Economic Loss Doctrine. For example, in *Arco Prods. Co. v. May*, 113 Nev. 1295, 948 P.2d 263 (1997), a franchisee of an AM/PM Mini Market sued its franchisor for a defective cash register, which often failed to scan purchases made by customers. The franchisee sued under theories of negligence and strict liability. The Court granted a motion to dismiss with regard to the strict products liability claim, but a jury awarded damages on the negligence claim. The Nevada Supreme Court reaffirmed its position that the doctrine applies equally to claims of negligence and strict liability. The Court then reversed the negligence verdict due to the fact that the claimed damages were "purely economic in nature." *Arco*, 113 Nev. at 1298. The Nevada Supreme Court held that "[b]ecause [Plaintiff's] claimed damages are purely economic in nature, the district court erred in failing to dismiss [Plaintiff's] negligence claim pursuant to the economic loss doctrine." *Id.* The Nevada Supreme Court specifically reaffirmed the well-founded common law rule that "absent... injury to person or property, a plaintiff may not recover in negligence for economic loss." *Arco*, 113 Nev. at 1299.

Moreover, the Nevada Supreme Court addressed a similar case to the one at issue. See *Jordan v. State of Nevada on Relation to the Dept. of Motor Vehicles*, 121 Nev. 44, 110 P.3d 30

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(2005). In *Jordan*, the Court noted that even assuming a motel owner had a duty to inform Plaintiff that a motel guest was a scam artist, the economic loss rule precluded the Plaintiff from bringing a negligence claim against the motel owner. The Nevada Supreme Court held that a plaintiff "failed to sufficiently state any cause of action for negligence" because he "did not allege that he was physically harmed or injured in any way other that through [a scam artist's] appropriation of a sum of money." *Jordan*[4], 121 Nev. at 51.

Plaintiff's Complaint seeks damages for economic loss only, and binding Nevada Supreme Court authority directs adjudication as a matter of law. Plaintiff's negligence based claims are an attempt "to pound a square peg in a round hole" for purposes of manufacturing legal liability where none exists. For these reasons, all of Plaintiff's negligence based claims must be dismissed which include the following: (1) Negligent Hiring Against All Defendants (First Cause of Action); (2) Negligent Supervision Against All Defendants (Second Cause of Action); and (3) Negligent Retention Against All Defendants (Third Cause of Action).

C. Plaintiff's claims for negligent hiring/supervision/retention must be dismissed because these claims impose liability on an employer (as opposed to the employee)

Moreover, even if the Plaintiff could show physical injury to person or property (which Plaintiff does not and cannot allege), the tort of negligent hiring (first cause of action), negligent supervision (second cause of action) and negligent retention (third cause of action) are claims against an employer (as opposed to the employee). In this case, Plaintiff's Complaint acknowledges that Mr. Barnes, the person who embezzled monies from the Plaintiff, was "Plaintiff's Office Manager." Comp. ¶¶ 20, 22, 24, 48, 53) and that Mr. Barnes' employment was with Plaintiff (*Id.* at ¶¶ 37, 43, 44 "Plaintiff's employment of Barnes")(See also *Id.* at ¶ 47 "Barnes continued employment as Plaintiff's Office Manager"). In other words, the Complaint acknowledges that Mr. Barnes' employment was with the Plaintiff, and not the individual physician Defendants. The torts of negligent hiring/supervision/retention are all claims against

[4] This case was abrogated by *Buzz Steew, LLC v. City of North Las Vegas,* 124 Nev. 224 (2008) on unrelated grounds.

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an "employer" who in this case is the Plaintiff.

- "The tort of **negligent hiring and supervision creates employer liability** when the employer exacerbates the normal risks to be borne by the business through the employer's own negligence." (emphasis added) *Wright v. Watkins and Shepard Trucking, Inc.*, 968 F.Supp.2d 1092, 1095 (2013).
- The Nevada Supreme Court recognized that "**negligent hiring** liability is imposed 'when the **employer** knew or should have known that the employee was violent or aggressive and might engage in injurious conduct.'" (emphasis added) *Hall v. SFF*, 112 Nev. 1384, 1392, 930 P.2d 94, 99 (1996)(*citing Yunker v. Honeywell, Inc.*, 496 N.W.2d 419, 422 (Minn. Ct.App. 1993)).
- "The tort of **negligent** training and **supervision imposes direct liability on the employer** if (1) the **employer knew** that the employee acted in a negligent manner, (2) the **employer failed** to train or supervise the employee adequately, and (3) the employer's negligence proximately caused the plaintiffs injuries." (emphasis added). *Helle v. Core Home Health Services of Nevada*, 2008 WL 6101984 at * 3 (Nov 20, 2008, Nev.)
- "To prove **negligent supervision/retention**, a plaintiff must establish that the '**employer** knew or should have known its employee behaved in a dangerous or otherwise incompetent manner, and that the employer, armed with that actual or constructive knowledge, failed to adequately supervise the employee." (emphasis added) *ETT, Inc. v. Delgada*, 2010 WL 3246334 at * 7 (April 29, 2010, Nev.)

Moreover, even if the Plaintiff had alleged injury to person or property (which it has not), the torts of negligent hiring/supervision/retention are all claims against an "employer." In this case, the employer was Plaintiff itself (as opposed to the individual defendants, including Dr. Bhatnagar and Dr. Ng). Because there is no allegation that Dr. Bhatnagar and Dr. Ng were the employers of Barnes, the claims for negligent hiring/supervision/retention must be dismissed as against the Defendants.

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D. Plaintiff's Breach of Fiduciary Duty of Care Claim Fails as a Matter of Law.

Plaintiff's claim for breach of fiduciary duty of care must be dismissed against Defendants because this claim is governed by an express statutory scheme that protects officers and directors by strictly limiting the circumstances in which they can be held personally liable for their business decisions. First, NRS 78.138(3)[5] establishes a presumption that "Directors and officers, in deciding upon matters of business, are presumed to act in good faith, on an informed basis and with a view to the interests of the corporation." Second, NRS 78.138(7) provides that in order to state a damages claim against officers and directors, a plaintiff must allege that the defendants breached their fiduciary duties and that they engaged in "intentional misconduct, fraud or a knowing violation of law." The liability imposed upon directors and officers is set forth in NRS 78.138(7) which, *inter alia*, states as follows:

> 7. Except as otherwise provided in NRS 35.230, 90.660, 91.250, 452.200, 452.270, 668.045 and 694A.030, or unless the articles of incorporation or an amendment thereto, in each case filed on or after October 1, 2003, provide for greater individual liability, **a director or officer is not individually liable to the corporation or its stockholders or creditors for any damages** as a result of any act or failure to act in his or her capacity as a director or officer **unless** it is proven that:
> (a) The director's or officer's act or failure to act constituted a breach of his or her fiduciary duties as a director or officer; **and**
> **(b) The breach of those duties involved intentional misconduct, fraud or a knowing violation of law.**

(emphasis added).

Here, Plaintiff alleges that "Defendants were 'asleep at the wheel' in completely neglecting this duty, and Defendants let Barnes embezzlement and theft continue unabated." Comp., ¶ 52. The Plaintiff also alleges that Defendants failed to "(a) oversee, supervise, monitor and discipline Plaintiff's Office Manager, who was embezzling and stealing from

[5] Though NRS 78 is the Nevada Corporations code and the Plaintiff is a limited liability company, Nevada Courts have consistently applied the law of corporations to LLC's for purposes of the business judgment rule. *Guy v. Casal Institute of Nevada*, LLC, 2015 WL 56048, at *2 (Jan 5, 2015, D. Nev.) (*citing Montgomery v. eTrepped Technologies, LLC*, 548 F.Supp.2d 1175, 1179 (D. Nev. 2008) (**recognizing that federal and state courts have consistently applied the law of corporations to LLCs for** piercing the corporate veil, the 'alter ego' doctrine, **the 'business judgment rule,'** and derivative actions)." (emphasis added).

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Plaintiff; (b) supervise, care for, monitor or review Plaintiff's books, accounts, and finances while Barnes was Plaintiff's Office Manager; (c) expeditiously remove Barnes from the position of Plaintiff's Office Manager upon the discovery of Barnes' embezzlement and theft (d) audit, investigate and/or determine the extent of Barnes' embezzlement and theft; (e) pursue Barnes in behalf of Plaintiff in order to recover Plaintiff's assets, funding and interests from Barnes; and (f) take appropriate, reasonable and necessary steps to protect Plaintiff's interest vis-à-vis Barnes and certain Defendants." Id., ¶ 53. While Plaintiff alleges that Defendants failed to take these actions, this does not rise to the level of alleging that Defendants engaged in "intentional misconduct, fraud or a knowing violation of law." Moreover, even if Plaintiff could assert such an allegation, the Nevada Supreme Court requires, pursuant to NRS 78.138(7), the claim must be pleaded "with particularity" pursuant to Rule of Civil Procedure 9(b). *In re AMERCO Derivative Lit.,* 127 Nev. 196, 223, 252 P.3d 681, 700 (2011). Simply put, Plaintiff's Complaint does not contain allegations (including under the heightened pleading standard) that the Defendants acted with "intentional misconduct, fraud or a knowing violation of law" which is necessary to overcome Nevada's statutory business judgment rule presumption. Because Plaintiff has not asserted facts necessary to overcome Nevada's statutory business judgment rule presumption, Plaintiff's claim for breach of fiduciary duty must be dismissed as a matter of law.

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IV.

CONCLUSION

Accordingly, the following claims asserted by the Plaintiff must be dismissed as a matter of law:

(1) Negligent Hiring Against All Defendants (First Cause of Action);

(2) Negligent Supervision Against All Defendants (Second Cause of Action);

(3) and Negligent Retention Against All Defendants (Third Cause of Action); and

(4) Defendants' Breach of Fiduciary Duty of Care to Plaintiff (Fourth Cause of Action).

DATED this 23rd day of June, 2017

Bryce K. Kunimoto, Esq.
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Las Vegas, NV 89134

CERTIFICATE OF SERVICE

I hereby certify that on the 23rd day of June, 2017, I served a true and correct copy of the foregoing DEFENDANTS DR. MATTHEW NG AND DR. PANKAJ BHATNAGAR'S MOTION TO DISMISS was served by the following method(s):

☒ Electronic: by submitting electronically for filing and/or service with the Eighth Judicial District Court's e-filing system and served on counsel electronically in accordance with the E-service list to the following email addresses:

Timothy R. Mulliner, Esq.
Mulliner Law Group CHTD
101 Convention Center Drive Ste 650
Las Vegas, Nevada 89109
tmulliner@mullinerlaw.com

Todd E. Kennedy
Black and Lobello PLLC
10777 West Twain Avenue, Ste 300
Las Vegas, Nevada 89135
tkennedy@blacklobellolaw.com

☐ U.S. Mail: by depositing same in the United States mail, first class postage fully prepaid to the persons and addresses listed below:

☐ Email: by electronically delivering a copy via email to the following e-mail address:

☐ Facsimile: by faxing a copy to the following numbers referenced below:

An Employee of Holland & Hart LLP

HOLLAND & HART LLP
9555 Hillwood Drive, 2nd Floor
Las Vegas, NV 89134

MDSM
ROBERT E. SCHUMACHER, ESQ
Nevada Bar No. 7504
GORDON & REES LLP
300 South Fourth Street, Suite 1550
Las Vegas, Nevada 89101
Telephone: (702) 577-9300
Direct Line: (702) 577-9319
Facsimile: (702) 255-2858
Email: rschumacher@gordonrees.com

Attorney For: Defendant
DANIEL L. BURKHEAD, M.D., LTD.

EIGHTH JUDICIAL DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company; Plaintiff. vs. William Smith MD, an individual; Pankaj Bhatanagar MD, an individual; Marjorie Belsky MD, an individual; Sheldon Freedman MD, an individual; Mathew Ng MD, and individual; Daniel Burkhead MD, an individual; and DOE MANAGERS, DIRECTORS AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendants.	CASE NO. A-17-750926-B DEPT. NO.: XV **DEFENDANT DANIEL BURKHEAD M.D.'S MOTION TO DISMISS COMPLAINT**

DEFENDANT DANIEL BURKHEAD M.D.'S MOTION TO DISMISS COMPLAINT

Defendant, DANIEL L. BURKHEAD, M.D., (hereinafter "Dr. Burkhead" or "Defendant") by and through his attorney of record, Robert E. Schumacher, Esq., of the law firm of GORDON & REES SCULLY MANSUKHANI, hereby submits this Motion to Dismiss Complaint ("Motion") filed by Plaintiff FLAMINGO-PECOS SURGERY CENTER, LLC ("Plaintiff").

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This Motion is brought pursuant to Nevada Rules of Civil Procedure 12(b)(5) and is based upon the attached Memorandum of Points and Authorities and any exhibits attached thereto, the pleadings and papers on file herein and any oral argument that may be presented at the time of hearing on this matter.

Dated: June 26, 2017

GORDON & REES LLP

By: */s/ Robert E. Schumacher*
ROBERT E. SCHUMACHER, ESQ
Nevada Bar No. 7504
300 South Fourth Street
Suite 1550
Las Vegas, Nevada 89101
Attorney for Defendant
DANIEL L. BURKHEAD, M.D.

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

NOTICE OF MOTION

PLEASE TAKE NOTICE that DEFENDANT DANIEL BURKHEAD, M.D.'S MOTION TO DISMISS COMPLAINT PURSUANT TO NRCP 12(B)(5), will be heard on the **27** day of **July** 2017, at the hour of **9:00** a.m./~~p.m.~~ or as soon as counsel may be heard in the Department XV of the District Court, Clark County, Nevada.

Dated: June 26, 2017

GORDON & REES LLP

By: */s/ Robert E. Schumacher*
ROBERT E. SCHUMACHER, ESQ
Nevada Bar No. 7504
300 South Fourth Street
Suite 1550
Las Vegas, Nevada 89101
Attorney for Defendant
DANIEL L. BURKHEAD, M.D.

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

The Plaintiff in this case was a local ambulatory surgery center ("ASC") set up as a Nevada limited liability company. The ASC has an Operating Agreement that established that the company would be run by and through its annually elected Board of Managers. Numerous local physicians invested in the ASC and became owners, some serving from time to time (on a volunteer basis) on the company's Board of Managers. Defendant Burkhead is one such physician; however, he resigned from the Board of Managers prior to the occurrence of many of the significant events alleged in Plaintiff's Complaint. Since that time, Plaintiff's status as a Nevada business entity has been revoked.

Plaintiff alleges that Defendants negligently hired, supervised and trained a former employee, Robert Barnes, who served as the company's Administrator. Plaintiff terminated Mr. Barnes after it discovered millions of dollars of revenue could not be accounted for. He ultimately was charged with and convicted of embezzling millions of dollars from Plaintiff. Plaintiff also alleges that Defendants breached a fiduciary duty of care they purportedly owed to Plaintiff.

Plaintiff's operating agreement requires it to defend and indemnify Defendant Burkhead for any liability and/or acts he performed within the scope of his duties as a member of the Board of Managers under the operating agreement or as a member of the company, unless in doing so he was grossly negligent or acted willfully. Here, Plaintiff failed to allege that Defendant was grossly negligent or that his actions amounted to willful misconduct. In fact, the Complaint alleges only that Defendant Burkhead was negligent in doing those things that are purported to be tortious. For these reasons, Plaintiff's Complaint should be dismissed as against Defendant Burkhead. Alternatively, this Court should stay this action until Plaintiff rectifies it corporate status, which is currently revoked by the Nevada Secretary of State.

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II. STATEMENTS OF FACTS

Defendant was a member of Plaintiff Flamingo Pecos Surgery Center, which is currently a defunct business entity. Plaintiff's corporate status is currently listed as "revoked" by the Nevada Secretary of State. See **Exhibit 1**. Plaintiff does not have standing to pursue this action while its corporate status is revoked. As such, this case should be stayed for a brief, reasonable amount of time so that Plaintiff has the opportunity to cure its revoked corporate status. Until such time, Plaintiff cannot pursue its claims. If Plaintiff fails to rectify its corporate standing this suit should be dismissed for lack of standing.

Defendant alleged actions that form the basis of Plaintiff's claims were performed while Defendant was acting within the scope and authority of his employment under Plaintiff's operating agreement. Pursuant to the operating agreement, Defendant is not liable for any liability and/or acts that are performed by him that is within the scope of the authority conferred under the operating agreement, unless those actions amount to gross negligence or willful misconduct. Plaintiff has failed to allege that Defendant was grossly negligent or acted with willful misconduct in its Complaint. Thus, Defendant cannot be held liable by Plaintiff for his alleged actions since the operating agreement precludes suits against Defendant for ordinary negligence. For these reasons, Plaintiff's complaint should be dismissed.

III. DISCUSSION

A. Legal Standard

1. Motion to Dismiss

Pursuant to NRCP 12(b)(5), a complaint may be dismissed for failure to state a claim for which relief may be granted. A complaint must be dismissed when it is beyond a doubt that there is no set of facts which, if accepted by the trier of fact, would entitle the Plaintiff to relief. See *Simpson v. Mars Inc.*, 113 Nev. 188 929 P.2d 966 (1997). Nevada courts are to construe the pleadings liberally and draw every fair inference in favor of the nonmoving party. *Id*.

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B. This Court Should Dismiss the Claims Against Defendant

1. Plaintiff's Operating Agreement Precludes Suit Against its Members for Ordinary Negligence so the Complaint Should be Dismissed

> Plaintiff's operating agreement, Section 7.8, contains the following indemnity provision: Indemnification. The Company shall indemnify the officers and Board of Managers of the Company, and the officers, directors and shareholders of any Manager which is a corporation in accordance with the applicable law and the articles of organization, by-laws and other governing documents of such corporation, **for any liability incurred and/or for any act performed by them within the scope of the authority conferred on them by this Agreement, and/or for any act omitted to be performed, except for their gross negligence or willful misconduct**, which indemnification shall include all reasonable expenses incurred, including reasonable legal and other professional fees and expenses. The doing of any act or failing to do any act by an officer or a Board member, the effect of which may cause or result in loss or damage to the Company, if done in good faith to promote the best interests of the Company, shall not subject the office or Board member to any liability to the Members except for gross negligence or willful misconduct.

See **Exhibit 2**, Plaintiff's Operating Agreement, Section 7.8 (emphasis added). Here, Defendant was a member of the Board of managers for Plaintiff. Plaintiff claims that Defendant is liable for negligent training, supervision, and retention of Plaintiff's former office manager Robert Barnes. Plaintiff also claims that Defendant breached his fiduciary duty of care to Plaintiff.

These claims relate to acts allegedly performed by Defendant while acting within the scope of the authority conferred to him under the operating agreement since hiring, supervising, and retaining an office manager is clearly within the scope of duties given to members of the Board of Managers. The Board of Managers has the power to employ and retain persons to act as employees. See **Exhibit 2**, Section 7.3(c). Further, any power not specifically enumerated under the operating agreement rests with the Board of Managers. See **Exhibit 2**, Section 7.1. Thus, any actions taken by Defendant with respect to his alleged negligent hiring, supervision, and retention of Mr. Barnes were performed within the scope of the authority conferred to him under the operating agreement. As such, Defendant can only be held liable for such actions if they amount to gross negligence or willful misconduct.

Here, Plaintiff has failed to plead to otherwise allege that Defendant has acted with gross negligence or willful misconduct anywhere in the Complaint. See generally, Complaint. Thus,

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if Defendant is found liable for the allegations in the Complaint, Plaintiff would be forced to indemnify Plaintiff for any loss he incurred in this action. This would amount to a clear waste of scarce judicial resources, and courts should not be used for an entity to essentially sue itself despite the clear benefits this would provide to law firms. For these reasons, this Court should dismiss this action with prejudice.

2. Alternatively, the Claims Against Dr. Burkhead Should be Stayed Since Plaintiff Lacks Standing to Maintain this Action

Plaintiff's Charter with the Nevada Secretary of State is currently listed as revoked. See **Exhibit 1**. When the revoked corporate status is brought to the attention of the court by a motion, a reasonable period of time should be allowed to the entity to bring its status back to current. See *AA Primo Builders, LLC v. Washington*, 126 Nev. 578 (2010). Dismissal of an action due to forfeiture of an entities charter should not be ordered without first staying the action for a brief period of time to allow the entity to be reinstated by the Secretary of State. *Id*.

Here, should the Court reject the above bases for this Motion, Defendant requests that this Court stay the instant action for a brief, reasonable period of time in order for Plaintiff to bring its status with the Nevada Secretary of State to current. If Plaintiff fails to do so within a reasonable period of time, then this Court should dismiss the Complaint since Plaintiff will not have standing to maintain this action. Defendant contends that thirty days is a brief, reasonable amount of time for which Plaintiff should be given to remedy its corporate status with the Nevada Secretary of State. If Plaintiff fails to do so this Complaint should be dismissed with prejudice.

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IV. CONCLUSION

Based on the foregoing, Defendant respectfully requests that this Court dismiss all claims against him. Alternatively, this Court should stay this action for a reasonable time to allow Plaintiff to reinstate its charter with the Nevada Secretary of State, and if it fails to do so within this reasonable period of time then this action should be dismissed.

Dated: June 26, 2017

GORDON & REES LLP

By: */s/ Robert E. Schumacher*

ROBERT E. SCHUMACHER, ESQ
Nevada Bar No. 7504
300 South Fourth Street
Suite 1550
Las Vegas, Nevada 89101
Attorney for Defendant
DANIEL L. BURKHEAD, M.D.

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and Administrative Order 14-2, effective June 1, 2014, and N.E.F.C.R. Rule 9, I certify that I am an employee of GORDON & REES SCULLY MANSUKHANI LLP and that on this 26th day of June, 2017, I did cause a true correct copy of **DEFENDANT DANIEL BURKHEAD M.D.'S MOTION TO DISMISS COMPLAINT** to be served via the Court's electronic filing service on all parties listed below (unless indicated otherwise):

Timothy R. Mulliner, Esq.
Mulliner Law Group Chtd.
101 Convention Center Drive, Suite 650
Las Vegas, Nevada 89109
Attorney for Plaintiff

/s/ Andrea Montero
An Employee of Gordon & Rees LLP

Gordon & Rees LLP
300 South 4th Street, Suite 1550
Las Vegas, NV 89101

EXHIBIT 1

EXHIBIT 1

FLAMINGO-PECOS SURGERY CENTER, LLC

Business Entity Information

Status:	Revoked	File Date:	1/9/2002
Type:	Domestic Limited-Liability Company	Entity Number:	LLC240-2002
Qualifying State:	NV	List of Officers Due:	1/31/2015
Managed By:	Managers	Expiration Date:	1/9/2502
NV Business ID:	NV20021004335	Business License Exp:	1/31/2015

Additional Information

Central Index Key:	

Registered Agent Information

Registered Agent resigned

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Manager - WILLIAM D SMITH MD			
Address 1:	10195 W. TWAIN AVE	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89147-6727	Country:	USA
Status:	Active	Email:	

Manager - CHARLES TADLOCK MD			
Address 1:	10195 W. TWAIN AVE	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89147-6727	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	LLC240-2002-001	# of Pages:	2
File Date:	1/9/2002	Effective Date:	
(No notes for this action)			

Action Type:	Annual List		
Document Number:	LLC240-2002-004	# of Pages:	2

File Date:	11/26/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	LLC240-2002-003	# of Pages:	1
File Date:	1/16/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	LLC240-2002-002	# of Pages:	1
File Date:	1/17/2005	Effective Date:	
List of Officers for 2005 to 2006			
Action Type:	Annual List		
Document Number:	20060060240-00	# of Pages:	1
File Date:	1/30/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070035531-16	# of Pages:	1
File Date:	1/16/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080173775-90	# of Pages:	1
File Date:	3/10/2008	Effective Date:	
08/09			
Action Type:	Registered Agent Change		
Document Number:	20090103452-46	# of Pages:	1
File Date:	2/2/2009	Effective Date:	
2009-2010			
Action Type:	Annual List		
Document Number:	20090103453-57	# of Pages:	1
File Date:	2/2/2009	Effective Date:	
2009-2010			
Action Type:	Annual List		
Document Number:	20100010732-96	# of Pages:	1
File Date:	1/8/2010	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20100213597-40	# of Pages:	1
File Date:	4/2/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110117689-36	# of Pages:	1
File Date:	2/16/2011	Effective Date:	

(No notes for this action)			
Action Type:	Merge In		
Document Number:	20110754933-05	# of Pages:	6
File Date:	10/20/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120061226-72	# of Pages:	1
File Date:	1/27/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130138695-98	# of Pages:	1
File Date:	2/28/2013	Effective Date:	
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20130647725-57	# of Pages:	1
File Date:	10/2/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140100816-93	# of Pages:	1
File Date:	2/10/2014	Effective Date:	
(No notes for this action)			
Action Type:	Commercial Registered Agent Resignation		
Document Number:	20150276898-08	# of Pages:	3
File Date:	6/18/2015	Effective Date:	
(No notes for this action)			
Action Type:	Resignation of Officers		
Document Number:	20160215742-70	# of Pages:	1
File Date:	5/12/2016	Effective Date:	
(No notes for this action)			

EXHIBIT 2

EXHIBIT 2

FLAMINGO-PECOS SURGERY CENTER, LLC – SCSN

A Nevada Limited Liability Company

OPERATING AGREEMENT

AS INDICATED IN THE FLAMINGO-PECOS SURGERY CENTER, LLC COUNTERPART SIGNATURE PAGE AND SUBSCRIPTION PURCHASE FORM, THIS OPERATING AGREEMENT PROVIDES FOR BOTH THE POSSIBILITY THAT KINDRED HOSPITAL LAS VEGAS WILL INVEST IN THE PROJECT AND THE POSSIBILITY THAT KINDRED HOSPITAL LAS VEGAS WILL NOT INVEST IN THE PROJECT.

FLAMINGO-PECOS SURGERY CENTER, LLC

OPERATING AGREEMENT

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FLAMINGO-PECOS SURGERY CENTER, LLC

OPERATING AGREEMENT

This Operating Agreement is made and entered into as of the 10th day of December, 2001, by and among the persons identified as Members (collectively the "Members") in Exhibit A annexed hereto and incorporated herein. Except as otherwise provided, the capitalized terms used in this Agreement shall have the meanings set forth in Article I hereof.

WHEREAS, the **Flamingo-Pecos Surgery Center, LLC** (the "Company") has been formed as a limited liability company under the laws of the State of Nevada by the filing, on or about the 1st day of January, 2002 (the "Effective Date"), of the Articles of Organization in the office of the Secretary of the State of Nevada;

WHEREAS, the Members desire to ensure the availability of ambulatory surgery care services in the most cost-effective and patient-friendly setting in which such services can be rendered in Las Vegas, Nevada and the surrounding areas;

WHEREAS, the Members have determined that the creation of a limited liability company to operate a Medicare certified surgical center formed and organized under the laws of the State of Nevada will provide cost-efficient patient care and will produce quality results for patients residing in Las Vegas, Nevada and the surrounding areas;

WHEREAS, the Company is being formed by two (2) or three (3) classes of Members, including (1) physicians practicing in the Las Vegas, Nevada area ("Class A Members" or "Physician Class Members"); (2) if, and only if, it invests, Kindred Hospital Las Vegas ("Kindred Hospital" or "Class B Member" or "Institutional Class Member"); and (3) Regent Surgical Health, LLC and certain affiliates thereof (the "Class C Member").

WHEREAS, the Members own all of the membership interests in the Company (the "Units"); and

WHEREAS, the Members desire to enact this Operating Agreement to provide for their respective rights, obligations and duties with respect to the Company, and the management and governance of the Company.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I
Definitions

The following defined terms used in this Agreement shall have the meanings specified below:

"Act" shall mean Chapter 86 of the Nevada Revised Statutes, as in effect at the time of the initial filing of the Articles, and as thereafter amended from time to time.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's aggregate Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Contribution" shall mean a Member's aggregate Capital Contribution to the Company reduced by all distributions made to such Member under Article VI hereof.

"Affiliated Person" or "Affiliate" shall mean, with reference to a specified Person, (a) any member of such Person's Immediate Family, (b) any Person who owns directly or indirectly ten percent (10%) or more of the beneficial ownership in such Person, (c) any one or more Legal Representatives of such Person and/or any Persons referred to in the preceding clauses (a) or (b); and (d) any entity in which any one or more of such Person and/or the Persons referred to in the preceding clauses (a), (b) or (c) owns directly or indirectly ten percent (10%) or more of the beneficial ownership.

"Agreement" shall mean this Operating Agreement as it may be amended, supplemented, or restated from time to time.

"Applicable Federal Rate" shall mean the Applicable Federal Rate as that term is defined in Code Section 1274(d)(1), whether the short-term, mid-term or long-term rate, as the case may be, as published from time to time by the Secretary of the Treasury.

"Approval of the Managers" and any grammatical variation thereof, shall mean the approval or vote of Managers then in office representing Members holding a majority of Units of the Company.

"Articles" shall mean the Articles of Organization creating the Company, as they may, from time to time, be amended in accordance with the Act.

"Bankruptcy" shall mean any of the following:

(a) If any Member shall file a voluntary petition in bankruptcy, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or shall file any answer or other pleading admitting or failing to contest the material allegations of any petition in bankruptcy or any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar

relief filed against such Member, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of such Member or of all or any substantial part of such Member's properties or interest in the Company (the term "acquiesce" as used herein includes but is not limited to the failure to file a petition or motion to vacate or discharge any order, judgment, or decree within thirty (30) days after such order, judgment or decree);

(b) If a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against any Member seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors and such Member shall acquiesce in the entry of such order, judgment, or decree, or if any Member shall suffer the entry of an order for relief under Title 11 of the United States Code and such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or if any trustee, receiver, conservator, or liquidator of any Member or of all or any substantial part of such Member's properties or interest in the Company shall be appointed without the consent or acquiescence of such Member and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(c) If any Member shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

"Board" or "Board of Managers" shall refer collectively to the Persons named to the Board in this Agreement and any Person who becomes an additional, substitute or replacement Manager as permitted by this Agreement, in each such Person's capacity on the Board of Managers of the Company.

"Book Value" shall mean, with respect to any asset of the Company, such asset's adjusted basis for federal income tax purposes, except that:

(a) The initial Book Value of any asset contributed by a Member of the Company shall be the gross fair market value of such asset (not reduced for any liabilities to which it is subject or which the Company assumes), as such value is determined and for which credit is given to the contributing Member under this Agreement;

(d) The Book Value of each of the assets of the Company shall be adjusted to equal their respective gross fair market values, as determined by the Approval of the Board, at and as of the following times:

(i) The acquisition of an additional or new interest in the Company by a new or existing Member in exchange for other than a de minimis capital contribution by such Member, if the Board, acting by Approval, reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members;

(ii) The distribution by the Company to a Member of more than a de minimis amount of any asset of the Company (including cash or cash equivalents) as consideration for all or any portion of an interest in the Company, if the Board, acting by

Approval, reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members; and

(iii) The liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and

(e) The Book Value of all of the assets of the Company shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that such Book Value shall not be adjusted pursuant to this clause (c) to the extent that the Board, acting by Approval, determines that an adjustment pursuant to the immediately preceding clause (b) is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (c).

If the Book Value of any asset of the Company has been determined or adjusted pursuant to the preceding clauses (a), (b) or (c), such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

"Capital Account" shall mean a capital account maintained and adjusted in accordance with the Code and the Regulations, including the Regulations under Section 704(b) and (c) of the Code. The Capital Account of each Member shall be:

(a) Credited with all payments made to the Company by such Member on account of Capital Contributions (and as to any property other than cash or a promissory note of the contributing Member, the agreed (as indicated by the Approval of the Board) fair market value of such property, net of liabilities secured by such property and assumed by the Company or subject to which such contributed property is taken) and by such Member's allocable share of Profits and items in the nature of income and gain of the Company;

(f) Charged with the amount of any distributions to such Member (and as to any distributions of property other than cash or a promissory note of a Member or the Company, by the agreed fair market value of such property, net of liabilities secured by such property and assumed by such Member or subject to which such distributed property is taken), and by such Member's allocable share of Losses and items in the nature of losses and deductions of the Company;

(g) Adjusted simultaneously with the making of any adjustment to the Book Value of the Company's assets pursuant to the definition thereof, to reflect the aggregate net adjustments to such Book Value as if the Company recognized Profit or Loss equal to the respective amount of such aggregate net adjustments immediately before the event causing such adjustments; and

(h) Otherwise appropriately adjusted to reflect transactions of the Company and the Members.

"Capital Contribution" shall mean the amount of cash and the value of any other property contributed to the Company by a Member.

"Class A Member" shall mean any Member holding Class A Units in the Company, in each such Member's capacity as a holder of Class A Units. Class A Units shall be held only by Eligible Physicians, as defined in Section 2.4(b) hereof.

"Class B Member" shall mean any Member holding Class B Units in the Company, in each such Member's capacity as a holder of Class B Units. Class B Member Units shall be held only by persons and entities which are not Eligible Physicians.

"Class C Member" shall mean any Member holding Class C Units in the Company, in each such Member's capacity as a holder of Class C Units. Class C Units shall only be held by persons and entities which are not Eligible Physicians.

Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Consent of the Members" except as otherwise provided herein, shall mean the written consent of Members holding more than sixty-six percent (66%) of the total number of Class A Units, Class B Units (if and only if Kindred Hospital invests), and Class C Units then issued and outstanding voting together as one class in the Company.

"Depreciation" shall mean, for each year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same relationship to the Book Value of such asset as the depreciation, amortization or other cost recovery deduction computed for tax purposes with respect to such asset for such period bears to the adjusted tax basis for such asset, or if such asset has a zero adjusted tax basis, Depreciation shall be determined with reference to the initial Book Value of such asset using any reasonable method selected by Approval of the Board, but not less than depreciation allowable for tax purposes for such year.

"Disability" means the inability of a Physician Class Member by reason of mental or physical illness, disease or injury, to perform the usual surgical procedures within such Member's medical specialty on a regular and continuous basis for a minimum period of twelve (12) consecutive months as determined by the Approval of the Board.

"Immediate Family" with respect to any individual, means such individual's ancestors, spouse, issue, spouses of issue, any trust principally for the benefit of any one or more of such individuals, such individual's estate, and any entity beneficially owned by such individuals or trusts for their principal benefit.

"Legal Representative" shall mean, with respect to any individual, a duly appointed executor, administrator, guardian, conservator, personal representative or other legal representative appointed as a result of the death, minority or incompetency of such individual.

"Losses" shall have the meaning provided below under the heading "Profits and Losses."

"Manager" shall refer to each Person serving as an officer of the Company and any Person who becomes an additional, substitute or replacement Manager as permitted by this Agreement, in each such Person's capacity as a Manager of the Company.

"Member" shall mean any Person named as a Member in this Agreement and any Person who becomes an additional, substitute or replacement Member as permitted by this Agreement, in each such Person's capacity as a Member of the Company.

"Member Minimum Gain" shall mean "partner nonrecourse debt minimum gain" as that term is defined in Regulations Section 1.704-2(i)(2).

"Member Nonrecourse Debt" shall mean "partner nonrecourse debt" or "partner nonrecourse liability" as those terms are defined in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" shall mean "partner nonrecourse deductions" as that term is defined in Regulations Section 1.704-2(i)(1).

"Minimum Gain" shall have the meaning given in Regulations Section 1.704-2(d).

"Net Operating Cash Flow of the Company" shall mean the Company's taxable income or loss arising in the ordinary course of its business activities, increased by tax-exempt interest and by depreciation and any other deductions that do not involve cash expenditures, and decreased by principal payments, capital expenditures (other than those made from borrowings) and any other nondeductible cash expenditures.

"Nonrecourse Deductions" shall have the meaning given in Regulations Section 1.704-2(b)(1).

"Person" or "Party" shall mean any natural person, partnership (whether general or limited), limited liability company, trust, estate, association or corporation.

"Profits and Losses" shall mean, for each year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this provision shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses pursuant to this provision, shall be subtracted from such taxable income or added to such loss;

(c) Gain or loss from a disposition of property of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of such property, rather than its adjusted tax basis;

(d) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account the Depreciation on the assets for such fiscal year or other period; and

(e) Any items which are separately allocated pursuant to Sections 6.5 and/or 6.6 hereof which otherwise would have been taken into account in calculating Profits and Losses pursuant to the above provisions shall not be taken into account and, as the case may be, shall be added to or deducted from such amounts so as to be not part of the calculation of the Profits or Losses.

If the Company's taxable income or loss for such year, as adjusted in the manner provided above, is a positive amount, such amount shall be the Company's Profits for such year; and if negative, such amount shall be the Company's Losses for such year.

"Reasonable Reserves" shall mean such amount as the Board, acting by Approval, shall deem reasonably necessary to meet the foreseeable liabilities or obligations of the Company taking into consideration historic costs as well as reasonably projected cash flow, and including, but not limited to, (i) the normal expenses of the operation and management of the Company's activities, as such liabilities and obligations become due and payable, and (ii) the expenses of any redemptions pursuant to the provisions of this Agreement.

"Regulations" shall mean the Regulations promulgated under the Code, and any successor provisions to such Regulations, as such Regulations may be amended from time to time.

"Retirement" shall mean when a Class A Member completely ceases to practice medicine and publicly announces such retirement or, if he or she does not publicly announce such retirement, the Board determines in its reasonable discretion that such person no longer practices medicine on at least a substantially full-time basis (i.e., at least thirty (30) hours per week for at least thirty (30) weeks per year).

"Terminating Capital Transaction" shall mean a sale or other disposition of all or substantially all of the assets of the Company.

"Transfer" and any grammatical variation thereof shall refer to any sale, exchange, issuance, redemption, assignment, distribution, encumbrance, hypothecation, gift, pledge, retirement, resignation, transfer or other withdrawal, disposition or alienation in any way as to any interest as a Member. Transfer shall specifically, without limitation of the above, include assignments and distributions resulting from death, incompetency, Bankruptcy, liquidation and dissolution.

"Unit" shall mean a unit or share of interest in the Company. The interest of each Unit in the Company shall be equal to one (1) divided by the total number of Units then authorized and

outstanding (including, but not limited to, Class A Units, Class B Units (if and only if Kindred Hospital invests), and Class C Units).

The definitions set forth in the Act shall be applicable, to the extent not inconsistent herewith, to define terms not defined herein and to supplement definitions contained herein.

ARTICLE II
Organizational Powers and Membership

2.1 Organization. The Board of Managers shall file such articles, certificates and documents as appropriate to comply with the applicable requirements for the operation of a limited liability company in accordance with the laws of any jurisdictions in which the Company shall conduct business and shall continue to do so as long as the Company conducts business therein. By Approval of the Board, the Company may establish places of business within and without the State of Nevada, as and when required by its business and in furtherance of its purposes set forth in Section 2.2 hereof, and may appoint agents for service of process in all jurisdictions in which the Company shall conduct business.

