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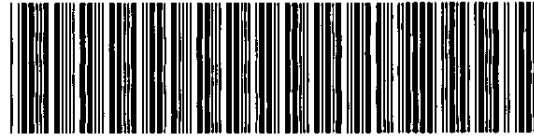
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CORPDIRECT AGENTS, INC. (formerly CCRS)
515 EAST PARK AVENUE
TALLAHASSEE, FL 32301
222-1173

FILING COVER SHEET
ACCT. #FCA-23

CONTACT: **RICKY SOTO**

DATE: **07/30/2013**

REF. #: **8848126**

CORP. NAME: **THE NEW PORT RICHEY FL MULTI-SPECIALTY ASC, LLC (a Tennessee LLC)**
merging into TRINITY SURGERY CENTER, LLC (a Florida LLC)

- | | | |
|--|---|--|
| <input type="checkbox"/> ARTICLES OF INCORPORATION | <input type="checkbox"/> ARTICLES OF AMENDMENT | <input type="checkbox"/> ARTICLES OF DISSOLUTION |
| <input type="checkbox"/> ANNUAL REPORT | <input type="checkbox"/> TRADEMARK/SERVICE MARK | <input type="checkbox"/> FICTITIOUS NAME |
| <input type="checkbox"/> FOREIGN QUALIFICATION | <input type="checkbox"/> LIMITED PARTNERSHIP | <input type="checkbox"/> LIMITED LIABILITY |
| <input type="checkbox"/> REINSTATEMENT | <input checked="" type="checkbox"/> MERGER | <input type="checkbox"/> WITHDRAWAL |
| <input type="checkbox"/> CERTIFICATE OF CANCELLATION | | |
| <input type="checkbox"/> OTHER: | | |

STATE FEES PREPAID WITH CHECK# 70005420 FOR \$ 80.00

AUTHORIZATION FOR ACCOUNT IF TO BE DEBITED:

_____ **COST LIMIT: \$** _____

PLEASE RETURN:

- | | | |
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| <input checked="" type="checkbox"/> CERTIFIED COPY | <input type="checkbox"/> CERTIFICATE OF GOOD STANDING | <input type="checkbox"/> PLAIN STAMPED COPY |
| <input type="checkbox"/> CERTIFICATE OF STATUS | | |

Examiner's Initials

COVER LETTER

TO: Amendment Section
Division of Corporations

SUBJECT: Trinity Surgery Center, LLC

Name of Surviving Party

The enclosed Certificate of Merger and fee(s) are submitted for filing.

Please return all correspondence concerning this matter to:

Margaret Alexander

Contact Person

Bass Berry & Sims, PLC

Firm/Company

150 3rd Avenue South Ste 2800

Address

Nashville, TN 37201

City, State and Zip Code

malexander@bassberry.com

E-mail address: (to be used for future annual report notification)

For further information concerning this matter, please call:

Margaret Alexander

at (615) 259-6721

Name of Contact Person

Area Code and Daytime Telephone Number



Certified copy (optional) \$30.00

STREET ADDRESS:

Amendment Section
Division of Corporations
Clifton Building
2661 Executive Center Circle
Tallahassee, FL 32301

MAILING ADDRESS:

Amendment Section
Division of Corporations
P. O. Box 6327
Tallahassee, FL 32314

**Certificate of Merger
For
Florida Limited Liability Company**

The following Certificate of Merger is submitted to merge the following Florida Limited Liability Company(ies) in accordance with s. 608.4382, Florida Statutes.

FIRST: The exact name, form/entity type, and jurisdiction for each merging party are as follows:

| <u>Name</u> | <u>Jurisdiction</u> | <u>Form/Entity Type</u> |
|---|---------------------|-------------------------|
| The New Port Richey FL Multi-Specialty ASC, LLC | Tennessee | LLC |
| Trinity Surgery Center, LLC | Florida | LLC |
| | | |
| | | |

SECOND: The exact name, form/entity type, and jurisdiction of the surviving party are as follows:

| <u>Name</u> | <u>Jurisdiction</u> | <u>Form/Entity Type</u> |
|-----------------------------|---------------------|-------------------------|
| Trinity Surgery Center, LLC | Florida | LLC |

THIRD: The attached plan of merger was approved by each domestic corporation, limited liability company, partnership and/or limited partnership that is a party to the merger in accordance with the applicable provisions of Chapters 607, 608, 617, and/or 620, Florida Statutes.

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2013 JUL 31 PM 2:22
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TALLAHASSEE, FLORIDA

FOURTH: The attached plan of merger was approved by each other business entity that is a party to the merger in accordance with the applicable laws of the state, country or jurisdiction under which such other business entity is formed, organized or incorporated.

FIFTH: If other than the date of filing, the effective date of the merger, which cannot be prior to nor more than 90 days after the date this document is filed by the Florida Department of State:

1:01 a.m., Eastern Time, on August 1, 2013

SIXTH: If the surviving party is not formed, organized or incorporated under the laws of Florida, the survivor's principal office address in its home state, country or jurisdiction is as follows:

SEVENTH: If the survivor is not formed, organized or incorporated under the laws of Florida, the survivor agrees to pay to any members with appraisal rights the amount, to which such members are entitled under ss.608.4351-608.43595, F.S.

EIGHTH: If the surviving party is an out-of-state entity not qualified to transact business in this state, the surviving entity:

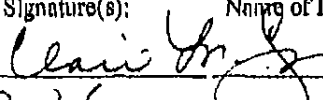
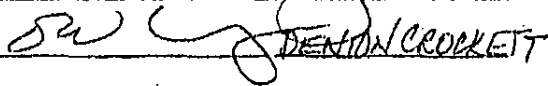
a.) Lists the following street and mailing address of an office, which the Florida Department of State may use for the purposes of s. 48.181, F.S., are as follows:

Street address: _____

Mailing address: _____

b.) Appoints the Florida Secretary of State as its agent for service of process in a proceeding to enforce obligations of each limited liability company that merged into such entity, including any appraisal rights of its members under ss.608.4351-608.43595, Florida Statutes.

NINTH: Signature(s) for Each Party:

| Name of Entity/Organization: | Signature(s): | Typed or Printed Name of Individual: |
|---|--|--------------------------------------|
| The New Port Richey FL Multi-Specialty ASC, LLC |  | Claire M. Gwaltney |
| Trinity Surgery Center, LLC |  | DENON CROCKETT |
| | | |
| | | |

| | |
|-----------------------------------|---|
| Corporations: | Chairman, Vice Chairman, President or Officer (If no directors selected, signature of incorporator.) |
| General partnerships: | Signature of a general partner or authorized person |
| Florida Limited Partnerships: | Signatures of all general partners |
| Non-Florida Limited Partnerships: | Signature of a general partner |
| Limited Liability Companies: | Signature of a member or authorized representative |

| | |
|-------------------------------------|---------|
| <u>Fees:</u> | |
| For each Limited Liability Company: | \$25.00 |
| For each Corporation: | \$35.00 |
| For each Limited Partnership: | \$52.50 |
| For each General Partnership: | \$25.00 |
| For each Other Business Entity: | \$25.00 |

| | |
|--|---------|
| <u>Certified Copy (optional):</u> | \$30.00 |
|--|---------|

Agreement and Plan of Merger
See Attached

AGREEMENT AND PLAN OF MERGER
BY AND BETWEEN
THE NEW PORT RICHEY FL MULTI-SPECIALTY ASC, LLC,
a Tennessee limited liability company
AND
TRINITY SURGERY CENTER, LLC, a Florida limited liability company

1. Constituent Companies; Surviving Company. The companies proposing to merge are The New Port Richey FL Multi-Specialty ASC, LLC, a Tennessee limited liability company ("NPR") and Trinity Surgery Center, LLC, a Florida limited liability company ("Trinity"). NPR proposes to merge with and into Trinity with Trinity being the "Surviving Entity" (the "Merger").