2.2 Purposes and Powers of the Company. The Company is organized for the general purposes of (i) establishing, owning and operating a surgical center in Las Vegas, Nevada (the "Facility"), (ii) engaging in other activities in connection therewith which are necessary or beneficial to the Company, and (iii) engaging in any other lawful business activity permitted under the Act and consistent with the foregoing.

2.3 Permissible Relationships. The Members understand that the Company's and the Facility's operations are subject to various state and federal laws regulating permissible relationships between the Members and entities such as the Company, including 42 U.S.C. § 1320a-7b(b) (the "Fraud and Abuse Statute"), and 42 U.S.C. § 1395nn (the "Stark Act"). It is the intent of the parties that the Company and the Facility operate in a manner consistent with the foregoing statutes and substantially comply with the Fraud and Abuse Statute safe harbors. Accordingly, each Physician Class or Class A Member represents and warrants that he or she (i) has not received loans for the purpose of investing in the Facility from the Company or from any investor in the Company; (ii) has not been excluded or suspended from participation in the Medicare and/or Medicaid programs; (iii) is actively and substantially engaged in his or her practice in performing ambulatory surgical procedures (i.e., he or she is a person who directly performs surgical procedures and he or she does not intentionally generate surgical referrals for other physicians who may use the Facility); and further, he or she generates approximately thirty-three percent (33%) of his or her medical practice income from the performance of outpatient surgical procedures; (iv) maintains active staff privileges at the Facility and performs not less than approximately thirty-three percent (33%) of his or her procedures that require, or can be performed in, an ambulatory surgery center or hospital outpatient surgical setting (in accordance with applicable Medicare reimbursement rules) at the Facility; (v) fully informs each patient, prior to referring such patient to the Facility, of such physician's investment interest in the Facility; and (vi) treats patients receiving medical benefits or assistance under any federal health care program in a nondiscriminatory manner. These requirements are referred to herein as the Physician Class Requirements.

The Members also acknowledge that Stark II, the regulations promulgated thereunder and similar Nevada laws and regulations may restrict the Facility (as presently formed) from providing "designated health services" (as defined by Stark II) or other services to patients referred by Members. The Facility shall not provide "designated health services." If, in the future, any of the services that the Facility provides are deemed to be "designated health services," such services shall be provided by the Facility only if such services may be provided in compliance with one or more exceptions to the ban on self-referrals set forth in Stark II, the regulations promulgated thereunder, or any successor statutes and/or regulations thereto. Furthermore, if the owner of a Member is a pension plan, trust or other entity, all of the owners and beneficiaries of such pension plan, trust or other entity who are practicing physicians shall also comply with Stark II, the Fraud and Abuse Statute, its regulations and similar Nevada laws and regulations.

2.4 Membership.

(a) Reference is hereby made to the fact that there shall initially be two (2) or three (3) authorized classes of Members of the Company: Class A Members, Class B Members (if and only if Kindred Hospital invests), and Class C Members. All Members shall have (based on Units held) the same economic rights. The Members, acting as Members, shall have no right to act for or bind the Company. The initial Class A Members, the initial Class B Member (if and only if Kindred Hospital invests) and the initial Class C Member are identified on Exhibit A hereto.

(b) No Person shall be eligible to become a Class A Member (or remain a Class A Member, as applicable) unless the following eligibility requirements are satisfied: (1) such Class A Member shall be a physician, licensed and registered, in good standing, to practice medicine in the State of Nevada; (2) such Class A Member shall maintain an active practice of medicine in the greater Las Vegas, Nevada metropolitan area and shall generate approximately thirty-three percent (33%) of his or her medical practice income from performing inpatient and outpatient surgical procedures and perform not less than approximately thirty-three percent (33%) of his or her surgical services at the Facility (such physician shall maintain active privileges at the Facility and at least one hospital within thirty (30) miles of the Facility); (3) such Class A Member shall comply with the Physician Class A Member requirements set forth in Section 2.3 hereof as the Physician Class Requirements; and (4) under applicable law, such Class A Member's ownership shall not disqualify (and, without further action, would not disqualify) the Company or Facility from engaging in operations as a Medicare certified surgical center for any reason or from having such physician perform cases at the Facility. (A physician who meets such requirements may be referred to herein as an "Eligible Physician").

The intent of the one-third tests set forth above is to ensure that a physician is not serving as an indirect referral source with respect to the Company and that physicians actively perform services at the Company. The one-third tests are intended to establish a general standard for physicians based on the Office of Inspector General ("OIG") safe harbors for surgery centers. The Board of Managers, acting in its sole discretion, may waive a Member's compliance with the one-third tests above, if a Member is constrained in complying with the tests due to various factors such as managed care contract exclusion or general practice mix; provided, however, the Board must believe that the Member is acting in good faith to comply with the safe harbors and

statutes and must believe that the Member does not own the Units for the purpose of indirectly referring patients to the Center.

2.5 Physician Class Members as Entities. The Institutional Members agree that a Physician Class Member may invest in the Company through or as an entity ("Entity Investor") and such Entity Investor and its owners must make, agree to and abide by the agreements and make the following representations and warranties, with such additions or modifications as the Board of Managers may require from time to time:

(a) All of the equity interests in the Entity Investor are owned by individual Physician Class Members (the "Individual Physicians Owners");

(b) Each of the Individual Physicians satisfies the requirements for an eligible Class A Member set forth in Sections 2.3 and 2.4 (b) hereof;

(c) Each of the Individual Physicians agrees to be bound by each of the covenants contained in this Agreement, including, without limitation, all confidentiality and non-competition covenants and agrees to abide by the requirements for an eligible Class A Member in Sections 2.3 and 2.4 (b) hereof:

(d) Each of the Individual Physicians has read this Agreement and has had the opportunity to discuss this Agreement with counsel. Each of the Individual Physicians understands the eligibility requirements and other provisions of this Agreement;

(e) The Entity Investor does not distribute income from the Company based on value or volume of referrals.

(f) The Entity Investor may be a trust or pension plan of which the Physician is the grantor; provided if a Terminating Event occurs with respect to the Physician grantor or beneficiary, the trust or plan must redeem the Units in accord with Section 4.3 of this Agreement.

ARTICLE III
Capital Contributions and Liability of Members

3.1 Capital Accounts. A separate Capital Account shall be maintained for each Member, including any Member who shall hereafter acquire an interest in the Company.

3.2 Capital Contributions.

(a) Capital Contributions. Each of the Members shall be required to make a Capital Contribution to the Company in accordance with the following provisions of this paragraph (a). The Capital Contributions are based on the equity needs of the Company and are directly proportional to each Members' Unit ownership in the Company. Capital Contributions shall be made in installments as provided below.

(i) The Class A Members, Class B Member (if and only if Kindred Hospital invests), and Class C Member shall acquire, collectively, one hundred (100) Units for a

Capital Contribution of One Million Dollars ($1,000,000) in the aggregate. The Units shall be sold such that if and only if Kindred Hospital invests, the Class A Members collectively have the right to acquire a total of sixty (60) Units or sixty percent (60%) of the Units (the "Physician Class Units" or "Class A Units"), the Class B Member has the right to acquire a total of twenty-five (25) Units or twenty-five percent (25%) of the Units (the "Class B Units" or "Institutional Class Units"), and the Class C Member has the right to acquire a total of fifteen (15) Units or fifteen percent (15%) of the Units (the "Class C Units"). The Members may acquire fractional Units to maintain their proportion of Unit ownership among the classes of Members. If and only if Kindred Hospital does not invest, the Class A Members collectively shall have the right to acquire a total of eighty (80) Units or eighty percent (80%) of the Units, and the Class C Member shall have the right to acquire a total of twenty (20) Units or twenty percent (20%) of the Units. The Members shall contribute their respective shares of the aggregate Capital Contributions, based on each Member's pro-rata share of the Company, in three (3) equal installments on the following dates: (i) the first installment shall be made on the date this Agreement is executed, (ii) the second installment shall be made on February 1, 2002, and (iii) the third installment shall be on May 1, 2002.

(ii) The Company intends to secure nonrecourse loans to finance certain equipment requirements of the Facility. In the event such nonrecourse financing is unavailable or insufficient, it is hereby agreed and acknowledged that only upon the approval of holders of at least sixty-six percent (66%) of the Class A Units, at least sixty-six percent (66%) of the holders of the Class B Units (if and only if Kindred Hospital invests), and at least sixty-six percent (66%) of the Class C Units, each Member shall be required to guarantee debt of the Facility, solely on a pro-rata and several basis, and in an amount to be agreed upon by the Board of Managers and consented to pursuant to Section 7.4 hereof and, in such event, each Member further agrees, to execute and deliver such agreements and instruments as the Company or the Facility may require with respect to such Member's guarantee; provided, the aggregate debt to which such personal liabilities relate may not exceed One Million Dollars ($1,000,000) without the consent of the holders of more than eighty-five percent (85%) of all of the Membership Units.

(iii) At any time after the initial offering Units are sold to new Members, each Class of Members shall have the right to acquire Units on a proportionate basis to permit the Unit ownership to remain proportionate among the classes of Members. For example, if the Institutional Class Member owns twenty-five percent (25%) of the Company, the Physician Class Members as a class own sixty percent (60%) of the Company, and the Class C Member owns fifteen percent (15%) of the Company, and an additional nine (9) Units are to be sold to a new physician, the Institutional Class Member shall have the right to acquire an additional three and three-quarter (3.75) Units, and the Class C Member shall have the right to acquire an additional two and one-quarter (2.25) Units so as to retain the same proportionate ownership as classes.

(iv) As proportionate ownership changes based on the occurrence of events such as the redemption of Membership Units, non-exercise of the right to acquire Units on a proportionate basis, or for any other reason, such offers shall be made based on the then-proportionate ownership of the classes.

(v) All offerings for this purpose shall be provided to the Members via a written purchase notice. Such purchase notice shall include the specific terms of the offering, which terms shall include, without limitation, the identity of purchasers, the proposed number of Units to be acquired, and price per Unit. Members shall have no more than fifteen (15) days from the receipt of the purchase notice to respond with a check for the tendered amount needed to buy additional Units, if desired. Any subscriber or Member who does not respond to said purchase notice with a check within fifteen (15) days after a purchase notice is received shall be deemed to have waived such purchase right.

Each new physician subscriber shall be required to complete a subscription or purchase agreement, including a counterpart to this Agreement. Such subscription agreement shall evidence the subscriber's acceptance of the terms and conditions of this Agreement and shall be returned to the Company with such new Subscriber's Capital Contribution. If such new subscriber has been accepted by the Company as a Member of the Company, then the Class B Member (if and only if Kindred Hospital invests) and the Class C Member shall be sent a written purchase notice and subscription materials describing the specific terms of such new Member's investment in the Company (e.g., the number of Units to be acquired, the per-Unit price, etc.) so that the Class B Member (if and only if Kindred Hospital invests) and/or Class C Member may exercise their option to maintain ownership in the Company on a proportionate basis.

(b) Loans. Except with the Consent of the Class A Members, the Consent of the Class B Member (if and only if Kindred Hospital invests), and the Consent of the Class C Member(s), no Member or Manager shall be entitled, obligated or required to make any loan to or guarantee for the Company or any Capital Contribution to the Company in addition to his or her Capital Contribution made pursuant to Section 3.2(a) above. No loan made to the Company by any Member or Manager shall constitute a Capital Contribution to the Company for any purpose.

(c) Additional Capital Contributions. Additional required capital contributions may only be required if approved by both the Approval of the Board of Managers and the consent of the holders of more than eighty-five percent (85%) of all Units then issued and outstanding in accord with Section 7.4 hereof.

3.3 No Withdrawal of or Interest on Capital. Except as otherwise provided in this Agreement, (i) no Member shall have any right to demand and receive property of the Company in exchange for all or any portion of his or her Capital Contribution or Capital Account, and (ii) no interest or preferred return shall accrue or be paid on any Capital Contribution or Capital Account.

3.4 Liability of Members. No Member, in his or her capacity as a Member, shall have any liability to restore any negative balance in his or her Capital Account or to contribute to, or in respect of, the liabilities or the obligations of the Company, or to restore any amounts distributed from the Company, except as may be required specifically under this Agreement, the Act or other applicable law. Except to the extent otherwise provided by law, in no event shall any Member, in his or her capacity as a Member, be personally liable for any liabilities or obligations of the Company.

3.5 Managers as Members. No Manager is required to hold any membership interest in the Company in order to serve as a Manager.

3.6 Additional Members. Additional Members may be admitted to the Company only upon the approval, including the terms of admission, of the Board in accordance with the terms of Article VII hereof and upon execution and delivery by the new Member of a counterpart of this Agreement, delivery of the required Capital Contribution (as determined by the Board of Managers) and execution and delivery of such other documents, instruments and items as the Members may require. Issuance of Membership Units to new Members shall be structured in accordance with Section 3.2 hereof. All such issuances shall be structured such that the amount paid for Units is not less than fair market value, payments are made in cash and such that the issuance of Units does not take into account the potential volume or value of referrals to the Facility of the Member.

ARTICLE IV
MEMBERS AND MEMBERSHIP UNITS

4.1 Classification of Members. If and only if Kindred Hospital invests in the Company, there shall be three (3) classes of Members of the Company: a Physician or Class A Member Class, an Institutional or Class B Member Class, and a Class C Member Class. If and only if Kindred Hospital does not invest, there shall be two (2) classes of Members: The Class A Member Class and the Class C Member Class. All Members shall generally have (based on Units held) the same economic rights.

4.2 Withdrawal of a Member. Except in connection with a Non-Adverse Terminating Event, no Member may withdraw or resign from the Company at any time prior to the later of (i) five (5) years after the Facility has obtained its Medicare certification or (ii) the expiration of five (5) years after the date on which such Member became a Member. If a Member withdraws or resigns as a Member in violation of this Section, such Member hereby agrees that such withdrawal or resignation will constitute a breach of this Agreement and an Adverse Termination Event. The Company may offset any damages due to such a breach against any amounts otherwise distributable to such Member in addition to any remedies otherwise available to the Company. No assessment of damages shall account for or be based on the volume or value of business generated by such Member.

4.3 Redemption of a Member.

(a) Termination Events are categorized as either Adverse Terminating Events or Non-Adverse Terminating Events for purposes of differentiating the Company's redemption obligations to the Member to which an event occurs. With respect to an Entity Investor, if an Adverse or Non-Adverse Terminating Event occurs with respect to an Individual Physician Owner of the Entity Investor and the number of Physician Owners to which a Terminating Event has not occurred is less than fifty percent (50%) of the Initial Physician Owners in such Entity Investor, it shall be a Terminating Event which shall require the Entity Investor, to redeem the proportion of Units held by the Entity Investor multiplied by the fraction which is one (1) divided by the then number of equity owners of the Entity Investor who are still owners and who have not had a Terminating Event plus one (1). The purchase price for the redeemed Units shall

be based on whether the Terminating Event applicable to the latest Initial Physician Owner of the Entity Investor was Adverse or Non-Adverse, in accordance with the formula provided in Section 4.3(h) below.

(b) For purposes of this Section, an "Adverse Terminating Event" means:

(i) with respect to any Member:

A. the improper Transfer (or attempted Transfer) of Units;

B. the exclusion, suspension or debarment of a Member from participation in the Medicare, Medicaid Programs or by any Nevada health care licensing authority;

C. the conviction of any felony;

D. any breach of this Agreement;

E. any event of Bankruptcy;

F. the resignation or withdrawal of a Member prior to the later of (i) five (5) years after the Facility has obtained its Medicare certification or (ii) the expiration of five (5) years after the date on which such Member became a Member;

G. Failure to fund a properly approved additional Capital Contribution; or

H. Any withdrawal or resignation by a Member that occurs within a one (1) year period before or after the occurrence of an Adverse Terminating Event relating to such Member.

(ii) with respect to any Physician Class Member:

A. the relocation of the primary site of such Physician Class Member's medical practice to a location more than fifty (50) miles away from the Facility;

B. the revocation or suspension of the Physician Class Member's license to practice medicine in the State of Nevada;

C. the failure by the Physician Class Member to maintain active unrestricted staff privileges at the Facility (or failure to continue to meet all of the requirements set forth in Section 2.3 and 2.4 hereof); or

D. the failure by the Physician Class Member to maintain active, unrestricted staff privileges at a minimum of one (1) hospital within thirty (30) miles of the Facility.

(c) For purposes of this Section, a "Non-Adverse Terminating Event" means:

(i) With respect to any Member, the resignation or withdrawal of a Member after the later of (i) five (5) years after the Facility has obtained its Medicare certification or (ii) the expiration of five (5) years after the date on which such Member became a Member, and such withdrawal or resignation does not occur in the one (1) year period before or after the occurrence of an Adverse Terminating Event relating to such Member.

(ii) With respect to a Physician Class Member:

A. death:

B. adjudication of incompetence; or

C. Disability or Retirement at any time.

(d) Each Termination Event, if subject to cure within thirty (30) days, shall trigger termination only after written notice is provided and if a cure has not been made of the Termination Event within such thirty (30) day period.

(e) If an Adverse Terminating Event shall occur with respect to any Member, the Company may elect, at the Company's sole option (upon written notice to such Member), to purchase the Member's Units, with notice to be provided within sixty (60) days after the Company has received actual knowledge (meaning knowledge of a majority of the Board of Managers) of the occurrence of such Adverse Terminating Event.

(f) If a Non-Adverse Terminating Event shall occur with respect to any Member, the Company shall acquire such Member's Units and the Member shall sell such Units to the Company in accord with the provisions hereof.

(g) If any Member's Units are purchased because of the occurrence of an Adverse Terminating Event, the amount the Company shall pay for the Units owned by such Member shall be the Formula Amount (as defined below) times the Member's Unit Proportion (as defined below), and discounted by forty percent (40%) (the "Purchase Price").

(h) If any Member's Units are purchased because of the occurrence of a Non-Adverse Terminating Event, the amount the Company shall pay for such Units owned by such Member shall be equal to the Formula Amount (defined below) multiplied by the Member's Unit Proportion (defined below). The following formula (the "Formula Amount") is intended to provide a method to approximate fair market value that will minimize disputes and appraisal-related costs and expenses regarding valuation of Units for purposes of redemption. For purposes of this Section 4.3, "Unit Proportion" equals the number of Units held by the Member

divided by all Units then issued and outstanding. The "Formula Amount" for purposes of this Section 4.3 shall be determined as follows: (i) if the Facility has been in operation as a Medicare-certified surgical center for less than one (1) calendar year, the Formula Amount shall be equal to the actual amount of cash equity invested in the Company by all Members, or (ii) if the Company has been in operation as a Medicare-certified surgical center for more than one (1) calendar year, the Formula Amount shall be equal to four (4) times the average of the Company's annual net operating income (in accordance with generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization ("EBITDA") minus the Company's outstanding long term debt and long term liabilities as of the date of the Termination Event determined in accordance with generally accepted accounting principles. For this purpose, the annual net operating income of the Company shall be based on the calendar year of the year immediately prior to the year in which the Termination Event occurs. For example, if the Termination Event occurs in 2003, the Formula Amount shall be calculated using 2002's EBITDA. If the Company has been in operation as a Medicare-certified surgical center for at least two (2) full calendar years, the Formula Amount shall be three (3) times the average of the Company's EBITDA for the most recent two (2) fully completed prior calendar years.

(i) All calculations used to determine the Formula Amount shall be performed by the Company's regularly retained accountants and such calculations shall be final and binding upon all parties to this Agreement. All Members acknowledge and agree that the Formula Amount is an inexact proxy for fair market value and all Members waive any and all rights to contest the use of the Formula Amount for any and all purposes in lieu of an appraisal method.

(ii) The Board of Managers, in its sole discretion, with approval of the holders of at least sixty-six percent (66%) of total Units outstanding, shall have the ability to adjust the multiple used to arrive at the Formula Amount (i.e., the number 4 indicated in Section 4.3(h) above) based on its assessment of the market conditions for surgery centers on an annual basis or whenever determined; provided, once adjusted, the multiple may not be adjusted for the next twelve (12) months; and provided further, a multiple adjustment taking effect after the occurrence of a Termination Event will not affect the Formula Amount with respect to the Member for whom the Termination Event had occurred. Rather, in that case, the multiple shall remain the multiple in effect on the effective date of such Member's Termination Event.

(i) Payments for Units hereunder shall be made as follows: twenty-five percent (25%) on the initial payment date, which shall be within ninety (90) days after the determination of the Valuation Price (the "Purchase Date"), and twenty-five percent (25%) of the Purchase Price on each of the anniversaries of the Purchase Date with interest on the outstanding principal balance accruing at the prime rate as indicated by the Wall Street Journal on the Purchase Date. Payments may be delayed at the direction of the Company to the extent that the Company has insufficient assets as provided by law to make any such payments. Notwithstanding any such delay in the payment of amounts due, the Member's rights as a Member shall cease on the Purchase Date. Aggregate payments to be made in connection with redemption events shall not exceed seven and one half percent (7.5%) of the Company's aggregate collections. If payments are so restricted, payments shall be made in proportion to amounts owed to all Members being redeemed. In sum, notwithstanding the provisions of this

Article, the Company shall not be required to make payments to former Members pursuant to this Section which, in the aggregate, would exceed seven and one half percent (7.5%) of the aggregate collections of the Company for any such period. If the aggregate amount of payments otherwise due to former Members pursuant to this Section would reasonably be expected to exceed this limitation in any calendar year or portion thereof, with the Approval of the Managers, the Company shall pay such former Members, on a pro rata basis, based on the amount still owed such Members, payments totaling seven and one half percent (7.5%) of the Company's anticipated aggregate collections for such period, and the balance of that period's payment obligations to such former Members shall be deferred to the following calendar year or years, until such amounts can be paid without violating such limitation with respect to any such year or years. Within thirty (30) days following the end of each calendar year, the Company shall make a pro rata adjusted payment to the former Members if and to the extent that actual aggregate collections during the prior year (or relevant portion thereof) have exceeded the anticipated amount.

ARTICLE V
Additional Capital

5.1 Funding Capital Requirements.

(a) In the event that the Company requires additional funds to carry out its purposes, to conduct its business, or to meet its obligations, the Company may borrow funds from such lender(s), including Members and the Board of Managers, and on such terms and conditions as are Approved by the Board of Managers, all on such terms as reflect fair market value. It is specifically provided that (except as set forth in Section 3.2 hereof) no such terms or conditions shall impose any personal liability on any Member without the prior written consent of such Member.

(b) A Member or Manager shall have an obligation to give notice of an existing or potential default of any obligation of the Company that he or she becomes aware of to the Board of Managers. No Member or Manager shall be obligated to make any Capital Contributions or loans to the Company (except as provided in Section 3.2 hereof) or otherwise supply or make available any funds to the Company, even if the failure to do so would result in a default of any of the Company's obligations or the loss or termination of all or any part of the Company's assets or business.

5.2 Third Party Liabilities. The provisions of this Article and of Section 3.2 hereof are not intended to be for the benefit of any creditor or other Person (other than a Member in his or her capacity as a Member) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members. Moreover, notwithstanding anything contained in this Agreement, including specifically, but without limitation, this Article V, no such creditor or other Person shall obtain any rights under this Agreement or shall, by reason of this Agreement, make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any Member.

ARTICLE VI
Distributions; Profits and Losses

6.1 Distribution of Company Funds - In General.

(a) Except as necessary to comply with Sections in this Article VI, all Net Operating Cash Flow of the Company over and above Reasonable Reserves shall be distributed at least quarterly to the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding. While the intent is to distribute substantially all available cash flow (minus reserves), in accordance with this Section, at a minimum the Company shall attempt to distribute at least the estimated amount (i.e., forty to forty-two percent (40-42%) of Company net income) as is necessary for Members to meet expected individual tax obligations related to Company income.

(b) Except as necessary to comply with certain of the following Sections in this Article VI, all other cash flow of the Company shall be distributed among the Members of the Company on a pro rata basis based on each Member's Unit proportion as determined by Approval of the Board.

6.2 Distribution Upon Dissolution. Proceeds from a Terminating Capital Transaction and/or other amounts or assets available upon dissolution, and after payment of, or adequate provision for, the debts and obligations of the Company, shall be distributed and applied in the following priority:

(a) First, to fund reserves for liabilities not then due and owing and for contingent liabilities to the extent deemed reasonable by Approval of the Board, provided that, upon the expiration of such period of time as the Board, acting by Approval, shall deem advisable, the balance of such reserves remaining after payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section 6.2; and

(b) Second, to the Members, an amount sufficient to reduce the Members' Capital Accounts to zero, in proportion to the positive balances in such Capital Accounts (after reflecting in such Capital Accounts all adjustments thereto necessitated by (i) all other Company transactions (distributions and allocations of Profits and Losses and items of income, gain, deduction and loss) and (ii) such Terminating Capital Transaction).

6.3 Distribution of Assets in Kind. No Member shall have the right to require any distribution of any assets of the Company in kind. If any assets of the Company are distributed in kind, such assets shall be distributed on the basis of their respective fair market values as determined by the Approval of the Board. Any Member entitled to any interest in such assets shall, unless otherwise determined by the Approval of the Board, receive separate assets of the Company and not an interest as tenant-in-common, with other Members so entitled, in each asset being distributed.

6.4 Allocation of Profits and Losses. After giving effect to the allocations set forth in Sections 6.5 and 6.6 hereof which affect the Members' distributive shares, Profits and Losses shall be allocated among the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding.

6.5 Required Regulatory Allocations.

(a) Limitation on and Reallocation of Losses. At no time shall any allocations of Losses, or any item of loss or deduction, be made to a Member if and to the extent such allocation would cause such Member to have, or would increase the deficit in, any Adjusted Capital Account Deficit of such Member at the end of any fiscal year. To the extent any Losses or items are not allocated to one or more Members pursuant to the preceding sentence, such Losses shall be allocated to the Members to which such losses or items may be allocated without violation of this Section 6.5(a).

(b) Minimum Gain Chargeback. If there is a net decrease in the Minimum Gain of the Company during any fiscal year, then items of income or gain of the Company for such fiscal year (and, if necessary, subsequent fiscal years) shall be allocated to each Member in an amount equal to such Member's share of the net decrease in the Minimum Gain, determined in accordance with Regulations Section 1.704-2(d)(1). A Member's share of the net decrease in the Minimum Gain of the Company shall be determined in accordance with Regulations Section 1.704-2(g). The items of income and gain to be so allocated shall be determined in accordance with Regulations Section 1.704-2(j)(2)(i).

(c) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period (not including any Member Nonrecourse Deductions allocated pursuant to Section 6.5(d) below) shall be allocated among the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding. Solely for purposes of determining each Member's proportionate share of the "excess nonrecourse liabilities" of the Company, within the meaning of Regulations Section 1.752-3(a)(3), the Company Profits shall be allocated among the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding. The items of losses, deductions and Code Section 705(a)(2)(B) expenditures to be so allocated shall be determined in accordance with Regulations Section 1.704-2(j)(1)(ii).

(d) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member who bears the economic risk of loss with respect to the nonrecourse liability, as determined and defined under Regulations Section 1.704-2(b)(4), to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1). The items of losses, deductions and Code Section 705(a)(2)(b) expenditures to be so allocated shall be determined in accordance with Regulations Section 1.704-2(j)(1)(ii).

(e) Member Minimum Gain Chargeback. Notwithstanding any contrary provisions of this Article VI, other than Section 6.5(b) above, if there is a net decrease in Member Minimum Gain attributable to Member Nonrecourse Debt during any fiscal year, then each Member who has a share of such Member Minimum Gain, determined in accordance with Regulations Section 1.704-2(i), shall be allocated items of income and gain of the Company, determined in accordance with Regulations Section 1.704-2(j)(2)(ii), for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to each such Member's share of the net decrease in such Member Minimum Gain, determined in accordance with Regulations Section 1.704-2(i)(3) and 2(i)(5).

(f) Qualified Income Offset. If any Member unexpectedly receives an item described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be allocated to each such Member in an amount and manner sufficient to eliminate, as quickly as possible and to the extent required by Regulations Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit of such Member, provided that an allocation pursuant to this Section 6.5(f) shall only be made if and to the extent that such Member would have an Adjusted Capital Account Deficit after accounting for all other allocations provided for in this Article VI other than that described in this Section 6.5(f).

(g) Basis Adjustment. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to either of Code Sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to said Section of the Regulations.

(h) Gross Income Allocation. If at the end of any Company fiscal year any Member has a Capital Account deficit which is in excess of the sum of the items to be credited to a Member's Capital Account under clause (a) of the definition of Adjusted Capital Account Deficit contained herein, then each such Member shall be allocated items of income and gain in the amount of such excess as quickly as possible provided that an allocation pursuant to this Section 6.5(h) shall only be made if and to the extent that such Member would have a Capital Account deficit in excess of such sum after accounting for all other allocations provided for in this Article VI other than that described in this Section 6.5(h). As among Members having such excess, if there are not sufficient items of income and gain to eliminate all such excess, such allocations shall be made in proportion to the amount of each Member's respective excess.

6.6 Curative Allocations. The allocations set forth in Section 6.5 hereof are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted consistently therewith. Such allocations may not be consistent with the manner in which the Members intend to divide Company distributions and make Profit and Loss allocations. Accordingly, by the Approval of the Board, after effecting the allocations required pursuant to Section 6.5 hereof, other allocations of Profits, Losses and items thereof shall be divided among the Members so as to prevent the allocations in Section 6.5 hereof from distorting the manner in which Company distributions will be divided among the Members pursuant to Sections 6.1 and 6.2 hereof. In general, the Members anticipate that this will be accomplished by specifically allocating other Profits, Losses and items of income, gain, loss and deduction among the Members so that the net amount of allocations under Section 6.5 hereof and allocations under this Section 6.6 to each such Member is zero. However, the Board shall have discretion to accomplish this result in any reasonable manner.

6.7 Tax Allocations and Book Allocations.

(a) Except as otherwise provided in this Section 6.7, for federal income tax purposes, each item of income, gain, loss and deduction shall, to the extent appropriate, be

allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction has been allocated pursuant to the other provisions of this Article VI.

(b) In accordance with Code Section 704(c) and the Regulations thereunder, depreciation, amortization, gain and loss, as determined for tax purposes, with respect to any property whose Book Value differs from its adjusted basis for federal income tax purposes shall, for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value, such allocation to be made by the Approval of all members of the Board in any manner which is permissible under said Code Section 704(c) and the Regulations thereunder and the Regulations under Code Section 704(b).

(c) In the event the Book Value of any property of the Company is subsequently adjusted, subsequent allocations of income, gain, loss and deduction with respect to any such property shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its respective Book Value in the manner provided under Section 704(c) of the Code and the Regulations thereunder.

(d) Allocations pursuant to this Section 6.7 are solely for federal, state, and local income tax purposes, and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

6.8 General Allocation and Distribution Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Approval of all of the Board of Managers using any permissible method under Code Section 706 and the Regulations thereunder. Except as otherwise provided in this Agreement, all items of income, gain, loss, and deduction shall be allocated among the Members in the same proportions as the allocations of Profits or Losses for the fiscal year in which such items are to be allocated.

(b) Upon the admission of a new Member or the Transfer of an interest, the new and old Members or the transferee and transferor shall be allocated shares of Profits and Losses and other allocations and shall receive distributions, if any, based on the portion of the fiscal year that the new or transferred Company interest was held by the new and old Members, or the transferor and transferee, respectively. For the purpose of allocating Profits and Losses and other allocations and distributions, (i) such admission or Transfer shall be deemed to have occurred on the first day of the month in which it occurs or, if such date shall not be permitted for allocation purposes under the Code or the Regulations, on the nearest date otherwise permitted under the Code or the Regulations, and (ii) if required by the Code or the Regulations, the Company shall close its books on an interim basis on the last day of the previous calendar month.

6.9 Tax Withholding. If the Company incurs a withholding tax obligation with respect to the share of income allocated to any Member, (a) any amount which is (i) actually

withheld from a distribution that would otherwise have been made to such Member and (ii) paid over in satisfaction of such withholding tax obligation shall be treated for all purposes under this Agreement as if such amount had been distributed to such Member, and (b) any amount which is so paid over by the Company, but which exceeds the amount, if any, actually withheld from a distribution which would otherwise have been made to such Member, shall be treated as an interest-free advance to such Member. Amounts treated as advanced to any Member pursuant to this Section 6.9 shall be repaid by such Member to the Company within thirty (30) days after the Board, acting by Approval of the Board of Managers, give notice to such Member making demand therefor. Any amounts so advanced and not timely repaid by such Member shall bear interest, commencing on the expiration of said thirty (30) day period, compounded monthly on unpaid balances, at an annual rate equal to the lowest Applicable Federal Rate as of such expiration date. The Company shall collect any unpaid amounts so advanced from any Company distributions that would otherwise be made to such Member.

6.10 Tax Matters Partner. The Board of Managers will designate a "Tax Matters Partner" (as defined in Code Section 6231) of the Company. The Tax Matters Partner is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings (collectively, "Audits"), and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings. The Company shall indemnify and hold harmless the Tax Matters Partner and its directors, officers, employees and agents from and against any loss, expense, damage or injury suffered or sustained by them by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company as Tax Matters Partner, absent the gross negligence of the Tax Matters Partner. The Members specifically acknowledge that the Tax Matters Partner shall not be liable, responsible or accountable in damages or otherwise to the Company or any Member with respect to any action taken by the Tax Matters Partner with respect to an Audit, absent the gross negligence of the Tax Matters Partner.

ARTICLE VII
Management

7.1 Management of the Company. The overall management and control of the business and affairs of the Company shall be vested in the Board, acting by Approval of the Board of Managers, subject to the Management Agreement and to the Member protections indicated in Section 7.4 hereof. All management and other responsibilities not specifically reserved to the Members in this Agreement, or requiring Member Consent, shall be vested in the Board of Managers, and the Members shall have no voting rights except as specifically provided in this Agreement. Each member of the Board shall devote such time to the affairs of the Company as is reasonably necessary for performance by such member of the Board of his or her duties, provided such member of the Board shall not be required to devote full time to such affairs. Moreover, each member of the Board shall act in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in the best interest of the Company.

7.2 Board of Managers. The business and affairs of the Company shall be managed by a governing board (the "Board of Managers" or "Board").

(a) The Board shall be composed of four (4) or five (5) Managers. The Physician Class Members, voting as a class, shall elect three (3) Managers who shall have that number of votes as calculated pursuant to Section 7.3 below. If and only if Kindred Hospital invests, the Institutional Class Member shall appoint one (1) Manager who shall have that number of votes as calculated pursuant to Section 7.3 below, and the Class C Member voting as a Class shall appoint one (1) Manager who shall have that number of votes as calculated pursuant to Section 7.3 below. The powers of the Board in all cases shall be exercised subject to the Member protections indicated in Section 7.4 hereof. Each Manager elected or appointed to the Board shall have the right to sit on the Board and to vote as a Board Manager. Unless terminated sooner, each Board Manager shall serve for a one (1) year term.

(b) There shall be at least one (1) meeting of the Managers per annum and at least one (1) meeting of the Members per annum. The Managers or Members, as applicable, may provide, by resolution, the time and place for the holding of this or additional meetings. Written notice shall be provided to all Managers and Members of such resolution.

Special meetings of the Board of Managers may be called at the request of any Manager upon ten (10) days advance written notice to all other Managers. The time, place and purpose or purposes for such special meeting shall be stated in the notice of such meeting.

Special meetings of the Members also may be called at the request of any Member upon ten (10) days advance written notice to other Members. The time, place and purpose or purposes for such special meeting shall be stated in the notice of such meeting.

(c) Managers representing a majority of Member Units shall constitute a quorum at any meeting of the Board of Managers. Members representing a majority of Member Units shall constitute a quorum at any meeting of the Members.

(d) Regarding Board meetings, Board members may provide a proxy to attend who shall have powers to vote as a Board member. For Physician Class Members, such proxy must be a Member.

(e) A Class A Manager's status as Manager may be terminated at any time, with or without Cause, upon the consent of the holders of at least seventy-five percent (75%) of all Class A Member Units then outstanding. In the event that any Class A Manager ceases to serve as Manager (whether by reason of termination, resignation, removal or any other cause), thereby creating a vacancy in the position of Class A Manager, a replacement shall be elected by the vote of fifty percent (50%) of all Class A Units. If a Class A Member who is also a Manager has his or her interest in the Company terminated for any reason whatsoever, then such Class A Manager shall be removed and a new Manager elected by the vote of fifty percent (50%) of all Class A Units.

(f) If and only if Kindred Hospital invests in the Company, a Class B Manager's status as Manager may be terminated at any time, with or without Cause upon the consent of the holders of at least seventy-five percent (75%) of all Class B Member Units then

outstanding. In the event that a Class B Manager ceases to serve as Manager (whether by reason of termination, resignation, removal or any other cause), thereby creating a vacancy in the position of Class B Manager, the Class B Member shall designate a successor Class B Manager to fill such vacancy.

(g) A Class C Manager's status as Manager may be terminated at any time, with or without Cause upon the consent of the holders of at least seventy-five percent (75%) of all Class C Member Units then outstanding. In the event that a Class C Manager ceases to serve as Manager (whether by reason of termination, resignation, removal or any other cause), thereby creating a vacancy in the position of Class C Manager, the Class C Member shall designate a successor Class C Manager to fill such vacancy.

(h) A Member who holds Units in more than one Class shall be allowed to appoint only one (1) Manager of the Company. If that Manager is appointed by the Class B Member, that Manager can only be removed in accordance with Section 7.2(f) hereof and if that Manager is appointed by the Class C Member, that Manager can only be removed in accordance with Section 7.2(g) hereof. For purposes of applying this paragraph, a Manager shall be deemed to have that voting interest and Units as the Member who appointed the Manager.

(i) No Manager may resign from, retire from, abandon or otherwise terminate his or her status as a Manager except after thirty (30) days' written notice to the Member or Class of Members who appointed him or her or to the Company, unless such Member or the Company otherwise consents in writing.

(j) The election of Managers shall be conducted at any duly convened meeting of the Members. Termination of a Manager pursuant to Section 7.2(e), 7.2(f) or 7.2(g) hereof shall be conducted as follows:

(i) Any Member may call a special meeting of the Members for purpose of calling for the termination of a Manager pursuant to Section 7.2(e), 7.2(f) or 7.2(g) as applicable. At such special meeting, the Members of the class who appointed such Manager shall vote on the termination of the Manager in question; such Manager shall be immediately terminated if the holders of at least seventy-five percent (75%) of the Units in the class who elected him such manager vote affirmatively for the Manager's termination. Consistent with and subject to Sections 7.2(e), 7.2(f) and 7.2(g) hereof, as applicable, the class of Members who appointed such Manager shall designate a successor Manager to fill such vacancy.

(k) Managers representing a majority of Member Units shall constitute a quorum at any meeting of the Board of Managers. Board members may provide a proxy to attend who shall have powers to vote as a Board manager.

(l) No Manager may resign from, retire from, abandon or otherwise terminate his or her status as a Manager except after thirty (30) days' written notice to the Member or class of Members who appointed such manager, unless such class of Members otherwise consents in writing.

7.3 Manner of Exercise of Board's Authority. All responsibilities granted to the Board of Managers under this Agreement shall be exercised by the Board of Managers as a body,

and no member of the Board of Managers, acting alone, shall have the authority to act on behalf of the Board of Managers. The Board shall act by the vote of the Board of Managers representing Members holding a majority of Units. For example, if a member of the Board is appointed by a class of Members owning twenty-five (25) Units, he or she (if he or she is the sole representative of the Class) will be accounted twenty-five (25) votes in any vote. For the Board members elected by the Physician Class Members, such Board members shall have that number of Units as is equal to the total number of Physician Class Units then outstanding divided by the number of Board members elected by the Physician Class Members (i.e., three (3)). For the Board member appointed by the Institutional Class Member and the Class C Member, such Board member shall have that number of votes as is equal to the total number of Institutional Class Units or Class C Units then outstanding divided by the number of Board members appointed by the Institutional Class Member or Class C Member, as applicable (i.e. one (1)). If and only if Kindred Hospital does not invest, there shall be no Board Members elected by the Institutional Class Member, and the Institutional Class Member shall have no Board rights.

None of the following actions shall be taken by the Company except upon Approval by the Board of Managers, subject to the Management Agreement and to the Member protections indicated in Section 7.4 hereof:

(a) Borrow money and otherwise obtain credit and other financial accommodations in the ordinary course of the business of the Company;

(b) Perform or cause to be performed all of the Company's obligations under any agreement to which the Company is a party, including, without limitation, any obligations of the Company or otherwise in respect of any indebtedness secured in whole or in part by, or by lien on, or security interest in, any asset(s) of the Company;

(c) Employ, engage, retain or deal with any Persons in the capacity of employees, agents, brokers, accountants, lawyers or in such other capacity as may be necessary or desirable;

(d) Appoint individuals to act as officers of the Company and delegate to such individuals such authority to act on behalf of the Company and such duties and functions as would normally be delegated to officers of a corporation holding similar offices;

(e) Adjust, compromise, settle or refer to arbitration any claim in favor of or against the Company or any of its assets, make elections in connection with the preparation of any federal, state and local tax returns of the Company, and institute, prosecute, and defend any legal action or any arbitration proceeding;

(f) Acquire and enter into any contract of insurance necessary or proper for the protection of the Company and/or any Member and/or any Manager/or any Board member, including, without limitation, to provide the indemnity described in Section 7.8 hereof or any portion thereof;

(g) To make elections in connection with the preparation of any federal, state and local tax returns of the Company, and to institute, prosecute, and defend any legal action or any arbitration proceeding;

(h) To establish a record date for any distribution to be made under Article VI; and

(i) To cause Units in the Company to be issued in accord with Section 3.2 and 3.6 hereof.

(j) To perform any other act which the Board may deem necessary or desirable for the Company or its business.

7.4 Restrictions. Notwithstanding any other provision in this Agreement to the contrary, the Company shall not take any of the following actions without written consent or vote of Members holding at least sixty-six percent (66%) of the Units issued and outstanding in each separate class of Units (provided, however, if a Person, other than the Members or their Affiliates, purchases or otherwise acquires by a sale, exchange, merger or by public offering more than fifty-one percent (51%) of the Units, actions of the Members under this Section 7.4 (other than Section 7.4(e), which shall remain subject to the vote of holders of more than eighty-five percent (85%) of all Units)shall require the vote of Members holding at least fifty-one percent (51%) of the Units issued and outstanding in each separate class of Units):

(a) Except as contemplated by Article IV hereof, authorize, or set aside any sums for, the purchase, repurchase, redemption or other acquisition by the Company of any Member's Units of any class or make loans or distributions to Members;

(b) Authorize a merger, consolidation or similar combination with any other entity, or authorize the sale of all or substantially all the assets of the Company or the dissolution or liquidation of the Company;

(c) Approve a recapitalization, reclassification, reorganization, split or other similar event affecting the Units;

(d) Effect any Bankruptcy event with regard to the Company;

(e) Require a Member to make an additional Capital Contribution or personally guarantee an obligation of the Company, provided, however, that the actions in this Section 7.4(e) or the requirement to guarantee any amount pro rata in excess of $1,000,000 in aggregate pursuant to this Section 7.4(e) shall require the vote of holders of more than eighty-five percent (85%) of all Units then outstanding in the Company and the vote of eighty-five percent (85%) of all holders to amend such provision; except for payments under a duly approved management agreement or medical director agreement;

(f) Pay any compensation to any Member or Affiliate or enter into any transaction with a Member or Affiliate, except to the extent that all Members are paid compensation on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding;

(g) Enter into, amend or terminate any arrangement or agreement with any Company administrator, management company, consulting company or other senior executive of the Company, provided, the Class B (if and only if Kindred Hospital invests) and Class C

Member shall not utilize this provision to unreasonably withhold consent to the appointment of another management company or administrator and, provided further, this qualification does not serve as a waiver of any of the rights and obligations set forth in the management agreement between the Class C Member and the Company;

(h) Except for purely technical amendments, amend this Agreement or the Articles of Organization of the Company;

(i) Adjust, arbitrate, compromise, sue, defend, abandon, or otherwise deal with and settle any and all claims in favor of or against the Company, as the Board shall, in its sole discretion, deem proper; and

(j) Appoint a liquidator, waive any Member obligations or approve the Transfer of Units.

7.5 Binding the Company. Any action taken by a member of the Board with Approval of the Board, or, where so required, by the Consent of the Members, shall bind the Company and any other Board members and shall be deemed to be the action of the Company.

7.6 Compensation of Managers and Members. No direct or indirect payment shall be made by the Company to any Board member, Member, or officer of the Company, or to any Affiliate of any Board member, Member, or officer of the Company, for such Board member's, Member's, or officer's services as a Member, Board member or officer. Each Board member and officer shall be entitled to reimbursement from the Company for all expenses incurred by such Board member or officer in managing and conducting the business and affairs of the Company. Also, it is intended that the Class C Member will have a contract to manage the Facility substantially in the form of Exhibit B hereof.

7.7 Contracts with Affiliated Persons. Subject to Section 7.4, the Company may enter into one or more agreements, leases, contracts or other arrangements with any Member, Manager or Affiliated Person for the furnishing to or by the Company of goods, services or space, and may pay compensation thereunder for such goods, services or space, provided in each case the amounts payable thereunder are reasonably comparable to those which would be payable to unaffiliated Persons under similar agreements. If the determination of such amounts is made in good faith, it shall be conclusive absent manifest error.

7.8 Indemnification. The Company shall indemnify the officers and Board of Managers of the Company, and the officers, directors and shareholders of any Manager which is a corporation in accordance with applicable law and the articles of organization, by-laws and other governing documents of such corporation, for any liability incurred and/or for any act performed by them within the scope of the authority conferred on them by this Agreement, and/or for any act omitted to be performed, except for their gross negligence or willful misconduct, which indemnification shall include all reasonable expenses incurred, including reasonable legal and other professional fees and expenses. The doing of any act or failing to do any act by an officer or a Board member, the effect of which may cause or result in loss or damage to the Company, if done in good faith to promote the best interests of the Company,

shall not subject the officer or Board member to any liability to the Members except for gross negligence or willful misconduct.

7.9 Other Activities. Subject to any other restrictions set forth in this Agreement, the Members, Managers and any Affiliates of any of them may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others as long as they do not violate Article X hereof. Neither the Company nor any other Member or Manager shall have any rights in or to such ventures or opportunities or the income or profits therefrom.

7.10 Audited Financial Statements. The Board shall authorize and cause to be prepared audited financial statements on an annual basis. Each Member, upon request, shall have the right to inspect such audited financial statements.

ARTICLE VIII
Officers

8.1 Number; Election; Resignation. The Company shall have a President, a Treasurer, a Secretary, and such other officers as the Board may in its discretion create. All officers shall be elected annually by the Board, acting by Approval, at any duly convened meeting of the Board. Regarding the selection of officers, the Managers shall consider the skill, qualifications, dedication, and loyalty of officer candidates. With respect to such officers, the Managers shall select only those individuals who, in the Managers' sole opinion, shall best promote and advance the interests of the Company. Each officer shall hold office for one (1) year and until their successors are chosen and qualified, unless terminated earlier pursuant to Section 8.4 hereof and except as otherwise provided at the meetings respectively at which they are elected or appointed. Any officer may resign by delivering a written resignation to the Company at its office, or to the Managers, and such resignation shall be effective upon receipt, unless it is specified to be effective at some other time or upon the happening of some other event. A director or officer may serve consecutive terms if elected or so appointed.

8.2 Same Person Holding Two or More Offices. To the extent permitted by the Act, any two or more of the offices referred to in this Section may be filled by the same person.

8.3 Officers Need Not Be Members or Managers. Except as otherwise provided by the Act, any person shall be eligible for election to be an officer of the Company without the necessity of being a Member or Board member.

8.4 Removal of Officers. Any officer may be removed by the Board, acting by Approval, with or without cause.

8.5 Vacancies. In case a vacancy in any office shall occur due to any cause, the Board of Managers, acting by Approval, may elect a person to fill such vacancy who shall hold office until the date on which the office would ordinarily be filled, and until a successor is chosen and qualified.

8.6 President. The President shall be the chief executive officer of the Company and shall, subject to the provisions set forth hereinafter, have the authority to oversee such

administrative activities and to take such administrative actions as shall be customary for a chief executive officer. The President shall perform such additional duties as may be delegated by the Board of Managers or as may be imposed by law. It shall be the duty of the President, and the President shall have the power to see to it, that all orders and resolutions of the Board are carried into effect. The President, as soon as reasonably possible after the close of each fiscal year, shall submit to the Board a report of the operation of the Company for such year and a statement of its affairs, and the President shall, from time to time, report to the Board all matters within the President's knowledge which the interests of the Company may require to be brought to its notice.

8.7 Treasurer. The Treasurer shall, subject to the supervision and control of the Board of Managers, have custody of the funds and of all the valuable papers of the Company. The Treasurer shall keep the accounts of the Company in a clear manner, and the Treasurer shall, at all times, when requested by the Board of Managers, exhibit a true statement of the affairs of the Company. Except as the Board of Managers may otherwise order, the Treasurer shall sign and/or endorse all promissory notes, bills, checks, drafts, trade acceptances, and bankers' acceptances, and the Treasurer may execute all deeds, mortgages, reports, contracts, agreements, and other legal documents of the Company, but the Board of Managers may authorize any other officer or officers, or agent or agents, to sign any obligations, instruments, or papers on behalf of the Company, and/or may limit the authority of the Treasurer in any of said matters. The Treasurer shall perform such other duties as may be delegated to the Treasurer by the Board or as may be imposed by law. When the Treasurer shall be absent or for any other reason unable to perform the Treasurer's duties, the Treasurer may appoint any other officer of the Company to act as Temporary Treasurer, and said Temporary Treasurer shall have all the duties herein delegated to the Treasurer during the term of the Treasurer's appointment.

8.8 Secretary. The Secretary shall keep the records of the Company, of its Members, and of the Board of Managers and shall perform such duties and have such powers additional to the foregoing as the Board shall designate.

ARTICLE IX
Fiscal Matters

9.1 Books and Records. The Company shall engage the services of a certified public accounting firm ("Accounting Firm") which shall keep complete and accurate books and records of the Company, using the same methods of accounting which are used in preparing the federal income tax returns of the Company to the extent applicable and otherwise in accordance with generally accepted accounting principles consistently applied. Such books and records shall all be maintained and updated monthly, and shall be available, in addition to any documents and information required to be furnished to the Members under the Act, at an office of the Company or the Accounting Firm for examination and copying by any Member, or such Member's duly authorized representative, upon reasonable request therefor and at the expense of such Member. Alternately, copies of such books, records, documents and information shall be sent by the Company to any Member, or such Member's duly authorized representative, upon reasonable request therefor and at the expense of such Member. The Company shall keep at its registered office all items required pursuant to the laws governing Nevada limited liability companies. Within one hundred twenty (120) days after the end of each fiscal year of the Company, each

Member shall be furnished with audited financial statements which shall contain a balance sheet as of the end of the fiscal year and statements of income and cash flows for such fiscal year. Any Member may, at any time, at such Member's own expense, cause an audit or review of the Company books to be made by a certified public accountant of such Member's own selection.

9.2 Bank Accounts. Bank accounts and/or other accounts of the Company shall be maintained in such banking and/or other financial institution(s) as shall be selected by Approval of the Board, and withdrawals shall be made and other activity conducted on such signature or signatures as determined by Approval of the Board. Any and all records with respect to such bank accounts and/or other accounts, including, but not limited to, copies of any checks written on such account or records of other withdrawal activity, shall be available at an office of the Company or the Accounting Firm for examination and copying by any Member, or his or her duly authorized representative, upon reasonable request therefor and at the expense of such Member. Alternately, copies of such records shall be sent by the Company to any Member, or a Member's duly authorized representative, upon reasonable request therefor and at the expense of such Member.

9.3 Fiscal Year. The fiscal year of the Company shall end on December 31 of each year.

ARTICLE X
Transfer and Redemption of Interests and Admission of New Members

10.1 Restriction on Transfers. Except as otherwise indicated in this Article X, no Member may sell, Transfer, pledge, hypothecate, gift or otherwise dispose of or encumber all or any portion of such Member's Membership Units without the prior written consent of the holders of at least sixty-six percent (66%) of all of the Membership Units (the Member proposing to Transfer his or her Units shall be entitled to vote); provided, however, any Class A Transfer must be to a person who meets the requirements set forth at Sections 2.3 and 2.4 hereof, and any decision shall not take into account the volume or value of referrals of a transferee. Provided further, that the Class B Member (if and only if Kindred Hospital invests) and the Class C Member may not withhold consent to the Transfer of Class A Units as long as such Transfer does not result in the reduction of the number of Physician Class Members, and the transferee meets the requirements of Sections 2.3 and 2.4 hereof and any other Physician Class eligibility requirements hereunder.

10.2 Transferability of Units.

(a) Any Transfer of Units in violation hereof shall be treated as an Adverse Terminating Event. The Units of a Member, and any interest of such Member's spouse in such Units, shall remain subject to this Agreement regardless of the termination, for any reason, of the marital relationship of any Member and the Member's spouse. During the marriage of the Member and such Member's spouse, such Member's obligations to sell or offer to sell Units pursuant to this Agreement shall include any interest of such Member's spouse in the Units. Any Units Transferred in contravention of this Section shall be void of all voting, inspection and other rights with respect to the pledgee/transferee and any such Transfer shall be null and void ab initio

and shall be subject to purchase by the Company as a Terminating Event. Each spouse of a Physician Class Member shall sign a Consent of Spouse form, substantially in the form of Exhibit C hereto, agreeing to be bound by the terms hereof including, without limitation, the term providing that ownership by a spouse is not permitted. Any transferor must sign a counterpart to this Agreement, agreeing to be bound by the terms hereof prior to such Transfer being deemed effective.

Notwithstanding the foregoing, the Class B Member (if and only if Kindred Hospital invests) or Class C Member (including and with respect to all Class A Units held by such Class B or Class C Member) which owns the interests hereof may transfer its Units to an Affiliate (or a purchaser of any significant portion of its stock or assets, or in any merger, consolidation or public offering transaction or as part of any gratuitous transfer if for a gratuitous transfer the transferor receives no consideration in exchange for such interest) as long as the transferor and the transferee agree to remain bound by all of the terms hereof.

Further, Regent Investment, LLC shall be permitted to transfer its Units to Regent Surgical Health, LLC.

(b) The Class B or Class C Member may not Transfer its Class B or C Units, without obtaining Transfer Consent, to any individual or entity engaging or intending to engage in the business of providing outpatient or ambulatory surgical services within fifteen (15) miles of the Center ("Competitor") or to the owners of such Competitor.

(c) Further, notwithstanding the foregoing, any Member may pledge his, her, or its Units to a bank or financial institution.

10.3 Irreparable Harm. Each Member specifically acknowledges that a breach of Section 10.1 hereof would cause the Company and the Members to suffer immediate and irreparable harm, which could not be remedied by the payment of money. In the event of a breach or threatened breach by a Member of the provisions of Section 10.1 hereof, the Company or other Members shall be entitled to injunctive relief to prevent or end such breach, without the requirement to post bond. Nothing herein shall be construed to prevent the Company or other Members from pursuing any other remedies available to it for such breach or such threatened breach, including the recovery of damages, reasonable attorneys' fees and expenses. Any such Transfer shall be an Adverse Terminating Event.

10.4 Assignee of a Member's Membership Units. If, notwithstanding the prohibitions in Section 10.1 hereof, a Member Transfers all or any portion of its Membership Units (whether voluntarily, involuntarily or by operation of law, including, but not limited to, the death, divorce, Disability, merger, or bankruptcy of a Member) and a Person acquires such Membership Units, (but is not admitted as a substituted Member pursuant to the terms of this Agreement) such Person shall:

(a) be treated as an assignee of a Member's Membership Units, as provided in the Act and not as a Member of the Company (unless the provisions of Section 10.5 have been met);

(b) have no right to participate in the business and affairs of the Company or to exercise any rights of a Member under this Agreement or the Act;

(c) share in distributions from the Company with respect to the transferred Membership Units on the same basis as the transferring Member previously had; and

(d) be required to Transfer the Units to the Company in accord with the redemption provisions hereof relating to Adverse Terminating Events.

10.5 Admission of Transferees. Subject to the Transfer permitted in Section 10.1 hereof, a transferee (not already a Member) may be admitted to the Company as a substituted Member only with the prior written consent of the holders of at least sixty-six percent (66%) of all Units then issued and outstanding (the transferee shall not be entitled to vote); provided, Units of the Institutional Class Member or Class C Member may be transferred to any Affiliate or party related to the Institutional Class Member or Class C Member as applicable, as indicated in Section 10.1 hereof.

10.6 Obligations of Permitted Transferees. In the case of any approved Transfer or disposition of Units, the transferee shall execute and deliver an appropriate instrument agreeing to be bound by this Agreement as a Member and such additional agreements or instruments as the Board of Managers may require. Any permitted transferee of Units shall receive and hold such Units subject to this Agreement and all of the restrictions, obligations and rights created hereunder, and the Members and each transferee shall be bound by their obligations under this Agreement with respect to each subsequent transferee.

10.7 Noncompetition. During the term of a Member's membership in the Company, whether a Class A Member, Class B Member or Class C Member, and for a period of two (2) years thereafter, other than through the Company, no Member shall, without the prior written Approval of the Board and the Consent of the Members, and in accordance with Section 7.4 hereof, directly or indirectly own, manage, operate, control or participate in any manner in the ownership, management, operation or control of, or serve as a partner, employee, principal, agent, consultant or otherwise contract with, or have any financial interest in, or aid or assist any other person or entity that operates an ambulatory surgical center, surgical hospital or a facility (including an office or practice based facility which is accredited, licensed or Medicare-certified) that provides services of the type provided by the Company, within fifteen (15) miles of the address of the Facility ("the Territory")), nor may a Member own or operate equipment in his or her office of the type used by the Facility. The preceding sentence shall not be construed to prevent a Physician Class Member or any of its Affiliates from practicing medicine and performing procedures at any location, including any inpatient or outpatient setting, or in such Physician Class Member's or its Affiliates office, as long as such Physician Class Member is not an owner, employee, contractor of, and does not have any financial relationship with, and such office does not constitute, a licensed, accredited, or Medicare-certified ambulatory surgery center or surgical hospital within the Territory; provided further, a physician may perform a procedure under local anesthesia with no sedation in his or her office (as long as a site of service differential is paid), as long as the office is not accredited, licensed or Medicare certified as an ambulatory surgery center or surgical hospital.

If Kindred Hospital invests, this restriction shall not restrict the Institutional Class Member from offering and providing outpatient surgical services in its hospital located at 2250 Flamingo Road. However, the Hospital shall not be permitted to enter into another joint venture with physicians relating to the provision of outpatient surgical or endoscopy services in the Territory. Further the Members may jointly develop a Surgery Center to be located within the Territory as long as all Members are offered the opportunity to invest in the proportion and on the same terms as provided herein; it being understood that certain of the Physician Class Members and the Class C Members are establishing a Surgery Center in the territory and the Class B Institutional Class Member has not yet determined if it will invest therein.

10.8 Confidential Information. Each Member acknowledges that the Confidential Information is valuable property of the Company and undertakes that for so long as he, she or it is a Member, and thereafter until such information otherwise becomes publicly available other than through breach of this Section, shall:

(a) treat the Confidential Information as secret and confidential;

(b) not disclose (directly or indirectly, in whole or in part) the Confidential Information to any third party except with the prior written consent of the Company;

(c) not use (or in any way appropriate) the Confidential Information for any purpose other than the performance of the business of the Company and otherwise in accordance with the provisions of this Agreement;

(d) recognize and acknowledge that the Company's trade secrets and other confidential or proprietary information, as they may exist from time to time, are valuable, special and unique assets of the Company's business. Accordingly, during the term of the Company, each Member shall hold in strict confidence and shall not, directly or indirectly, disclose or reveal to any person, or use for such Member's own personal benefit or for the benefit of anyone else, any trade secrets, confidential dealings or other confidential or proprietary information of any kind, nature or description (whether or not acquired, learned, obtained or developed by a Member alone or in conjunction with others) belonging to or concerning the Company, or any of its customers or clients or others with whom they now or hereafter have a business relationship, except: (i) with the prior written consent of all the other Members; (ii) in the course of the proper performance of the Member's duties hereunder; or (iii) as required by applicable law or legal process. Each Member confirms that all such information constitutes the exclusive property of the Company.

Given the secretive and competitive environment in which the Company does business and the fiduciary relationship that the Members have with the Company, each Member agrees to promptly deliver to the Company, at any time when the Company so requests, all memoranda, notes, records, drawings, manuals and other documents (and all copies thereof and therefrom) in any way relating to the business or affairs of the Company or any of its customers and clients, whether made or compiled by such Member or furnished to it by the Company or any of its employees, customers, clients, consultants or agents, which such Member may then possess or have under its control. Each Member confirms that all such memoranda, notes, records, drawings, manuals and other documents (and all copies thereof and therefrom) constitute the

exclusive property of the Company. Notwithstanding the foregoing paragraph or any other provision of this Agreement, each Member shall be entitled to retain any written materials received by such Member in its capacity as a Member; and

(e) limit the dissemination of and access to the Confidential Information to such of the Company's and the Member's officers, directors, managers, employees, agents, attorneys, consultants, professional advisors or representatives as may reasonably require such information for the performance of Company business and ensure that any and all such persons observe all the obligations of confidentiality contained in this Section 10.8.

(f) "Confidential Information" means any and all policies, procedures, contracts, quality assurance techniques, plans, market studies, projections, pro formas, managed care initiatives, strategies, utilization management, physician lists, patient records, credentialing, financial, statistical and other information of the Company, including (but not limited to) information embodied on magnetic tape, computer software or any other medium for the storage of information, together with all notes, analyses, compilations, studies or other documents prepared by the Company or others on behalf of the Company containing or reflecting such information. Confidential Information does not include information which:

(i) was lawfully made available to or known by a third person on a non-confidential basis prior to disclosure by a Member;

(ii) is or becomes publicly known through no wrongful act of a Member;

(iii) is received by a Member from a third party other than in breach of confidence.

(g) The Class C Member may use Confidential Information for other purposes if the source of such Confidential Information is not identified to the Facility or used in competition against the Facility.

10.9 Nonsolicitation. During the term of a Member's membership in the Company and for a period of two (2) years thereafter, no Member nor any of its Affiliates shall employ or offer employment to any person who is employed by the Company during the term of this Agreement without the prior written Consent of the Members. It is specifically provided that this Section 10.9 shall not prohibit the Class C Member from soliciting the Facility Administrator.

10.10 Additional Covenants.

(a) If a court of competent jurisdiction should declare this Article X, or any provision hereof, unenforceable because of any unreasonable restriction of duration, activity and/or geographical area, then the Parties hereby acknowledge and agree that such court shall have the express authority to reform this Agreement to provide for reasonable restrictions and/or grant the Company such other relief at law or in equity, reasonably necessary to protect the interests of the Company.

(b) Each Member specifically acknowledges that a breach of this Article would cause the Company and other Members to suffer immediate and irreparable harm, which could not be remedied by the payment of money. In the event of a breach or threatened breach by a Member of any of the provisions of this Article, the Company and other Members shall be entitled to injunctive relief to prevent or end such breach, without the requirement to post bond, and shall be entitled to recover reasonable attorneys' fees and expenses. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or such threatened breach, including the recovery of damages.

(c) Each Member warrants and represents that he, she or it:

(i) is familiar with the confidentiality agreement and non-competition agreements agreement contained herein.

(ii) has concluded that the Member's obligations and the Company's rights and remedies described herein, including, without limitation, the right to equitable relief contained herein, are reasonable.

(iii) is fully aware of the duties, responsibilities, obligations and liabilities imposed by this Article X.

(iv) acknowledges that the covenants contained herein are fair, reasonable and just, under the circumstances, and are not a penalty.

(v) acknowledges that no registration statement is now on file with the Securities and Exchange Commission with respect to any Units in the Company, and the Company has no obligation or current intention to register such Units under the Federal Securities Act 1933 ("33 Act").

(vi) acknowledges that the Units have not been registered under the 33 Act because the Company believes such Units are not securities in that all Members will be actively involved in the operation and management of the Company and, further, if securities are deemed to be issued, such Units are issued in reliance upon the exceptions from registration requirements of the 33 Act providing for issuance of securities not involving a public offering, together with any corresponding exemptions of the Nevada Securities Act.

(vii) acknowledges that the Member is acquiring such Units solely for investment and not resale, the Member is an accredited investor (if an actual person, he or she earned more than $200,000 per year individually in each of the last two years, and expects to earn more than such amount this year), has experience and sophistication in financial matters sufficient to evaluate the merits and risks of the investment, and can afford to lose his, her or its entire investment and has not learned of this investment through any general solicitation or advertising. The Company has relied upon the fact that the Units in the Company are to be held by the Members solely for investment and on each of the representations made hereby.

(viii) acknowledges that the exemptions from registration under the 33 Act would be unavailable if the Units in the Company were acquired by a Member with a view to distribution.

(ix) acknowledges that this Agreement does not conflict with or violate any other agreement to which the Member is party.

(x) acknowledges that, notwithstanding any provision to the contrary in this Agreement, no Member may resell his, her or its Units within twelve (12) months of the purchase of such Units.

(xi) acknowledges that the Member expects to be substantially involved in the operations of the Company, and does not expect a return on his, her or its investment due to the efforts of others.

(xii) acknowledges that entering into this Agreement will not require the Company to be bound by any other agreement (and does not violate any other Agreement) to which the Member is a party, such as a collective bargaining agreement, an anesthesia agreement or any other agreement.

(d) The Institutional Class Member (if and only if Kindred Hospital invests) and the Class C Member each further represents, warrants and covenants to the Company, the Board of Managers and all other Members that the appropriate approval to enact this Agreement has been obtained from such Member's independent governing board and any other duly constituted authority from whom such approval is required or necessary for such Member to enact this Agreement and for such Member to be bound hereby.

(i) Each Member has read the Risk Factors attached to the subscription agreement for purchase of Units.

10.11 Drag Along Rights. Notwithstanding anything in this Agreement to the contrary, the following provisions shall apply to the Members:

(a) At any time after the date of this Agreement, if the Class C Member receives an offer from a Person (the "Third Party Purchaser") to purchase or otherwise acquire all of the Class C Member's Units in the Company, whether by purchase or exchange, or by the merger or consolidation of the Class C Member with or into any other Person or Persons (a "Purchase Offer"), and the Class C Member desires to accept such Purchase Offer, then the Class C Member shall deliver written notice of such desire to the Class A Members and Class B Member (if and only if Kindred Hospital invests) (collectively the "Other Members"), together with a copy of the Purchase Offer (an "Affirmative Buy-Out Notice"). The Other Members shall have fifteen (15) days from the date of receipt of the Affirmative Buy-Out Notice to provide written notice (the "Acceptance Notice") to the Class C Member of their desire to sell to the Third Party Purchaser that number of Units equal to forty-two and one-half percent (42.5%) of the collective Units (or 36 Units of all of the issued and outstanding Units) of the Other Members at a price set forth in the Purchase Offer. If and only if Kindred Hospital does not invest, the Class A Members shall sell the Third Party Purchaser that number of Units equal to thirty-eight and seventy-five one hundredths percent (38.75%) of the collective Units (or thirty-one percent (31%) of all issued and outstanding Units) of the Class A Members. The number of Units to be sold by each class of the Other Members under this Section 10.11 shall equal the pro-rata share of Units owned by such class compared to all Units owned by the Other Members. For example,

assuming the Class A Members own, in the aggregate, sixty (60) Units and the Class B Member owns twenty-five (25) Units out of a total one hundred (100) Units issued and outstanding in the Company, the Other Members shall be obligated to sell forty-two and one-half percent (42.5%) of their Units or thirty-six (36) Units in the aggregate. Accordingly, on an individual class basis (as may be adjusted from time to time for the then respective ownership of the classes), the Class A Members shall be required to sell twenty-five and four tenths (25.4) of the Class A Units and the Class B Member shall be required to sell ten and six tenths (10.6) of the Class B Units. Upon the timely delivery of the Acceptance Notice to the Class C Member, the Other Members shall be obligated to sell the required number of Units to the Third Party Purchaser on a date determined by the Class C Member and such Third Party Purchaser, but in any event not more than sixty (60) days after the date the Affirmative Buy-Out Notice is given to the Other Members. The Other Members may sell and retain fractional Units in order to comply with the requirements of this Section.

If Units are sold such that a Third Party Purchaser gains a majority ownership in the Company, the Third Party Purchaser shall acquire the right of the Class C Member to appoint a Manager to the Board. Such Manager shall have the number of votes as calculated pursuant to the first paragraph of Section 7.3 hereof.

(b) If the Other Members do not timely provide the Class C Member with the Acceptance Notice, then the Class C Member may elect, by written notice to the Other Members, to require the Company to purchase all of the Units of the Class C Member at a price equal to the Purchase Offer on the same terms as stated therein. The closing of a purchase pursuant to this Section 10.11(b) will be held at the principal office of the Company on a date determined by the Class C Member and the Company, but in any event not more than thirty (30) days after the date the Affirmative Buy-Out Notice is given to the Other Members. If the Class C Member's Units are purchased hereto, such Units shall be paid for in cash at the closing. The Institutional Class C Member shall have the right to specifically enforce this obligation.

ARTICLE XI
Dissolution and Termination

11.1 Events Causing Dissolution. The Company shall be dissolved and its affairs wound up upon the first to occur of the following events unless the Board approves the continuation of the Company:

(a) The sale or other disposition of all or substantially all of the assets of the Company, unless the disposition is a transfer of assets of the Company in return for consideration other than cash and, by Approval of the Board, a determination is made not to distribute any such non-cash items to the Members;

(b) The election for any reason to dissolve the Company made by Approval of the Board, including the Consent of the Members pursuant to Section 7.4 hereof;

(c) When there is no remaining Member, unless the holders of all the financial rights in the Company agree in writing, within ninety (90) days after the cessation of

membership of the last Member, to continue the legal existence and business of the Company and to appoint one or more new Members;

(d) Any consolidation or merger of the Company with or into any entity unless the Company is the resulting or surviving entity; or

(e) Entry of a decree of judicial dissolution.

To the greatest extent permitted by law, no event (including without limitation the death, resignation, expulsion, bankruptcy, or dissolution of the Member) shall cause automatic dissolution of the Company. Further, upon Board approval, any event giving rise to automatic dissolution shall not cause dissolution if the Board votes that it shall not cause dissolution.

11.2 Procedures on Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the Articles shall be canceled in the manner set forth in the Act. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business and the affairs of the Company shall be conducted so as to maintain the continuous operation of the Company pursuant to the terms of this Agreement. Upon dissolution of the Company, the Board acting by Approval, or, if none, a liquidator elected by the Consent of the Members, shall liquidate the assets of the Company, apply and distribute the proceeds thereof pursuant to Article VI hereof, and cause the termination of the Agreement.

ARTICLE XII
General Provisions

12.1 Notices. Any and all notices under this Agreement shall be effective (a) on the fifth (5th) business day after being sent by registered or certified mail, return receipt requested, postage prepaid, or (b) on the first business day after being sent by express mail, telecopy, or commercial expedited delivery service providing a receipt for delivery. All such notices in order to be effective shall be addressed, if to the Company at its principal office, if to a Member at the last address of record on the Company books, and copies of such notices shall also be sent to the last address for the recipient which is known to the sender, if different from the address so specified. A Member may change its address for purposes of this Agreement by giving the other Members notice of such change in the manner herebefore provided for the giving of notices.

12.2 Word Meanings. The words "herein," "hereinafter," "hereinbefore," "hereof" and "hereunder" as used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. All section references, except as otherwise provided herein, are to sections of this Agreement.

12.3 Binding Provisions. Subject to the restrictions on transfers set forth herein, the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, Legal Representatives, successors and assigns.

12.4 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada, including, but not limited to, the Act, as interpreted by the courts of the State of Nevada, notwithstanding any rules regarding choice of law to the contrary.

12.5 Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the original or the same counterpart.

12.6 Separability of Provisions. Each provision of this Agreement shall be considered separable. If for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and if for any reason any provision or provisions herein would cause the Members to be liable for or bound by the obligations of the Company, such provision or provisions shall be deemed void and of no effect.

12.7 Section Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

12.8 Amendments. This Agreement may be amended or modified only with the Approval of the Board and the Members (as limited by Section 7.4 hereof).

12.9 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

12.10 Waiver of Partition. Each Member agrees that irreparable damage would be done to the Company if any Member brought an action in court to dissolve the Company. Accordingly, each Member agrees that such Member shall not, either directly or indirectly, take any action to require partition or appraisement of the Company or of any of the assets or properties of the Company, and notwithstanding any provisions of this Agreement to the contrary, each Member (and such Member's successors and assigns) accepts the provisions of this Agreement as such Member's sole entitlement on termination, dissolution and/or liquidation of the Company and hereby irrevocably waives any and all rights to maintain any action for partition or to compel any sale or other liquidation with respect to such Member's interest, in or with respect to, any assets or properties of the Company. Each Member further agrees not to petition a court for the dissolution, termination or liquidation of the Company.

12.11 Survival of Certain Provisions. The Members acknowledge and agree that this Agreement contains certain terms and conditions which are intended to survive the dissolution and termination of the Company, including, but without limitation, the provisions of Sections 10.7 through 10.10. The Members agree that such provisions of this Agreement, which by their terms require, given their context, that they survive the dissolution and termination of the Company so as to effectuate the intended purposes and agreements of the Members hereunder, shall survive notwithstanding that such provisions had not been specifically identified as surviving and notwithstanding the dissolution and termination of the Company or the execution of any document terminating this Agreement, unless such document specifically provides for

nonsurvival by reference to this Section 12.11 and to the specific provisions hereof which are intended not to survive.

12.12 No Impairment. The Company shall not amend, modify or repeal any provision of the Articles or this Agreement in any manner which would alter or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Class A, Class B or Class C Members, without the express prior written consent of holders of a majority of the Units of the class so impacted in each and every such instance; nor shall the Company, through any reorganization, transfer of assets, merger, dissolution, issue, sale or distribution of Units or any other voluntary action, avoid or seek to avoid the observance or performance of any terms of this Agreement that are for the benefit of the Class A, Class B (if and only if Kindred Hospital invests) or Class C Members, without the express prior written consent of the holders of the majority of the class impacted in each and every such instance. The Company shall in good faith take any and all actions which are necessary or appropriate in order to protect the rights of the Class A, Class B (if and only if Kindred Hospital invests) or Class C Members.

12.13 Specific Performance or Injunctive Relief. The Members and the Company hereby declare that it is impossible to measure in money the damages which may accrue to one or more of them by reason of the failure of a Party to perform any of its obligations hereunder. Therefore, if any Party hereto shall institute any action or proceeding to enforce the provisions of this Agreement, any person (including the Company) against whom such action or proceeding is brought hereby waives the claim or defense therein that such Party has or may have an adequate remedy at law and agrees not to urge in any such action or proceeding that such a remedy exists. Furthermore, any Party seeking to enforce the provisions of this Agreement shall have the right to specific performance, injunctive or other equitable relief without the requirement to post bond.

12.14 Dispute Resolution; Limited Renegotiation. Except for disputes relating to breaches of Sections 10.7 through 10.9 hereof, all disputes shall be resolved in accordance with the provisions of this Section 12.14.

This Agreement shall be construed to be in accordance with any and all federal and state statutes, including Medicare, Medicaid and all federal and state rules, regulations, principles and interpretations applicable to the Company and the Members, and the relationships among them. It is the intent of this Section 12.14 to set forth a procedure so that if certain legal developments occur, or certain circumstances arise in which the Board of Managers should become internally deadlocked, a procedure will be in place that will bring the terms of this Agreement back into legal compliance and/or resolve a Board of Managers deadlock while preserving, to the extent possible, the economic and governance relationships set forth here.

In the event there is any dispute among the parties or there is any legal development, including, without limitation, a change in (or the interpretation of) Medicare, Medicaid or other federal or state statutes, rules, regulations, principles or interpretations, that renders any of the material terms of this Agreement unlawful or unenforceable (including any services rendered or compensation to be paid hereunder), or a definitive judicial or State of Nevada interpretation of Nevada law that substantially affects the business, governance, or economics of the Company in an adverse manner (collectively a "Negative Legal Development"), or any circumstance in which the Board itself is deadlocked in its decision making hereunder and cannot take action (a

"Deadlock Event" and the failure to take such action is likely to lead to irreparable harm to the Company), any Member affected by such Negative Legal Development or such Deadlock Event shall have the immediate right, upon notice to the other Members, (the "Notice") to initiate the renegotiation of the affected term or terms of this Agreement, so as to remedy the impact of the Negative Legal Development or to seek resolution of the Deadlock Event, each in a manner that substantially maintains the then existing economic and governance relationships of the Members, if it is legal to accomplish the change while maintaining substantially such economic and governance relationship.

If the Parties are not able to renegotiate the affected terms of the Agreement or resolve the Deadlock Event or dispute on a mutually satisfactory basis within ninety (90) days after the Notice, the Parties must submit the issue (the "Dispute") to mediation and arbitration pursuant to the procedure set forth below. The arbitrator selected in accordance with the provisions set forth below (the "Arbitrator") will be asked to determine the following: (a) whether there is a bona fide Negative Legal Development or Deadlock Event; (b) if so, are there modifications to the affected term or terms of the Agreement (the "Modifications") or a resolution of the Deadlock Event ("Resolution") that are legal and will resolve the Dispute in a manner that substantially maintains the then existing economic and governance relationships of the Members; and (c) if there are curative Modifications or a Resolution, what is the Resolution or the specific Modifications to each term of this Agreement.