2. Terms and Conditions of Merger. The Merger shall be consummated pursuant to and in accordance with this Agreement and Plan of Merger. The Merger will become effective upon filing of the Certificate of Merger with the Secretary of State of the State of Tennessee and the Certificate of Merger with the Secretary of State of Florida (the "Effective Time").

3. Continuation of LLC. The name, identity, purpose, existence, rights, privileges, powers, franchises, properties, and assets of Trinity shall continue unaffected and unimpaired by the Merger. Trinity shall continue to be governed by the laws of the State of Florida.

4. Continuation of the Trinity FEIN. The Federal Employer Identification Number of Trinity shall continue with the Surviving Entity unaffected and unimpaired by the Merger.

5. Termination of Existence of NPR. At the Effective Time, the separate existence of NPR shall cease, and (a) all rights, privileges, powers, properties and assets of NPR shall be vested in the Surviving Entity and effectively shall be the property of the Surviving Entity, and (b) all liabilities of NPR shall be vested in the Surviving Entity and effectively shall be liabilities of the Surviving Entity.

6. Organization of the Surviving Entity.

a. Articles of Organization. The Articles of Organization of Trinity shall be the Articles of Organization of the Surviving Entity, at and after the Effective Time until thereafter changed or amended. The Amended and Restated Operating Agreement of Trinity in the form attached hereto as Exhibit A (the "Operating Agreement") shall be the operating agreement of the Surviving Entity, at and after the Effective Time until thereafter changed or amended.

b. Board of Directors and Officers. The Board of Directors and officers of Trinity immediately prior to the Effective Time shall be the Board of Directors and officers of the Surviving Entity. Each such director and officer shall hold such office until his or her successor has been elected or appointed and qualified to serve, or as otherwise provided by the Operating Agreement of the Surviving Entity.

7. Exchange of Membership Interests. At the Effective Time, by virtue of the Merger and without any action on the part of the holders of any membership interest in Trinity or NPR, all of the issued and outstanding membership interests of NPR immediately prior to the Effective Time shall be cancelled and exchanged for membership interests in Trinity in consideration of the transfer and assumption by the Surviving Entity of all of the assets and liabilities of NPR. Immediately following the effectiveness of the Merger, the respective membership interests of the members of Trinity shall be as set forth on Exhibit B attached hereto.

8. Address of Surviving Entity. The street address of the Surviving Entity's principal place of business is 8452 118th Street North, Largo, Florida 33773.

9. Power of Attorney. Upon consummation of the Merger, each of the members of NPR immediately prior to the consummation of the Merger shall execute and deliver to Trinity the Operating Agreement (or an amendment of joinder thereto) joining in the Operating Agreement as a member of Trinity. Each of the members of NPR immediately prior to the consummation of the Merger hereby constitutes and appoints the officers of Trinity as such member's true and lawful attorney-in-fact, with full power and authority in such member's name place and stead to execute and deliver the Operating Agreement (or an amendment of joinder thereto) as contemplated by this Section 9.

Exhibit A

Amended and Restated Operating Agreement

Attached

**AMENDED AND RESTATED OPERATING AGREEMENT OF
TRINITY SURGERY CENTER, LLC**

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THIS AMENDED AND RESTATED OPERATING AGREEMENT (the "Agreement") is made and entered into as of the 15th day of March, 2013, by and between BayCare Surgery Centers, LLC, a Florida limited liability company ("BSC"), and the other owners of the LLC (as defined below) as of the date hereof listed on the signature pages hereto ("Owners") (each of BSC and Owners, together with the other persons who may become members under the terms of this Agreement, a "Member" and collectively, the "Members").

WITNESSETH:

WHEREAS, the limited liability company was formed under and pursuant to the Act (as defined below) to conduct certain business as a limited liability company; and

WHEREAS, Morton Plan Mease Health Services, Inc. has transferred its ownership interest in the LLC to BSC; and

WHEREAS, BSC and Owners desire to enter into this Agreement to set forth their mutual rights and obligations.

NOW, THEREFORE, in consideration of the mutual promises, covenants and undertakings hereinafter contained, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Members hereby agree as follows:

1. DEFINITIONS

When used in this Agreement, the following terms shall have the meanings set forth below:

1.1. "Act" means the Florida Limited Liability Company Act, being Chapter 608 of the Florida Statutes, as amended from time to time, and any corresponding provisions of any successor legislation.

1.2. "Affiliate," with respect to any individual or Entity, means any individual or other Entity directly or indirectly controlling, controlled by or under common control with such individual or Entity.

1.3. "Agent" means any agent of the LLC, including any officer, director, employee, independent contractor, or agent of a Member acting on behalf of the LLC.

1.4. "Agreement" means this Amended and Restated Operating Agreement, as amended from time to time.

1.5. "Articles of Organization" means the Articles of Organization of the LLC filed with the Secretary of State of the State of Florida, as amended from time to time.

1.6. "Available Cash Flow" means all cash funds of the LLC on hand at the end of each month, less (a) provision for payment of all outstanding and unpaid current cash obligations of the LLC at the end of such month (including those which are in dispute) and (b) provisions for reserves reasonably determined by the Board for anticipated operating expenses, capital expenditures and other contingencies (which may include debt service on LLC indebtedness and fees payable to Affiliates); provided, however, that proceeds from the disposition of all or substantially all of the LLC's capital assets shall not be included in Available Cash Flow.

1.7. "Board" means the Board of Directors of the LLC.

1.8. "Book Capital Account" has the meaning given to such term in Section 4.3 hereof.

1.9. "BSC" has the meaning set forth in the introductory paragraph hereof.

1.10. "Capital Contribution" in respect of any Member means the amount of all cash and other property, tangible or intangible, contributed by such Member to the capital of the LLC. The current Capital Account Balance for each Member is as set forth on Exhibit A.

1.11. "Center" means the ambulatory surgery center operated by the LLC and located in New Port Richey, Florida, including the real property, or leasehold improvements, furniture, fixtures, the Equipment, books, records, supplies, accounts receivable, goodwill, other intangibles and other assets used in its operation.

1.12. "Code" means the Internal Revenue Code of 1986, as amended from time to time, any corresponding provisions of any successor legislation, and the regulations adopted thereunder.

1.13. "Director" means, individually, any natural person serving on the Board.

1.14. "Dissolution Event" has the meaning given to such term in Section 13.2 hereof.