(a) Right to Mediate or Arbitrate. Any dispute between the Parties relating to this Agreement must first be submitted to non-binding mediation in accordance with procedures agreed upon by the Parties. If the dispute is not resolved through mediation within ninety (90) days of the initial request for mediation, or within a time frame mutually agreed upon by the Parties, the dispute must then be submitted for binding arbitration in accordance with procedures set forth by the American Health Lawyers Association.

(b) Pre-Arbitration Procedure.

(i) Any dispute shall be submitted to arbitration by notifying the other Party or Parties, as the case may be, hereto in writing of the submission of such dispute to arbitration (the "Arbitration Notice"). The Party delivering the Arbitration Notice shall specify therein, to the fullest extent then possible, its version of the facts surrounding the dispute and the amount of any damages and/or the nature of any injunctive or other relief such Party claims.

(ii) The Party (or Parties, as the case may be) receiving such Arbitration Notice shall respond within sixty (60) days after receipt thereof in writing (the "Arbitration Response"), stating its version of the facts to the fullest extent then possible and, if applicable, its position as to damages or other relief sought by the Party initiating arbitration.

(iii) The Parties shall then endeavor, in good faith, to resolve the dispute outlined in the Arbitration Notice and Arbitration Response. In the event the Parties are unable to resolve such dispute within sixty (60) days after receipt of the Arbitration Response, the Parties shall initiate the arbitration procedure outlined below.

(c) Arbitration Procedure.

(i) If the Parties hereto are unable to resolve the dispute within sixty (60) days after receipt of the Arbitration Response as set forth above, then the Parties must submit the dispute to binding arbitration in accordance with the American Health Lawyers arbitration program. If the Parties are unable to agree on an arbitrator within sixty (60) days after receipt of the Arbitration Response, each of the Parties shall, within sixty (60) days after receipt of the Arbitration Response, choose an arbitrator selector ("Selector"). The two Selectors shall then have thirty (30) days to select an arbitrator who shall serve as the final arbitrator for the dispute. (The arbitrator chosen by the Parties hereto or by the Selectors, as the case may be, shall hereinafter be referred to as the "Arbitrator"). The Arbitrator shall not be an Affiliate of any of the Parties hereto.

(ii) The arbitration shall be held in Las Vegas, Nevada. The Parties shall submit to the Arbitrator the Arbitration Notice and the Arbitration Response and any other facts regarding the dispute which any Party desires.

(iii) The Arbitrator shall apply the arbitration rules set forth below in making his or her decision. The decision of the Arbitrator shall be rendered within sixty (60) days of the close of the hearing record, shall be in writing and shall contain findings of fact and conclusions of law.

(d) Arbitration Rules.

(i) The Arbitrator shall allow reasonable discovery, which he or she determines is necessary for determination of the issues presented.

(ii) The Arbitrator shall agree to resolve all factual disputes prior to resolving legal disputes.

(iii) The Arbitrator shall be guided by, and shall substantially comply with, the then-applicable Federal Rules of Evidence.

(iv) The Arbitrator is empowered to include in any award made hereunder such relief as the Arbitrator deems appropriate (other than punitive damages), including, without limitation, (i) injunctive relief in addition to or in lieu of monetary damages and (ii) reasonable attorneys' fees and expenses.

(v) Should any Party refuse or neglect to appear or participate in the arbitration proceedings, including the procedures relating to the selection of an Arbitrator, the participating Party may select the Arbitrator and the Arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented.

(vi) The Arbitrator's award shall be in a form sufficient to clearly inform the Parties of the Arbitrator's decision.

(e) Arbitrator's Award. The award of the Arbitrator shall be binding on the Parties and may be entered as a final judgment in a court of competent jurisdiction.

(f) Other Disputes. All disputes relating to breaches of Sections 10.7 through 10.9 hereof shall be resolved by a court of law with the site of venue, without the right to remove or change venue, in Las Vegas, Nevada.

12.15 Waiver of Ross & Hardies Conflict. Ross & Hardies ("R&H") has acted as lead counsel in developing the documentation to form the Company. In this regard, the Parties acknowledge that R&H has informed each Member that a conflict of interest exists in R&H's representation in such formation and that each Member has been advised to seek outside counsel and business advice to review all documents relating to the Company and to advise each Member as to the effects, consequences and legalities of the documents. Further, it is expected that the Class A Members and Class B Member (if and only if Kindred Hospital invests) will engage counsel to negotiate the terms of this Agreement on their behalf. It is also acknowledged that R&H provides counsel to the Class C Member and will not negotiate on behalf of the Company any terms of the agreement between the Company and the Class C Member and, further, that a Member in R&H owns interests in Regent Investment, LLC. (provided all voting power in Regent Investment, LLC is provided to Regent Surgical Health for all purposes herein) and that such ownership can create a conflict of interest between the Company and the Class C Member, and thus R&H shall not represent the Company in enforcing the rights of the Company against the Class C Member or any other action between the Company and the Class C Member.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Board of Managers and the Members hereto have executed this Agreement under seal as of the day and year first above written. This Agreement shall be binding upon each Person who signs below even if all persons do not sign who are indicated below.

CLASS A MEMBERS:

WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF WRCBSS INVESTMENT, LLC

Matthew NO, M. D.

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

_____

Carl Williams, M.D.

_____

Michael Crovetti, M.D.

_____

Kevin Rayls, M.D.

_____

~~Robert Grzywacz, M.D.~~ Robert WONG, M. D

_____

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By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

Charles Tadlock, M.D.

Carl Williams, M.D.

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Michael Crovetti, M.D.

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Robert Grzywacz, M.D.

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WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

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Charles Tadlock, M.D.

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Carl Williams, M.D.

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Michael Crovetti, M.D.

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By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

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Charles Tadlock, M.D.

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Carl Williams, M.D.

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Michael Crovetti, M.D.

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Kevin Ravis, M.D.

_____

Robert Orszovacz, M.D.

_____

Robert WANG M.D.

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By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

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Charles Ladlock, M.D.

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Carl Williams, M.D.

_____

Michael Crovetti, M.D.

_____

Kevin Royls, M.D.

_____

Robert Grzywacz, M.D.

_____

THE COMPANY:

FLAMINGO-PECOS SURGERY CENTER, LLC
By:_____
Its:_____

CLASS B MEMBER:

KINDRED HOSPITAL LAS VEGAS*

By:_____

Its:_____

CLASS C MEMBER:

REGENT SURGICAL HEALTH, LLC

By:_____

Its:_____

REGENT INVESTMENT MANAGEMENT, ~~INC~~ (Scott Beaver)

By:_____

Its:_____

*The signature of the Class B Member shall only be required if Kindred Hospital is an investor.

EXHIBIT C

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement ("Agreement") and that I understand its contents. I am aware that the Agreement contains provisions whereby my spouse agrees to sell all his/her interest, of any form, in Flamingo-Pecos Surgical Center, LLC (the "Company"), including, if any, our community interest in it, upon the occurrence of certain events, and that the Agreement also imposes restrictions on the transfer of such ownership interest. I hereby consent to any sale of my spouse's interest in the Company pursuant to the Agreement, approve of the provisions of the Agreement, and agree that our community property interest, if any, is subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement in relation to that interest. Further, in the event of dissolution of my marriage or other event which necessitates the division of marital community property, I will assert no right, claim or other entitlement to the interest of my spouse in the Company so that full ownership of the interest therein shall thereafter remain with my spouse as his/her separate property notwithstanding that it may be subject to valuation for the purpose of achieving a fair and equitable division of our community property.

I AM AWARE THAT THE LEGAL, FINANCIAL AND OTHER MATTERS CONTAINED IN THE AGREEMENT ARE COMPLEX AND I AM FREE TO SEEK ADVICE WITH RESPECT THERETO FROM INDEPENDENT COUNSEL. I HAVE EITHER SOUGHT SUCH ADVICE OR DETERMINED AFTER CAREFULLY REVIEWING THE AGREEMENTS THAT I WILL WAIVE SUCH RIGHT.

Name of Member: [illegible] WEILER

Name of Spouse: [illegible] TRIA WEILER

Signature of Spouse: _____

Name of Witness: _____

Signature of Witness: _____

Date: _____

EXHIBIT C

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement ("Agreement") and that I understand its contents. I am aware that the Agreement contains provisions whereby my spouse agrees to sell all his/her interest, of any form, in Flamingo-Pecos Surgical Center, LLC (the "Company"), including, if any, our community interest in it, upon the occurrence of certain events, and that the Agreement also imposes restrictions on the transfer of such ownership interest. I hereby consent to any sale of my spouse's interest in the Company pursuant to the Agreement, approve of the provisions of the Agreement, and agree that our community property interest, if any, is subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement in relation to that interest. Further, in the event of dissolution of my marriage or other event which necessitates the division of marital community property, I will assert no right, claim or other entitlement to the interest of my spouse in the Company so that full ownership of the interest therein shall thereafter remain with my spouse as his/her separate property notwithstanding that it may be subject to valuation for the purpose of achieving a fair and equitable division of our community property.

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Name of Member: Charles Henry Tadlock

Name of Spouse: Mary Eleanor Tan

Signature of Spouse: Mary Eleanor Tan

Name of Witness: _____

Signature of Witness: _____

Date: _____

EXHIBIT C

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement ("Agreement") and that I understand its contents. I am aware that the Agreement contains provisions whereby my spouse agrees to sell all his/her interest, of any form, in Flamingo-Pecos Surgical Center, LLC (the "Company"), including, if any, our community interest in it, upon the occurrence of certain events, and that the Agreement also imposes restrictions on the transfer of such ownership interest. I hereby consent to any sale of my spouse's interest in the Company pursuant to the Agreement, approve of the provisions of the Agreement, and agree that our community property interest, if any, is subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement in relation to that interest. Further, in the event of dissolution of my marriage or other event which necessitates the division of marital community property, I will assert no right, claim or other entitlement to the interest of my spouse in the Company so that full ownership of the interest therein shall thereafter remain with my spouse as his/her separate property notwithstanding that it may be subject to valuation for the purpose of achieving a fair and equitable division of our community property.

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Name of Member: Matthew Ng, M.D.

Name of Spouse: Bonnie Ng

Signature of Spouse: Bonnie N. Ng

Name of Witness: _____

Signature of Witness: _____

Date: _____

FIRST AMENDMENT TO OPERATING AGREEMENT

THIS FIRST AMENDMENT TO OPERATING AGREEMENT ("Amendment") is made and entered into on this ___ day of _____, 2002 and amends the Operating Agreement dated December 10, 2001 ("Agreement") of Flamingo-Pecos Surgery Center, LLC, a Nevada limited liability company (the "Company"). This Amendment has been approved in accordance with Sections 7.4 and 12.8 of the Agreement.

WITNESSETH:

WHEREAS, the Company has entered into a Lease Agreement ("Agreement") dated as of May 23, 2002 with Transitional Hospitals Corporation of Nevada, Inc.;

WHEREAS, certain default provisions of the Lease require the Company to remove a Member under certain circumstances in order to avoid an Event of Default under the Lease;

WHEREAS, the Resolutions of the Company adopted by the Members and Managers of the Company on April 22, 2002 authorize the Board of Managers to make such changes to the Agreement as are necessary to enable Company to comply with Article XV of the Lease;

WHEREAS, Sections 7.4 and 12.8 of the Agreement provide that the Agreement can be amended upon approval of the Board of Managers and the written consent of Members holding at least sixty-six percent (66%) of the Units issues and outstanding in each separate class of Units; and

WHEREAS, terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW, THEREFORE, in accordance with the Agreement, the parties hereto agree that the Agreement shall be amended as follows:

Section 1. The Agreement is hereby amended by inserting the following language at the end of Section 4.3(c)(i), after the word "Member" and before the period:

> "; or the removal of a Member pursuant to Article XV of the Lease Agreement between Company and Transitional Hospitals Corporation of Nevada, Inc. dated as of May 23, 2002 ("Lease"); where such removal is required to avoid termination of the Lease pursuant to Sections 15.1.10 , 15.1.14 or 15.1.15 of the Lease (or other Lease Sections); provided, such removal may be expedited as needed to avoid a termination of the Lease, and upon such expedited removal, the Member shall be deemed removed immediately upon notice from the Board (a Board meeting for such purpose may be called upon three (3) days notice to the Board), but may arbitrate after such removal any dispute related thereto; provided, however, if such removal is due to an event that is also an Adverse Terminating Event pursuant to Section 4.3(b) hereof,

such removal shall be treated as an Adverse Terminating Event hereunder."

Section 2. The Agreement is amended only to the extent set forth herein, and all other terms of the Agreement shall remain the same and are not affected by this Amendment. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control.

Section 3. This Amendment may be executed in two (2) or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

Section 4. This Amendment shall be governed by the laws of the State of Nevada.

Section 5. This Amendment shall be effective as of the date first set forth above.

* * * *

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

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Regent Surgical Health, LLC

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Regent Investment Management, Inc./Scott Becker

By: _____

Vern Prochaska, M.D.

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MEMBERS OF THE BOARD:

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Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fisher, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

Ben Venger, M.D.

Sheldon J. Freedman, M.D.

Charles Tadlock, M.D.

Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

Paul Chao, M.D.

Sheldon Freedman, M.D.

Matthew Ng, M.D.

Robert Wang, M.D.

Michael Fishel, M.D.

Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By _____

Its _____

Regent Investment Management, Inc./Scott Becker

By _____

SECOND AMENDMENT TO OPERATING AGREEMENT OF FLAMINGO-PECOS SURGERY CENTER, LLC

This **SECOND AMENDMENT TO OPERATING AGREEMENT** ("Consent") of Flamingo-Pecos Surgery Center, LLC, is hereby entered into as of this ____ day of June, 2006 (the "Effective Date"), by and among the undersigned Members of Flamingo-Pecos Surgery Center, LLC, d/b/a Surgery Center of Southern Nevada, a Nevada limited liability company ("Company"). All capitalized terms used herein but not otherwise defined shall have the respective meanings set forth in the Operating Agreement (as defined below).

WHEREAS, the Company and the Members are parties to that certain Operating Agreement, dated as of December 10, 2001, as amended from time to time (the "Operating Agreement");

WHEREAS, pursuant to the exception to Section 7.4 of the Operating Agreement, amendments to the Operating Agreement require the written consent or vote of Members holding at least sixty-six percent (66%) of the Units issued and outstanding in each separate class of Units; and

WHEREAS, the Members desire to delete Section 10.11 of the Operating Agreement, and Regent Surgical Health, LLC ("Regent"), as a show of good faith and collegiality, agrees to such amendment of the Operating Agreement.

NOW, THEREFORE, the Members of the Company hereby Consent, adopt, ratify, and approve the following resolution:

RESOLVED, that Regent, as a show of good faith and collegiality, hereby agrees with the Members that Section 10.11 of the Agreement, regarding drag-along rights, shall be and hereby is deleted in its entirety, and such amendment is fully ratified, adopted and approved.

(Signature page to follow.)

IN WITNESS WHEREOF, all of the Members of the Company have executed the foregoing Amendment and Consent as of the date first written above.

CLASS A MEMBERS:

ATAGA FOUR, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

Steve Johnston, M.D.

Sheldon Friedman, M.D.

Laurie Larsen, M.D.

Scott Slavis, M.D.

Gerald Higgins, M.D.

Ivan Karabachev, M.D.

Matthew Ng, M.D.

Timothy Tolan, M.D.

Michael Fishell, M.D.

Larry Goldstein, M.D.

John Thalgott, M.D.

CLASS C MEMBERS:

REGENT SURGICAL HEALTH, LLC

By: _____

Its: _____

REGENT INVESTMENT MANAGEMENT, INC./ SCOTT BECKER

By: _____
Scott Becker, President

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MARC P. COOK
Nevada State Bar No. 004574
GEORGE P. KELESIS
Nevada State Bar No. 000069
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517 S. 9th Street
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Email: mcook@bckltd.com
Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

FLAMINGO-PECOS SURGERY CENTER, LLC a Nevada limited liability company, Plaintiff, vs. WILLIAM SMITH MD, an individual; PANKAJ BHATANAGAR MD, an individual; MAJORIE BELSKY MD, an individual; SHELDON FREEDMAN MD, an individual; MATHEW NG MD, an individual; DANIEL BURKHEAD MD, an individual; and DOE MANAGERS, DIRECTORS, AND OFFICERS 1-25, ROE BUSINESS ENTITIES 1-25; Defendant.	CASE NO. A-17-750926-B DEPT. NO. XV **DEFENDANT SHELDON J. FREEDMAN'S MOTION TO DISMISS PURSUANT TO N.R.C.P. 12(b)(5) and 12(b)(6) AND FOR ATTORNEYS FEES PURSUANT TO NRS 18.020** Hearing Date: Hearing Time:

COMES NOW, Defendant Sheldon J. Freedman, by and through his attorney of record, Marc P. Cook, Esq., of the law firm of Cook & Kelesis, Ltd., files the following Motion to Dismiss pursuant to Nev.R.Civ.P. 12(b)(5) and Nev.R.Civ.P. 12(b)(6).

This Motion is based on papers and pleadings on file herein, the following points and authorities, and upon oral argument of counsel at the time of the hearing of the motion.

Dated this 27 day of June, 2017.

COOK & KELESIS, LTD.

By : _____

MARC P. COOK
Nevada State Bar No. 004574
GEORGE P. KELESIS
Nevada State Bar No. 000069
517 S. 9th Street
Las Vegas, Nevada 89101
Attorneys for Defendant, Sheldon J. Freedman

NOTICE OF MOTION

TO: THE PARTIES HERETO, and

TO: THEIR RESPECTIVE COUNSEL.

PLEASE TAKE NOTICE that the undersigned will bring the foregoing **DEFENDANT SHELDON J. FREEDMAN'S MOTION TO DISMISS PURSUANT TO N.R.C.P. 12(b)(5) and 12(b)(6) AND FOR ATTORNEYS FEES PURSUANT TO NRS 18.020** on for hearing before the above-entitled court on the 1 day of Aug, 2017, at the hour of 9:00 a.m., in Department XV, or as soon thereafter as counsel may be heard.

Dated this _____ day of June, 2017.

COOK & KELESIS, LTD.

By :_____

MARC P. COOK
Nevada State Bar No. 004574
GEORGE P. KELESIS
Nevada State Bar No. 000069
517 S. 9th Street
Las Vegas, Nevada 89101
Attorneys for Defendant Sheldon J. Freedman

POINTS AND AUTHORITIES

I.

INTRODUCTION

Plaintiff Flaming-Pecos Surgery Center is a revoked entity.[1] This action was initiated, not for the benefit of the named Plaintiff, but to collect sums owed to a creditor of the Plaintiff, Patriot-Reading Associates LLC, a Delaware limited liability company ("Patriot"). The Plaintiff is actually in receivership under the control of a Receiver who has initiated this action to collect on behalf of Patriot. This Complaint is improper for a number of reasons and must be dismissed.

A motion to dismiss for failure to state a claim must be granted when it appears to a certainty that a plaintiff is not entitled to relief under any set of facts which could be proved in support of the claim. See *Stockmeier v. Nevada Dep't of Corrections,* 124 Nev. 313, 183 P.3d 133 (2008); *Pankopf v. Peterson,* 124 Nev. 43, 175 P.3d 910 (2008); *Vacation Village, Inc. v. Hitachi Am., Ltd.*, 110 Nev. 481, 874 P.2d 744; *Tahoe Village Homeowners Ass'n v. Douglas Cty.*, 106 Nev. 660, 799 P.2d 556 (1990).

When evaluating a 12(b)(6) motion to dismiss, the pleader is entitled to the presumption of truth. However, to be proper, allegations in a complaint may not simply recite the elements of the cause action, but must contain sufficient allegations of underlying facts to give fair notice and to enable the opposing party to defend itself effectively. See e.g., *Starr v. Baca*, 652 F.3d. 1202 (9 th Circ. 2011). Second, the factual allegations taken as true must plausibly suggest an entitlement to relief such that it is not unfair to require the opposing party to be subjected to the expense of discovery and continuing litigation. *Id.* A complaint must set forth sufficient facts to establish all necessary elements of a claim for relief. *Hay v. Hay*, 100 Nev. 196, 678 P.2d 672 (1984).

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[1] See Secretary of State printout attached hereto as Exhibit "A" and incorporated herein by this reference.

Dismissal under Rule 12(b)(5) is proper where the allegations in the complaint are insufficient to establish the elements of a claim for relief. *NRCP 12(b)(5); Stockmeier*, 124 Nev. 30, 183 P.3d 133 (2008). Here, dismissal is warranted as to the claims pled.

II.

FACTUAL BACKGROUND

In March 2017, Patriot-Reading Associates LLC ("Patriot"), a Delaware limited liability company sued Plaintiff, Flamingo-Pecos Surgery Center, LLC ("Surgery Center"), a revoked Nevada entity, in Case No. A-16-733627-B. When the Surgery Center defaulted, Patriot obtained a Default Judgment and requested the appointment of a Receiver for the Surgery Center. The Receiver was appointed in September, 2016.

The Receiver, appointed on behalf of Patriot, a third-party creditor, filed the present action. There is no dispute the Receiver has undertaken this lawsuit to collect sums for the benefit of Patriot and is not acting by and through the members of the Surgery Center. The Surgery Center's entity status is "revoked".

This action is purely an effort by a third party creditor to try to circumvent the provisions of NRS § 86, et seq. In Patriot's efforts to ignore NRS 86, the company alleges that the members and managers should be liable for their actions as managers and directors of the Surgery Center.[2] The stated justification for obtaining liability is the allegation that they are responsible for a rogue manager who stole from the Surgery Center. Specifically, ¶ 20 of the Complaint alleges that Robert Barnes ("Barnes") pled guilty to embezzling and stealing funds from the Surgery Center in his capacity as office manager. Thus, it is the allegation of this Delaware company through the Receiver that because these local doctors, with their own medical practices, were managers, directors and participants in the Surgery Center they are liable for the acts of the Chief Operating Officer who stole money out from under them.

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[2] See ¶¶ 23 through 27 of the Complaint.

Barnes' theft led to litigation arising from various personal guarantees some of these members were alleged to have signed.[3] Moreover, not only were some of the managing members forced into bankruptcy[4] based on this theft, but now, a Delaware creditor alleges that these individual Defendants should somehow have to pay a third party creditor for the LLC's debt because someone stole from the company.

Paragraph 21 of the Complaint advises that Barnes was hired in 2006. It is clear he was no longer with the company by the end of 2013. The Complaint alleges that "Barnes embezzled and stole vast sums of Plaintiff's funds and assets. Barnes admitted in subsequent criminal proceedings (brought by the U.S. Government), that he ... embezzled at least $1.2 million during the course of his crime spree over many years." It is evidently the position of Patriot, through the Receiver that the members of the company, the victims of the crime, are now responsible to the Surgery Center's default creditors.

Plaintiff's assertions are unconscionable, and fly in the face of law and facts. Accordingly, all claims must be dismissed.

III.

NEVADA REVISED STATUTES PREVENT THIS ACTION

An employee of the Surgery Center embezzled and defrauded the entity for over a million dollars. He was ultimately terminated for the same and went to prison with an Order for restitution. That appears to be the underlying basis for a Delaware creditor of the Surgery Center to hold individual members liable. However, this theory flies in the face of NRS § 86.

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[3] See case styled Michael G. Valpiani v. Flamingo-Pecos Surgery Center, LLC, Charles H. Tadlock, William D. Smith, and Stuart S. Kaplan, et al, District Court Case No. A-14-698938-C, JPMORGAN CHASE BANK, N.A. v. Flamingo-Pecos Surgery Center, LLC, Jason E. Garber, Mario F. Tarquino, Marjory E. Belsky, and William D. Smith, et al, District Court Case No. A-14-700424-C, and Desmed, LLC v. William D. Smith, M.D., District Court Case No. A-15-723445-C.

[4] See In Re: Charles H. Tadlock and Mary E. Tadlock, Bankruptcy Court Case No. BK-S-15-13135-ABI.

NRS 86.371 advises that "unless otherwise provided in the articles of organization or an agreement signed by the member or manager to be charged, no member or manager of any limited-liability company formed under the laws of the State is individually liable for the debts or liabilities of the company." Further, NRS 86.381 states that a "Member of company is not proper party in proceeding by or against company; exception. A member of a limited liability company is not a proper party to proceedings by or against the company, except where the object is to enforce the member's right against or liability to the company."

NRS 86.391 states that a member is liable to a limited liability company only for the "difference between the member's contribution to capital as actually made and as stated in the articles of organization or operating agreement as having been made" and "[f]or any unpaid contribution to capital which the member agreed in the articles of organization or operating agreement to make in the future at the time and on the conditions stated in the articles of organization or operation." Finally, NRS 86.391(3) advises that liabilities of a member can only be waived by consent of all members.

The above cited statutes protect the Surgery Center members from the liability asserted here. This is not a dispute alleging members did not pay their initial capital. Therefore, there is zero basis to bring the members into this case.

Accordingly, a third party creditor, the Delaware LLC, Patriot, is trying to get paid from the LLC by suing its members. The limitations of NRS § 86 prevent any such recovery. Accordingly, this matter must be dismissed from the Complaint.

IV.

THE OPERATING AGREEMENT

The Surgery Center is governed by its Operating Agreement.[5] The Operating Agreement specifically advises in Section 3.4 that "no member in his or her capacity as a member, shall have any liability to restore any negative balance in his or her Capital Account or to contribute to, or in

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[5] See Operating Agreement, bates stamped FREEDMAN0001-FREEDMAN0078 attached hereto as Exhibit "B" and incorporated herein by this reference.

respect of, the liabilities or the obligations of the Company, or to restore any amounts distributed from the Company, except as may be required specifically under this Agreement, the Act or other applicable law. Except to the extent otherwise provided by law, in no event shall any Member, in his or her capacity as a Member, be personally liable for any liabilities or obligations of the Company."[6] As was outlined hereinabove, there is no other circumstances that would provide for any liability asserted by the Plaintiff here. Accordingly, this Complaint fails on the entities own behalf as a result of the Surgery Center's Operating Agreement.

Moreover, in the event that the Court were to ignore NRS § 86 and Section 3.4 of the Operating Agreement the result under the indemnification paragraph of paragraph 7.8 would require the LLC to indemnify its members for this litigation and for any damages from this litigation. Specifically, under the indemnification, the entity would have to pay costs and damages on behalf of the directors. (*See 7.8*). Thus, even ignoring 3.4 and NRS § 86, this would be at best an exercise of futility in that the entity (by and through the Receivers), would pay for the individual members defense in this case and then pay any judgment back to itself.

V.

PLAINTIFF'S CAUSES OF ACTION DO NOT MEET THE STATUTE OF LIMITATIONS RESTRICTION

Plaintiffs allege four (4) separate negligence based causes of action. Pursuant to NRS 11.190(4)(e) the general negligence has a statute of limitations is two (2) years. By Plaintiff's own allegations, Barnes was hired in 2006. Accordingly, the cause of action for negligent hiring against the Defendants filed February 10, 2017, for a 2006 hiring is well past any statute of limitations.

As to the remaining causes of action for negligent supervision, negligent retention and breach of fiduciary duty, all negligence based causes of action, Plaintiff is clearly aware of the statute of limitations issue as its refused to provide any specificity as to when the alleged acts occurred instead using the phrase "for many years" in ¶¶ 25, 26, 27, and 28 of their Complaint. However, this intentional vagueness can not be a basis to avoid the statute of limitations. Plaintiff refers to the

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[6] emphasis added.

criminal proceedings in ¶¶ 28 and 29 of the Complaint but neglects for obvious statute of limitations reasons to include a time period during which Barnes was committing crimes. A copy of the plea agreement to which this information was undoubtedly obtained is attached hereto as Exhibit "C" and incorporated herein by this reference. As set forth in page 5 lines 16-17 of the plea agreement[7] Barnes embezzled funds from "approximately 2010 and continuing through 2013". (As an aside with regard to the negligent hiring cause of action, there was no evidence that during Barnes first four (4) years he engaged in any criminal activity).

Thus, there is no facts to even support a negligent hiring cause of action. Further, there is no information to suggest any criminal activity occurred by Barnes after 2013. As the current Complaint was filed in February 2017, there is no mechanism in which this Complaint can be considered timely for any negligence action and therefore, all actions should be dismissed.

VI.

STANDING

This Plaintiff is without standing to bring this suit. "It is a well-established rule that a litigant may assert only his own legal rights and interests and cannot rest a claim to relief on the legal rights or interests of third parties." *Coal. of Clergy, Lawyers, & Professors v. Bush*, 310 F.3d 1153, 1163 (9th Cir. 2002). "Standing is a legal right to set judicial machinery in motion." See *Heller v. Legislature of Nev.*, 120 Nev. 456, 93 P.3d 746, 749 (2004). The question of standing is similar to the issue of real party in interest because it also focuses on the party seeking adjudication rather than on the issues sought to be adjudicated. *Szilagyi v. Testa*, 99 Nev. 834, 673 P.2d 495 (1983). NRCP 17(a) provides that "[e]very action shall be prosecuted in the name of the real party in interest." A real party in interest "is one who possesses the right to enforce the claim and has a significant interest in the litigation." *Szilagyi*, 99 Nev. 834, 838, 673 P.2d 495, 498 (1983). The inquiry into whether a party is a real party in interest overlaps with the question of standing. *Id.* If a party does not own the claims, it has no standing to bring the action or seek the relief. *Livingston v. State Farm Mut. Auto. Ins. Co.*, 774 So.2d 716, 718 (Fla. 2d DCA 2000).

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[7] See Exhibit "C" attached hereto.

In the case ***sub judice***, because a Receiver has been appointed, the Receiver became the real party in interest to pursue this case, if in fact the Receivership appointment Order provides for the same. *See e.g., First State Bank of Northern California v. Bank of America, M.T. & S.A.*, 618 F.3d 603 (1980). Accordingly, if properly pursued , this action would be in the name of the Receivership on behalf of the entity as opposed to misleading the Court into believing that it was the entity itself suing. *See e.g., Haddock v. Eighth Judicial District Court,* 128 Nev. 900, 381 P.3d 617 (2012) (this case is cited for the limited purpose of demonstrating how the caption should read wherein it is a Receiver as the real party of interest pursuing a matter rather than pretending that it was the entity itself). *See also, Walters v. Eighth Judicial District Court of State ex rel County of Clark,* 127 Nev. 723, 263 P.3d 231 (2011). Accordingly, if the Receiver has authority under its Order granting Plaintiff's appointment of Receiver in the Patriot-Reading case, then this action would appropriately be pursued on behalf of the Receiver as the real party in interest as opposed to the entity itself. Further, it would appear that there was no direct order authorizing the Receiving to take actions against the Receivership entity's own members. It further appears from the docketing statement that no motion to authorize this action was even brought before the Court in A-733677.

Paragraph 7 of the Receivership Order allows the Receiver to "[b]ring and prosecute all proper actions for the collection of debts owed to Flamingo, and for the protection and recovery of the Receivership Property." However, in reading the plain language of this it would appear to be for the collection of actual debts owed to the Surgery Center from third parties as opposed to an action against its own members. There does not appear to be any specific order approving this particular litigation in that underlying manner nor anything specific in the Receiverships Order to even demonstrate there is proper standing to move forward with this suit.

Accordingly, Defendants would submit that there is no proper standing for this Complaint.

VII.

ALL CAUSES OF ACTION VIOLATE THE ECONOMIC LOSS DOCTRINE

Plaintiffs causes of action include a claim for negligent hiring, negligent supervision, and negligent retention. These claims are clearly based on the tort theory of negligence yet seek economic damages without alleging personal injury or property damage. "The economic loss doctrine marks the fundamental boundary between contract law, which is designed to enforce the expectancy interest of the parties, and tort law, which imposes a duty of reasonable care and thereby [generally] encourages citizens to avoid causing physical harm to others." *Terracon Consultants, Western, Inc. v. Mandalay Resort Group*, 125 Nev. 66, 72, 206 P.3e 81, 86 (2009) citing *Calloway v. City of Reno*, 116 Nev. 250, 256, 993 P.2d 1259, 1263 (2000). Accordingly, the economic loss doctrines application to negligence claims applies in the sense that "unless there is personal injury or property damage, a plaintiff may not recover in negligence for economic losses." *Terracon Consultants, Western, Inc.* 125 Nev. at 73, 206 P.3d at 87 (further citations omitted).

Accordingly, there is no basis for Plaintiffs to proceed on these negligence claims on behalf of a third party Delaware vendor for economic loss.

VIII.

MOTION FOR ATTORNEYS FEES

NRCP Rule 11 carries with it certain requirements in which and whereupon individuals pursuing matters are bound to do so diligently and with a clear understanding of the law. In the case ***sub judice*** it is obvious that this action was brought by a Receiver appointed by a Delaware company in a default action. There is no indication as to the authority in the Complaint as to how this matter would proceed. Moreover, it is equally clear that the action was brought well past the statute of limitations. The Complaint references Government action in the criminal case and certain years that suit their benefit from the plea agreement. Yet, rather than citing the latest year in which the embezzlement occurred, Plaintiff instead uses the phrase "many years" in an effort to seek to avoid the obvious ramifications of the statute of limitations that were occur by putting in the 2013 date in the Complaint. These actions do not meet the bear minimum of NRCP Rule 11. Moreover, it does not meet the guidelines set forth in NRS 18.010.

In the case ***sub judice*** this Receiver has ignored so many facts in an effort to bring these causes of action on behalf of a third party creditor in violation of the LLC rules and requirements, the statute of limitations, and further has done so in a manner which is significantly less than up front with the Court. Accordingly, it is clear that pursuant to NRS 18.010, this Court should find that this claim "was brought or maintained without reasonable ground or to harass the prevailing party."

NRS 18.010(2)(b) is to be liberally construed "in favor of avoiding attorneys fees in all appropriate situations" and further that it is the legislative intent that "the court award attorneys fees pursuant to this paragraph and impose sanctions pursuant to Rule 11 of the Nevada Rules of Civil Procedure in all appropriate situations to punish for and deter frivolous or vexatious claims and defenses because such claims and defenses overburden limited judicial resources, hinder the timely resolution of meritorious claims and increase the costs in engaging in business and providing professional service to the public." It is clear that in the case ***sub judice*** attorneys fees must be granted.

Section 7.085 of Nevada's Revised Statutes also applies. It reads:

> 1. If a court finds that an attorney has:
> a. Filed, maintained or defended a civil action or proceeding in any court in this state and such action of defense is not well-grounded in fact or is not warranted by existing law or by an argument for changing the existing law that is made in good faith; or
> b. Unreasonably and vexatiously extended a civil action or proceeding before any court in this state, the court shall require the attorney personally to pay the additional costs, expenses and attorney's fees reasonably incurred because of such conduct.

Similar to N.R.S. § 18.010(2)(b), N.R.S. § 7.085 also reads the "court shall liberally construe the provisions of this section in favor of awarding costs, expenses and attorney's fees." Nev. Rev. Stat. § 7.085.

There is simply no manner in which a good and conscientious plaintiff would have been able to go forward with this action suggesting that it is on behalf of the entity against its members (as opposed to an out-of-state third party creditor) to retrieve money that they understand was stolen (and leave out that in the sentencing of the individual and collapse of the corporation) well after the statute of limitations and in violation of all rules governing limited liability companies as well as the

Plaintiff Company's own Operating Agreement.

To support an award of attorney's fees under these statutes, "there must be evidence in the record supporting the proposition that the complaint was brought without reasonable grounds or to harass the other party." *Semenza v. Caughlin Crafted Homes*, 111 Nev. 1089, 1095 (1995), citing *Chowdhryv. NLVH, Inc.*, 109Nev. 478,486 (1993). *In Bergmann v. Boyce*, 109Nev. 670(1993), the court recognized that a claim is groundless if the complaint contains allegations which are not supported by any credible evidence at trial. *See also Allianz Ins. Co. v. Gagnon*, 109Nev. 990, 996, 860 P.2d 720,724 (1993) (quoting *Western United Realty, Inc. v. Isaacs*, 679 P.2d 1063,1065-69 (Colo. 1984) (attorney's fees allowable if action is frivolous or groundless, i.e., cannot be supported by any credible evidence at trial". In *Bergmann*, the court stated: "In assessing a motion for attorney's fees under NRS 18.010(2)(b), the trial court must determine whether the plaintiff had reasonable grounds for its claims. Such an analysis depends upon the actual circumstances of the case .... " *Bergmann*, 109 Nev. at 675.

As a result of this litigation, the Operating Agreement had to be reviewed, as well as all applicable law. This has been a single Motion and thus far the time incurred at the time of filing has been in the amount of $4,230.00.[8] Additionally, it is anticipated that up to an additional 3 hours may be necessary to review the opposition and prepare the reply. If the same is set before the Court, the time in court and reasonable prep time would be included. However, for having to have dismiss this improper litigation, the total of the fees incurred to date at the hourly rate of $450.00 equals $4,230.00 plus the additional time is estimated at $1,800.00.

The fees requested are reasonable. In determining the reasonableness of attorneys' fees, the court may consider several factors including the character of the services rendered, the time expended and the amount of fees requested. *See, Womens Fed. Sav. and Loan Association v. Nevada National Bank*, 623 F.Supp. 469 (Nev. 1985); *Brunzell v. Golden Gate National Bank*, 85 Nev. 345, 455 P.2d 31 (1969) (factors to be considered in determining reasonable value of attorney services

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[8] See billing statements attached hereto as Exhibit "D" and incorporated herein by this reference.

are the quality of the service, character of the work to be done, work actually performed by attorneys, and the result). *See also Farmers Insurance Exchange v. Pickering*, 104 Nev. 60, 765 P.2d 191 (1988); *Blane Fashions, Inc. v. ScheriShop*, 84 Nev. 339,440 P.2d 904 (1968).

When reviewing the factors in *Brunzell* it is clear that the attorneys fees requested are reasonable in amount. The quality of the advocate can be best determined by the outcome of this Motion and the same with regard to the character of the work. However, it should be noted that this work was actually performed in a reasonable and brief manner and the compensation thereon is appropriate. Accordingly, attorneys fees in the amount of $6,120.00 should be recovered upon the granting of this Motion to Dismiss.

IX.

CONCLUSION

Therefore, it is respectfully requested that this matter be dismissed and attorneys fees awarded.

Dated this 27 day of June, 2017.

COOK & KELESIS, LTD.

By: _____

MARC P. COOK
Nevada State Bar No. 004574
GEORGE P. KELESIS
Nevada State Bar No. 000069
517 S. 9th Street
Las Vegas, Nevada 89101
Attorneys for Defendant Sheldon J. Freedman

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 27th day of June, 2017, in accordance with NRCP 5(b), NEFCRRR Administrative Order 14-2 and NEFCR 9(e), the undersigned provided the clerk with a service list of parties to be served with the above and foregoing **DEFENDANT SHELDON J. FREEDMAN'S MOTION TO DISMISS PURSUANT TO N.R.C.P. 12(b)(5) and 12(b)(6) AND FOR ATTORNEYS FEES PURSUANT TO NRS 18.020** as follows:

Timothy R. Mulliner, Esq.
MULLINER LAW GROUP CHRD.
101 Convention Center Drive
Suite 650
Las Vegas, NV 89109
tmulliner@mullinerlaw.com

Todd E. Kennedy
BLACK AND LOBELLO PLLC
10777 West Twain Avenue
Suite 300
Las Vegas, Nevada 89135
tkennedy@blacklobellolaw.com

An employee of COOK & KELESIS, LTD.

EXHIBIT "A"

EXHIBIT "A"

FLAMINGO-PECOS SURGERY CENTER, LLC

Business Entity Information

Status:	Revoked	File Date:	1/9/2002
Type:	Domestic Limited-Liability Company	Entity Number:	LLC240-2002
Qualifying State:	NV	List of Officers Due:	1/31/2015
Managed By:	Managers	Expiration Date:	1/9/2502
NV Business ID:	NV20021004335	Business License Exp:	1/31/2015

Additional Information

Central Index Key:	

Registered Agent Information

Registered Agent resigned

Financial Information

No Par Share Count:	0	Capital Amount:	$ 0

No stock records found for this company

Officers

☐ Include Inactive Officers

Manager - WILLIAM D SMITH MD			
Address 1:	10195 W. TWAIN AVE	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89147-6727	Country:	USA
Status:	Active	Email:	
Manager - CHARLES TADLOCK MD			
Address 1:	10195 W. TWAIN AVE	Address 2:	
City:	LAS VEGAS	State:	NV
Zip Code:	89147-6727	Country:	USA
Status:	Active	Email:	

Actions\Amendments

Action Type:	Articles of Organization		
Document Number:	LLC240-2002-001	# of Pages:	2
File Date:	1/9/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	LLC240-2002-004	# of Pages:	2

File Date:	11/26/2002	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	LLC240-2002-003	# of Pages:	1
File Date:	1/16/2004	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	LLC240-2002-002	# of Pages:	1
File Date:	1/17/2005	Effective Date:	
List of Officers for 2005 to 2006			
Action Type:	Annual List		
Document Number:	20060060240-00	# of Pages:	1
File Date:	1/30/2006	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20070035531-16	# of Pages:	1
File Date:	1/16/2007	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20080173775-90	# of Pages:	1
File Date:	3/10/2008	Effective Date:	
08/09			
Action Type:	Registered Agent Change		
Document Number:	20090103452-46	# of Pages:	1
File Date:	2/2/2009	Effective Date:	
2009-2010			
Action Type:	Annual List		
Document Number:	20090103453-57	# of Pages:	1
File Date:	2/2/2009	Effective Date:	
2009-2010			
Action Type:	Annual List		
Document Number:	20100010732-96	# of Pages:	1
File Date:	1/8/2010	Effective Date:	
(No notes for this action)			
Action Type:	Registered Agent Change		
Document Number:	20100213597-40	# of Pages:	1
File Date:	4/2/2010	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20110117689-36	# of Pages:	1
File Date:	2/16/2011	Effective Date:	

(No notes for this action)			
Action Type:	Merge In		
Document Number:	20110754933-05	# of Pages:	6
File Date:	10/20/2011	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20120061226-72	# of Pages:	1
File Date:	1/27/2012	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20130138695-98	# of Pages:	1
File Date:	2/28/2013	Effective Date:	
(No notes for this action)			
Action Type:	Amended List		
Document Number:	20130647725-57	# of Pages:	1
File Date:	10/2/2013	Effective Date:	
(No notes for this action)			
Action Type:	Annual List		
Document Number:	20140100816-93	# of Pages:	1
File Date:	2/10/2014	Effective Date:	
(No notes for this action)			
Action Type:	Commercial Registered Agent Resignation		
Document Number:	20150276898-08	# of Pages:	3
File Date:	6/18/2015	Effective Date:	
(No notes for this action)			
Action Type:	Resignation of Officers		
Document Number:	20160215742-70	# of Pages:	1
File Date:	5/12/2016	Effective Date:	
(No notes for this action)			

EXHIBIT "B"

EXHIBIT "B"

FLAMINGO-PECOS SURGERY CENTER, LLC

A Nevada Limited Liability Company

OPERATING AGREEMENT

AS INDICATED IN THE FLAMINGO-PECOS SURGERY CENTER, LLC COUNTERPART SIGNATURE PAGE AND SUBSCRIPTION PURCHASE FORM, THIS OPERATING AGREEMENT PROVIDES FOR BOTH THE POSSIBILITY THAT KINDRED HOSPITAL LAS VEGAS WILL INVEST IN THE PROJECT AND THE POSSIBILITY THAT KINDRED HOSPITAL LAS VEGAS WILL NOT INVEST IN THE PROJECT.

FLAMINGO-PECOS SURGERY CENTER, LLC

OPERATING AGREEMENT

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FLAMINGO-PECOS SURGERY CENTER, LLC

OPERATING AGREEMENT

This Operating Agreement is made and entered into as of the 10th day of December, 2001, by and among the persons identified as Members (collectively the "Members") in Exhibit A annexed hereto and incorporated herein. Except as otherwise provided, the capitalized terms used in this Agreement shall have the meanings set forth in Article I hereof.

WHEREAS, the **Flamingo-Pecos Surgery Center, LLC** (the "Company") has been formed as a limited liability company under the laws of the State of Nevada by the filing, on or about the 1st day of January, 2002 (the "Effective Date"), of the Articles of Organization in the office of the Secretary of the State of Nevada;

WHEREAS, the Members desire to ensure the availability of ambulatory surgery care services in the most cost-effective and patient-friendly setting in which such services can be rendered in Las Vegas, Nevada and the surrounding areas;

WHEREAS, the Members have determined that the creation of a limited liability company to operate a Medicare certified surgical center formed and organized under the laws of the State of Nevada will provide cost-efficient patient care and will produce quality results for patients residing in Las Vegas, Nevada and the surrounding areas;

WHEREAS, the Company is being formed by two (2) or three (3) classes of Members, including (1) physicians practicing in the Las Vegas, Nevada area ("Class A Members" or "Physician Class Members"); (2) if, and only if, it invests, Kindred Hospital Las Vegas ("Kindred Hospital" or "Class B Member" or "Institutional Class Member"); and (3) Regent Surgical Health, LLC and certain affiliates thereof (the "Class C Member").

WHEREAS, the Members own all of the membership interests in the Company (the "Units"); and

WHEREAS, the Members desire to enact this Operating Agreement to provide for their respective rights, obligations and duties with respect to the Company, and the management and governance of the Company.

NOW, THEREFORE, in consideration of the mutual covenants herein expressed, and for other valuable consideration, the receipt of which is hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I
Definitions

The following defined terms used in this Agreement shall have the meanings specified below:

"Act" shall mean Chapter 86 of the Nevada Revised Statutes, as in effect at the time of the initial filing of the Articles, and as thereafter amended from time to time.

"Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's aggregate Capital Account as of the end of the relevant fiscal year, after giving effect to the following adjustments:

(a) Credit to such Capital Account any amounts which such Member is obligated to restore pursuant to any provision of this Agreement or is deemed to be obligated to restore pursuant to Regulations Section 1.704-2(g)(1) and 1.704-2(i)(5); and

(b) Debit to such Capital Account the items described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) and (6).

The foregoing definition is intended to comply with the provisions of Regulations Section 1.704-1(b)(2)(ii)(d) and shall be interpreted consistently therewith.

"Adjusted Capital Contribution" shall mean a Member's aggregate Capital Contribution to the Company reduced by all distributions made to such Member under Article VI hereof.

"Affiliated Person" or "Affiliate" shall mean, with reference to a specified Person, (a) any member of such Person's Immediate Family, (b) any Person who owns directly or indirectly ten percent (10%) or more of the beneficial ownership in such Person, (c) any one or more Legal Representatives of such Person and/or any Persons referred to in the preceding clauses (a) or (b); and (d) any entity in which any one or more of such Person and/or the Persons referred to in the preceding clauses (a), (b) or (c) owns directly or indirectly ten percent (10%) or more of the beneficial ownership.

"Agreement" shall mean this Operating Agreement as it may be amended, supplemented, or restated from time to time.

"Applicable Federal Rate" shall mean the Applicable Federal Rate as that term is defined in Code Section 1274(d)(1), whether the short-term, mid-term or long-term rate, as the case may be, as published from time to time by the Secretary of the Treasury.

"Approval of the Managers" and any grammatical variation thereof, shall mean the approval or vote of Managers then in office representing Members holding a majority of Units of the Company.

"Articles" shall mean the Articles of Organization creating the Company, as they may, from time to time, be amended in accordance with the Act.

"Bankruptcy" shall mean any of the following:

(a) If any Member shall file a voluntary petition in bankruptcy, or shall file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors, or shall file any answer or other pleading admitting or failing to contest the material allegations of any petition in bankruptcy or any petition seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar

relief filed against such Member, or shall seek, consent to or acquiesce in the appointment of any trustee, receiver, conservator, or liquidator of such Member or of all or any substantial part of such Member's properties or interest in the Company (the term "acquiesce" as used herein includes but is not limited to the failure to file a petition or motion to vacate or discharge any order, judgment, or decree within thirty (30) days after such order, judgment or decree);

(b) If a court of competent jurisdiction shall enter an order, judgment or decree approving a petition filed against any Member seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar relief under the present or any future federal bankruptcy act or any other present or future applicable federal, state, or other statute or law relating to bankruptcy, insolvency, or other relief for debtors and such Member shall acquiesce in the entry of such order, judgment, or decree, or if any Member shall suffer the entry of an order for relief under Title 11 of the United States Code and such order, judgment, or decree shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof, or if any trustee, receiver, conservator, or liquidator of any Member or of all or any substantial part of such Member's properties or interest in the Company shall be appointed without the consent or acquiescence of such Member and such appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive); or

(c) If any Member shall make an assignment for the benefit of creditors or take any other similar action for the protection or benefit of creditors.

"Board" or "Board of Managers" shall refer collectively to the Persons named to the Board in this Agreement and any Person who becomes an additional, substitute or replacement Manager as permitted by this Agreement, in each such Person's capacity on the Board of Managers of the Company.

"Book Value" shall mean, with respect to any asset of the Company, such asset's adjusted basis for federal income tax purposes, except that:

(a) The initial Book Value of any asset contributed by a Member of the Company shall be the gross fair market value of such asset (not reduced for any liabilities to which it is subject or which the Company assumes), as such value is determined and for which credit is given to the contributing Member under this Agreement;

(d) The Book Value of each of the assets of the Company shall be adjusted to equal their respective gross fair market values, as determined by the Approval of the Board, at and as of the following times:

(i) The acquisition of an additional or new interest in the Company by a new or existing Member in exchange for other than a de minimis capital contribution by such Member, if the Board, acting by Approval, reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members;

(ii) The distribution by the Company to a Member of more than a de minimis amount of any asset of the Company (including cash or cash equivalents) as consideration for all or any portion of an interest in the Company, if the Board, acting by

Approval, reasonably determines that such adjustment is necessary or appropriate to reflect the relative economic interests of the Members; and

(iii) The liquidation of the Company within the meaning of Regulations Section 1.704-1(b)(2)(ii)(g); and

(e) The Book Value of all of the assets of the Company shall be increased (or decreased) to reflect any adjustment to the adjusted basis of such assets pursuant to Section 734(b) or Section 743(b) of the Code, but only to the extent such adjustments are taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m); provided, however, that such Book Value shall not be adjusted pursuant to this clause (c) to the extent that the Board, acting by Approval, determines that an adjustment pursuant to the immediately preceding clause (b) is necessary or appropriate in connection with the transaction that would otherwise result in an adjustment pursuant to this clause (c).

If the Book Value of any asset of the Company has been determined or adjusted pursuant to the preceding clauses (a), (b) or (c), such Book Value shall thereafter be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits or Losses.

"Capital Account" shall mean a capital account maintained and adjusted in accordance with the Code and the Regulations, including the Regulations under Section 704(b) and (c) of the Code. The Capital Account of each Member shall be:

(a) Credited with all payments made to the Company by such Member on account of Capital Contributions (and as to any property other than cash or a promissory note of the contributing Member, the agreed (as indicated by the Approval of the Board) fair market value of such property, net of liabilities secured by such property and assumed by the Company or subject to which such contributed property is taken) and by such Member's allocable share of Profits and items in the nature of income and gain of the Company;

(f) Charged with the amount of any distributions to such Member (and as to any distributions of property other than cash or a promissory note of a Member or the Company, by the agreed fair market value of such property, net of liabilities secured by such property and assumed by such Member or subject to which such distributed property is taken), and by such Member's allocable share of Losses and items in the nature of losses and deductions of the Company;

(g) Adjusted simultaneously with the making of any adjustment to the Book Value of the Company's assets pursuant to the definition thereof, to reflect the aggregate net adjustments to such Book Value as if the Company recognized Profit or Loss equal to the respective amount of such aggregate net adjustments immediately before the event causing such adjustments; and

(h) Otherwise appropriately adjusted to reflect transactions of the Company and the Members.

"Capital Contribution" shall mean the amount of cash and the value of any other property contributed to the Company by a Member.

"Class A Member" shall mean any Member holding Class A Units in the Company, in each such Member's capacity as a holder of Class A Units. Class A Units shall be held only by Eligible Physicians, as defined in Section 2.4(b) hereof.

"Class B Member" shall mean any Member holding Class B Units in the Company, in each such Member's capacity as a holder of Class B Units. Class B Member Units shall be held only by persons and entities which are not Eligible Physicians.

"Class C Member" shall mean any Member holding Class C Units in the Company, in each such Member's capacity as a holder of Class C Units. Class C Units shall only be held by persons and entities which are not Eligible Physicians.

Code" shall mean the Internal Revenue Code of 1986, as amended from time to time.

"Consent of the Members" except as otherwise provided herein, shall mean the written consent of Members holding more than sixty-six percent (66%) of the total number of Class A Units, Class B Units (if and only if Kindred Hospital invests), and Class C Units then issued and outstanding voting together as one class in the Company.

"Depreciation" shall mean, for each year or other period, an amount equal to the depreciation, amortization or other cost recovery deduction allowable for federal income tax purposes with respect to an asset for such year or other period, except that if the Book Value of an asset differs from its adjusted basis for federal income tax purposes at the beginning of such year or other period, Depreciation shall be an amount that bears the same relationship to the Book Value of such asset as the depreciation, amortization or other cost recovery deduction computed for tax purposes with respect to such asset for such period bears to the adjusted tax basis for such asset, or if such asset has a zero adjusted tax basis, Depreciation shall be determined with reference to the initial Book Value of such asset using any reasonable method selected by Approval of the Board, but not less than depreciation allowable for tax purposes for such year.

"Disability" means the inability of a Physician Class Member by reason of mental or physical illness, disease or injury, to perform the usual surgical procedures within such Member's medical specialty on a regular and continuous basis for a minimum period of twelve (12) consecutive months as determined by the Approval of the Board.

"Immediate Family" with respect to any individual, means such individual's ancestors, spouse, issue, spouses of issue, any trust principally for the benefit of any one or more of such individuals, such individual's estate, and any entity beneficially owned by such individuals or trusts for their principal benefit.

"Legal Representative" shall mean, with respect to any individual, a duly appointed executor, administrator, guardian, conservator, personal representative or other legal representative appointed as a result of the death, minority or incompetency of such individual.

"Losses" shall have the meaning provided below under the heading "Profits and Losses."

"Manager" shall refer to each Person serving as an officer of the Company and any Person who becomes an additional, substitute or replacement Manager as permitted by this Agreement, in each such Person's capacity as a Manager of the Company.

"Member" shall mean any Person named as a Member in this Agreement and any Person who becomes an additional, substitute or replacement Member as permitted by this Agreement, in each such Person's capacity as a Member of the Company.

"Member Minimum Gain" shall mean "partner nonrecourse debt minimum gain" as that term is defined in Regulations Section 1.704-2(i)(2).

"Member Nonrecourse Debt" shall mean "partner nonrecourse debt" or "partner nonrecourse liability" as those terms are defined in Regulations Section 1.704-2(b)(4).

"Member Nonrecourse Deductions" shall mean "partner nonrecourse deductions" as that term is defined in Regulations Section 1.704-2(i)(1).

"Minimum Gain" shall have the meaning given in Regulations Section 1.704-2(d).

"Net Operating Cash Flow of the Company" shall mean the Company's taxable income or loss arising in the ordinary course of its business activities, increased by tax-exempt interest and by depreciation and any other deductions that do not involve cash expenditures, and decreased by principal payments, capital expenditures (other than those made from borrowings) and any other nondeductible cash expenditures.

"Nonrecourse Deductions" shall have the meaning given in Regulations Section 1.704-2(b)(1).

"Person" or "Party" shall mean any natural person, partnership (whether general or limited), limited liability company, trust, estate, association or corporation.

"Profits and Losses" shall mean, for each year or other period, an amount equal to the Company's taxable income or loss for such year or period, determined in accordance with Code Section 703(a) (for this purpose, all items of income, gain, loss, or deduction required to be stated separately pursuant to Code Section 703(a)(1) shall be included in taxable income or loss), with the following adjustments:

(a) Any income of the Company that is exempt from federal income tax and not otherwise taken into account in computing Profits and Losses pursuant to this provision shall be added to such taxable income or loss;

(b) Any expenditures of the Company described in Code Section 705(a)(2)(B) or treated as Code Section 705(a)(2)(B) expenditures pursuant to Regulations Section 1.704-1(b)(2)(iv)(i), and not otherwise taken into account in computing Profits and Losses pursuant to this provision, shall be subtracted from such taxable income or added to such loss;

(c) Gain or loss from a disposition of property of the Company with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of such property, rather than its adjusted tax basis;

(d) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing taxable income or loss, there shall be taken into account the Depreciation on the assets for such fiscal year or other period; and

(e) Any items which are separately allocated pursuant to Sections 6.5 and/or 6.6 hereof which otherwise would have been taken into account in calculating Profits and Losses pursuant to the above provisions shall not be taken into account and, as the case may be, shall be added to or deducted from such amounts so as to be not part of the calculation of the Profits or Losses.

If the Company's taxable income or loss for such year, as adjusted in the manner provided above, is a positive amount, such amount shall be the Company's Profits for such year; and if negative, such amount shall be the Company's Losses for such year.

"Reasonable Reserves" shall mean such amount as the Board, acting by Approval, shall deem reasonably necessary to meet the foreseeable liabilities or obligations of the Company taking into consideration historic costs as well as reasonably projected cash flow, and including, but not limited to, (i) the normal expenses of the operation and management of the Company's activities, as such liabilities and obligations become due and payable, and (ii) the expenses of any redemptions pursuant to the provisions of this Agreement.

"Regulations" shall mean the Regulations promulgated under the Code, and any successor provisions to such Regulations, as such Regulations may be amended from time to time.

"Retirement" shall mean when a Class A Member completely ceases to practice medicine and publicly announces such retirement or, if he or she does not publicly announce such retirement, the Board determines in its reasonable discretion that such person no longer practices medicine on at least a substantially full-time basis (i.e., at least thirty (30) hours per week for at least thirty (30) weeks per year).

"Terminating Capital Transaction" shall mean a sale or other disposition of all or substantially all of the assets of the Company.

"Transfer" and any grammatical variation thereof shall refer to any sale, exchange, issuance, redemption, assignment, distribution, encumbrance, hypothecation, gift, pledge, retirement, resignation, transfer or other withdrawal, disposition or alienation in any way as to any interest as a Member. Transfer shall specifically, without limitation of the above, include assignments and distributions resulting from death, incompetency, Bankruptcy, liquidation and dissolution.

"Unit" shall mean a unit or share of interest in the Company. The interest of each Unit in the Company shall be equal to one (1) divided by the total number of Units then authorized and

outstanding (including, but not limited to, Class A Units, Class B Units (if and only if Kindred Hospital invests), and Class C Units).

The definitions set forth in the Act shall be applicable, to the extent not inconsistent herewith, to define terms not defined herein and to supplement definitions contained herein.

ARTICLE II
Organizational Powers and Membership

2.1 Organization. The Board of Managers shall file such articles, certificates and documents as appropriate to comply with the applicable requirements for the operation of a limited liability company in accordance with the laws of any jurisdictions in which the Company shall conduct business and shall continue to do so as long as the Company conducts business therein. By Approval of the Board, the Company may establish places of business within and without the State of Nevada, as and when required by its business and in furtherance of its purposes set forth in Section 2.2 hereof, and may appoint agents for service of process in all jurisdictions in which the Company shall conduct business.

2.2 Purposes and Powers of the Company. The Company is organized for the general purposes of (i) establishing, owning and operating a surgical center in Las Vegas, Nevada (the "Facility"), (ii) engaging in other activities in connection therewith which are necessary or beneficial to the Company, and (iii) engaging in any other lawful business activity permitted under the Act and consistent with the foregoing.

2.3 Permissible Relationships. The Members understand that the Company's and the Facility's operations are subject to various state and federal laws regulating permissible relationships between the Members and entities such as the Company, including 42 U.S.C. § 1320a-7b(b) (the "Fraud and Abuse Statute"), and 42 U.S.C. § 1395nn (the "Stark Act"). It is the intent of the parties that the Company and the Facility operate in a manner consistent with the foregoing statutes and substantially comply with the Fraud and Abuse Statute safe harbors. Accordingly, each Physician Class or Class A Member represents and warrants that he or she (i) has not received loans for the purpose of investing in the Facility from the Company or from any investor in the Company; (ii) has not been excluded or suspended from participation in the Medicare and/or Medicaid programs; (iii) is actively and substantially engaged in his or her practice in performing ambulatory surgical procedures (i.e., he or she is a person who directly performs surgical procedures and he or she does not intentionally generate surgical referrals for other physicians who may use the Facility); and further, he or she generates approximately thirty-three percent (33%) of his or her medical practice income from the performance of outpatient surgical procedures; (iv) maintains active staff privileges at the Facility and performs not less than approximately thirty-three percent (33%) of his or her procedures that require, or can be performed in, an ambulatory surgery center or hospital outpatient surgical setting (in accordance with applicable Medicare reimbursement rules) at the Facility; (v) fully informs each patient, prior to referring such patient to the Facility, of such physician's investment interest in the Facility; and (vi) treats patients receiving medical benefits or assistance under any federal health care program in a nondiscriminatory manner. These requirements are referred to herein as the Physician Class Requirements.

The Members also acknowledge that Stark II, the regulations promulgated thereunder and similar Nevada laws and regulations may restrict the Facility (as presently formed) from providing "designated health services" (as defined by Stark II) or other services to patients referred by Members. The Facility shall not provide "designated health services." If, in the future, any of the services that the Facility provides are deemed to be "designated health services," such services shall be provided by the Facility only if such services may be provided in compliance with one or more exceptions to the ban on self-referrals set forth in Stark II, the regulations promulgated thereunder, or any successor statutes and/or regulations thereto. Furthermore, if the owner of a Member is a pension plan, trust or other entity, all of the owners and beneficiaries of such pension plan, trust or other entity who are practicing physicians shall also comply with Stark II, the Fraud and Abuse Statute, its regulations and similar Nevada laws and regulations.

2.4 Membership.

(a) Reference is hereby made to the fact that there shall initially be two (2) or three (3) authorized classes of Members of the Company: Class A Members, Class B Members (if and only if Kindred Hospital invests), and Class C Members. All Members shall have (based on Units held) the same economic rights. The Members, acting as Members, shall have no right to act for or bind the Company. The initial Class A Members, the initial Class B Member (if and only if Kindred Hospital invests) and the initial Class C Member are identified on Exhibit A hereto.

(b) No Person shall be eligible to become a Class A Member (or remain a Class A Member, as applicable) unless the following eligibility requirements are satisfied: (1) such Class A Member shall be a physician, licensed and registered, in good standing, to practice medicine in the State of Nevada; (2) such Class A Member shall maintain an active practice of medicine in the greater Las Vegas, Nevada metropolitan area and shall generate approximately thirty-three percent (33%) of his or her medical practice income from performing inpatient and outpatient surgical procedures and perform not less than approximately thirty-three percent (33%) of his or her surgical services at the Facility (such physician shall maintain active privileges at the Facility and at least one hospital within thirty (30) miles of the Facility); (3) such Class A Member shall comply with the Physician Class A Member requirements set forth in Section 2.3 hereof as the Physician Class Requirements; and (4) under applicable law, such Class A Member's ownership shall not disqualify (and, without further action, would not disqualify) the Company or Facility from engaging in operations as a Medicare certified surgical center for any reason or from having such physician perform cases at the Facility. (A physician who meets such requirements may be referred to herein as an "Eligible Physician").

The intent of the one-third tests set forth above is to ensure that a physician is not serving as an indirect referral source with respect to the Company and that physicians actively perform services at the Company. The one-third tests are intended to establish a general standard for physicians based on the Office of Inspector General ("OIG") safe harbors for surgery centers. The Board of Managers, acting in its sole discretion, may waive a Member's compliance with the one-third tests above, if a Member is constrained in complying with the tests due to various factors such as managed care contract exclusion or general practice mix; provided, however, the Board must believe that the Member is acting in good faith to comply with the safe harbors and

statutes and must believe that the Member does not own the Units for the purpose of indirectly referring patients to the Center.

2.5 Physician Class Members as Entities. The Institutional Members agree that a Physician Class Member may invest in the Company through or as an entity ("Entity Investor") and such Entity Investor and its owners must make, agree to and abide by the agreements and make the following representations and warranties, with such additions or modifications as the Board of Managers may require from time to time:

(a) All of the equity interests in the Entity Investor are owned by individual Physician Class Members (the "Individual Physicians Owners");

(b) Each of the Individual Physicians satisfies the requirements for an eligible Class A Member set forth in Sections 2.3 and 2.4 (b) hereof;

(c) Each of the Individual Physicians agrees to be bound by each of the covenants contained in this Agreement, including, without limitation, all confidentiality and non-competition covenants and agrees to abide by the requirements for an eligible Class A Member in Sections 2.3 and 2.4 (b) hereof;

(d) Each of the Individual Physicians has read this Agreement and has had the opportunity to discuss this Agreement with counsel. Each of the Individual Physicians understands the eligibility requirements and other provisions of this Agreement;

(e) The Entity Investor does not distribute income from the Company based on value or volume of referrals.

(f) The Entity Investor may be a trust or pension plan of which the Physician is the grantor; provided if a Terminating Event occurs with respect to the Physician grantor or beneficiary, the trust or plan must redeem the Units in accord with Section 4.3 of this Agreement.

ARTICLE III
Capital Contributions and Liability of Members

3.1 Capital Accounts. A separate Capital Account shall be maintained for each Member, including any Member who shall hereafter acquire an interest in the Company.

3.2 Capital Contributions.

(a) Capital Contributions. Each of the Members shall be required to make a Capital Contribution to the Company in accordance with the following provisions of this paragraph (a). The Capital Contributions are based on the equity needs of the Company and are directly proportional to each Members' Unit ownership in the Company. Capital Contributions shall be made in installments as provided below.

(i) The Class A Members, Class B Member (if and only if Kindred Hospital invests), and Class C Member shall acquire, collectively, one hundred (100) Units for a

Capital Contribution of One Million Dollars ($1,000,000) in the aggregate. The Units shall be sold such that if and only if Kindred Hospital invests, the Class A Members collectively have the right to acquire a total of sixty (60) Units or sixty percent (60%) of the Units (the "Physician Class Units" or "Class A Units"), the Class B Member has the right to acquire a total of twenty-five (25) Units or twenty-five percent (25%) of the Units (the "Class B Units" or "Institutional Class Units"), and the Class C Member has the right to acquire a total of fifteen (15) Units or fifteen percent (15%) of the Units (the "Class C Units"). The Members may acquire fractional Units to maintain their proportion of Unit ownership among the classes of Members. If and only if Kindred Hospital does not invest, the Class A Members collectively shall have the right to acquire a total of eighty (80) Units or eighty percent (80%) of the Units, and the Class C Member shall have the right to acquire a total of twenty (20) Units or twenty percent (20%) of the Units. The Members shall contribute their respective shares of the aggregate Capital Contributions, based on each Member's pro-rata share of the Company, in three (3) equal installments on the following dates: (i) the first installment shall be made on the date this Agreement is executed, (ii) the second installment shall be made on February 1, 2002, and (iii) the third installment shall be on May 1, 2002.

(ii) The Company intends to secure nonrecourse loans to finance certain equipment requirements of the Facility. In the event such nonrecourse financing is unavailable or insufficient, it is hereby agreed and acknowledged that only upon the approval of holders of at least sixty-six percent (66%) of the Class A Units, at least sixty-six percent (66%) of the holders of the Class B Units (if and only if Kindred Hospital invests), and at least sixty-six percent (66%) of the Class C Units, each Member shall be required to guarantee debt of the Facility, solely on a pro-rata and several basis, and in an amount to be agreed upon by the Board of Managers and consented to pursuant to Section 7.4 hereof and, in such event, each Member further agrees, to execute and deliver such agreements and instruments as the Company or the Facility may require with respect to such Member's guarantee; provided, the aggregate debt to which such personal liabilities relate may not exceed One Million Dollars ($1,000,000) without the consent of the holders of more than eighty-five percent (85%) of all of the Membership Units.

(iii) At any time after the initial offering Units are sold to new Members, each Class of Members shall have the right to acquire Units on a proportionate basis to permit the Unit ownership to remain proportionate among the classes of Members. For example, if the Institutional Class Member owns twenty-five percent (25%) of the Company, the Physician Class Members as a class own sixty percent (60%) of the Company, and the Class C Member owns fifteen percent (15%) of the Company, and an additional nine (9) Units are to be sold to a new physician, the Institutional Class Member shall have the right to acquire an additional three and three-quarter (3.75) Units, and the Class C Member shall have the right to acquire an additional two and one-quarter (2.25) Units so as to retain the same proportionate ownership as classes.

(iv) As proportionate ownership changes based on the occurrence of events such as the redemption of Membership Units, non-exercise of the right to acquire Units on a proportionate basis, or for any other reason, such offers shall be made based on the then-proportionate ownership of the classes.

(v) All offerings for this purpose shall be provided to the Members via a written purchase notiee. Sueh purchase notice shall include the specific terms of the offering, whieh terms shall inelude, without limitation, the identity of purehasers, the proposed number of Units to be acquired, and priee per Unit. Members shall have no more than fifteen (15) days from the receipt of the purehase notice to respond with a check for the tendered amount needed to buy additional Units, if desired. Any subscriber or Member who does not respond to said purchase notice with a check within fifteen (15) days after a purchase notice is received shall be deemed to have waived such purchase right.

Each new physician subscriber shall be required to eomplete a subscription or purchase agreement, including a counterpart to this Agreement. Such subscription agreement shall evidence the subscriber's aeceptance of the terms and conditions of this Agreement and shall be returned to the Company with such new Subscriber's Capital Contribution. If such new subscriber has been accepted by the Company as a Member of the Company, then the Class B Member (if and only if Kindred Hospital invests) and the Class C Member shall be sent a written purchase notice and subscription materials describing the specific terms of such new Member's investment in the Company (e.g., the number of Units to be acquired, the per-Unit price, etc.) so that the Class B Member (if and only if Kindred Hospital invests) and/or Class C Member may exercise their option to maintain ownership in the Company on a proportionate basis.

(b) Loans. Except with the Consent of the Class A Members, the Consent of the Class B Member (if and only if Kindred Hospital invests), and the Consent of the Class C Member(s), no Member or Manager shall be entitled, obligated or required to make any loan to or guarantee for the Company or any Capital Contribution to the Company in addition to his or her Capital Contribution made pursuant to Section 3.2(a) above. No loan made to the Company by any Member or Manager shall constitute a Capital Contribution to the Company for any purpose.

(c) Additional Capital Contributions. Additional required capital contributions may only be required if approved by both the Approval of the Board of Managers and the consent of the holders of more than eighty-five percent (85%) of all Units then issued and outstanding in accord with Seetion 7.4 hereof.

3.3 No Withdrawal of or Interest on Capital. Except as otherwise provided in this Agreement, (i) no Member shall have any right to demand and receive property of the Company in exchange for all or any portion of his or her Capital Contribution or Capital Aecount, and (ii) no interest or preferred return shall accrue or be paid on any Capital Contribution or Capital Aceount.

3.4 Liability of Members. No Member, in his or her capacity as a Member, shall have any liability to restore any negative balance in his or her Capital Account or to contribute to, or in respect of, the liabilities or the obligations of the Company, or to restore any amounts distributed from the Company, except as may be required specifically under this Agreement, the Act or other applieable law. Except to the extent otherwise provided by law, in no event shall any Member, in his or her eapaeity as a Member, be personally liable for any liabilities or obligations of the Company.

3.5 Managers as Members. No Manager is required to hold any membership interest in the Company in order to serve as a Manager.

3.6 Additional Members. Additional Members may be admitted to the Company only upon the approval, including the terms of admission, of the Board in accordance with the terms of Article VII hereof and upon execution and delivery by the new Member of a counterpart of this Agreement, delivery of the required Capital Contribution (as determined by the Board of Managers) and execution and delivery of such other documents, instruments and items as the Members may require. Issuance of Membership Units to new Members shall be structured in accordance with Section 3.2 hereof. All such issuances shall be structured such that the amount paid for Units is not less than fair market value, payments are made in cash and such that the issuance of Units does not take into account the potential volume or value of referrals to the Facility of the Member.

ARTICLE IV
MEMBERS AND MEMBERSHIP UNITS

4.1 Classification of Members. If and only if Kindred Hospital invests in the Company, there shall be three (3) classes of Members of the Company: a Physician or Class A Member Class, an Institutional or Class B Member Class, and a Class C Member Class. If and only if Kindred Hospital does not invest, there shall be two (2) classes of Members: The Class A Member Class and the Class C Member Class. All Members shall generally have (based on Units held) the same economic rights.

4.2 Withdrawal of a Member. Except in connection with a Non-Adverse Terminating Event, no Member may withdraw or resign from the Company at any time prior to the later of (i) five (5) years after the Facility has obtained its Medicare certification or (ii) the expiration of five (5) years after the date on which such Member became a Member. If a Member withdraws or resigns as a Member in violation of this Section, such Member hereby agrees that such withdrawal or resignation will constitute a breach of this Agreement and an Adverse Termination Event. The Company may offset any damages due to such a breach against any amounts otherwise distributable to such Member in addition to any remedies otherwise available to the Company. No assessment of damages shall account for or be based on the volume or value of business generated by such Member.

4.3 Redemption of a Member.

(a) Termination Events are categorized as either Adverse Terminating Events or Non-Adverse Terminating Events for purposes of differentiating the Company's redemption obligations to the Member to which an event occurs. With respect to an Entity Investor, if an Adverse or Non-Adverse Terminating Event occurs with respect to an Individual Physician Owner of the Entity Investor and the number of Physician Owners to which a Terminating Event has not occurred is less than fifty percent (50%) of the Initial Physician Owners in such Entity Investor, it shall be a Terminating Event which shall require the Entity Investor, to redeem the proportion of Units held by the Entity Investor multiplied by the fraction which is one (1) divided by the then number of equity owners of the Entity Investor who are still owners and who have not had a Terminating Event plus one (1). The purchase price for the redeemed Units shall

be based on whether the Terminating Event applicable to the latest Initial Physician Owner of the Entity Investor was Adverse or Non-Adverse, in accordance with the formula provided in Section 4.3(h) below.

(b) For purposes of this Section, an "Adverse Terminating Event" means:

(i) with respect to any Member:

A. the improper Transfer (or attempted Transfer) of Units;

B. the exclusion, suspension or debarment of a Member from participation in the Medicare, Medicaid Programs or by any Nevada health care licensing authority;

C. the conviction of any felony;

D. any breach of this Agreement;

E. any event of Bankruptcy;

F. the resignation or withdrawal of a Member prior to the later of (i) five (5) years after the Facility has obtained its Medicare certification or (ii) the expiration of five (5) years after the date on which such Member became a Member;

G. Failure to fund a properly approved additional Capital Contribution; or

H. Any withdrawal or resignation by a Member that occurs within a one (1) year period before or after the occurrence of an Adverse Terminating Event relating to such Member.

(ii) with respect to any Physician Class Member:

A. the relocation of the primary site of such Physician Class Member's medical practice to a location more than fifty (50) miles away from the Facility;

B. the revocation or suspension of the Physician Class Member's license to practice medicine in the State of Nevada;

C. the failure by the Physician Class Member to maintain active unrestricted staff privileges at the Facility (or failure to continue to meet all of the requirements set forth in Section 2.3 and 2.4 hereof); or

D. the failure by the Physician Class Member to maintain active, unrestricted staff privileges at a minimum of one (1) hospital within thirty (30) miles of the Facility.

(c) For purposes of this Section, a "Non-Adverse Terminating Event" means:

(i) With respect to any Member, the resignation or withdrawal of a Member after the later of (i) five (5) years after the Facility has obtained its Medicare certification or (ii) the expiration of five (5) years after the date on which such Member became a Member, and such withdrawal or resignation does not occur in the one (1) year period before or after the occurrence of an Adverse Terminating Event relating to such Member.

(ii) With respect to a Physician Class Member:

A. death;

B. adjudication of incompetence; or

C. Disability or Retirement at any time.

(d) Each Termination Event, if subject to cure within thirty (30) days, shall trigger termination only after written notice is provided and if a cure has not been made of the Termination Event within such thirty (30) day period.

(e) If an Adverse Terminating Event shall occur with respect to any Member, the Company may elect, at the Company's sole option (upon written notice to such Member), to purchase the Member's Units, with notice to be provided within sixty (60) days after the Company has received actual knowledge (meaning knowledge of a majority of the Board of Managers) of the occurrence of such Adverse Terminating Event.

(f) If a Non-Adverse Terminating Event shall occur with respect to any Member, the Company shall acquire such Member's Units and the Member shall sell such Units to the Company in accord with the provisions hereof.

(g) If any Member's Units are purchased because of the occurrence of an Adverse Terminating Event, the amount the Company shall pay for the Units owned by such Member shall be the Formula Amount (as defined below) times the Member's Unit Proportion (as defined below), and discounted by forty percent (40%) (the "Purchase Price").