1.15. "Eligibility Requirements" means the requirement that an Owner must affirm in writing, in connection with the initial acquisition of Membership Interests and, thereafter, by the execution and delivery to the LLC within 30 days after each anniversary of such Owner's admission to the LLC (or such other annual period as the LLC shall from time to time designate) of an Annual Certification in the form attached hereto as Exhibit B, representing that:

1.15.1. the Owner agrees to fully inform each patient referred to the Center by the Owner of his or her investment interest in the LLC;

- 1.15.2. a Substantial Portion (as defined below) of the Owner's medical practice income for the prior 12 month period was derived from the performance of outpatient surgical procedures (defined for purposes hereof to be those surgical procedures that are authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations, whether or not such procedures are paid for by Medicare, workers' compensation insurance or other payors);
- 1.15.3. the Owner performed a Substantial Portion of his or her outpatient surgical procedures (defined as described in subsection 1.16.2 above) at the Center during the prior 12 month period (or, if a new Owner, he or she expects to perform a Substantial Portion of such procedures at the Center each year); and
- 1.15.4. if the Owner provides services that are paid for by any federal health care program (including Medicare and Medicaid), the Owner agrees to treat patients receiving medical benefits or assistance under such federal health care programs in a nondiscriminatory manner.
- 1.16. "Entity" means any corporation, partnership, trust, limited liability company or other entity.
- 1.17. "Equipment" means the equipment used in connection with the operation of the Center.
- 1.18. "Financial Rights" means a Member's rights as a member of the LLC (i) to share in the profits and losses of the LLC to the extent provided in this Agreement and (ii) to share in distributions to the extent provided in this Agreement.
- 1.19. "Fundamental Regulatory Change" means any change in federal or state law or regulation that results in (a) the referral of Medicare or any other patients to the Center by Owners, or the submission of claims to Medicare for services performed by or at the direction of Owners, becoming illegal, (b) the existence of a substantial likelihood that the receipt of cash distributions from the LLC to Owners is or will be found to be in violation of federal or state law, or (c) the ownership by Owners of Membership Interests in the LLC becoming illegal.
- 1.20. "Governance Rights" means all of a Member's rights as a member of the LLC other than Financial Rights and the right to assign Financial Rights.
- 1.21. "Information" has the meaning given to such term in Section 8.11 hereof.
- 1.22. "LLC" means Trinity Surgery Center, LLC, a Florida limited liability company.
- 1.23. "LLC Profit" means net income of the LLC for the applicable period determined on an accrual basis in accordance with generally accepted accounting principles; provided, that in determining LLC Profit, any net income of the LLC attributable to direct or indirect referrals from, procedures performed by or other business generated by all Terminating Owners shall be excluded from the net income of the LLC.
- 1.24. "Officers" means the President, Vice Presidents, Treasurer, Secretary, and any other person appointed to be an officer by the Board of the LLC.
- 1.25. "Market Area" has the meaning given to such term in Section 8.2 hereof.
- 1.26. "Medical Director" means the person appointed by Owners and approved by the Board pursuant to Section 8.4.1 to provide medical supervision and to coordinate professional and clinical activities at the Center.
- 1.27. "Members" has the meaning set forth in the introductory paragraph hereof.
- 1.28. "Membership Interest" means a Member's interest in the LLC, which when expressed as a percentage of all Membership Interests in the LLC shall be equal to such Member's Membership Percentage. The Membership Interest shall consist of (a) the Member's Financial Rights, (b) the Member's right to assign Financial Rights to the extent permitted under this Agreement, and (c) the Member's Governance Rights.
- 1.29. "Membership Percentage" means the percentage interest of a Member as shown on Exhibit A, as amended from time to time as provided in Section 4.8 or 12.9 hereof or as otherwise required by this Agreement or the Code.
- 1.30. "New Member" has the meaning given such term in Section 12.7 hereof.
- 1.31. "Owners" has the meaning set forth in the introductory paragraph hereof.
- 1.32. "Qualified Owner" means an Owner that has active medical staff privileges at the Center and admitting privileges in a local licensed and accredited hospital and meets the Eligibility Requirements.
- 1.33. "Performance Improvement Chairman" means the person appointed by Owners and approved by the Board to provide oversight and coordinate the development and operation of the Center's performance improvement program.
- 1.34. "Prime Rate" means that rate of interest equal to the prime rate as published from time to time by SunTrust Bank in Tampa, Florida, or any successor thereto.

1.35. **"Principal Indebtedness"** means the principal amount of the LLC's indebtedness for borrowed money plus indebtedness for capitalized leases.

1.36. **"Responsible Person"** means an individual who is or was a Director of the LLC, or an individual who, while a Director is or was serving at the LLC's request as a director, manager, officer, partner, trustee, employee or agent of an employee benefit plan or any other foreign or domestic entity. For purposes of the preceding sentence, a Director is considered to be serving an employee benefit plan at the LLC's request if the Director's duties to the LLC also impose duties on, or otherwise involve services by, the Director to the plan or to participants in or beneficiaries of the plan. Unless the context requires otherwise, "Responsible Person" shall also include the estate or personal representative of a Responsible Person.

1.37. **"Substantial Portion"** means, for purposes of the Eligibility Requirements, at least 33%; provided, however, that the Board may establish a lower percent for an individual Owner based on a case-by-case analysis to the extent such lower percent is in compliance with federal and state laws and regulations. If the Board establishes a lower percent, the Owner must consistently meet the lower percentage.

1.38. **"Successor"** means a Member's executor, administrator, guardian, conservator, other legal representative or successor in interest.

1.39. **"Tax Capital Account"** has the meaning given to such term in Section 4.4 hereof.

1.40. **"Tax Matters Member"** has the meaning given to such term in Section 11.6 hereof and shall also mean the "tax matters partner" as that term is used in the Code.

1.41. **"Treasury Regulations"** includes proposed, temporary and final regulations promulgated under the Code.

1.42. **"Triggering Event"** has the meaning given to such term in Section 8.12 hereof.

1.43. **"Triggering Event Date"** means the last day of the calendar month immediately preceding the month during which a Triggering Event occurs.

2. ORGANIZATION

2.1. **Effective Date.** This Agreement shall become effective upon execution by the Members as of the date first above written.

2.2. **Adoption of Agreement.** The Members hereby adopt this Agreement as the operating agreement of the LLC, as the term "operating agreement" is used in the Act, to set forth the rules, regulations and provisions regarding the management of the business of the LLC, the governance of the LLC, the conduct of its business

and the rights and privileges of its members. The operating agreement of the LLC shall be in writing, and the terms of the operating agreement shall be as set forth in this Agreement. This Agreement supersedes any prior operating agreement of the LLC, which prior agreements shall be of no further force or effect.

2.3. **Name.** The name of the LLC shall be Trinity Surgery Center, LLC. The LLC may adopt and conduct its business under such assumed or trade names as the Members may from time to time determine. The LLC shall file any assumed or fictitious name certificates as may be required to conduct business in any state.

2.4. **Principal Place of Business.** Unless otherwise determined by the Board, the principal executive office of the LLC shall be 8452 118th Street North, Largo, Florida 33773.

2.5. **Registered Agent and Office.** Unless otherwise determined by the Board, the registered agent of the LLC shall be NRAI Services, Inc. and the registered office shall be 515 East Park Avenue, Tallahassee, Florida 32301.

3. PURPOSES AND POWERS

3.1. **Purposes.** The purposes of the LLC shall be to own and operate the Center and to carry on any and all activities necessary, proper, convenient or advisable in connection therewith.

3.2. **Powers.** The LLC may exercise all powers necessary or convenient to carry out its business and affairs and to effectuate the purposes set forth in Section 3.1 hereof which may be legally exercised by limited liability companies under the Act.

3.3. **Independent Medical Judgment.** No provision of this Agreement shall limit the independent medical judgment of any practicing physician with staff privileges at the Center with regard to the providing of patient care. Further, nothing contained herein requires any practicing physician with staff privileges at the Center to use or recommend the use of facilities or services owned, operated or provided by the LLC.

3.4. **Operations in a Manner Consistent With Charitable Purposes.** The LLC's operations shall be conducted and managed in a manner (i) that furthers the charitable tax-exempt purposes of BayCare Health System, Inc. ("BHS"), and (ii) consistent with the Ethical and Religious Directives for Catholic Health Care Services as adopted by the U.S. Conference of Catholic Bishops from time to time (collectively, the "ERD"). Owners hereby acknowledge and agree that the operations of the LLC shall not be conducted in a manner solely designed to maximize profits, and the LLC shall adopt a charity care policy substantially similar to BHS's charity care policy. In the event there is a conflict between the operation of the LLC in accordance with the charitable tax-exempt purposes of

BHS and the ERDs and any duty to maximize profits, the Board and the Officers shall satisfy the charitable tax-exempt purposes of BHS and the ERDs without regard to the consequences for maximizing profitability of the LLC.