(h) If any Member's Units are purchased because of the occurrence of a Non-Adverse Terminating Event, the amount the Company shall pay for such Units owned by such Member shall be equal to the Formula Amount (defined below) multiplied by the Member's Unit Proportion (defined below). The following formula (the "Formula Amount") is intended to provide a method to approximate fair market value that will minimize disputes and appraisal-related costs and expenses regarding valuation of Units for purposes of redemption. For purposes of this Section 4.3, "Unit Proportion" equals the number of Units held by the Member

divided by all Units then issued and outstanding. The "Formula Amount" for purposes of this Section 4.3 shall be determined as follows: (i) if the Facility has been in operation as a Medicare-certified surgical center for less than one (1) calendar year, the Formula Amount shall be equal to the actual amount of cash equity invested in the Company by all Members, or (ii) if the Company has been in operation as a Medicare-certified surgical center for more than one (1) calendar year, the Formula Amount shall be equal to four (4) times the average of the Company's annual net operating income (in accordance with generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization ("EBITDA") minus the Company's outstanding long term debt and long term liabilities as of the date of the Termination Event determined in accordance with generally accepted accounting principles. For this purpose, the annual net operating income of the Company shall be based on the calendar year of the year immediately prior to the year in which the Termination Event occurs. For example, if the Termination Event occurs in 2003, the Formula Amount shall be calculated using 2002's EBITDA. If the Company has been in operation as a Medicare-certified surgical center for at least two (2) full calendar years, the Formula Amount shall be three (3) times the average of the Company's EBITDA for the most recent two (2) fully completed prior calendar years.

(i) All calculations used to determine the Formula Amount shall be performed by the Company's regularly retained accountants and such calculations shall be final and binding upon all parties to this Agreement. All Members acknowledge and agree that the Formula Amount is an inexact proxy for fair market value and all Members waive any and all rights to contest the use of the Formula Amount for any and all purposes in lieu of an appraisal method.

(ii) The Board of Managers, in its sole discretion, with approval of the holders of at least sixty-six percent (66%) of total Units outstanding, shall have the ability to adjust the multiple used to arrive at the Formula Amount (i.e., the number 4 indicated in Section 4.3(h) above) based on its assessment of the market conditions for surgery centers on an annual basis or whenever determined; provided, once adjusted, the multiple may not be adjusted for the next twelve (12) months; and provided further, a multiple adjustment taking effect after the occurrence of a Termination Event will not affect the Formula Amount with respect to the Member for whom the Termination Event had occurred. Rather, in that case, the multiple shall remain the multiple in effect on the effective date of such Member's Termination Event.

(i) Payments for Units hereunder shall be made as follows: twenty-five percent (25%) on the initial payment date, which shall be within ninety (90) days after the determination of the Valuation Price (the "Purchase Date"), and twenty-five percent (25%) of the Purchase Price on each of the anniversaries of the Purchase Date with interest on the outstanding principal balance accruing at the prime rate as indicated by the Wall Street Journal on the Purchase Date. Payments may be delayed at the direction of the Company to the extent that the Company has insufficient assets as provided by law to make any such payments. Notwithstanding any such delay in the payment of amounts due, the Member's rights as a Member shall cease on the Purchase Date. Aggregate payments to be made in connection with redemption events shall not exceed seven and one half percent (7.5%) of the Company's aggregate collections. If payments are so restricted, payments shall be made in proportion to amounts owed to all Members being redeemed. In sum, notwithstanding the provisions of this

Article, the Company shall not be required to make payments to former Members pursuant to this Section which, in the aggregate, would exceed seven and one half percent (7.5%) of the aggregate collections of the Company for any such period. If the aggregate amount of payments otherwise due to former Members pursuant to this Section would reasonably be expected to exceed this limitation in any calendar year or portion thereof, with the Approval of the Managers, the Company shall pay such former Members, on a pro rata basis, based on the amount still owed such Members, payments totaling seven and one half percent (7.5%) of the Company's anticipated aggregate collections for such period, and the balance of that period's payment obligations to such former Members shall be deferred to the following calendar year or years, until such amounts can be paid without violating such limitation with respect to any such year or years. Within thirty (30) days following the end of each calendar year, the Company shall make a pro rata adjusted payment to the former Members if and to the extent that actual aggregate collections during the prior year (or relevant portion thereof) have exceeded the anticipated amount.

ARTICLE V
Additional Capital

5.1 Funding Capital Requirements.

(a) In the event that the Company requires additional funds to carry out its purposes, to conduct its business, or to meet its obligations, the Company may borrow funds from such lender(s), including Members and the Board of Managers, and on such terms and conditions as are Approved by the Board of Managers, all on such terms as reflect fair market value. It is specifically provided that (except as set forth in Section 3.2 hereof) no such terms or conditions shall impose any personal liability on any Member without the prior written consent of such Member.

(b) A Member or Manager shall have an obligation to give notice of an existing or potential default of any obligation of the Company that he or she becomes aware of to the Board of Managers. No Member or Manager shall be obligated to make any Capital Contributions or loans to the Company (except as provided in Section 3.2 hereof) or otherwise supply or make available any funds to the Company, even if the failure to do so would result in a default of any of the Company's obligations or the loss or termination of all or any part of the Company's assets or business.

5.2 Third Party Liabilities. The provisions of this Article and of Section 3.2 hereof are not intended to be for the benefit of any creditor or other Person (other than a Member in his or her capacity as a Member) to whom any debts, liabilities or obligations are owed by (or who otherwise has any claim against) the Company or any of the Members. Moreover, notwithstanding anything contained in this Agreement, including specifically, but without limitation, this Article V, no such creditor or other Person shall obtain any rights under this Agreement or shall, by reason of this Agreement, make any claim in respect of any debt, liability or obligation (or otherwise) against the Company or any Member.

ARTICLE VI
Distributions; Profits and Losses

6.1 Distribution of Company Funds - In General.

(a) Except as necessary to comply with Sections in this Article VI, all Net Operating Cash Flow of the Company over and above Reasonable Reserves shall be distributed at least quarterly to the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding. While the intent is to distribute substantially all available cash flow (minus reserves), in accordance with this Section, at a minimum the Company shall attempt to distribute at least the estimated amount (i.e., forty to forty-two percent (40-42%) of Company net income) as is necessary for Members to meet expected individual tax obligations related to Company income.

(b) Except as necessary to comply with certain of the following Sections in this Article VI, all other cash flow of the Company shall be distributed among the Members of the Company on a pro rata basis based on each Member's Unit proportion as determined by Approval of the Board.

6.2 Distribution Upon Dissolution. Proceeds from a Terminating Capital Transaction and/or other amounts or assets available upon dissolution, and after payment of, or adequate provision for, the debts and obligations of the Company, shall be distributed and applied in the following priority:

(a) First, to fund reserves for liabilities not then due and owing and for contingent liabilities to the extent deemed reasonable by Approval of the Board, provided that, upon the expiration of such period of time as the Board, acting by Approval, shall deem advisable, the balance of such reserves remaining after payment of such contingencies shall be distributed in the manner hereinafter set forth in this Section 6.2; and

(b) Second, to the Members, an amount sufficient to reduce the Members' Capital Accounts to zero, in proportion to the positive balances in such Capital Accounts (after reflecting in such Capital Accounts all adjustments thereto necessitated by (i) all other Company transactions (distributions and allocations of Profits and Losses and items of income, gain, deduction and loss) and (ii) such Terminating Capital Transaction).

6.3 Distribution of Assets in Kind. No Member shall have the right to require any distribution of any assets of the Company in kind. If any assets of the Company are distributed in kind, such assets shall be distributed on the basis of their respective fair market values as determined by the Approval of the Board. Any Member entitled to any interest in such assets shall, unless otherwise determined by the Approval of the Board, receive separate assets of the Company and not an interest as tenant-in-common, with other Members so entitled, in each asset being distributed.

6.4 Allocation of Profits and Losses. After giving effect to the allocations set forth in Sections 6.5 and 6.6 hereof which affect the Members' distributive shares, Profits and Losses shall be allocated among the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding.

6.5 Required Regulatory Allocations.

(a) Limitation on and Reallocation of Losses. At no time shall any allocations of Losses, or any item of loss or deduction, be made to a Member if and to the extent such allocation would cause such Member to have, or would increase the deficit in, any Adjusted Capital Account Deficit of such Member at the end of any fiscal year. To the extent any Losses or items are not allocated to one or more Members pursuant to the preceding sentence, such Losses shall be allocated to the Members to which such losses or items may be allocated without violation of this Section 6.5(a).

(b) Minimum Gain Chargeback. If there is a net decrease in the Minimum Gain of the Company during any fiscal year, then items of income or gain of the Company for such fiscal year (and, if necessary, subsequent fiscal years) shall be allocated to each Member in an amount equal to such Member's share of the net decrease in the Minimum Gain, determined in accordance with Regulations Section 1.704-2(d)(1). A Member's share of the net decrease in the Minimum Gain of the Company shall be determined in accordance with Regulations Section 1.704-2(g). The items of income and gain to be so allocated shall be determined in accordance with Regulations Section 1.704-2(j)(2)(i).

(c) Nonrecourse Deductions. Nonrecourse Deductions for any fiscal year or other period (not including any Member Nonrecourse Deductions allocated pursuant to Section 6.5(d) below) shall be allocated among the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding. Solely for purposes of determining each Member's proportionate share of the "excess nonrecourse liabilities" of the Company, within the meaning of Regulations Section 1.752-3(a)(3), the Company Profits shall be allocated among the Members on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding. The items of losses, deductions and Code Section 705(a)(2)(B) expenditures to be so allocated shall be determined in accordance with Regulations Section 1.704-2(j)(1)(ii).

(d) Member Nonrecourse Deductions. Any Member Nonrecourse Deductions for any fiscal year or other period shall be allocated to the Member who bears the economic risk of loss with respect to the nonrecourse liability, as determined and defined under Regulations Section 1.704-2(b)(4), to which such Member Nonrecourse Deductions are attributable in accordance with Regulations Section 1.704-2(i)(1). The items of losses, deductions and Code Section 705(a)(2)(b) expenditures to be so allocated shall be determined in accordance with Regulations Section 1.704-2(j)(1)(ii).

(e) Member Minimum Gain Chargeback. Notwithstanding any contrary provisions of this Article VI, other than Section 6.5(b) above, if there is a net decrease in Member Minimum Gain attributable to Member Nonrecourse Debt during any fiscal year, then each Member who has a share of such Member Minimum Gain, determined in accordance with Regulations Section 1.704-2(i), shall be allocated items of income and gain of the Company, determined in accordance with Regulations Section 1.704-2(j)(2)(ii), for such fiscal year (and, if necessary, subsequent fiscal years) in an amount equal to each such Member's share of the net decrease in such Member Minimum Gain, determined in accordance with Regulations Section 1.704-2(i)(3) and 2(i)(5).

(f) Qualified Income Offset. If any Member unexpectedly receives an item described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), items of income and gain shall be allocated to each such Member in an amount and manner sufficient to eliminate, as quickly as possible and to the extent required by Regulations Section 1.704-1(b)(2)(ii)(d), the Adjusted Capital Account Deficit of such Member, provided that an allocation pursuant to this Section 6.5(f) shall only be made if and to the extent that such Member would have an Adjusted Capital Account Deficit after accounting for all other allocations provided for in this Article VI other than that described in this Section 6.5(f).

(g) Basis Adjustment. To the extent an adjustment to the adjusted tax basis of any Company asset pursuant to either of Code Sections 734(b) or 743(b) is required to be taken into account in determining Capital Accounts pursuant to Regulations Section 1.704-1(b)(2)(iv)(m), the amount of such adjustment to the Capital Accounts shall be treated as an item of gain (if the adjustment increases the basis of the asset) or loss (if the adjustment decreases such basis) and such gain or loss shall be allocated to the Members in a manner consistent with the manner in which their Capital Accounts are required to be adjusted pursuant to said Section of the Regulations.

(h) Gross Income Allocation. If at the end of any Company fiscal year any Member has a Capital Account deficit which is in excess of the sum of the items to be credited to a Member's Capital Account under clause (a) of the definition of Adjusted Capital Account Deficit contained herein, then each such Member shall be allocated items of income and gain in the amount of such excess as quickly as possible provided that an allocation pursuant to this Section 6.5(h) shall only be made if and to the extent that such Member would have a Capital Account deficit in excess of such sum after accounting for all other allocations provided for in this Article VI other than that described in this Section 6.5(h). As among Members having such excess, if there are not sufficient items of income and gain to eliminate all such excess, such allocations shall be made in proportion to the amount of each Member's respective excess.

6.6 Curative Allocations. The allocations set forth in Section 6.5 hereof are intended to comply with certain requirements of Regulations Sections 1.704-1(b) and 1.704-2 and shall be interpreted consistently therewith. Such allocations may not be consistent with the manner in which the Members intend to divide Company distributions and make Profit and Loss allocations. Accordingly, by the Approval of the Board, after effecting the allocations required pursuant to Section 6.5 hereof, other allocations of Profits, Losses and items thereof shall be divided among the Members so as to prevent the allocations in Section 6.5 hereof from distorting the manner in which Company distributions will be divided among the Members pursuant to Sections 6.1 and 6.2 hereof. In general, the Members anticipate that this will be accomplished by specifically allocating other Profits, Losses and items of income, gain, loss and deduction among the Members so that the net amount of allocations under Section 6.5 hereof and allocations under this Section 6.6 to each such Member is zero. However, the Board shall have discretion to accomplish this result in any reasonable manner.

6.7 Tax Allocations and Book Allocations.

(a) Except as otherwise provided in this Section 6.7, for federal income tax purposes, each item of income, gain, loss and deduction shall, to the extent appropriate, be

allocated among the Members in the same manner as its correlative item of "book" income, gain, loss or deduction has been allocated pursuant to the other provisions of this Article VI.

(b) In accordance with Code Section 704(c) and the Regulations thereunder, depreciation, amortization, gain and loss, as determined for tax purposes, with respect to any property whose Book Value differs from its adjusted basis for federal income tax purposes shall, for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its Book Value, such allocation to be made by the Approval of all members of the Board in any manner which is permissible under said Code Section 704(c) and the Regulations thereunder and the Regulations under Code Section 704(b).

(c) In the event the Book Value of any property of the Company is subsequently adjusted, subsequent allocations of income, gain, loss and deduction with respect to any such property shall take into account any variation between the adjusted basis of such asset for federal income tax purposes and its respective Book Value in the manner provided under Section 704(c) of the Code and the Regulations thereunder.

(d) Allocations pursuant to this Section 6.7 are solely for federal, state, and local income tax purposes, and shall not affect, or in any way be taken into account in computing, any Member's Capital Account or share of Profits, Losses, other items, or distributions pursuant to any provision of this Agreement.

6.8 General Allocation and Distribution Rules.

(a) For purposes of determining the Profits, Losses, or any other items allocable to any period, Profits, Losses, and any such other items shall be determined on a daily, monthly, or other basis, as determined by the Approval of all of the Board of Managers using any permissible method under Code Section 706 and the Regulations thereunder. Except as otherwise provided in this Agreement, all items of income, gain, loss, and deduction shall be allocated among the Members in the same proportions as the allocations of Profits or Losses for the fiscal year in which such items are to be allocated.

(b) Upon the admission of a new Member or the Transfer of an interest, the new and old Members or the transferee and transferor shall be allocated shares of Profits and Losses and other allocations and shall receive distributions, if any, based on the portion of the fiscal year that the new or transferred Company interest was held by the new and old Members, or the transferor and transferee, respectively. For the purpose of allocating Profits and Losses and other allocations and distributions, (i) such admission or Transfer shall be deemed to have occurred on the first day of the month in which it occurs or, if such date shall not be permitted for allocation purposes under the Code or the Regulations, on the nearest date otherwise permitted under the Code or the Regulations, and (ii) if required by the Code or the Regulations, the Company shall close its books on an interim basis on the last day of the previous calendar month.

6.9 Tax Withholding. If the Company incurs a withholding tax obligation with respect to the share of income allocated to any Member, (a) any amount which is (i) actually

withheld from a distribution that would otherwise have been made to such Member and (ii) paid over in satisfaction of such withholding tax obligation shall be treated for all purposes under this Agreement as if such amount had been distributed to such Member, and (b) any amount which is so paid over by the Company, but which exceeds the amount, if any, actually withheld from a distribution which would otherwise have been made to such Member, shall be treated as an interest-free advance to such Member. Amounts treated as advanced to any Member pursuant to this Section 6.9 shall be repaid by such Member to the Company within thirty (30) days after the Board, acting by Approval of the Board of Managers, give notice to such Member making demand therefor. Any amounts so advanced and not timely repaid by such Member shall bear interest, commencing on the expiration of said thirty (30) day period, compounded monthly on unpaid balances, at an annual rate equal to the lowest Applicable Federal Rate as of such expiration date. The Company shall collect any unpaid amounts so advanced from any Company distributions that would otherwise be made to such Member.

6.10 Tax Matters Partner. The Board of Managers will designate a "Tax Matters Partner" (as defined in Code Section 6231) of the Company. The Tax Matters Partner is authorized and required to represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax authorities, including, without limitation, administrative and judicial proceedings (collectively, "Audits"), and to expend Company funds for professional services and costs associated therewith. The Members agree to cooperate with each other and to do or refrain from doing any and all things reasonably required to conduct such proceedings. The Company shall indemnify and hold harmless the Tax Matters Partner and its directors, officers, employees and agents from and against any loss, expense, damage or injury suffered or sustained by them by reason of any acts, omissions or alleged acts or omissions arising out of their activities on behalf of the Company as Tax Matters Partner, absent the gross negligence of the Tax Matters Partner. The Members specifically acknowledge that the Tax Matters Partner shall not be liable, responsible or accountable in damages or otherwise to the Company or any Member with respect to any action taken by the Tax Matters Partner with respect to an Audit, absent the gross negligence of the Tax Matters Partner.

ARTICLE VII
Management

7.1 Management of the Company. The overall management and control of the business and affairs of the Company shall be vested in the Board, acting by Approval of the Board of Managers, subject to the Management Agreement and to the Member protections indicated in Section 7.4 hereof. All management and other responsibilities not specifically reserved to the Members in this Agreement, or requiring Member Consent, shall be vested in the Board of Managers, and the Members shall have no voting rights except as specifically provided in this Agreement. Each member of the Board shall devote such time to the affairs of the Company as is reasonably necessary for performance by such member of the Board of his or her duties, provided such member of the Board shall not be required to devote full time to such affairs. Moreover, each member of the Board shall act in good faith with the care an ordinarily prudent person in a like position would exercise under similar circumstances and in the best interest of the Company.

7.2 Board of Managers. The business and affairs of the Company shall be managed by a governing board (the "Board of Managers" or "Board").

(a) The Board shall be composed of four (4) or five (5) Managers. The Physician Class Members, voting as a class, shall elect three (3) Managers who shall have that number of votes as calculated pursuant to Section 7.3 below. If and only if Kindred Hospital invests, the Institutional Class Member shall appoint one (1) Manager who shall have that number of votes as calculated pursuant to Section 7.3 below, and the Class C Member voting as a Class shall appoint one (1) Manager who shall have that number of votes as calculated pursuant to Section 7.3 below. The powers of the Board in all cases shall be exercised subject to the Member protections indicated in Section 7.4 hereof. Each Manager elected or appointed to the Board shall have the right to sit on the Board and to vote as a Board Manager. Unless terminated sooner, each Board Manager shall serve for a one (1) year term.

(b) There shall be at least one (1) meeting of the Managers per annum and at least one (1) meeting of the Members per annum. The Managers or Members, as applicable, may provide, by resolution, the time and place for the holding of this or additional meetings. Written notice shall be provided to all Managers and Members of such resolution.

Special meetings of the Board of Managers may be called at the request of any Manager upon ten (10) days advance written notice to all other Managers. The time, place and purpose or purposes for such special meeting shall be stated in the notice of such meeting.

Special meetings of the Members also may be called at the request of any Member upon ten (10) days advance written notice to other Members. The time, place and purpose or purposes for such special meeting shall be stated in the notice of such meeting.

(c) Managers representing a majority of Member Units shall constitute a quorum at any meeting of the Board of Managers. Members representing a majority of Member Units shall constitute a quorum at any meeting of the Members.

(d) Regarding Board meetings. Board members may provide a proxy to attend who shall have powers to vote as a Board member. For Physician Class Members, such proxy must be a Member.

(e) A Class A Manager's status as Manager may be terminated at any time, with or without Cause, upon the consent of the holders of at least seventy-five percent (75%) of all Class A Member Units then outstanding. In the event that any Class A Manager ceases to serve as Manager (whether by reason of termination, resignation, removal or any other cause), thereby creating a vacancy in the position of Class A Manager, a replacement shall be elected by the vote of fifty percent (50%) of all Class A Units. If a Class A Member who is also a Manager has his or her interest in the Company terminated for any reason whatsoever, then such Class A Manager shall be removed and a new Manager elected by the vote of fifty percent (50%) of all Class A Units.

(f) If and only if Kindred Hospital invests in the Company, a Class B Manager's status as Manager may be terminated at any time, with or without Cause upon the consent of the holders of at least seventy-five percent (75%) of all Class B Member Units then

outstanding. In the event that a Class B Manager ceases to serve as Manager (whether by reason of termination, resignation, removal or any other cause), thereby creating a vacancy in the position of Class B Manager, the Class B Member shall designate a successor Class B Manager to fill such vacancy.

(g) A Class C Manager's status as Manager may be terminated at any time, with or without Cause upon the consent of the holders of at least seventy-five percent (75%) of all Class C Member Units then outstanding. In the event that a Class C Manager ceases to serve as Manager (whether by reason of termination, resignation, removal or any other cause), thereby creating a vacancy in the position of Class C Manager, the Class C Member shall designate a successor Class C Manager to fill such vacancy.

(h) A Member who holds Units in more than one Class shall be allowed to appoint only one (1) Manager of the Company. If that Manager is appointed by the Class B Member, that Manager can only be removed in accordance with Section 7.2(f) hereof and if that Manager is appointed by the Class C Member, that Manager can only be removed in accordance with Section 7.2(g) hereof. For purposes of applying this paragraph, a Manager shall be deemed to have that voting interest and Units as the Member who appointed the Manager.

(i) No Manager may resign from, retire from, abandon or otherwise terminate his or her status as a Manager except after thirty (30) days' written notice to the Member or Class of Members who appointed him or her or to the Company, unless such Member or the Company otherwise consents in writing.

(j) The election of Managers shall be conducted at any duly convened meeting of the Members. Termination of a Manager pursuant to Section 7.2(e), 7.2(f) or 7.2(g) hereof shall be conducted as follows:

(i) Any Member may call a special meeting of the Members for purpose of calling for the termination of a Manager pursuant to Section 7.2(e), 7.2(f) or 7.2(g) as applicable. At such special meeting, the Members of the class who appointed such Manager shall vote on the termination of the Manager in question; such Manager shall be immediately terminated if the holders of at least seventy-five percent (75%) of the Units in the class who elected him such manager vote affirmatively for the Manager's termination. Consistent with and subject to Sections 7.2(e), 7.2(f) and 7.2(g) hereof, as applicable, the class of Members who appointed such Manager shall designate a successor Manager to fill such vacancy.

(k) Managers representing a majority of Member Units shall constitute a quorum at any meeting of the Board of Managers. Board members may provide a proxy to attend who shall have powers to vote as a Board manager.

(l) No Manager may resign from, retire from, abandon or otherwise terminate his or her status as a Manager except after thirty (30) days' written notice to the Member or class of Members who appointed such manager, unless such class of Members otherwise consents in writing.

7.3 Manner of Exercise of Board's Authority. All responsibilities granted to the Board of Managers under this Agreement shall be exercised by the Board of Managers as a body,

and no member of the Board of Managers, acting alone, shall have the authority to act on behalf of the Board of Managers. The Board shall act by the vote of the Board of Managers representing Members holding a majority of Units. For example, if a member of the Board is appointed by a class of Members owning twenty-five (25) Units, he or she (if he or she is the sole representative of the Class) will be accounted twenty-five (25) votes in any vote. For the Board members elected by the Physician Class Members, such Board members shall have that number of Units as is equal to the total number of Physician Class Units then outstanding divided by the number of Board members elected by the Physician Class Members (i.e., three (3)). For the Board member appointed by the Institutional Class Member and the Class C Member, such Board member shall have that number of votes as is equal to the total number of Institutional Class Units or Class C Units then outstanding divided by the number of Board members appointed by the Institutional Class Member or Class C Member, as applicable (i.e. one (1)). If and only if Kindred Hospital does not invest, there shall be no Board Members elected by the Institutional Class Member, and the Institutional Class Member shall have no Board rights.

None of the following actions shall be taken by the Company except upon Approval by the Board of Managers, subject to the Management Agreement and to the Member protections indicated in Section 7.4 hereof:

(a) Borrow money and otherwise obtain credit and other financial accommodations in the ordinary course of the business of the Company;

(b) Perform or cause to be performed all of the Company's obligations under any agreement to which the Company is a party, including, without limitation, any obligations of the Company or otherwise in respect of any indebtedness secured in whole or in part by, or by lien on, or security interest in, any asset(s) of the Company;

(c) Employ, engage, retain or deal with any Persons in the capacity of employees, agents, brokers, accountants, lawyers or in such other capacity as may be necessary or desirable;

(d) Appoint individuals to act as officers of the Company and delegate to such individuals such authority to act on behalf of the Company and such duties and functions as would normally be delegated to officers of a corporation holding similar offices;

(e) Adjust, compromise, settle or refer to arbitration any claim in favor of or against the Company or any of its assets, make elections in connection with the preparation of any federal, state and local tax returns of the Company, and institute, prosecute, and defend any legal action or any arbitration proceeding;

(f) Acquire and enter into any contract of insurance necessary or proper for the protection of the Company and/or any Member and/or any Manager/or any Board member, including, without limitation, to provide the indemnity described in Section 7.8 hereof or any portion thereof;

(g) To make elections in connection with the preparation of any federal, state and local tax returns of the Company, and to institute, prosecute, and defend any legal action or any arbitration proceeding;

(h) To establish a record date for any distribution to be made under Article VI; and

(i) To cause Units in the Company to be issued in accord with Section 3.2 and 3.6 hereof.

(j) To perform any other act which the Board may deem necessary or desirable for the Company or its business.

7.4 Restrictions. Notwithstanding any other provision in this Agreement to the contrary, the Company shall not take any of the following actions without written consent or vote of Members holding at least sixty-six percent (66%) of the Units issued and outstanding in each separate class of Units (provided, however, if a Person, other than the Members or their Affiliates, purchases or otherwise acquires by a sale, exchange, merger or by public offering more than fifty-one percent (51%) of the Units, actions of the Members under this Section 7.4 (other than Section 7.4(e), which shall remain subject to the vote of holders of more than eighty-five percent (85%) of all Units)shall require the vote of Members holding at least fifty-one percent (51%) of the Units issued and outstanding in each separate class of Units):

(a) Except as contemplated by Article IV hereof, authorize, or set aside any sums for, the purchase, repurchase, redemption or other acquisition by the Company of any Member's Units of any class or make loans or distributions to Members;

(b) Authorize a merger, consolidation or similar combination with any other entity, or authorize the sale of all or substantially all the assets of the Company or the dissolution or liquidation of the Company;

(c) Approve a recapitalization, reclassification, reorganization, split or other similar event affecting the Units;

(d) Effect any Bankruptcy event with regard to the Company;

(e) Require a Member to make an additional Capital Contribution or personally guarantee an obligation of the Company, provided, however, that the actions in this Section 7.4(e) or the requirement to guarantee any amount pro rata in excess of $1,000,000 in aggregate pursuant to this Section 7.4(c) shall require the vote of holders of more than eighty-five percent (85%) of all Units then outstanding in the Company and the vote of eighty-five percent (85%) of all holders to amend such provision; except for payments under a duly approved management agreement or medical director agreement;

(f) Pay any compensation to any Member or Affiliate or enter into any transaction with a Member or Affiliate, except to the extent that all Members are paid compensation on a pro rata basis, based on the proportion of Units then held by each such Member to the total number of Units then issued and outstanding;

(g) Enter into, amend or terminate any arrangement or agreement with any Company administrator, management company, consulting company or other senior executive of the Company, provided, the Class B (if and only if Kindred Hospital invests) and Class C

Member shall not utilize this provision to unreasonably withhold consent to the appointment of another management company or administrator and, provided further, this qualification does not serve as a waiver of any of the rights and obligations set forth in the management agreement between the Class C Member and the Company;

(h) Except for purely technical amendments, amend this Agreement or the Articles of Organization of the Company;

(i) Adjust, arbitrate, compromise, sue, defend, abandon, or otherwise deal with and settle any and all claims in favor of or against the Company, as the Board shall, in its sole discretion, deem proper; and

(j) Appoint a liquidator, waive any Member obligations or approve the Transfer of Units.

7.5 Binding the Company. Any action taken by a member of the Board with Approval of the Board, or, where so required, by the Consent of the Members, shall bind the Company and any other Board members and shall be deemed to be the action of the Company.

7.6 Compensation of Managers and Members. No direct or indirect payment shall be made by the Company to any Board member, Member, or officer of the Company, or to any Affiliate of any Board member, Member, or officer of the Company, for such Board member's, Member's, or officer's services as a Member, Board member or officer. Each Board member and officer shall be entitled to reimbursement from the Company for all expenses incurred by such Board member or officer in managing and conducting the business and affairs of the Company. Also, it is intended that the Class C Member will have a contract to manage the Facility substantially in the form of Exhibit B hereof.

7.7 Contracts with Affiliated Persons. Subject to Section 7.4, the Company may enter into one or more agreements, leases, contracts or other arrangements with any Member, Manager or Affiliated Person for the furnishing to or by the Company of goods, services or space, and may pay compensation thereunder for such goods, services or space, provided in each case the amounts payable thereunder are reasonably comparable to those which would be payable to unaffiliated Persons under similar agreements. If the determination of such amounts is made in good faith, it shall be conclusive absent manifest error.

7.8 Indemnification. The Company shall indemnify the officers and Board of Managers of the Company, and the officers, directors and shareholders of any Manager which is a corporation in accordance with applicable law and the articles of organization, by-laws and other governing documents of such corporation, for any liability incurred and/or for any act performed by them within the scope of the authority conferred on them by this Agreement, and/or for any act omitted to be performed, except for their gross negligence or willful misconduct, which indemnification shall include all reasonable expenses incurred, including reasonable legal and other professional fees and expenses. The doing of any act or failing to do any act by an officer or a Board member, the effect of which may cause or result in loss or damage to the Company, if done in good faith to promote the best interests of the Company,

shall not subject the officer or Board member to any liability to the Members except for gross negligence or willful misconduct.

7.9 Other Activities. Subject to any other restrictions set forth in this Agreement, the Members, Managers and any Affiliates of any of them may engage in and possess interests in other business ventures and investment opportunities of every kind and description, independently or with others as long as they do not violate Article X hereof. Neither the Company nor any other Member or Manager shall have any rights in or to such ventures or opportunities or the income or profits therefrom.

7.10 Audited Financial Statements. The Board shall authorize and cause to be prepared audited financial statements on an annual basis. Each Member, upon request, shall have the right to inspect such audited financial statements.

ARTICLE VIII
Officers

8.1 Number; Election; Resignation. The Company shall have a President, a Treasurer, a Secretary, and such other officers as the Board may in its discretion create. All officers shall be elected annually by the Board, acting by Approval, at any duly convened meeting of the Board. Regarding the selection of officers, the Managers shall consider the skill, qualifications, dedication, and loyalty of officer candidates. With respect to such officers, the Managers shall select only those individuals who, in the Managers' sole opinion, shall best promote and advance the interests of the Company. Each officer shall hold office for one (1) year and until their successors are chosen and qualified, unless terminated earlier pursuant to Section 8.4 hereof and except as otherwise provided at the meetings respectively at which they are elected or appointed. Any officer may resign by delivering a written resignation to the Company at its office, or to the Managers, and such resignation shall be effective upon receipt, unless it is specified to be effective at some other time or upon the happening of some other event. A director or officer may serve consecutive terms if elected or so appointed.

8.2 Same Person Holding Two or More Offices. To the extent permitted by the Act, any two or more of the offices referred to in this Section may be filled by the same person.

8.3 Officers Need Not Be Members or Managers. Except as otherwise provided by the Act, any person shall be eligible for election to be an officer of the Company without the necessity of being a Member or Board member.

8.4 Removal of Officers. Any officer may be removed by the Board, acting by Approval, with or without cause.

8.5 Vacancies. In case a vacancy in any office shall occur due to any cause, the Board of Managers, acting by Approval, may elect a person to fill such vacancy who shall hold office until the date on which the office would ordinarily be filled, and until a successor is chosen and qualified.

8.6 President. The President shall be the chief executive officer of the Company and shall, subject to the provisions set forth hereinafter, have the authority to oversee such

administrative activities and to take such administrative actions as shall be customary for a chief executive officer. The President shall perform such additional duties as may be delegated by the Board of Managers or as may be imposed by law. It shall be the duty of the President, and the President shall have the power to see to it, that all orders and resolutions of the Board are carried into effect. The President, as soon as reasonably possible after the close of each fiscal year, shall submit to the Board a report of the operation of the Company for such year and a statement of its affairs, and the President shall, from time to time, report to the Board all matters within the President's knowledge which the interests of the Company may require to be brought to its notice.

8.7 Treasurer. The Treasurer shall, subject to the supervision and control of the Board of Managers, have custody of the funds and of all the valuable papers of the Company. The Treasurer shall keep the accounts of the Company in a clear manner, and the Treasurer shall, at all times, when requested by the Board of Managers, exhibit a true statement of the affairs of the Company. Except as the Board of Managers may otherwise order, the Treasurer shall sign and/or endorse all promissory notes, bills, checks, drafts, trade acceptances, and bankers' acceptances, and the Treasurer may execute all deeds, mortgages, reports, contracts, agreements, and other legal documents of the Company, but the Board of Managers may authorize any other officer or officers, or agent or agents, to sign any obligations, instruments, or papers on behalf of the Company, and/or may limit the authority of the Treasurer in any of said matters. The Treasurer shall perform such other duties as may be delegated to the Treasurer by the Board or as may be imposed by law. When the Treasurer shall be absent or for any other reason unable to perform the Treasurer's duties, the Treasurer may appoint any other officer of the Company to act as Temporary Treasurer, and said Temporary Treasurer shall have all the duties herein delegated to the Treasurer during the term of the Treasurer's appointment.

8.8 Secretary. The Secretary shall keep the records of the Company, of its Members, and of the Board of Managers and shall perform such duties and have such powers additional to the foregoing as the Board shall designate.

ARTICLE IX
Fiscal Matters

9.1 Books and Records. The Company shall engage the services of a certified public accounting firm ("Accounting Firm") which shall keep complete and accurate books and records of the Company, using the same methods of accounting which are used in preparing the federal income tax returns of the Company to the extent applicable and otherwise in accordance with generally accepted accounting principles consistently applied. Such books and records shall all be maintained and updated monthly, and shall be available, in addition to any documents and information required to be furnished to the Members under the Act, at an office of the Company or the Accounting Firm for examination and copying by any Member, or such Member's duly authorized representative, upon reasonable request therefor and at the expense of such Member. Alternately, copies of such books, records, documents and information shall be sent by the Company to any Member, or such Member's duly authorized representative, upon reasonable request therefor and at the expense of such Member. The Company shall keep at its registered office all items required pursuant to the laws governing Nevada limited liability companies. Within one hundred twenty (120) days after the end of each fiscal year of the Company, each

Member shall be furnished with audited financial statements which shall contain a balance sheet as of the end of the fiscal year and statements of income and cash flows for such fiscal year. Any Member may, at any time, at such Member's own expense, cause an audit or review of the Company books to be made by a certified public accountant of such Member's own selection.

9.2 Bank Accounts. Bank accounts and/or other accounts of the Company shall be maintained in such banking and/or other financial institution(s) as shall be selected by Approval of the Board, and withdrawals shall be made and other activity conducted on such signature or signatures as determined by Approval of the Board. Any and all records with respect to such bank accounts and/or other accounts, including, but not limited to, copies of any checks written on such account or records of other withdrawal activity, shall be available at an office of the Company or the Accounting Firm for examination and copying by any Member, or his or her duly authorized representative, upon reasonable request therefor and at the expense of such Member. Alternately, copies of such records shall be sent by the Company to any Member, or a Member's duly authorized representative, upon reasonable request therefor and at the expense of such Member.

9.3 Fiscal Year. The fiscal year of the Company shall end on December 31 of each year.

ARTICLE X
Transfer and Redemption of Interests and Admission of New Members

10.1 Restriction on Transfers. Except as otherwise indicated in this Article X, no Member may sell, Transfer, pledge, hypothecate, gift or otherwise dispose of or encumber all or any portion of such Member's Membership Units without the prior written consent of the holders of at least sixty-six percent (66%) of all of the Membership Units (the Member proposing to Transfer his or her Units shall be entitled to vote); provided, however, any Class A Transfer must be to a person who meets the requirements set forth at Sections 2.3 and 2.4 hereof, and any decision shall not take into account the volume or value of referrals of a transferee. Provided further, that the Class B Member (if and only if Kindred Hospital invests) and the Class C Member may not withhold consent to the Transfer of Class A Units as long as such Transfer does not result in the reduction of the number of Physician Class Members, and the transferee meets the requirements of Sections 2.3 and 2.4 hereof and any other Physician Class eligibility requirements hereunder.

10.2 Transferability of Units.

(a) Any Transfer of Units in violation hereof shall be treated as an Adverse Terminating Event. The Units of a Member, and any interest of such Member's spouse in such Units, shall remain subject to this Agreement regardless of the termination, for any reason, of the marital relationship of any Member and the Member's spouse. During the marriage of the Member and such Member's spouse, such Member's obligations to sell or offer to sell Units pursuant to this Agreement shall include any interest of such Member's spouse in the Units. Any Units Transferred in contravention of this Section shall be void of all voting, inspection and other rights with respect to the pledgee/transferee and any such Transfer shall be null and void ab initio

and shall be subject to purchase by the Company as a Terminating Event. Each spouse of a Physician Class Member shall sign a Consent of Spouse form, substantially in the form of Exhibit C hereto, agreeing to be bound by the terms hereof including, without limitation, the term providing that ownership by a spouse is not permitted. Any transferor must sign a counterpart to this Agreement, agreeing to be bound by the terms hereof prior to such Transfer being deemed effective.

Notwithstanding the foregoing, the Class B Member (if and only if Kindred Hospital invests) or Class C Member (including and with respect to all Class A Units held by such Class B or Class C Member) which owns the interests hereof may transfer its Units to an Affiliate (or a purchaser of any significant portion of its stock or assets, or in any merger, consolidation or public offering transaction or as part of any gratuitous transfer if for a gratuitous transfer the transferor receives no consideration in exchange for such interest) as long as the transferor and the transferee agree to remain bound by all of the terms hereof.

Further, Regent Investment, LLC shall be permitted to transfer its Units to Regent Surgical Health, LLC.

(b) The Class B or Class C Member may not Transfer its Class B or C Units, without obtaining Transfer Consent, to any individual or entity engaging or intending to engage in the business of providing outpatient or ambulatory surgical services within fifteen (15) miles of the Center ("Competitor") or to the owners of such Competitor.

(c) Further, notwithstanding the foregoing, any Member may pledge his, her, or its Units to a bank or financial institution.

10.3 Irreparable Harm. Each Member specifically acknowledges that a breach of Section 10.1 hereof would cause the Company and the Members to suffer immediate and irreparable harm, which could not be remedied by the payment of money. In the event of a breach or threatened breach by a Member of the provisions of Section 10.1 hereof, the Company or other Members shall be entitled to injunctive relief to prevent or end such breach, without the requirement to post bond. Nothing herein shall be construed to prevent the Company or other Members from pursuing any other remedies available to it for such breach or such threatened breach, including the recovery of damages, reasonable attorneys' fees and expenses. Any such Transfer shall be an Adverse Terminating Event.

10.4 Assignee of a Member's Membership Units. If, notwithstanding the prohibitions in Section 10.1 hereof, a Member Transfers all or any portion of its Membership Units (whether voluntarily, involuntarily or by operation of law, including, but not limited to, the death, divorce, Disability, merger, or bankruptcy of a Member) and a Person acquires such Membership Units, (but is not admitted as a substituted Member pursuant to the terms of this Agreement) such Person shall:

(a) be treated as an assignee of a Member's Membership Units, as provided in the Act and not as a Member of the Company (unless the provisions of Section 10.5 have been met);

(b) have no right to participate in the business and affairs of the Company or to exercise any rights of a Member under this Agreement or the Act;

(c) share in distributions from the Company with respect to the transferred Membership Units on the same basis as the transferring Member previously had; and

(d) be required to Transfer the Units to the Company in accord with the redemption provisions hereof relating to Adverse Terminating Events.

10.5 Admission of Transferees. Subject to the Transfer permitted in Section 10.1 hereof, a transferee (not already a Member) may be admitted to the Company as a substituted Member only with the prior written consent of the holders of at least sixty-six percent (66%) of all Units then issued and outstanding (the transferee shall not be entitled to vote); provided, Units of the Institutional Class Member or Class C Member may be transferred to any Affiliate or party related to the Institutional Class Member or Class C Member as applicable, as indicated in Section 10.1 hereof.

10.6 Obligations of Permitted Transferees. In the case of any approved Transfer or disposition of Units, the transferee shall execute and deliver an appropriate instrument agreeing to be bound by this Agreement as a Member and such additional agreements or instruments as the Board of Managers may require. Any permitted transferee of Units shall receive and hold such Units subject to this Agreement and all of the restrictions, obligations and rights created hereunder, and the Members and each transferee shall be bound by their obligations under this Agreement with respect to each subsequent transferee.

10.7 Noncompetition. During the term of a Member's membership in the Company, whether a Class A Member, Class B Member or Class C Member, and for a period of two (2) years thereafter, other than through the Company, no Member shall, without the prior written Approval of the Board and the Consent of the Members, and in accordance with Section 7.4 hereof, directly or indirectly own, manage, operate, control or participate in any manner in the ownership, management, operation or control of, or serve as a partner, employee, principal, agent, consultant or otherwise contract with, or have any financial interest in, or aid or assist any other person or entity that operates an ambulatory surgical center, surgical hospital or a facility (including an office or practice based facility which is accredited, licensed or Medicare-certified) that provides services of the type provided by the Company, within fifteen (15) miles of the address of the Facility ("the Territory"), nor may a Member own or operate equipment in his or her office of the type used by the Facility. The preceding sentence shall not be construed to prevent a Physician Class Member or any of its Affiliates from practicing medicine and performing procedures at any location, including any inpatient or outpatient setting, or in such Physician Class Member's or its Affiliates office, as long as such Physician Class Member is not an owner, employee, contractor of, and does not have any financial relationship with, and such office does not constitute, a licensed, accredited, or Medicare-certified ambulatory surgery center or surgical hospital within the Territory; provided further, a physician may perform a procedure under local anesthesia with no sedation in his or her office (as long as a site of service differential is paid), as long as the office is not accredited, licensed or Medicare certified as an ambulatory surgery center or surgical hospital.

If Kindred Hospital invests, this restriction shall not restrict the Institutional Class Member from offering and providing outpatient surgical services in its hospital located at 2250 Flamingo Road. However, the Hospital shall not be permitted to enter into another joint venture with physicians relating to the provision of outpatient surgical or endoscopy services in the Territory. Further the Members may jointly develop a Surgery Center to be located within the Territory as long as all Members are offered the opportunity to invest in the proportion and on the same terms as provided herein; it being understood that certain of the Physician Class Members and the Class C Members are establishing a Surgery Center in the territory and the Class B Institutional Class Member has not yet determined if it will invest therein.

10.8 Confidential Information. Each Member acknowledges that the Confidential Information is valuable property of the Company and undertakes that for so long as he, she or it is a Member, and thereafter until such information otherwise becomes publicly available other than through breach of this Section, shall:

(a) treat the Confidential Information as secret and confidential;

(b) not disclose (directly or indirectly, in whole or in part) the Confidential Information to any third party except with the prior written consent of the Company;

(c) not use (or in any way appropriate) the Confidential Information for any purpose other than the performance of the business of the Company and otherwise in accordance with the provisions of this Agreement;

(d) recognize and acknowledge that the Company's trade secrets and other confidential or proprietary information, as they may exist from time to time, are valuable, special and unique assets of the Company's business. Accordingly, during the term of the Company, each Member shall hold in strict confidence and shall not, directly or indirectly, disclose or reveal to any person, or use for such Member's own personal benefit or for the benefit of anyone else, any trade secrets, confidential dealings or other confidential or proprietary information of any kind, nature or description (whether or not acquired, learned, obtained or developed by a Member alone or in conjunction with others) belonging to or concerning the Company, or any of its customers or clients or others with whom they now or hereafter have a business relationship, except: (i) with the prior written consent of all the other Members; (ii) in the course of the proper performance of the Member's duties hereunder; or (iii) as required by applicable law or legal process. Each Member confirms that all such information constitutes the exclusive property of the Company.

Given the secretive and competitive environment in which the Company does business and the fiduciary relationship that the Members have with the Company, each Member agrees to promptly deliver to the Company, at any time when the Company so requests, all memoranda, notes, records, drawings, manuals and other documents (and all copies thereof and therefrom) in any way relating to the business or affairs of the Company or any of its customers and clients, whether made or compiled by such Member or furnished to it by the Company or any of its employees, customers, clients, consultants or agents, which such Member may then possess or have under its control. Each Member confirms that all such memoranda, notes, records, drawings, manuals and other documents (and all copies thereof and therefrom) constitute the

exclusive property of the Company. Notwithstanding the foregoing paragraph or any other provision of this Agreement, each Member shall be entitled to retain any written materials received by such Member in its capacity as a Member; and

(e) limit the dissemination of and access to the Confidential Information to such of the Company's and the Member's officers, directors, managers, employees, agents, attorneys, consultants, professional advisors or representatives as may reasonably require such information for the performance of Company business and ensure that any and all such persons observe all the obligations of confidentiality contained in this Section 10.8.

(f) "Confidential Information" means any and all policies, procedures, contracts, quality assurance techniques, plans, market studies, projections, pro formas, managed care initiatives, strategies, utilization management, physician lists, patient records, credentialing, financial, statistical and other information of the Company, including (but not limited to) information embodied on magnetic tape, computer software or any other medium for the storage of information, together with all notes, analyses, compilations, studies or other documents prepared by the Company or others on behalf of the Company containing or reflecting such information. Confidential Information does not include information which:

(i) was lawfully made available to or known by a third person on a non-confidential basis prior to disclosure by a Member;

(ii) is or becomes publicly known through no wrongful act of a Member;

(iii) is received by a Member from a third party other than in breach of confidence.

(g) The Class C Member may use Confidential Information for other purposes if the source of such Confidential Information is not identified to the Facility or used in competition against the Facility.

10.9 Nonsolicitation. During the term of a Member's membership in the Company and for a period of two (2) years thereafter, no Member nor any of its Affiliates shall employ or offer employment to any person who is employed by the Company during the term of this Agreement without the prior written Consent of the Members. It is specifically provided that this Section 10.9 shall not prohibit the Class C Member from soliciting the Facility Administrator.

10.10 Additional Covenants.

(a) If a court of competent jurisdiction should declare this Article X, or any provision hereof, unenforceable because of any unreasonable restriction of duration, activity and/or geographical area, then the Parties hereby acknowledge and agree that such court shall have the express authority to reform this Agreement to provide for reasonable restrictions and/or grant the Company such other relief at law or in equity, reasonably necessary to protect the interests of the Company.

(b) Each Member specifically acknowledges that a breach of this Article would cause the Company and other Members to suffer immediate and irreparable harm, which could not be remedied by the payment of money. In the event of a breach or threatened breach by a Member of any of the provisions of this Article, the Company and other Members shall be entitled to injunctive relief to prevent or end such breach, without the requirement to post bond, and shall be entitled to recover reasonable attorneys' fees and expenses. Nothing herein shall be construed as prohibiting the Company from pursuing any other remedies available to it for such breach or such threatened breach, including the recovery of damages.

(c) Each Member warrants and represents that he, she or it:

(i) is familiar with the confidentiality agreement and non-competition agreements agreement contained herein.

(ii) has concluded that the Member's obligations and the Company's rights and remedies described herein, including, without limitation, the right to equitable relief contained herein, are reasonable.

(iii) is fully aware of the duties, responsibilities, obligations and liabilities imposed by this Article X.

(iv) acknowledges that the covenants contained herein are fair, reasonable and just, under the circumstances, and are not a penalty.

(v) acknowledges that no registration statement is now on file with the Securities and Exchange Commission with respect to any Units in the Company, and the Company has no obligation or current intention to register such Units under the Federal Securities Act 1933 ("33 Act").

(vi) acknowledges that the Units have not been registered under the 33 Act because the Company believes such Units are not securities in that all Members will be actively involved in the operation and management of the Company and, further, if securities are deemed to be issued, such Units are issued in reliance upon the exceptions from registration requirements of the 33 Act providing for issuance of securities not involving a public offering, together with any corresponding exemptions of the Nevada Securities Act.

(vii) acknowledges that the Member is acquiring such Units solely for investment and not resale, the Member is an accredited investor (if an actual person, he or she earned more than $200,000 per year individually in each of the last two years, and expects to earn more than such amount this year), has experience and sophistication in financial matters sufficient to evaluate the merits and risks of the investment, and can afford to lose his, her or its entire investment and has not learned of this investment through any general solicitation or advertising. The Company has relied upon the fact that the Units in the Company are to be held by the Members solely for investment and on each of the representations made hereby.

(viii) acknowledges that the exemptions from registration under the 33 Act would be unavailable if the Units in the Company were acquired by a Member with a view to distribution.

(ix) acknowledges that this Agreement does not conflict with or violate any other agreement to which the Member is party.

(x) acknowledges that, notwithstanding any provision to the contrary in this Agreement, no Member may resell his, her or its Units within twelve (12) months of the purchase of such Units.

(xi) acknowledges that the Member expects to be substantially involved in the operations of the Company, and does not expect a return on his, her or its investment due to the efforts of others.

(xii) acknowledges that entering into this Agreement will not require the Company to be bound by any other agreement (and does not violate any other Agreement) to which the Member is a party, such as a collective bargaining agreement, an anesthesia agreement or any other agreement.

(d) The Institutional Class Member (if and only if Kindred Hospital invests) and the Class C Member each further represents, warrants and covenants to the Company, the Board of Managers and all other Members that the appropriate approval to enact this Agreement has been obtained from such Member's independent governing board and any other duly constituted authority from whom such approval is required or necessary for such Member to enact this Agreement and for such Member to be bound hereby.

(i) Each Member has read the Risk Factors attached to the subscription agreement for purchase of Units.

10.11 Drag Along Rights. Notwithstanding anything in this Agreement to the contrary, the following provisions shall apply to the Members:

(a) At any time after the date of this Agreement, if the Class C Member receives an offer from a Person (the "Third Party Purchaser") to purchase or otherwise acquire all of the Class C Member's Units in the Company, whether by purchase or exchange, or by the merger or consolidation of the Class C Member with or into any other Person or Persons (a "Purchase Offer"), and the Class C Member desires to accept such Purchase Offer, then the Class C Member shall deliver written notice of such desire to the Class A Members and Class B Member (if and only if Kindred Hospital invests) (collectively the "Other Members"), together with a copy of the Purchase Offer (an "Affirmative Buy-Out Notice"). The Other Members shall have fifteen (15) days from the date of receipt of the Affirmative Buy-Out Notice to provide written notice (the "Acceptance Notice") to the Class C Member of their desire to sell to the Third Party Purchaser that number of Units equal to forty-two and one-half percent (42.5%) of the collective Units (or 36 Units of all of the issued and outstanding Units) of the Other Members at a price set forth in the Purchase Offer. If and only if Kindred Hospital does not invest, the Class A Members shall sell the Third Party Purchaser that number of Units equal to thirty-eight and seventy-five one hundredths percent (38.75%) of the collective Units (or thirty-one percent (31%) of all issued and outstanding Units) of the Class A Members. The number of Units to be sold by each class of the Other Members under this Section 10.11 shall equal the pro-rata share of Units owned by such class compared to all Units owned by the Other Members. For example,

assuming the Class A Members own, in the aggregate, sixty (60) Units and the Class B Member owns twenty-five (25) Units out of a total one hundred (100) Units issued and outstanding in the Company, the Other Members shall be obligated to sell forty-two and one-half percent (42.5%) of their Units or thirty-six (36) Units in the aggregate. Accordingly, on an individual class basis (as may be adjusted from time to time for the then respective ownership of the classes), the Class A Members shall be required to sell twenty-five and four tenths (25.4) of the Class A Units and the Class B Member shall be required to sell ten and six tenths (10.6) of the Class B Units. Upon the timely delivery of the Acceptance Notice to the Class C Member, the Other Members shall be obligated to sell the required number of Units to the Third Party Purchaser on a date determined by the Class C Member and such Third Party Purchaser, but in any event not more than sixty (60) days after the date the Affirmative Buy-Out Notice is given to the Other Members. The Other Members may sell and retain fractional Units in order to comply with the requirements of this Section.

If Units are sold such that a Third Party Purchaser gains a majority ownership in the Company, the Third Party Purchaser shall acquire the right of the Class C Member to appoint a Manager to the Board. Such Manager shall have the number of votes as calculated pursuant to the first paragraph of Section 7.3 hereof.

(b) If the Other Members do not timely provide the Class C Member with the Acceptance Notice, then the Class C Member may elect, by written notice to the Other Members, to require the Company to purchase all of the Units of the Class C Member at a price equal to the Purchase Offer on the same terms as stated therein. The closing of a purchase pursuant to this Section 10.11(b) will be held at the principal office of the Company on a date determined by the Class C Member and the Company, but in any event not more than thirty (30) days after the date the Affirmative Buy-Out Notice is given to the Other Members. If the Class C Member's Units are purchased hereto, such Units shall be paid for in cash at the closing. The Institutional Class C Member shall have the right to specifically enforce this obligation.

ARTICLE XI
Dissolution and Termination

11.1 Events Causing Dissolution. The Company shall be dissolved and its affairs wound up upon the first to occur of the following events unless the Board approves the continuation of the Company:

(a) The sale or other disposition of all or substantially all of the assets of the Company, unless the disposition is a transfer of assets of the Company in return for consideration other than cash and, by Approval of the Board, a determination is made not to distribute any such non-cash items to the Members;

(b) The election for any reason to dissolve the Company made by Approval of the Board, including the Consent of the Members pursuant to Section 7.4 hereof;

(c) When there is no remaining Member, unless the holders of all the financial rights in the Company agree in writing, within ninety (90) days after the cessation of

membership of the last Member, to continue the legal existence and business of the Company and to appoint one or more new Members;

(d) Any consolidation or merger of the Company with or into any entity unless the Company is the resulting or surviving entity; or

(e) Entry of a decree of judicial dissolution.

To the greatest extent permitted by law, no event (including without limitation the death, resignation, expulsion, bankruptcy, or dissolution of the Member) shall cause automatic dissolution of the Company. Further, upon Board approval, any event giving rise to automatic dissolution shall not cause dissolution if the Board votes that it shall not cause dissolution.

11.2 Procedures on Dissolution. Dissolution of the Company shall be effective on the day on which the event occurs giving rise to the dissolution, but the Company shall not terminate until the Articles shall be canceled in the manner set forth in the Act. Notwithstanding the dissolution of the Company, prior to the termination of the Company, as aforesaid, the business and the affairs of the Company shall be conducted so as to maintain the continuous operation of the Company pursuant to the terms of this Agreement. Upon dissolution of the Company, the Board acting by Approval, or, if none, a liquidator elected by the Consent of the Members, shall liquidate the assets of the Company, apply and distribute the proceeds thereof pursuant to Article VI hereof, and cause the termination of the Agreement.

ARTICLE XII
General Provisions

12.1 Notices. Any and all notices under this Agreement shall be effective (a) on the fifth (5th) business day after being sent by registered or certified mail, return receipt requested, postage prepaid, or (b) on the first business day after being sent by express mail, telecopy, or commercial expedited delivery service providing a receipt for delivery. All such notices in order to be effective shall be addressed, if to the Company at its principal office, if to a Member at the last address of record on the Company books, and copies of such notices shall also be sent to the last address for the recipient which is known to the sender, if different from the address so specified. A Member may change its address for purposes of this Agreement by giving the other Members notice of such change in the manner herebefore provided for the giving of notices.

12.2 Word Meanings. The words "herein," "hereinafter," "hereinbefore," "hereof" and "hereunder" as used in this Agreement refer to this Agreement as a whole and not merely to a subdivision in which such words appear unless the context otherwise requires. The singular shall include the plural and the masculine gender shall include the feminine and neuter, and vice versa, unless the context otherwise requires. All section references, except as otherwise provided herein, are to sections of this Agreement.

12.3 Binding Provisions. Subject to the restrictions on transfers set forth herein, the covenants and agreements contained herein shall be binding upon, and inure to the benefit of, the parties hereto, their heirs, Legal Representatives, successors and assigns.

12.4 Applicable Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Nevada, including, but not limited to, the Act, as interpreted by the courts of the State of Nevada, notwithstanding any rules regarding choice of law to the contrary.

12.5 Counterparts. This Agreement may be executed in several counterparts and as so executed shall constitute one agreement binding on all parties hereto, notwithstanding that all of the parties have not signed the original or the same counterpart.

12.6 Separability of Provisions. Each provision of this Agreement shall be considered separable. If for any reason any provision or provisions herein are determined to be invalid and contrary to any existing or future law, such invalidity shall not impair the operation of or affect those portions of this Agreement which are valid, and if for any reason any provision or provisions herein would cause the Members to be liable for or bound by the obligations of the Company, such provision or provisions shall be deemed void and of no effect.

12.7 Section Titles. Section titles are for descriptive purposes only and shall not control or alter the meaning of this Agreement as set forth in the text.

12.8 Amendments. This Agreement may be amended or modified only with the Approval of the Board and the Members (as limited by Section 7.4 hereof).

12.9 Entire Agreement. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to such subject matter.

12.10 Waiver of Partition. Each Member agrees that irreparable damage would be done to the Company if any Member brought an action in court to dissolve the Company. Accordingly, each Member agrees that such Member shall not, either directly or indirectly, take any action to require partition or appraisement of the Company or of any of the assets or properties of the Company, and notwithstanding any provisions of this Agreement to the contrary, each Member (and such Member's successors and assigns) accepts the provisions of this Agreement as such Member's sole entitlement on termination, dissolution and/or liquidation of the Company and hereby irrevocably waives any and all rights to maintain any action for partition or to compel any sale or other liquidation with respect to such Member's interest, in or with respect to, any assets or properties of the Company. Each Member further agrees not to petition a court for the dissolution, termination or liquidation of the Company.

12.11 Survival of Certain Provisions. The Members acknowledge and agree that this Agreement contains certain terms and conditions which are intended to survive the dissolution and termination of the Company, including, but without limitation, the provisions of Sections 10.7 through 10.10. The Members agree that such provisions of this Agreement, which by their terms require, given their context, that they survive the dissolution and termination of the Company so as to effectuate the intended purposes and agreements of the Members hereunder, shall survive notwithstanding that such provisions had not been specifically identified as surviving and notwithstanding the dissolution and termination of the Company or the execution of any document terminating this Agreement, unless such document specifically provides for

nonsurvival by reference to this Section 12.11 and to the specific provisions hereof which are intended not to survive.

12.12 No Impairment. The Company shall not amend, modify or repeal any provision of the Articles or this Agreement in any manner which would alter or change the rights, preferences, privileges or powers of, or the restrictions provided for the benefit of, the Class A, Class B or Class C Members, without the express prior written consent of holders of a majority of the Units of the class so impacted in each and every such instance; nor shall the Company, through any reorganization, transfer of assets, merger, dissolution, issue, sale or distribution of Units or any other voluntary action, avoid or seek to avoid the observance or performance of any terms of this Agreement that are for the benefit of the Class A, Class B (if and only if Kindred Hospital invests) or Class C Members, without the express prior written consent of the holders of the majority of the class impacted in each and every such instance. The Company shall in good faith take any and all actions which are necessary or appropriate in order to protect the rights of the Class A, Class B (if and only if Kindred Hospital invests) or Class C Members.

12.13 Specific Performance or Injunctive Relief. The Members and the Company hereby declare that it is impossible to measure in money the damages which may accrue to one or more of them by reason of the failure of a Party to perform any of its obligations hereunder. Therefore, if any Party hereto shall institute any action or proceeding to enforce the provisions of this Agreement, any person (including the Company) against whom such action or proceeding is brought hereby waives the claim or defense therein that such Party has or may have an adequate remedy at law and agrees not to urge in any such action or proceeding that such a remedy exists. Furthermore, any Party seeking to enforce the provisions of this Agreement shall have the right to specific performance, injunctive or other equitable relief without the requirement to post bond.

12.14 Dispute Resolution; Limited Renegotiation. Except for disputes relating to breaches of Sections 10.7 through 10.9 hereof, all disputes shall be resolved in accordance with the provisions of this Section 12.14.

This Agreement shall be construed to be in accordance with any and all federal and state statutes, including Medicare, Medicaid and all federal and state rules, regulations, principles and interpretations applicable to the Company and the Members, and the relationships among them. It is the intent of this Section 12.14 to set forth a procedure so that if certain legal developments occur, or certain circumstances arise in which the Board of Managers should become internally deadlocked, a procedure will be in place that will bring the terms of this Agreement back into legal compliance and/or resolve a Board of Managers deadlock while preserving, to the extent possible, the economic and governance relationships set forth here.

In the event there is any dispute among the parties or there is any legal development, including, without limitation, a change in (or the interpretation of) Medicare, Medicaid or other federal or state statutes, rules, regulations, principles or interpretations, that renders any of the material terms of this Agreement unlawful or unenforceable (including any services rendered or compensation to be paid hereunder), or a definitive judicial or State of Nevada interpretation of Nevada law that substantially affects the business, governance, or economics of the Company in an adverse manner (collectively a "Negative Legal Development"), or any circumstance in which the Board itself is deadlocked in its decision making hereunder and cannot take action (a

"Deadlock Event" and the failure to take such action is likely to lead to irreparable harm to the Company), any Member affected by such Negative Legal Development or such Deadlock Event shall have the immediate right, upon notice to the other Members, (the "Notice") to initiate the renegotiation of the affected term or terms of this Agreement, so as to remedy the impact of the Negative Legal Development or to seek resolution of the Deadlock Event, each in a manner that substantially maintains the then existing economic and governance relationships of the Members, if it is legal to accomplish the change while maintaining substantially such economic and governance relationship.

If the Parties are not able to renegotiate the affected terms of the Agreement or resolve the Deadlock Event or dispute on a mutually satisfactory basis within ninety (90) days after the Notice, the Parties must submit the issue (the "Dispute") to mediation and arbitration pursuant to the procedure set forth below. The arbitrator selected in accordance with the provisions set forth below (the "Arbitrator") will be asked to determine the following: (a) whether there is a bona fide Negative Legal Development or Deadlock Event; (b) if so, are there modifications to the affected term or terms of the Agreement (the "Modifications") or a resolution of the Deadlock Event ("Resolution") that are legal and will resolve the Dispute in a manner that substantially maintains the then existing economic and governance relationships of the Members; and (c) if there are curative Modifications or a Resolution, what is the Resolution or the specific Modifications to each term of this Agreement.

(a) Right to Mediate or Arbitrate. Any dispute between the Parties relating to this Agreement must first be submitted to non-binding mediation in accordance with procedures agreed upon by the Parties. If the dispute is not resolved through mediation within ninety (90) days of the initial request for mediation, or within a time frame mutually agreed upon by the Parties, the dispute must then be submitted for binding arbitration in accordance with procedures set forth by the American Health Lawyers Association.

(b) Pre-Arbitration Procedure.

(i) Any dispute shall be submitted to arbitration by notifying the other Party or Parties, as the case may be, hereto in writing of the submission of such dispute to arbitration (the "Arbitration Notice"). The Party delivering the Arbitration Notice shall specify therein, to the fullest extent then possible, its version of the facts surrounding the dispute and the amount of any damages and/or the nature of any injunctive or other relief such Party claims.

(ii) The Party (or Parties, as the case may be) receiving such Arbitration Notice shall respond within sixty (60) days after receipt thereof in writing (the "Arbitration Response"), stating its version of the facts to the fullest extent then possible and, if applicable, its position as to damages or other relief sought by the Party initiating arbitration.

(iii) The Parties shall then endeavor, in good faith, to resolve the dispute outlined in the Arbitration Notice and Arbitration Response. In the event the Parties are unable to resolve such dispute within sixty (60) days after receipt of the Arbitration Response, the Parties shall initiate the arbitration procedure outlined below.

(c) Arbitration Procedure.

(i) If the Parties hereto are unable to resolve the dispute within sixty (60) days after receipt of the Arbitration Response as set forth above, then the Parties must submit the dispute to binding arbitration in accordance with the American Health Lawyers arbitration program. If the Parties are unable to agree on an arbitrator within sixty (60) days after receipt of the Arbitration Response, each of the Parties shall, within sixty (60) days after receipt of the Arbitration Response, choose an arbitrator selector ("Selector"). The two Selectors shall then have thirty (30) days to select an arbitrator who shall serve as the final arbitrator for the dispute. (The arbitrator chosen by the Parties hereto or by the Selectors, as the case may be, shall hereinafter be referred to as the "Arbitrator"). The Arbitrator shall not be an Affiliate of any of the Parties hereto.

(ii) The arbitration shall be held in Las Vegas, Nevada. The Parties shall submit to the Arbitrator the Arbitration Notice and the Arbitration Response and any other facts regarding the dispute which any Party desires.

(iii) The Arbitrator shall apply the arbitration rules set forth below in making his or her decision. The decision of the Arbitrator shall be rendered within sixty (60) days of the close of the hearing record, shall be in writing and shall contain findings of fact and conclusions of law.

(d) Arbitration Rules.

(i) The Arbitrator shall allow reasonable discovery, which he or she determines is necessary for determination of the issues presented.

(ii) The Arbitrator shall agree to resolve all factual disputes prior to resolving legal disputes.

(iii) The Arbitrator shall be guided by, and shall substantially comply with, the then-applicable Federal Rules of Evidence.

(iv) The Arbitrator is empowered to include in any award made hereunder such relief as the Arbitrator deems appropriate (other than punitive damages), including, without limitation, (i) injunctive relief in addition to or in lieu of monetary damages and (ii) reasonable attorneys' fees and expenses.

(v) Should any Party refuse or neglect to appear or participate in the arbitration proceedings, including the procedures relating to the selection of an Arbitrator, the participating Party may select the Arbitrator and the Arbitrator is empowered to decide the controversy in accordance with whatever evidence is presented.

(vi) The Arbitrator's award shall be in a form sufficient to clearly inform the Parties of the Arbitrator's decision.

(e) Arbitrator's Award. The award of the Arbitrator shall be binding on the Parties and may be entered as a final judgment in a court of competent jurisdiction.

(f) Other Disputes. All disputes relating to breaches of Sections 10.7 through 10.9 hereof shall be resolved by a court of law with the site of venue, without the right to remove or change venue, in Las Vegas, Nevada.

12.15 Waiver of Ross & Hardies Conflict. Ross & Hardies ("R&H") has acted as lead counsel in developing the documentation to form the Company. In this regard, the Parties acknowledge that R&H has informed each Member that a conflict of interest exists in R&H's representation in such formation and that each Member has been advised to seek outside counsel and business advice to review all documents relating to the Company and to advise each Member as to the effects, consequences and legalities of the documents. Further, it is expected that the Class A Members and Class B Member (if and only if Kindred Hospital invests) will engage counsel to negotiate the terms of this Agreement on their behalf. It is also acknowledged that R&H provides counsel to the Class C Member and will not negotiate on behalf of the Company any terms of the agreement between the Company and the Class C Member and, further, that a Member in R&H owns interests in Regent Investment, LLC, (provided all voting power in Regent Investment, LLC is provided to Regent Surgical Health for all purposes herein) and that such ownership can create a conflict of interest between the Company and the Class C Member, and thus R&H shall not represent the Company in enforcing the rights of the Company against the Class C Member or any other action between the Company and the Class C Member.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Board of Managers and the Members hereto have executed this Agreement under seal as of the day and year first above written. This Agreement shall be binding upon each Person who signs below even if all persons do not sign who are indicated below.

CLASS A MEMBERS:

WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF
WRCBSS INVESTMENT, LLC

Matthew NG, M. D.

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

_____

Carl Williams, M.D.

_____

Michael Crovetti, M.D.

_____

Kevin Rayls, M.D.

_____

~~Robert Grzywacz M.D.~~ Robert Wong, M.D.

_____

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WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF
WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

Charles Tadlock, M.D.

Carl Williams, M.D.

_____

Michael Crovetti, M.D.

_____

Kevin Rayls, M.D.

_____

Robert Grzywacz, M.D.

_____

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CLASS A MEMBERS:

WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

_____

Carl Williams, M.D.

_____

Michael Cravetti, M.D.

_____

Kevin Rayls, M.D.

_____

Robert Grzywacz, M.D.

_____

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CLASS A MEMBERS:

WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF
WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

_____

Carl Williams, M.D.

_____

Michael Crovetti, M.D.

_____

Kevin Reds, M.D.

_____

Robert Urzovacz, M.D.

_____

Robert WANG M.D.

IN WITNESS WHEREOF, the Board of Managers and the Members hereto have executed this Agreement under seal as of the day and year first above written. This Agreement shall be binding upon each Person who signs below even if all persons do not sign who are indicated below.

CLASS A MEMBERS:

WRCBSS INVESTMENT LLC

By: _____

Its: _____

INITIAL PHYSICIAN OWNERS OF
WRCBSS INVESTMENT, LLC

WRCBSS Investment, LLC.

By: _____

Its: _____

James Lovett, M.D.

_____

Charles Tadlock, M.D.

_____

Carl Williams, M.D.

_____

Michael Crovetti, M.D.

_____

Kevin Ryvls, M.D.

_____

Robert Grzywacz, M.D.

_____

THE COMPANY:

FLAMINGO-PECOS SURGERY CENTER, LLC
By: _____
Its: _____

CLASS B MEMBER:

KINDRED HOSPITAL LAS VEGAS*

By: _____

Its: _____

CLASS C MEMBER:

REGENT SURGICAL HEALTH, LLC

By: _____

Its: _____

REGENT INVESTMENT MANAGEMENT, ~~INC~~ (Scott Beck)

By: _____

Its: _____

*The signature of the Class B Member shall only be required if Kindred Hospital is an investor.

EXHIBIT C

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement ("Agreement") and that I understand its contents. I am aware that the Agreement contains provisions whereby my spouse agrees to sell all his/her interest, of any form, in Flamingo-Pecos Surgical Center, LLC (the "Company"), including, if any, our community interest in it, upon the occurrence of certain events, and that the Agreement also imposes restrictions on the transfer of such ownership interest. I hereby consent to any sale of my spouse's interest in the Company pursuant to the Agreement, approve of the provisions of the Agreement, and agree that our community property interest, if any, is subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement in relation to that interest. Further, in the event of dissolution of my marriage or other event which necessitates the division of marital community property, I will assert no right, claim or other entitlement to the interest of my spouse in the Company so that full ownership of the interest therein shall thereafter remain with my spouse as his/her separate property notwithstanding that it may be subject to valuation for the purpose of achieving a fair and equitable division of our community property.

I AM AWARE THAT THE LEGAL, FINANCIAL AND OTHER MATTERS CONTAINED IN THE AGREEMENT ARE COMPLEX AND I AM FREE TO SEEK ADVICE WITH RESPECT THERETO FROM INDEPENDENT COUNSEL. I HAVE EITHER SOUGHT SUCH ADVICE OR DETERMINED AFTER CAREFULLY REVIEWING THE AGREEMENTS THAT I WILL WAIVE SUCH RIGHT.

Name of Member: [illegible] NEUK

Name of Spouse: [illegible] ORIA WEUK

Signature of Spouse: _____

Name of Witness: _____

Signature of Witness: _____

Date: _____

EXHIBIT C

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement ("Agreement") and that I understand its contents. I am aware that the Agreement contains provisions whereby my spouse agrees to sell all his/her interest, of any form, in Flamingo-Pecos Surgical Center, LLC (the "Company"), including, if any, our community interest in it, upon the occurrence of certain events, and that the Agreement also imposes restrictions on the transfer of such ownership interest. I hereby consent to any sale of my spouse's interest in the Company pursuant to the Agreement, approve of the provisions of the Agreement, and agree that our community property interest, if any, is subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement in relation to that interest. Further, in the event of dissolution of my marriage or other event which necessitates the division of marital community property, I will assert no right, claim or other entitlement to the interest of my spouse in the Company so that full ownership of the interest therein shall thereafter remain with my spouse as his/her separate property notwithstanding that it may be subject to valuation for the purpose of achieving a fair and equitable division of our community property.

I AM AWARE THAT THE LEGAL, FINANCIAL AND OTHER MATTERS CONTAINED IN THE AGREEMENT ARE COMPLEX AND I AM FREE TO SEEK ADVICE WITH RESPECT THERETO FROM INDEPENDENT COUNSEL. I HAVE EITHER SOUGHT SUCH ADVICE OR DETERMINED AFTER CAREFULLY REVIEWING THE AGREEMENTS THAT I WILL WAIVE SUCH RIGHT.

Name of Member: Charles Henry Tadlock

Name of Spouse: Mary Elaine Tadlock

Signature of Spouse: Mary Elaine Tadlock

Name of Witness: _____

Signature of Witness: _____

Date: _____

EXHIBIT C

CONSENT OF SPOUSE

I acknowledge that I have read the foregoing Operating Agreement ("Agreement") and that I understand its contents. I am aware that the Agreement contains provisions whereby my spouse agrees to sell all his/her interest, of any form, in Flamingo-Pecos Surgical Center, LLC (the "Company"), including, if any, our community interest in it, upon the occurrence of certain events, and that the Agreement also imposes restrictions on the transfer of such ownership interest. I hereby consent to any sale of my spouse's interest in the Company pursuant to the Agreement, approve of the provisions of the Agreement, and agree that our community property interest, if any, is subject to the provisions of the Agreement and that I will take no action at any time to hinder operation of the Agreement in relation to that interest. Further, in the event of dissolution of my marriage or other event which necessitates the division of marital community property, I will assert no right, claim or other entitlement to the interest of my spouse in the Company so that full ownership of the interest therein shall thereafter remain with my spouse as his/her separate property notwithstanding that it may be subject to valuation for the purpose of achieving a fair and equitable division of our community property.

I AM AWARE THAT THE LEGAL, FINANCIAL AND OTHER MATTERS CONTAINED IN THE AGREEMENT ARE COMPLEX AND I AM FREE TO SEEK ADVICE WITH RESPECT THERETO FROM INDEPENDENT COUNSEL. I HAVE EITHER SOUGHT SUCH ADVICE OR DETERMINED AFTER CAREFULLY REVIEWING THE AGREEMENTS THAT I WILL WAIVE SUCH RIGHT.

Name of Member: Matthew Ng, M.D.

Name of Spouse: Bonnie Ng

Signature of Spouse: Bonnie N. Ng

Name of Witness: _____

Signature of Witness: _____

Date: _____

FIRST AMENDMENT TO OPERATING AGREEMENT

THIS FIRST AMENDMENT TO OPERATING AGREEMENT ("Amendment") is made and entered into on this 1st day of _____, _____, 2002 and amends the Operating Agreement dated December 10, 2001 ("Agreement") of Flamingo-Pecos Surgery Center, LLC, a Nevada limited liability company (the "Company"). This Amendment has been approved in accordance with Sections 7.4 and 12.8 of the Agreement.

WITNESSETH:

WHEREAS, the Company has entered into a Lease Agreement ("Agreement") dated as of May 23, 2002 with Transitional Hospitals Corporation of Nevada, Inc.;

WHEREAS, certain default provisions of the Lease require the Company to remove a Member under certain circumstances in order to avoid an Event of Default under the Lease;

WHEREAS, the Resolutions of the Company adopted by the Members and Managers of the Company on April 22, 2002 authorize the Board of Managers to make such changes to the Agreement as are necessary to enable Company to comply with Article XV of the Lease;

WHEREAS, Sections 7.4 and 12.8 of the Agreement provide that the Agreement can be amended upon approval of the Board of Managers and the written consent of Members holding at least sixty-six percent (66%) of the Units issues and outstanding in each separate class of Units; and

WHEREAS, terms not otherwise defined herein shall have the meanings ascribed to such terms in the Agreement.

NOW, THEREFORE, in accordance with the Agreement, the parties hereto agree that the Agreement shall be amended as follows:

Section 1. The Agreement is hereby amended by inserting the following language at the end of Section 4.3(c)(i), after the word "Member" and before the period:

> ": or the removal of a Member pursuant to Article XV of the Lease Agreement between Company and Transitional Hospitals Corporation of Nevada, Inc. dated as of May 23, 2002 ("Lease"); where such removal is required to avoid termination of the Lease pursuant to Sections 15.1.10 , 15.1.14 or 15.1.15 of the Lease (or other Lease Sections); provided, such removal may be expedited as needed to avoid a termination of the Lease, and upon such expedited removal, the Member shall be deemed removed immediately upon notice from the Board (a Board meeting for such purpose may be called upon three (3) days notice to the Board), but may arbitrate after such removal any dispute related thereto; provided, however, if such removal is due to an event that is also an Adverse Terminating Event pursuant to Section 4.3(h) hereof,

such removal shall be treated as an Adverse Terminating Event hereunder."