3.5. Rules of Construction Related to Tax Exemption. Whenever this Agreement refers to the tax-exempt status of an entity, the parties shall construe this Agreement to refer to an organization described in Section 501(c)(3) of the Code.

3.6. Regulatory and ERD Matters Concerning BHS.

3.6.1. If, based upon an Opinion of independent counsel obtained pursuant to Section 3.6.2 below, it is determined that (i) the tax-exempt status of BHS, or a BHS tax-exempt Affiliate, and/or (ii) BHS's or a BHS Affiliate's compliance with the ERD, is more likely than not to be jeopardized by BSC's ownership of an interest in the LLC, the Members shall attempt in good faith to restructure the LLC to eliminate the adverse effect and accomplish, as nearly as possible consistent with the Opinion, the original objectives of the parties. If the Members do not agree to such restructuring within sixty (60) days of delivery of the Opinion to both Members, and if during such sixty (60) day period BSC is not satisfied in its sole discretion (through the delivery of contrary third-party legal opinions or otherwise) that it is not more likely than not that the aforesaid adverse tax and/or ERD consequences will occur, BSC may elect to initiate the rights and procedures set forth in Section 3.7 by delivering a Purchase Notice to the Owners.

3.6.2 In the event BSC reasonably believes that its, or a BHS tax-exempt Affiliate's, tax-exempt status and/or compliance with the ERD may be jeopardized by its ownership interest in the LLC, it may request that the Members select independent counsel experienced in federal tax exemption matters involving joint ventures between for-profit and tax-exempt organizations and/or ERD matters to review and render a written opinion on those issues (the "Opinion"), subject to the standards described in Section 3.6.1. In the event BSC requests an Opinion, the BSC Directors shall present to the Owner Directors a list of not less than three (3) such independent counsel (each affiliated with a different law firm) acceptable to the BSC Directors, and the Owner Directors shall, within twenty (20) days of receipt of such list, select the independent counsel from such list, following which the independent counsel so selected will be engaged solely by

BSC or its Affiliates to render the Opinion; provided, however, the aforesaid list presented by the BSC Directors shall not include a law firm which at such time currently represents, or at any time within the prior five (5) years has represented, either BSC or a BSC Affiliate, or a lawyer who has provided services to or on behalf of BSC or a BSC Affiliate during that time period. BSC shall be responsible for the costs and expenses of the independent counsel in rendering the Opinion referenced in this paragraph. To the extent feasible, the Opinion shall outline reasonable alternatives to restructure the LLC to eliminate the adverse effect.

3.7. Purchase Right of BSC.

3.7.1. Under the circumstances described in Section 3.6.1, BSC shall have the right to provide the Owners written notice (a "Purchase Notice") of its election to purchase all (but not less than all) of the Membership Interests then owned by the Owners, and each of the Owners will then be obligated to sell the Membership Interests then owned by him or her to BSC for a purchase price equal to (i) three (3) times the LLC Profit for the twelve (12) calendar months immediately following the date BSC delivers the Purchase Notice to the Owners plus the LLC's interest expense for the twelve (12) calendar months immediately preceding the date BSC delivers the Purchase Notice to the Owners, minus (ii) the LLC's outstanding Principal Indebtedness as of the date BSC delivers the Purchase Notice to the Owners, with this amount multiplied by such Owner's pro rata percentage ownership interest in the LLC. The Owners agree that the foregoing is intended to represent fair market value and accordingly, each of them agrees not to challenge the foregoing purchase price or methodology on the basis of lack of fair market value or commercial reasonableness.

3.7.2. In the event BSC delivers a Purchase Notice to the Owners as described above, the Owners' Membership Interests shall terminate as of the date of such notice; provided, that the purchase price for each Owner's Membership Interest as described in Section 3.7.1 shall be paid to such Owner by wire transfer of immediately available funds within sixty (60) days following the first anniversary of the date BSC delivers the Purchase Notice to the Owners.

4. CAPITAL CONTRIBUTIONS AND MEMBERSHIP INTERESTS

4.1. **Capital Account Balances.** The current Capital Account Balance of each Member shall be as set forth opposite such Member's name on Exhibit A hereto.

4.2. **Additional Contributions.** Members shall make additional Capital Contributions as may be determined from time to time by the Board in an amount proportional to their Membership Percentages. The timing, amount and terms of such additional Capital Contributions shall be determined by the Board. The Capital Contributions of each Member shall be made on the same terms and conditions.

4.3. **Book Capital Accounts.** Each Member shall have a capital account to which the fair market value of such Member's Capital Contribution shall be credited (the "Book Capital Account"). Each Member's share of the income, including tax-exempt income, expenses, gain or loss of the LLC shall be charged or credited to such Member's Book Capital Account. All distributions to a Member shall be charged to such Member's Book Capital Account.

Any Capital Contributions made solely by one Member or made out of proportion to the Membership Percentages shall, in the sole discretion of the President, either (a) be treated as a loan to the LLC and shall not affect the balance of the Book Capital Accounts, or (b) shall cause an appropriate adjustment to be made to the Book Capital Accounts.

4.4. **Tax Capital Accounts.** The capital accounts for the Members for federal income tax purposes (the "Tax Capital Accounts") shall be maintained and adjusted in accordance with the principles set forth in Treasury Regulation Section 1.704-1(b)(2)(iv), and the items of income, profit, gain, expenditures, deductions, losses, distributions and contributions which increase or decrease such Tax Capital Accounts shall be those items which, pursuant to such provision, affect the balance of capital accounts.

Any Capital Contributions made solely by one Member or made out of proportion to the Membership Percentages shall, in the sole discretion of the President, either (a) be treated as a loan to the LLC and shall not affect the balance of the Tax Capital Accounts, or (b) shall cause an appropriate adjustment to be made to the Tax Capital Accounts.

4.5. **LLC Loans.** BSC or an Affiliate thereof may, from time to time and as it deems necessary, lend, or arrange for the LLC to borrow, additional working capital sufficient to enable the LLC to carry on its business as contemplated by Article 3 hereof.

Any loan by BSC or an Affiliate thereof to the LLC made for working capital purposes shall be

evidenced by a promissory note which shall bear interest at market rate of interest and which shall contain other terms substantially similar to those which might be agreed to with a non-affiliated lender. Any required monthly payments (including any past due amounts) under any such loan by the LLC or any other party shall be made before any distributions of Available Cash Flow are made to the Members pursuant to Section 6.3 hereof.

4.6. **Withdrawal or Reduction of Members' Capital Contributions.** No Member shall have the right to withdraw from the LLC. A Member shall not receive out of the LLC's property all or any part of such Member's Capital Contributions except as provided in Sections 6.3 and 13.3 hereof.

4.7. **Interest and Preferential Rights.** Except with respect to any loans made pursuant to Sections 4.3, 4.4 and 4.5 hereof, no interest shall accrue on any Capital Contributions and no Member shall have any preferential rights with respect to distributions or upon dissolution of the LLC.

4.8. **Membership Interests and Amendments to Exhibit A.** Each Member shall be credited with the Membership Interest (expressed as a percentage of all Membership Interests) and Capital Contribution set forth opposite such Member's name on Exhibit A. The amounts shown on Exhibit A with respect to Capital Contributions and Membership Interests shall be appropriately amended to reflect changes to such amounts as a result of any changes in the membership of the LLC or assignments of Membership Interests. Exhibit A shall also be amended from time to time to reflect any changes in the addresses of Members.

5. EXPENSES OF THE LLC

5.1. **Organizational Expenses.** Each Member shall bear its own expenses incurred in connection with the preparation, review, and negotiation of this Agreement and any other documents contemplated hereunder.