Section 2. The Agreement is amended only to the extent set forth herein, and all other terms of the Agreement shall remain the same and are not affected by this Amendment. In the event of any conflict between the terms of this Amendment and the terms of the Agreement, the terms of this Amendment shall control.

Section 3. This Amendment may be executed in two (2) or more counterparts, each of which shall constitute an original, and all of which together shall constitute one and the same instrument.

Section 4. This Amendment shall be governed by the laws of the State of Nevada.

Section 5. This Amendment shall be effective as of the date first set forth above.

* * * *

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

Ben Venger, M.D.

Sheldon J. Freedman, M.D.

Charles Tadlock, M.D.

Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

its: _____

Paul Chao, M.D.

Sheldon Freedman, M.D.

Matthew Ng, M.D.

Robert Wang, M.D.

Michael Fishel, M.D.

Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

By: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

_____
Victor Prochaska, M.D.

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D

_____
Michael Fisher, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Jaecker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

By: _____

Its: _____

_____
Paul Chae, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fishel, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.1 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

_____
Ben Venger, M.D.

_____
Sheldon J. Freedman, M.D.

_____
Charles Tadlock, M.D.

_____
Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd

By: _____

Its: _____

_____
Paul Chao, M.D.

_____
Sheldon Freedman, M.D.

_____
Matthew Ng, M.D.

_____
Robert Wang, M.D.

_____
Michael Fisher, M.D.

_____
Laurie Larson, M.D.

CLASS C MEMBERS:

Reece Surgical Health, LLC

By: _____

Its: _____

Regent Investment Management, Inc./Scott Becker

By: _____

IN WITNESS WHEREOF, the undersigned parties, being all of the voting members of the Board of Managers and the Institutional Class Member, have caused this Amendment to be adopted in accordance with the terms of Sections 7.4 and 12.8 of the Agreement and have duly executed this Amendment as of the day and year first written above.

MEMBERS OF THE BOARD:

Ben Venger, M.D.

Sheldon J. Freedman, M.D.

Charles Tadlock, M.D.

Tom Mallon

CLASS A MEMBERS:

WRCBSS Investment Group, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd

By: _____

Its: _____

Paul Chao, M.D.

Sheldon Freedman, M.D.

Matthew Ng, M.D.

Robert Wang, M.D.

Michael Fisher, M.D.

Laurie Larson, M.D.

CLASS C MEMBERS:

Regent Surgical Health, LLC

By: _____

Its: CEO

Regent Investment Management, Inc./Scott Becker

By: _____

SECOND AMENDMENT TO OPERATING AGREEMENT OF FLAMINGO-PECOS SURGERY CENTER, LLC

This **SECOND AMENDMENT TO OPERATING AGREEMENT** ("Consent") of Flamingo-Pecos Surgery Center, LLC, is hereby entered into as of this ____ day of June, 2006 (the "Effective Date"), by and among the undersigned Members of Flamingo-Pecos Surgery Center, LLC, d/b/a Surgery Center of Southern Nevada, a Nevada limited liability company ("Company"). All capitalized terms used herein but not otherwise defined shall have the respective meanings set forth in the Operating Agreement (as defined below).

WHEREAS, the Company and the Members are parties to that certain Operating Agreement, dated as of December 10, 2001, as amended from time to time (the "Operating Agreement");

WHEREAS, pursuant to the exception to Section 7.4 of the Operating Agreement, amendments to the Operating Agreement require the written consent or vote of Members holding at least sixty-six percent (66%) of the Units issued and outstanding in each separate class of Units; and

WHEREAS, the Members desire to delete Section 10.11 of the Operating Agreement, and Regent Surgical Health, LLC ("Regent"), as a show of good faith and collegiality, agrees to such amendment of the Operating Agreement.

NOW, THEREFORE, the Members of the Company hereby Consent, adopt, ratify, and approve the following resolution:

RESOLVED, that Regent, as a show of good faith and collegiality, hereby agrees with the Members that Section 10.11 of the Agreement, regarding drag-along rights, shall be and hereby is deleted in its entirety, and such amendment is fully ratified, adopted and approved.

(Signature page to follow.)

IN WITNESS WHEREOF, all of the Members of the Company have executed the foregoing Amendment and Consent as of the date first written above.

CLASS A MEMBERS:

ATAGA FOUR, LLC

By: _____

Its: _____

Charles H. Tadlock, M.D., Ltd.

Ivan Karabachev, M.D.

Steve Johnsen, M.D.

Matthew Ng, M.D.

Sheldon Friedman, M.D.

Timothy Tolan, M.D.

Laurie Larsen, M.D.

Michael Fishell, M.D.

Scott Slavis, M.D.

Larry Goldstein, M.D.

Gerald Higgins, M.D.

John Thalgott, M.D.

CLASS C MEMBERS:

REGENT SURGICAL HEALTH, LLC

By: _____

Its: _____

REGENT INVESTMENT MANAGEMENT, INC./ SCOTT BECKER

By: _____
Scott Becker, President

THIRD AMENDMENT TO OPERATING AGREEMENT
OF
FLAMINGO-PECOS SURGERY CENTER, LLC

THIS THIRD AMENDMENT TO OPERATING AGREEMENT (this "***Amendment***") is made and entered into as of this 20th day of May, 2008, by and among FLAMINGO-PECOS SURGERY CENTER, LLC, a Nevada limited-liability company ("***Company***"). Capitalized terms used herein that are not otherwise defined shall, unless otherwise indicated, have their meanings set forth in the Operating Agreement (as defined below).

RECITALS

WHEREAS, the Company and Epiphany Surgical Solutions, LLC, a Nevada limited-liability company ("***Epiphany***"), entered into that certain Omnibus Agreement of even date herewith (the "***Omnibus Agreement***").

WHEREAS, immediately following the consummation of the transactions contemplated by the Redemption Agreements (as defined in the Omnibus Agreement), the Company will only have Class A Units issued and outstanding.

WHEREAS, the Omnibus Agreement requires the Company and the Class A Members to who will to make certain amendments to the MSA effective as of the Closing (as defined in the Purchase Agreement, which is defined in the Omnibus Agreement).

NOW, THEREFORE, in consideration of the mutual covenants, promises, and other agreements set forth in the Omnibus Agreement and in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby acknowledge and agree that the above recitals are true and correct and are, by this reference, incorporated herein, and further acknowledge and agree with each other as follows.

1. Deletion of Section 10.7. Section 10.7 of the Operating Agreement shall be, and hereby is, deleted in its entirety.

2. Amendment to Section 10.8(g). Section 10.8(g) of the Operating Agreement shall be deleted in its entirety and the following Section 10.8(g) shall be, and hereby is, inserted in its place and stead:

> (g) Notwithstanding anything contained in this Agreement to the contrary, the Company and each of the Members hereby acknowledge and agree that EPIPHANY SURGICAL SOLUTIONS, LLC, a Nevada limited-liability company (collectively with its successor and assigns, "***Epiphany***"), which is, pursuant to the terms of that certain Management Services Agreement dated February 12, 2002, by and between the Company and REGENT SURGICAL HEALTH, L.L.C., a Nevada limited-liability company ("***RSH***"), which has been acquired by Epiphany and subsequently amended by Epiphany and the Company (the "***MSA***"), is owned and/or controlled by one or more of the Members. Further, the Company and the Members hereby acknowledge and agree that Epiphany manages and/or operates other surgical centers within and outside of Clark County, Nevada. As such, the Company and its Members hereby acknowledge and agree that Epiphany may disclose Confidential Information that is not Excluded Information, in the course of operating its other surgical centers that are not located within a three (3) mile radius of the Facility. For purposes of this Section 10.8(g) the term "***Excluded Information***" shall refer to and mean patient records.

3. Amendment to Section 10.9. Section 10.9 of the Operating Agreement shall be deleted in its entirety and the following Section 10.9 shall be, and hereby is, inserted in its place and stead:

Section 10.9. During the term of a Member's membership in the Company and for a period of two (2) years thereafter, no Member nor any of its Affiliates shall employ or offer employment to any person who is employed by the Company during the term of this Agreement without the prior written Consent of the Members. It is specifically provided that this Section 10.9 shall not prohibit Epiphany from soliciting any of the Company's employees for Epiphany's self or any other facility managed by Epiphany.

4. Effective Date. The Amendments set forth in this Amendment shall become effective, if at all, at the later of (a) the date the transactions contemplated by the Redemption Agreements are closed; and (b) the date the transactions contemplated by the Purchase Agreement are closed.

5. Affirmation. The Operating Agreement is, to the extent not inconsistent with the provisions of this Amendment, hereby ratified and affirmed. If there is any conflict between the terms set forth in the Operating Agreement and the terms contained in this Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto affix their signatures below and execute this Agreement under seal.

CLASS A MEMBERS:

Charles Tadlock

Larry Goldstein

Michael Fischell

Daniel Burkhead

John Thalgett

Marjorie Belsky

Sheldon Freedman

Scott Slavis

Matthew Ng

Ivan Karabachev

Laurie Larson

William Smith

James Vahey

Ataga Four, L.L.C.,
a Nevada limited-liability company

By: _____
John Arger, Manager
Jason Gruber

FOURTH AMENDMENT TO OPERATING AGREEMENT OF FLAMINGO –PECOS SURGERY CENTER, LLC

THIS FOURTH AMENDMENT TO OPERATING AGREEMENT (this "***Amendment***") is made and entered into as of this 10th day of JUNE, 2011, by and among FLAMINGO-PECOS SURGERY CENTER, LLC, a Nevada limited-liability company ("***Company***") and all the Members of the Company. Capitalized terms used herein that are not otherwise defined shall, unless otherwise indicated, have their meanings set forth in the Company's Operating Agreement dated December 10, 2001, as amended by that First Amendment to Operating Agreement dated _____, 2002, that Second Amendment to Operating Agreement dated June ___, 2006, and that Third Amendment to Operating Agreement dated May 20, 2008 (collectively, the "***Operating Agreement***").

RECITALS

WHEREAS, the Operating Agreement contains certain provisions that are no longer applicable to the Company's business and/or affairs;

WHEREAS, the Members desire to increase the number Units the Company is authorized to issue to its Members;

WHEREAS, the Members desire to only have two (2) classes of Units and to retain the right to hereafter issue one or more Units in either class of Units to existing Members, substitute Members, and/or additional Members as permitted under the terms of the Operating Agreement.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and other agreements set forth in the Omnibus Agreement and in this Amendment, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby acknowledge and agree that the above recitals are true and correct and are, by this reference, incorporated herein, and further acknowledge and agree with each other as follows.

1. Deletion of all references to Class B Members, Class B Units, Institutional Class Units, Institutional Member, and Kindred Hospital. For all purposes of the Operating Agreement, all references to Class B Members, Class B Units, Institutional Class Units, Institutional Member, and Kindred Hospital are hereby deleted and each and every provision of the Operating Agreement shall be read and interpreted as though there were no Class B Units and no Class B Members, and without reference to Kindred Hospital. For all purposes of the Operating Agreement, there shall be no Class B Members and Class B Units, unless and until the Board of Managers and the Members otherwise provide by future amendment to the Operating Agreement, which amendment shall be made and approved, if at all, as provided in Section 12.8 of the Operating Agreement.

2. Amendment to Section 3.2(a)(i). Section 3.2(a)(i) of the Operating Agreement shall be deleted in its entirety and the following Section 3.2(a)(i) shall be, and hereby is, inserted in its place and stead:

"(i) The Company shall be authorized to issue five hundred (500) Unit. The Company shall have two (2) classes of Units. The first class shall be referred to as "***Class A Units***" and the second class shall be referred to as "***Class C Units***." The Class A Units may also be referred to as the "***Physician Class Units***." Except as otherwise provided in this Operating Agreement, the Board of Managers and the Members may authorize additional Units. Further, the Board of Managers and the Members may create additional classes of Units with such rights, powers, and/or priorities as the Board of Managers and the Members shall determine. Each Unit (including any Unit hereafter authorized and/or issued) shall, except as otherwise provided in this Operating Agreement, have the same rights and obligations, represent an ownership interest in the Company, and include, without limitation, any and all benefits to which a Member may be entitled as provided in this Agreement. The Company shall designate one hundred fifty (150) Units as Class A Units. The remaining three hundred fifty (350) Units shall remain authorized but unissued and shall not be designated for any class unless and until the Board of Managers and the Members so agree as provided in this Operating Agreement."

3. Amendment of Section 3.2(a)(iii). Section 3.2(a)(iii) of the Operating Agreement shall be deleted in its entirety and the following Section 3.2(a)(iii) shall be, and hereby is, inserted in its place and stead:

"(iii) Each new Member (whether an additional Member or substitute Member) shall be required to complete a subscription or purchase agreement, including a counterpart of this Operating Agreement. Such subscription or purchase agreement shall evidence the subscriber's acceptance of the terms and conditions of this Agreement and shall be returned to the Company with such new Subscriber's Capital Contribution."

4. Deletion of Section 3.2(a)(iv) and Section 3.2(a)(v). Section 3.2(a)(iv) and Section 3.2(a)(v) of the Operating Agreement, including, the full paragraph prior to Section 3.2(b), are hereby deleted in full.

5. Effective Date. The Amendments set forth in this Amendment shall become effective, if at all, at the later of (a) the date the transactions contemplated by the Redemption Agreements are closed; and (b) the date the transactions contemplated by the Purchase Agreement are closed.

6. Affirmation. The Operating Agreement is, to the extent not inconsistent with the provisions of this Amendment, hereby ratified and affirmed. If there is any conflict between the terms set forth in the Operating Agreement and the terms contained in this

Amendment, the terms of this Amendment shall control.

IN WITNESS WHEREOF, and intending to be legally bound, the parties hereto affix their signatures below and execute this Agreement under seal.

CLASS A MEMBERS:

Charles Tadlock

Larry Goldstein

Michael Valpiani

Daniel Burkhead

John Thalgott

Marjorie Belsky

Minh Luong

Jason Garber

John Anson

Steve Becker

Scott Slavis

Matthew Ng

Ivan Karabachev

Laurie Larson

William Smith

James Vahey

T.S. O-Lee

Fred Redfern

William Muir

Sheldon Freedman

EXHIBIT "C"

EXHIBIT "C"

DANIEL G. BOGDEN
United States Attorney
District of Nevada
CRANE M. POMERANTZ
Assistant United States Attorney
333 Las Vegas Boulevard South, Suite 5000
Las Vegas, Nevada 89101
702-388-6336

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

-oOo-

UNITED STATES OF AMERICA, Plaintiff, vs. ROBERT W. BARNES, Defendant.	Case No.: **PLEA AGREEMENT UNDER FED. R. CRIM. P. 11 (c)(1)(A) and (B)**

Plaintiff United States of America, by and through Daniel G. Bogden, United States Attorney, and Crane M. Pomerantz, Assistant United States Attorney, the defendant Robert W. Barnes, and the defendant's attorney, Daniel Albregts, submit this Plea Agreement under Fed. R. Crim. P. 11(c)(1)(A and B).

I. SCOPE OF AGREEMENT

The parties to this Plea Agreement are the United States of America and Robert W. Barnes. This Plea Agreement binds the defendant and the United States Attorney's Office for the District of Nevada. It does not bind any other prosecuting, administrative, or regulatory authority, the United States Probation Office, or the Court.

The Plea Agreement sets forth the parties' agreement regarding criminal charges referenced in the Plea Agreement and applicable sentences, fines, restitution and forfeiture. It does not control or prohibit the United States or any agency or third party from seeking any other civil or administrative remedies directly or indirectly against the defendant.

II. DISPOSITION OF CHARGES AND WAIVER OF TRIAL RIGHTS

A. Guilty Plea. The defendant knowingly and voluntarily agrees to plead guilty to the following charges set forth in the Criminal Information:

Count One: Embezzlement in Connection with Health Care, in violation of Title 18, United States Code, Section 669.

The defendant also agrees to the forfeiture of the property, the imposition of the forfeiture on the property, and the imposition of the in personam criminal forfeiture money judgment as set forth in the Plea Agreement and the Forfeiture Allegations of the Criminal Information.

B. Waiver of Trial Rights. The defendant acknowledges that he has been advised and understands that by entering a plea of guilty he is waiving -- that is, giving up certain rights guaranteed to all defendants by the laws and the Constitution of the United States. Specifically, the defendant is giving up:

1. The right to proceed to trial by jury on all charges, or to a trial by a judge if the defendant and the United States both agree;

2. The right to confront the witnesses against the defendant at such a trial, and to cross-examine them;

3. The right to remain silent at such a trial, with assurance that his silence could not be used against his in any way;

4. The right to testify in his own defense at such a trial if he so chooses;

5. The right to compel witnesses to appear at such a trial and testify in the defendant's behalf; and

6. The right to have the assistance of an attorney at all stages of such proceedings.

7. The right to be indicted by a grand jury.

C. Withdrawal of Guilty Plea. The defendant will not seek to withdraw his guilty pleas after he has entered them in court.

D. Additional Charges. The United States agrees not to bring any additional charges against the defendant arising out of the investigation in the District of Nevada which culminated in this Plea Agreement and based on conduct known to the United States except that the United States reserves the right to prosecute the defendant for any crime of violence as defined by 18 U.S.C. § 16.

III. ELEMENTS OF THE OFFENSES

Counts One: The elements of Embezzlement in Connection with Health Care, in violation of 18 U.S.C. § 669 are:

First, the defendant, without authority, embezzled money from the Surgical Centers of Southern Nevada and related entities;

Second, the defendant acted knowingly and willfully;

Third, the Surgical Center of Southern Nevada was an entity that provided health care benefits for which payment may be made under a health care benefit program; and

Fourth, the amount embezzled exceeded $100.

18 U.S.C. § 669; 18 U.S.C. § 24(b).

IV. FACTS SUPPORTING GUILTY PLEA

A. The defendant will plead guilty because he is, in fact and under the law, guilty of the crimes charged.

B. The defendant acknowledges that if he elected to go to trial instead of pleading guilty, the United States could prove his guilt beyond a reasonable doubt and establish its right to forfeit the specified property by preponderance of the evidence. The defendant further acknowledges that his admissions and declarations of fact set forth below satisfy every element of the charged offenses.

C. The defendant waives any potential future claim that the facts he admitted in this Plea Agreement were insufficient to satisfy the elements of the charged offenses.

D. The defendant admits and declares under penalty of perjury that the facts set forth below are true and correct:

Beginning on or about October 5, 2006, defendant Robert W. Barnes worked as the Operating Manager / Office Administrator for Surgery Centers of Southern Nevada ("SCSN"). SCSN is an outpatient ambulatory surgical center at which surgical procedures not requiring an overnight hospital stay are performed. Procedures performed at SCSN are reimbursed by public and private health

insurance companies on behalf of their beneficiaries. As the Operating Manager / Office Administrator for SCSN, defendant Robert W. Barnes was responsible for the management and finances of that entity, including vendor payments and distributions to the physician investors who owned SCSN and performed surgical procedures there. At all relevant times, SCSN had locations at Burnham Avenue and W. Twain Avenue in Las Vegas. Defendant Robert W. Barnes' criminal conduct took place in the District of Nevada.

In approximately 2010, SCSN began to struggle financially. Vendor payments, including rent, were long overdue and physician-investors ceased receiving distributions on their investments, despite the fact that SCSN continued to receive reimbursement from the various public and private insurance companies whose beneficiaries had procedures there. SCSN ultimately declared bankruptcy as a result of the substantial amounts due to its various vendors, causing significant losses to its physician investors.

Defendant Robert W. Barnes was responsible for the lack of payments to vendors and lack of distributions to investors. Between approximately 2010 and continuing through 2013, he embezzled at least $1.3 million dollars from SCSN, without authority to do so. Defendant Robert W. Barnes improperly used multiple SCSN credit cards for personal purchases, including travel, jewelry, concerts and dining. For example, defendant Robert W. Barnes obtained approximately $515,000 in casino cash advances using SCSN credit cards, which he used for personal gambling. In February 2013, defendant Robert W. Barnes used an SCSN credit card to purchase a diamond and platinum ring for $38,000. During one five

month period in 2013, defendant Robert W. Barnes charged approximately $45,000 on one SCSN credit card for concert tickets, hotels and expenses at Disneyland, expensive meals, and other personal entertainment and expenses. Defendant Robert W. Barnes also embezzled funds from entities related to SCSN, including Epiphany Surgical Solutions ("ESS"), a management company that received fees from SCSN for management services, and VIP Surgical Centers, a prospective surgical center that defendant Robert W. Barnes was managing through ESS, in which several physicians had made substantial cash investments.

At all relevant times, the defendant acted knowingly and willfully.

The parties agree that $1.3 million is the correct measure of loss for guideline calculation purposes.

The defendant admits that the property and the in personam criminal forfeiture money judgment amount listed in Section X is any property, real or personal, which constitutes or is derived from proceeds traceable to a violation of Title 18, United States Code, Section 669, a specified unlawful activity as defined in Title 18, United States Code, Section 1956(c)(7)(F), involving a Federal health care offense as defined in Title 18, United States Code, Section 24, or a conspiracy to commit such offense, and is property, real or personal, that constitutes or is derived, directly or indirectly, from gross proceeds traceable to the commission of Title 18, United States Code, Section 669, involving a Federal health care offense as defined in Title 18, United States Code, Section 24, and is subject to forfeiture pursuant to Title 18, United States Code, Section 981(a)(1)(C) with Title 28, United

States Code, Section 2461(c); Title 18, United States Code, Section 982(a)(7); and Title 21, United States Code, Section 853(p).

V. COLLATERAL USE OF FACTUAL ADMISSIONS

The facts set forth in Section IV of this Plea Agreement shall be admissible against the defendant under Fed. R. Evid. 801(d)(2)(A) at sentencing for any purpose. If the defendant does not plead guilty or withdraws his guilty pleas, the facts set forth in Section IV of this Plea Agreement shall be admissible at any proceeding, including a trial, for impeaching or rebutting any evidence, argument or representation offered by or on the defendant's behalf. The defendant expressly waives all rights under Fed. R. Crim. P. 11(f) and Fed. R. Evid. 410 regarding the use of the facts set forth in Section IV of this Plea Agreement.

VI. APPLICATION OF SENTENCING GUIDELINES PROVISIONS

A. Discretionary Nature of Sentencing Guidelines. The defendant acknowledges that the Court must consider the United States Sentencing Guidelines ("USSG" or "Sentencing Guidelines") in determining the defendant's sentence, but that the Sentencing Guidelines are advisory, not mandatory, and the Court has discretion to impose any reasonable sentence up to the maximum term of imprisonment permitted by statute.

B. Offense Level Calculations. The parties stipulate to the following calculation of the defendant's offense level under the Sentencing Guidelines, acknowledge that these stipulations do not bind the Court, and agree that they will not seek to apply any other specific offense characteristics, enhancements or reductions

Count One: 18 U.S.C. § 669	
a. Base Offense Level USSG § 2B1.1:	6
b. Loss < $1.5 million:	+14
Adjusted Offense Level:	20
Less: Acceptance of Responsibility	-3
Total Offense Level:	17

The defendant acknowledges that the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the defendant's sentence notwithstanding any applicable Sentencing Guidelines provisions.

C. Reduction of Offense Level for Acceptance of Responsibility. Under U.S.S.G. §3E1.1(a), the United States will recommend that the defendant receive a two-level downward adjustment for acceptance of responsibility unless he (a) fails to truthfully admit facts establishing a factual basis for the guilty plea when he enters the plea; (b) fails to truthfully admit facts establishing the amount of restitution owed when he enters his guilty plea; (c) fails to truthfully admit facts establishing the forfeiture allegations when he enters his guilty plea; (d) provides false or misleading information to the United States, the Court, Pretrial Services, or the Probation Office; (e) denies involvement in the offense or provides conflicting statements regarding his involvement or falsely denies or frivolously contests conduct relevant to the offense; (f) attempts to withdraw his guilty plea; (g) commits or attempts to commit any crime; (h) fails to appear in court; or (i) violates the conditions of pretrial release.

Under USSG §3E1.1(b), the United States will move for an additional one-level downward adjustment for acceptance of responsibility before sentencing because the Defendant communicated his decision to plead guilty in a timely manner that enabled the United States to avoid preparing for trial and to efficiently allocate its resources.

These Sentencing Guidelines provisions, if applied, will result in a total offense level of either 18 (if two-level adjustment applies) or 17 (if two-level adjustment and additional one-level adjustment both apply.)

D. Criminal History Category. The defendant acknowledges that the Court may base his sentence in part on the defendant's criminal record or criminal history. The Court will determine the defendant's Criminal History Category under the Sentencing Guidelines.

E. Relevant Conduct. The Court may consider any counts dismissed under this Plea Agreement and all other relevant conduct, whether charged or uncharged, in determining the applicable Sentencing Guidelines range and whether to depart from that range.

F. Additional Sentencing Information. The stipulated Sentencing Guidelines calculations are based on information now known to the parties. The parties may provide additional information to the United States Probation Office and the Court regarding the nature, scope, and extent of the defendant's criminal conduct and any aggravating or mitigating facts or circumstances. Good faith efforts to provide truthful information or to correct factual misstatements shall not be grounds for the defendant to withdraw his guilty plea.

The defendant acknowledges that the United States Probation Office may calculate the Sentencing Guidelines differently and may rely on additional information it obtains through its investigation. The defendant also acknowledges that the Court may rely on this and other additional information as it calculates the Sentencing Guidelines range and makes other sentencing determinations, and the Court's reliance on such information shall not be grounds for the defendant to withdraw his guilty plea.

VII. APPLICATION OF SENTENCING STATUTES

A. Maximum Penalty. The maximum penalty for Embezzlement in Connection with Health Care under 18 U.S.C. § 669 is ten years imprisonment and a fine of $250,000, or both.

B. Factors Under 18 U.S.C. § 3553. The Court must consider the factors set forth in 18 U.S.C. § 3553(a) in determining the defendant's sentence. However, the statutory maximum sentence and any statutory minimum sentence limit the Court's discretion in determining the defendant's sentence.

C. Parole Abolished. The defendant acknowledges that his prison sentence cannot be shortened by early release or parole because parole has been abolished.

D. Supervised Release. In addition to imprisonment and a fine, the defendant will be subject to a term of supervised release of not more than three years. Supervised release is a period of time after release from prison during which the defendant will be subject to various restrictions and requirements. If the defendant violates any condition of supervised release, the Court may order the

defendant's return to prison for all or part of the term of supervised release, which could result in the defendant serving a total term of imprisonment equal to the statutory maximum prison sentence of 10 years of imprisonment.

E. Special Assessment. The defendant will pay a $100.00 special assessment per count at the time of sentencing.

VIII. POSITIONS REGARDING SENTENCE

In light of mutual consideration, the United States will seek a sentence within the applicable sentencing guideline range as determined by the Court, unless the defendant commits any act that could result in a loss of the downward adjustment for acceptance of responsibility, in which case the United States may recommend any term up to the statutory maximum. The defendant acknowledges that the Court does not have to follow that recommendation. The defendant reserves the right to request a sentence below the Sentencing Guidelines range as determined by the Court and may seek a downward adjustment pursuant to 18 U.S.C. § 3553 or USSG § 4A1.3(b)(1) from any sentence the Court may impose.

The Defendant acknowledges that the Court does not have to follow this recommendation. The Defendant also acknowledges that the Court does not have to grant a downward departure based on the Defendant's substantial assistance to the United States, even if the United States chooses to file a motion pursuant to 18 U.S.C. § 3553(e)(1), USSG § 5K1.1, or Fed. R. Crim. P. 35. This Plea Agreement does not require the United States to file any pre- or post-sentence downward departure motion under USSG § 5K1.1 or Fed. R. Crim. P. 35. The United States

reserves its right to defend any lawfully imposed sentence on appeal or in any post-conviction litigation.

The defendant agrees that he will not seek early termination or reduction of his term of supervised release.

IX. RESTITUTION

In exchange for benefits received under this Plea Agreement, the defendant agrees to pay restitution in an amount determined by the Court, to be applied towards the losses the defendant caused by his participation in the offenses, whether charged or uncharged, pled to or not, and by all of his relevant conduct. 18 U.S.C. § 3663(a)(3). The defendant cannot discharge his restitution obligation through bankruptcy proceedings. The defendant acknowledges that restitution payments and obligations cannot offset or reduce the amount of any forfeiture judgment imposed in this case.

X. FORFEITURE

The defendant knowingly and voluntarily:

A. Agrees to the District Court imposing the civil judicial forfeiture or the criminal forfeiture of:

1. 2007 Honda Accord EX Gray 4D Sedan, VIN 1HGCM56857A164507, Nevada License Plate 452WVU;
2. 2011 EXP Limited 5.4L 4X4 Ford Expedition, Color: Sterling Gray Metallic, VIN 1FMJU2A53BEF36389, Nevada License Plate 929VJR;
3. 14k white gold cluster stud earrings with four princess cut diamonds surrounded by 16 round diamonds;

4. Ladies stainless steel Breitling Lady Colt A72345 Watch with blue Mother of Pearl dial, diamond bezel (28 diamonds), Serial No. 386210;
5. Ladies 14k white gold ring centered with one rectangle blue Tourmaline with 45 diamonds;
6. Ladies Tanzanite (approx. 40 carats) platinum ring with 152 brilliant diamonds;
7. Ladies 14k white gold with violetish red Garnet surrounded by 74 brilliant diamonds;
8. Ladies platinum oval shaped bluish green Tourmaline with 92 brilliant diamonds;
9. Ladies 14k white gold ring, pear shaped cabochon cut black opal with blue play of color and 50 diamonds;
10. Movado Womans watch with black in color face;
11. Edge Watch with brown leather like wrist band;
12. Tag Heuer lady's Watch silver in color;
13. Gucci Watch gold in color;
14. Necklace, silver in color, with Tiffany pendant heart shaped;
15. Necklace, silver in color, with floral design pendant;
16. Bracelet gold in color with green in color stones;
17. Bracelet gold in color appeared to be broken at time of seizure;
18. Bracelet clear stone type;
19. Pair of Earrings with green in color stones;
20. Metal ring, yellow in color with green in color stones;

21. Pair of Earrings tear drop shaped;

22. Pair of Earrings heart shaped;

23. Braided necklace, yellow in color;

24. Ring, silver in color with clear stones;

25. Pair of Earrings flower shaped;

26. Ring, silver in color with clear stones;

27. Pair of Earrings hoop shaped yellow in color;

28. Pair of Earrings, yellow in color with round white in color stones;

29. Thick Bracelet yellow in color;

30. Two (2) necklace like coils of wooden type beads;

31. Pair of Earrings, yellow in color;

32. "L" shaped pendant yellow in color;

33. Three (3) rings, yellow in color: One (1) with clear type stones, Two (2) with heart shaped designs;

34. Ring, white in color with clear stones;

35. Two (2) Rings yellow in color with blue in color stones;

36. Ring, yellow in color with green in color stone;

37. Ring, heart shaped with clear stones;

38. Two (2) Rings yellow in color with white in color stones;

39. Five Bracelets: Two (2) yellow in color; Two (2) yellow in color with name plates on them "Lucas" and "Joshua"; One (1) yellow in color with green stones;

40. Necklace, white in color;

41. Necklace, white in color with tear drop pendant;

42. One (1) Necklace, white in color with pink in color stone; One (1) pair of earrings with pink in color stones;

43. One (1) Necklace, gold in color; and One (1) Bracelet gold in color;

44. One (1) pendant with picture; and One (1) round pendant yellow in color; and

45. Pair of Earrings, orange in color

(all of which constitutes property);

B. Agrees to the District Court imposing an in personam criminal forfeiture money judgment including, but not limited to, at least $1,300,000, and that the property will be applied toward the payment of the money judgment;

C. Agrees to the abandonment, the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property;

D. Abandons or forfeits the property to the United States;

E. Relinquishes all right, title, and interest in the property;

F. Waives his right to any abandonment proceedings, any civil administrative forfeiture proceedings, any civil judicial forfeiture proceedings, or any criminal forfeiture proceedings of the property and the in personam criminal forfeiture money judgment (proceedings);

G. Waives service of process of any and all documents filed in this action or any proceedings concerning the property and the in personam criminal forfeiture money judgment arising from the facts and circumstances of this case;

H. Waives any further notice to him, his agents, or his attorney regarding the abandonment or the forfeiture and disposition of the property;

I. Agrees not to file any claim, answer, petition, or other documents in any proceedings concerning the property and the in personam criminal forfeiture money judgment;

J. Waives the statute of limitations, the CAFRA requirements, Fed. R. Crim. P. 7, 11, and 32.2, all constitutional requirements, including, but not limited to, the constitutional due process requirements of any proceedings concerning the in personam criminal forfeiture money judgment;

K. Waives his right to a jury trial on the forfeiture of the property;

L. Waives all constitutional, legal, and equitable defenses to the forfeiture or abandonment of the property and the in personam criminal forfeiture money judgment in any proceedings, including, but not limited to, (1) constitutional or statutory double jeopardy defenses and (2) defenses under the Excessive Fines or Cruel and Unusual Punishments Clauses of the Eighth Amendment to the United States Constitution;

M. Agrees to the entry of an Order of Forfeiture of the property and the in personam criminal forfeiture money judgment to the United States;

N. Waives the right to appeal any Order of Forfeiture;

O. Agrees the property is forfeited to the United States;

P. Agrees that the in personam criminal forfeiture money judgment is immediately due and payable and is subject to immediate collection by the United States;

Q. Agrees and understands the abandonment, the civil administrative forfeiture, the civil judicial forfeiture, or the criminal forfeiture of the property and the in personam criminal forfeiture money judgment shall not be treated as satisfaction of any assessment, fine, restitution, cost of imprisonment, or any other penalty the Court may impose upon the defendant in addition to the abandonment or the forfeiture;

R. Acknowledges that the amount of the forfeiture may differ from, and may be significantly greater than or less than, the amount of restitution; and

S. Agrees to take all steps as requested by the United States to pass clear title of the property and of any forfeitable assets which may be used to satisfy the in personam criminal forfeiture money judgment to the United States and to testify truthfully in any judicial forfeiture proceedings. The defendant understands and agrees that the property and the in personam criminal forfeiture money judgment amount represent proceeds and/or facilitating property of illegal conduct and are forfeitable. The defendant acknowledges that failing to cooperate in full in either the forfeiture of the property or the disclosure of assets constitutes a breach of this Plea Agreement.

XI. FINANCIAL INFORMATION AND DISPOSITION OF ASSETS

Before or after sentencing, upon request by the Court, the United States, or the Probation Office, the defendant will provide accurate and complete financial information, submit sworn statements, and/or give depositions under oath concerning his assets and his ability to pay. The defendant will surrender assets he obtained directly or indirectly as a result of his crimes, and will release funds

and property under his control in order to pay any fine, forfeiture, or restitution in the amount of $19,146.00 ordered by the Court.

XII. THE DEFENDANT'S ACKNOWLEDGMENTS AND WAIVERS

A. Plea Agreement and Decision to Plead Guilty. The defendant acknowledges that:

(1) He has read this Plea Agreement and understands its terms and conditions;

(2) He has had adequate time to discuss this case, the evidence, and this Plea Agreement with his attorney;

(3) He has discussed the terms of this Plea Agreement with his attorney;

(4) The representations contained in this Plea Agreement are true and correct, including the facts set forth in Section IV; and

(5) He was not under the influence of any alcohol, drug, or medicine that would impair his ability to understand the Agreement when he considered signing this Plea Agreement and when he signed it.

The defendant understands that he alone decides whether to plead guilty or go to trial, and acknowledges that he has decided to enter his guilty plea knowing of the charges brought against him, his possible defenses, and the benefits and possible detriments of proceeding to trial. The defendant also acknowledges that he decided to plead guilty voluntarily and that no one coerced or threatened his to enter into this Plea Agreement.

B. Waiver of Appeal and Post-Conviction Proceedings. The defendant knowingly and expressly waives: (a) the right to appeal any sentence imposed within or below the applicable Sentencing Guideline range as determined by the Court; (b) the right to appeal the manner in which the Court determined that sentence on the grounds set forth in 18 U.S.C. § 3742; and (c) the right to appeal any other aspect of the conviction or sentence and any order of restitution or forfeiture.

The defendant also knowingly and expressly waives all collateral challenges, including any claims under 28 U.S.C. § 2255, to his conviction, sentence, and the procedure by which the Court adjudicated guilt and imposed sentence, except non-waivable claims of ineffective assistance of counsel.

The defendant acknowledges that the United States is not obligated or required to preserve any evidence obtained in the investigation of this case.

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XIII. ADDITIONAL ACKNOWLEDGMENTS

This Plea Agreement resulted from an arms-length negotiation in which both parties bargained for and received valuable benefits in exchange for valuable concessions. It constitutes the entire agreement negotiated and agreed to by the parties. No promises, agreements or conditions other than those set forth in this agreement have been made or implied by the defendant, the defendant's attorney, or the United States, and no additional promises, agreements or conditions shall have any force or effect unless set forth in writing and signed by all parties or confirmed on the record before the Court.

DANIEL G. BOGDEN,
United States Attorney

DATE 3/17/16

Crane M. Pomerantz
Assistant United States Attorney

DATE 3/16/16

Daniel Albregts
Counsel for the Defendant

DATE 3/16/16

Robert W. Barnes
Defendant

EXHIBIT "D"

EXHIBIT "D"

COOK & KELESIS, LTD.
LAWYERS
517 S. 9TH STREET
LAS VEGAS, NV 89101

DRAFT

Freedman, Dr. Sheldon
653 N. Town Center Dr., #308
LAS VEGAS, NV 89144

Invoice No.: **65490**
Invoice Date: 06/15/17
Acct. No. 17-0051

In Reference To: **Flamingo-Pecos Surgery Center**

PROFESSIONAL FEES

			Hrs/Rate	Amount
06/09/17	MPC	Review Complaint; review Operating Agreement; review Receiver's Appointment; legal research.	4.00 450.00/hr	1,800.00
06/11/17	MPC	Review documents; review caselaw; draft Motion.	3.60 450.00/hr	1,620.00
06/14/17	MPC	Review and revise Motion.	0.40 450.00/hr	180.00
Total Professional Fees			**8.00**	**$3,600.00**

1.4 630.00
4230.00

ADDITIONAL CHARGES

		Qty	Price Per	
06/15/17	4% Administrative Expense - administrative expenses will be waived if payment is received by cash or check.	1	144.00	144.00
Total Additional Charges				**$144.00**
TOTAL FEES & ADDITIONAL CHARGES				**$3,744.00**
TOTAL AMOUNT DUE (Upon Receipt)				**$3,744.00**

All bills are payable upon receipt.
A late charge of 1-1/2 % per month (18% per annum) will be assessed on all balances 30 days overdue;
Make Checks Payable: Bailus Cook & Kelesis, Ltd. EIN 80-0020466