5.2. **Operating Expenses.** The LLC will reimburse the Members for reasonable travel expenses approved by the Board and incurred in connection with performing their respective duties hereunder. Neither BSC nor any Owner shall allocate to or charge the LLC for any of its overhead expenses, employee compensation costs, or other costs incurred in connection with the services to be provided by BSC or the Owners pursuant to this Agreement.

6. ALLOCATION OF INCOME AND LOSS AND DISTRIBUTIONS

6.1. **Allocation of Net Taxable Income or Loss and Tax Credits.** Except as provided in Sections 6.2 and 6.5, all income and gain of the LLC includable for federal, state and local income tax purposes, all

expenses and losses of the LLC deductible for federal, state and local income tax purposes, as applicable, and all federal income tax credits shall be allocated in proportion to the Membership Percentage of each Member.

6.2. Allocations to Reflect Contributed Property. If a Member contributes property to the LLC which has a difference between its tax basis and its fair market value on the date of its contribution, then all items of income, gain, loss and deduction with respect to such contributed property shall be shared for federal income tax purposes among the Members pursuant to Section 704(c) of the Code so as to take into account the variation between the basis of such property and its fair market value at the time of contribution.

Any elections or other decisions relating to such allocations shall be made by the Tax Matters Member in any manner that reasonably reflects the purpose and intention of this Agreement; provided, however, that with respect to the contributed assets comprising the business operations of the Center, the Members agree that the Tax Matters Member may elect the remedial allocation method described in Section 1.704-3(d) of the Treasury Regulations. Except as otherwise provided in such Section 1.704-3(d) of the Treasury Regulations, the Capital Accounts of the Members shall be adjusted in accordance with Section 1.704-1(b)(2)(iv)(g) of the Treasury Regulations for allocations to the Members of income, gain, loss and deduction (including depreciation, depletion, amortization or other cost recovery) as computed for book purposes, with respect to the property contributed; and the amount of book depreciation, depletion or amortization for a period with respect to an item of contributed property shall be the amount that bears the same relationship to the book value of such property as the depreciation (or cost recovery deduction), depletion or amortization computed for tax purposes with respect to such property for such period bears to the adjusted tax basis of such property. If such property has a zero adjusted tax basis, the book depreciation, depletion or amortization may be determined under any reasonable method selected by the Tax Matters Member.

References in this Section 6.2 to book and tax depreciation, depletion, amortization, and gain or loss with respect to property that has an adjusted tax basis that differs from its book value include, under analogous rules and principles, the unrealized income or deduction with respect to accounts receivable, accounts payable and other accrued but unpaid items.

6.3. Distribution of Available Cash Flow. Except as provided in Section 4.5, the LLC shall distribute Available Cash Flow. Such distributions shall be made in quarterly installments within thirty (30) days after the end of each quarter and shall be made to all Members pro rata in proportion to the respective Membership

Percentages of the Members at the time of each distribution.

6.4. Consequences of Distributions. Upon the determination to distribute funds in any manner expressly provided in this Article 6, made in good faith, no Member shall incur liability on account of such distribution, even though such distribution may have resulted in the LLC retaining insufficient funds for the operation of its business, which insufficiency resulted in loss to the LLC or necessitated the borrowing of funds by the LLC.

6.5. Distribution Upon Termination. When the LLC is terminated, pursuant to Article 13 or otherwise, the final distribution to Members shall be according to the balance of their Book Capital Accounts, after allocation of income, gain, expense and loss in the fiscal year of termination (including the allocation for the deemed sale of assets distributed in kind required by Section 13.3).

7. BOARD OF DIRECTORS

7.1. Number and Term. The LLC shall have a Board consisting of four (4) BSC Directors and three (3) Owner Directors. Each Director shall hold office for a period of one (1) year or until such Director's earlier resignation, removal or death.

7.2. Duties. Except as otherwise specifically set forth in this Agreement, the Board shall have ultimate authority with respect to the LLC's operations, including, but not limited to, physician credentialing, granting of privileges and approval of operating policies and procedures of the Center.

7.3. Acts Requiring Board Approval. Without obtaining the consent of the Board, no Member or Officer shall:

7.3.1. Sell, exchange, lease or otherwise transfer all or substantially all of the assets of the LLC;

7.3.2. Dissolve the LLC;

7.3.3. Merge or consolidate the LLC into another entity;

7.3.4. Request or require a Capital Contribution to be made by any Member; or

7.3.5. Do any act that would make it impossible to carry on the ordinary course of business of the LLC, except as expressly provided in this Agreement.

7.4. Election. The BSC Directors shall be elected by BSC, and the Owner Directors shall be elected by Owners. Any vacancy occurring on the Board for any reason shall be filled by the Member that originally appointed such Director. A Chairman of the Board shall

be elected by a majority of the members of the Board at the first meeting of the Board held in each fiscal year.

7.5. Quorum and Voting. A quorum of the Board shall consist of five Directors. If a quorum is present when a vote is taken, the affirmative vote of a majority of Directors present shall be the act of the Board, unless the Articles of Organization or this Agreement requires the vote of a greater number of Directors; provided, that in all cases that at least one affirmative vote be cast by a BSC Director and by an Owner Director; and provided, further, that with respect to approval of any request or requirement that any Member make a Capital Contribution as described in Section 7.3.4 above, that at least two affirmative votes be cast by the BSC Directors and by the Owner Directors. Each Director shall have one vote on each matter considered by the Board.

7.6. Regular Meetings of the Board. Regular meetings of the Board shall be held quarterly at such places, within or without the State of Florida, on such dates and at such times as the Board may determine from time to time.

7.7. Meeting by Telephone. Any or all Directors may participate in a regular or special meeting by conference telephone or any other means of communication by which all Directors participating may simultaneously hear each other during the meeting. A Director participating in a meeting by this means is deemed to be present in person at the meeting.

7.8. Action on Written Consent. Action required or permitted to be taken at a meeting of the Board may be taken without a meeting, if the number of Directors required to approve any such action consent to the taking of such action without a meeting and approve such action by signing one or more written consents describing the action taken. The LLC shall promptly distribute copies of any such action to the Directors, but the failure of the LLC to distribute copies of such action shall not void or otherwise affect the validity of such action in any manner.

7.9. Notice of Meetings. The President or a majority of the Directors may call a special meeting of the Board of Directors by giving 48 hours' prior notice to all Directors of the date, time and place of the meeting. The notice need not state the purpose of the meeting.

8. MEMBERS

8.1. Medical Malpractice Insurance. Each Owner shall maintain at all times medical malpractice insurance complying with the Medical Staff Bylaws of the Center.

8.2. Ownership and Investment Restrictions. No Owner nor any Affiliate of any Owner, shall have any direct or indirect ownership interest in, or manage, lease, develop or otherwise have any financial interest in any business or entity competing or planning to compete

with the LLC (including, but not limited to, any ambulatory surgery center or any physician office in which surgical procedures are performed and for which facility fees, tray fees or other site of service or similar fees in addition to standard professional fees are charged) within a fifteen (15) mile radius of the Center (the "Market Area") until two (2) years after such Owner ceases to be a Member of the LLC.

The foregoing shall not prohibit any Owner, nor any Affiliate of an Owner, from (i) owning shares of capital stock constituting less than 1% of the outstanding capital stock of any corporation whose common stock is traded on a national securities exchange (including The Nasdaq Stock Market), (ii) practicing medicine or performing surgical procedures at any facility, or (iii) receiving a reasonable fee in exchange for providing medical director services to a tertiary hospital. The parties acknowledge and agree that this Section 8.2 does not require former physician owners to perform surgical procedures at the Center or to refer patients to the Center, and imposes no restrictions on where such procedures are performed or where referrals are made.

Notwithstanding the foregoing, nothing contained herein shall be construed to prohibit any Owner from having any financial interest in any business or entity competing or planning to compete with the LLC; provided that, while a Member of the LLC, such financial interests in any competitive business exist in the same amounts as such financial interests exist on the date such Owner becomes a Member of the LLC. Specifically, such other ownership interests shall be limited to:

Each Owner acknowledges and agrees that the enforcement of the provisions of this Section 8.2 against him or her would not prevent such person from engaging in his or her profession, the practice of medicine.

Each Owner recognizes and acknowledges that the ascertainment of damages in the event of a breach of this Section 8.2 would be difficult, and agrees that BSC, in addition to all other remedies it may have, shall have the right to injunctive relief if there is such a breach.

8.3. BSC Ownership and Investment Restrictions. Neither BSC nor any member of BSC, shall have any direct or indirect ownership interest in, or manage, lease, develop or otherwise have any financial interest in any business or entity that owns or operates or plans to own or operate a facility licensed as an ambulatory surgery center that is located within a five (5) mile radius of the Center until the earlier of (i) two (2) years after BSC ceases to be a Member of the LLC

or (ii) two (2) years after such member of BSC ceases to be a member of BSC.

BSC recognizes and acknowledges that the ascertainment of damages in the event of a breach of this Section 8.2 would be difficult, and agrees that Owners, in addition to all other remedies it may have, shall have the right to injunctive relief if there is such a breach.

8.4. Services Provided by Owners. As additional consideration for his or her Membership Interests and without further charge to the LLC other than the expenses outlined in Section 5.2 hereof, Owners shall provide the Center with:

8.4.1. A Medical Director acceptable to the Board, who will perform the duties and responsibilities assigned from time to time by the Board, including, but not limited to:

8.4.1.1 Assisting in the selection of suitable treatment modality for all patients of the Center;

8.4.1.2 Devising clinical procedures which, when implemented by the Center, will assure adequate monitoring of patients and the treatment process;

8.4.1.3 Directing, coordinating and reporting to the Board on all medical aspects of the Center's operations;

8.4.1.4 Devising procedures which, when implemented by the Center, will assure (i) adequate training of nurses and other staff in appropriate treatment techniques, and (ii) the supervision of all non-physician staff at the Center;

8.4.1.5 Devising clinical procedures which, when implemented by the Center, will assure the availability of a patient care policy and procedures manual and other written or electronic materials that reflect current professional standards and assisting in the periodic review and revision thereof;

8.4.1.6 Developing and maintaining professional memberships and active visibility in the local community through the provision of consulting, educational and related services in a manner consistent with the role of Medical Director which promotes the positive visibility of the Center in the community;

8.4.1.7 Devising the medical policy statements of the Center, presenting the statements for the approval of the Board and upon securing Board approval, implementing and monitoring the policies;

8.4.1.8 Assisting the LLC in attracting qualified physicians to the medical staff of the Center and recommending to the Board that qualified physicians be granted clinical privileges at the Center;

8.4.1.9 Assisting the LLC in attracting qualified non-physician staff to work at the Center and assessing, in conjunction with other members of the medical staff, the performance of non-physician staff;

8.4.1.10 Using best efforts to assist the Board in assuring that the Center complies with all state and federal statutes, all standards of applicable accreditation bodies, and regulations and agency directives concerning the medical standards of patient care required at the Center, and reporting to the Board any known deficiencies therein;

8.4.1.11 Accepting appropriate and reasonable medical staff duties and assignments at the Center including (i) acting as the liaison between the medical staff and the Board, (ii) appointing physicians to serve as members and chairmen of medical staff committees, and (iii) serving on all committees of the Center; and

8.4.1.12 Participating in long and short range planning for the Center, reviewing the Center's operating budget, and, where appropriate, making recommendations on the budget.

8.4.2. A Performance Improvement Chairman acceptable to the Board, who will perform the duties and responsibilities assigned from time to time by the Board or its designee, including, but not limited to:

8.4.2.1 Overseeing the performance improvement program and all corresponding activities of the Center;

8.4.2.2 Assisting in the development and revision of indicators necessary to adequately

evaluate care provided by the Center and that meet or exceed governmental requirements;

8.4.2.3 Directing the review of data summaries of all identified indicators, as well as information from other sources regarding the quality of care provided by the Center;

8.4.2.4 Directing the development of educational programs based on the needs identified through committee activities and supporting department-wide education on continuous process improvement principles;

8.4.2.5 Overseeing the credentialing and recredentialing process for the Center's medical staff;

8.4.2.6 Overseeing and administering the risk management program for the Center;

8.4.2.7 Overseeing and administering medical malpractice issues related to the Center;

8.4.2.8 Working with the Center's performance improvement committee and conducting quarterly performance improvement committee meetings; and

8.4.2.9 Reviewing the Center's performance improvement program on at least an annual basis.

8.5. **Operation of the Center.** Each Owner hereby represents that he or she has no knowledge of any circumstances or conditions that could have a material adverse impact on the operations of the medical practices of Owners (other than conditions which might have a material adverse effect on the health care industry in general).

8.6. **Meetings.** Meetings of the Members, for any purpose or purposes, may be called by the President, the Board of Directors or Members holding a majority of the Membership Interests by giving 48 hours' prior notice to all Members of the date, time and place of the meeting. The notice need not state the purpose of the meeting.

8.7. **Action by Members Without a Meeting; Telephone Meetings.** Action required or permitted to be taken at a meeting of the Members may be taken without a meeting, if the number of Members required to approve any such action consent to the taking of such action without a meeting and approve such action by signing one or more written consents describing the action taken. The LLC shall promptly distribute copies of any such action to the Members, but the failure of the LLC to distribute copies of such action shall not void or otherwise affect the validity of such action in any manner. A meeting also may take place by telephone conference call or any other form of electronic

communication through which the Members may simultaneously hear each other. A Member participating in a meeting by this means is deemed to be present in person at the meeting.

8.8. **Record Date.** For the purpose of determining Members entitled to notice of or to vote at any meeting of Members or any adjournment thereof, or Members entitled to receive payment of any distribution, or in order to make a determination of Members for any other purpose, the date on which notice of the meeting is mailed or the date on which the resolution declaring such distribution is adopted, as the case may be, shall be the record date for such determination of Members. When a determination of Members entitled to vote at any meeting of Members has been made as provided in this Section 8.8, such determination shall apply to any adjournment thereof.

8.9. **Quorum.** Members holding a majority of the Membership Interests, represented in person, shall constitute a quorum at any meeting of Members.

8.10. **Required Vote; Manner of Acting.** Except as otherwise provided in Section 8.8 above, if a quorum is present, the affirmative vote of Members holding a majority of the Membership Interests present and entitled to vote on that item of business shall be the act of the Members.

8.11. **Confidentiality.** Each Owner shall maintain the confidentiality of all confidential documents and information of the LLC, including information regarding the business conducted by the LLC and its business strategy and any documents utilized in connection with the ownership and operation of the Center (the "Information"). No Owner will discuss or disclose any of the Information to any third party or take any action that could compromise the confidentiality of the Information without the prior written consent of BSC. Each Owner shall, upon termination of his or her membership in the LLC, promptly return to the LLC all Information in his or her possession, including without limitation all policy, procedure and program manuals and related documents, and such person shall not make or retain any copies thereof. By their execution of this Agreement, each Owner acknowledges that the Information is proprietary and contains specialized knowledge and data that constitutes valuable intellectual property.

8.12. **Triggering Events.**

8.12.1. Each of the following events shall be deemed a "Triggering Event" for purposes of this Section 8.12 with respect to any Owner (and such Owner shall hereinafter be referred to as "Terminating Owner");

8.12.1.1 the death of such Terminating Owner;

8.12.1.2 the certification of such Terminating Owner as permanently disabled by at least two (2) licensed physicians;

8.12.1.3 the cessation of the practice of medicine by such Terminating Owner on a full-time basis;

8.12.1.4 the relocation of such Terminating Owner's practice outside of the Market Area;

8.12.1.5 such Terminating Owner no longer maintaining a current license to practice medicine in the State of Florida (the foregoing not being applicable to a temporary suspension of a license to practice in Florida for a period of less than ninety (90) days);

8.12.1.6 such Terminating Owner no longer meeting the qualifications to be a Qualified Owner;

8.12.1.7 such Terminating Owner is involved in a divorce proceeding or matrimonial dissolution that becomes final and in which a transfer of any of such Terminating Owner's Membership Interest is ordered, in which case this subsection shall be applied solely to the ex-spouse of the Terminating Owner; provided, however, that in the event the LLC exercises its right to purchase any of the Terminating Owner's Membership Interest pursuant to this subsection, the Terminating Owner shall have an option to repurchase such membership interest for the same purchase price paid by the LLC in accordance with Section 8.12.2;

8.12.1.8 a Transferring Owner (A) makes an assignment for the benefit of creditors or admits in writing his inability to pay debts generally as they become due, (B) applies to any tribunal for the appointment of a trustee or receiver of any substantial part of his assets, (C) commences any voluntary proceeding under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or other liquidation laws of any jurisdiction, (D) becomes the subject of any involuntary proceedings and such Transferring Owner indicates his approval, consent or

acquiescence, or (E) becomes the subject of an order appointing a trustee or receiver, adjudicating him bankrupt or insolvent, or approving a petition in any involuntary proceeding, and such order remains in effect for ninety (90) days;

8.12.1.9 the exclusion of such Terminating Owner by the Centers for Medicare & Medicaid Services or the state Medicaid agency from participation in the Medicare or Medicaid program for any reason;

8.12.1.10 the conviction of such Terminating Owner of a felony in violation of any state or federal law related to healthcare matters;

8.12.1.11 the violation of the provisions of Section 8.2 by such Terminating Owner; and

8.12.1.12 the determination by BSC and the Owners holding at least two-thirds of the Membership Interests held by all Owners (other than the Terminating Owner) that the Terminating Owner's Membership Interest shall be repurchased by the LLC.

8.12.2. In the event of a Triggering Event, the Terminating Owner shall promptly (but in any event within 60 days of the Triggering Event) sell the Terminating Owner's Membership Interest to another physician reasonably acceptable to BSC and a majority of the Membership Interests held by all Owners (other than the Terminating Owner). Otherwise, the LLC, at the direction of the Board, shall have the right, but not the obligation (except with respect to Section 8.12.1.12 above in which case the LLC shall have the obligation to repurchase such Terminating Owner's Membership Interest), to purchase such Terminating Owner's Membership Interest at a purchase price, payable in cash, as follows:

8.12.2.1 If the Triggering Event is one described in Sections 8.12.1.1 through 8.12.1.8 and Section 8.12.1.12, an amount equal to (i) three (3) times the LLC Profit for the twelve (12) calendar months immediately following the Triggering Event Date plus the LLC's interest expense for the twelve (12) calendar months immediately preceding the Triggering Event Date, minus (ii) the

LLC's outstanding Principal Indebtedness as of the Triggering Event Date, with this amount multiplied by the selling Terminating Owner's pro rata percentage ownership interest in the LLC.

8.12.2.2 If the Triggering Event is one described in Sections 8.12.1.9 and 8.12.1.10, the purchase price shall be equal to 50% of the amount determined in accordance with Section 8.12.2.1.

8.12.2.3 If the Triggering Event is described in Section 8.12.1.11, the purchase price shall be One Dollar (\$1.00).

8.12.3. In the event the LLC notifies the selling Terminating Owner of its intention to purchase such Membership Interest, such Terminating Owner's Membership Interest shall terminate as of the date of such notice; provided, that the purchase price for the Terminating Owner's Membership Interest as described in Section 8.12.2 shall be paid to the Terminating Owner within sixty (60) days following the first anniversary of the Triggering Date.

8.12.4. By their execution of this Agreement, each Owner acknowledges and agrees that the LLC may purchase a Terminating Owner's ownership interest in LLC pursuant to Section 8.12.2 and may subsequently thereafter transfer such ownership interest to another physician in the New Port Richey, FL area without then obtaining any additional consent of any Owner. Any such physician shall be treated as an Owner on the same terms as the other Owners.

8.13. **Annual Certification.** In order to assist the LLC in determining whether it meets the standards set forth in the safe harbor to the Anti-Kickback Statute applicable to ambulatory surgery center investments, each physician Owner shall certify annually to the LLC in writing, with respect to the prior fiscal year, on or before March 31: (i) that one-third of his or her annual professional income derived from performing outpatient surgical procedures; and (ii) that one-third of such Owner's outpatient surgical procedures were performed at the Center. A copy of the form of Annual Certification is attached hereto as Exhibit B. For purposes of this Section 8.13, "outpatient surgical procedures" means (x) those surgical procedures that were authorized to be performed in ambulatory surgical centers under the applicable Medicare regulations for the prior fiscal year and (y) any other surgical

procedures actually performed by such Owner on an outpatient basis in such fiscal year.

9. OFFICERS

9.1. **Appointment of Officers.** The Board shall appoint a President and may appoint one or more Vice Presidents, a Treasurer, a Secretary and such other officers as the Board shall elect from time to time, all of whom will be Affiliates of BSC, to serve as the officers of the LLC.

9.2. **Term.** The Officers shall serve for an indefinite term until removed and replaced by the Board.

9.3. President.

9.3.1. **General.** Subject to the provisions of this Agreement, the management of the business affairs of the LLC shall rest with the President, who shall have all the authority which may be possessed by a president pursuant to the Act, and such additional authority as otherwise conferred by law or is necessary or advisable in the discharge of the duties of the President under this Agreement. The President shall perform his or her duties to the best of his or her ability and shall use his or her best efforts to carry out the business of the LLC.

9.3.2. **Powers.** Subject to the provisions of Section 7.3 and those powers reserved to the Members and the Board by this Agreement or the Articles of Organization, the President may, on behalf of and at the cost, expense and risk of the LLC and in accordance with the operating and capital budgets of the LLC:

9.3.2.1 On behalf of the LLC, spend the capital and net income of the LLC in the exercise of any rights or powers possessed by the President hereunder;

9.3.2.2 Make capital expenditures on behalf of the LLC;

9.3.2.3 Cause the LLC to lease, acquire, own, manage and operate the Center, and enter into agreements containing such terms, provisions and conditions as the President may deem advisable;

9.3.2.4 Except as provided in Section 7.3.9, cause the LLC to lease, acquire, own and operate any equipment, fixtures, supplies or other items necessary for the operation of the Center;

9.3.2.5 On behalf of and for the benefit of the LLC, enter into any contracts or arrangements necessary for the conduct of the business of the LLC, including any amendments, renewals or extensions of the Management Agreement between the LLC and BSC;

9.3.2.6 Purchase from or through others contracts of liability, casualty and other insurance which the President deems advisable for the protection of the LLC or for any purpose convenient or beneficial to the LLC;

9.3.2.7 On behalf of and for the benefit of the LLC, incur indebtedness;

9.3.2.8 Sell or otherwise dispose of, upon such terms and conditions as the President may deem advisable, appropriate or convenient, any of the assets of the LLC that do not constitute all or substantially all of the LLC's assets;

9.3.2.9 Establish bank accounts in the name and on behalf of the LLC and designate the signatories thereon;

9.3.2.10 Invest in short-term debt obligations of federal and state governments and their agencies, commercial paper and certificates of deposit of commercial banks, savings bank or savings and loan associations and "money market" mutual funds, such funds as are temporarily not required for the purposes of the LLC's operations; and

9.3.2.11 Delegate all or any of its duties hereunder and, in furtherance of any such delegation, appoint, employ or contract with any person (including Affiliates of the Members) for the transaction of the business of the LLC, which persons may, under the supervision of the President, act as consultants, accountants, attorneys, brokers, escrow agents, or in any other capacity deemed by the President necessary or desirable, and pay appropriate fees to any of such persons. Without limiting the foregoing, BSC may delegate to its Affiliates or to AmSurg Corp. or its Affiliates the authority to negotiate

and execute agreements with payors on behalf of the LLC.

9.4. **Duties.** As additional consideration for its Membership Interest and without further charge to the LLC other than the expenses outlined in Section 5.2 hereof, BSC, through the President, shall consult in and oversee the administrative operations of the Center and, subject to the terms of this Agreement and the general direction and control of the Board, coordinate all business and administrative activities pertaining to the Center, including, but not in any way limited to, the following:

9.4.1. Assist the Center in operating in an efficient and business like manner;

9.4.2. Coordinate the purchase or lease of equipment, supplies and pharmaceuticals (including purchases through national purchasing programs) necessary for the operation of the Center;

9.4.3. Coordinate all reasonable and necessary actions to maintain all licenses, permits and certificates required for the operation of the Center, and to ensure that all appropriate certification and accreditation available to the Center's operations are obtained;

9.4.4. Coordinate, with the support of the Medical Director and the Board, ongoing marketing programs to increase community and payor awareness of the Center;

9.4.5. Negotiate the amount and method of reimbursement that the Center will receive from all appropriate third party payors, both public and private;

9.4.6. Establish, maintain, revise and administer, with the support and approval of the Board, the overall charge structure of the Center and arrange for payment of such charges by others, when appropriate;

9.4.7. Arrange and negotiate financing for equipment and future capital needs of the Center;

9.4.8. Develop and revise, subject to approval by the Board, all necessary policies and operating procedures pertaining to each aspect of the Center's operations (except for policies and procedures relating to corporate and regulatory compliance, employment matters and financial reporting matters, which shall be approved by BSC and shall not be subject to Board approval);

9.4.9. Hire, supervise, discipline and discharge, in conjunction with the Medical

Director, all persons working in the Center and providing direct patient care, as needed;

9.4.10. Train Center personnel with respect to all aspects of the Center's operations, including but not limited to administrative, clinical, financial and marketing matters;

9.4.11. Arrange for the purchase by the LLC of necessary insurance coverage for the Center;

9.4.12. Establish and administer accounting procedures and controls and systems for the development, preparation and keeping of records and books of accounting related to the business and financial affairs of the Center;

9.4.13. Oversee the preparation of the annual report and tax information returns required to be filed by the LLC, and deliver a copy of same to the Members in a timely manner as needed;

9.4.14. Furnish the LLC in a timely fashion monthly operating reports and other reports reasonably requested by the Board or any Director;

9.4.15. Prepare for Board review all capital and annual operating budgets as needed; and

9.4.16. Perform all duties herein required of it in good faith and with reasonable diligence so as to maximize the Center's ability to efficiently provide appropriate quality health care to patients.

9.5. **Right to Rely Upon the Authority of the President.** No person dealing with the President shall be required to determine the President's authority to make any commitment or undertaking on behalf of the LLC, nor to determine any fact or circumstance bearing upon the existence of its authority. In addition, no purchaser of any property of the LLC shall be required to determine the sole and exclusive authority of the President to sign and deliver on behalf of the LLC any instrument of transfer, or to see to the application or distribution of revenues or proceeds paid or credited in connection therewith, unless such purchasers shall have received written notice from the LLC affecting the same.

9.6. **Vice President.** The Vice President or Vice Presidents (if any) shall assist the President in the management of the LLC, and shall perform such other duties as the Board may from time to time prescribe.

9.7. **Secretary.** The Secretary shall be responsible for recording the minutes of all Board and Member meetings. The Secretary shall have the responsibility of authenticating records of the LLC and receiving notices required to be sent to the Secretary and shall perform

such other duties as the Board may from time to time prescribe.

9.8. **Treasurer.** The Treasurer shall have custody of the LLC's funds and securities, shall keep or cause to be kept full and accurate account of receipts and disbursements in books of the LLC, shall disburse or cause to be disbursed the funds of the LLC as required in the ordinary course of business, and shall perform such other duties as may be incident to his or her office or as prescribed by the Board.

9.9. **Limitation on Liability.** An Officer shall not be liable for any action taken as an Officer, or any failure to take action as an Officer, except to the extent that such Officer's conduct failed to comply with the standards set forth in Section 48-249-115 of the Act.

9.10. **Resignation.** Any Officer of the LLC may resign at any time by giving written notice to the Members. The resignation of any Officer shall take effect upon receipt of notice thereof or at such later time as shall be specified in such notice; and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

9.11. **Compensation and Reimbursement.** No Officer shall have any right to compensation for services performed on behalf of the LLC except as determined from time to time by the Board. Notwithstanding the foregoing, an Officer shall have the right to be reimbursed by the LLC for any out-of-pocket expenses incurred by such Officer in connection with any services performed by such Officer on behalf of the LLC.

9.12. **No Exclusive Duty.** Each Officer may have other business interests and may engage in other activities in addition to those relating to the LLC. Neither the LLC nor any Member shall have the right to share or participate in such other investments or activities of such Officer based on such Officer's status as an Officer of the LLC. No Officer shall incur any liability to any Member or the LLC as a result of engaging in any other business or venture.

10. INDEMNIFICATION

10.1. **Authority to Indemnify.** The LLC shall indemnify, and upon request shall advance expenses to, an individual made a party to a proceeding because such individual is or was a Responsible Person, to the full extent permitted by law, against liability incurred in the proceeding if the Responsible Person satisfies the following standard of conduct:

10.1.1. The Responsible Person's conduct was in good faith and the Responsible Person reasonably believed (a) in the case of conduct in the Responsible Person's official capacity with the LLC, that his or her conduct was in the best interest of the LLC and (b) in all other

cases, that his or her conduct was at least not opposed to the LLC's best interest; and

10.1.2. In the case of any criminal proceeding, the Responsible Person had no reasonable cause to believe his or her conduct was unlawful.

10.2. **Limitations on Authority to Indemnify.** Except as required by applicable law, the LLC may not indemnify a Responsible Person (a) in connection with a proceeding by or in the right of the LLC in which the Responsible Person was adjudged liable to the LLC, and (b) in connection with any other proceeding charging improper personal benefit to such Responsible Person, whether or not involving action in the Responsible Person's official capacity, in which the Responsible Person was adjudged liable on the basis that personal benefit was improperly received by such Responsible Person.

The indemnification and advancement of expenses granted pursuant to this Article 10 shall not be deemed exclusive of any other rights to which a Responsible Person seeking indemnification or advancement of expenses may be entitled, whether contained in this Article 10, the Articles of Organization, the Act, a resolution of the Board, or an agreement providing for such indemnification; provided, however, that no indemnification may be made to or on behalf of any Responsible Person if a judgment or other final adjudication adverse to the Responsible Person establishes his or her liability:

10.2.1. For any breach of duty of loyalty to the LLC or its Members;

10.2.2. For acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law; or

10.2.3. For any liability for unlawful distributions incurred under Section 48-249-307 of the Act.

10.3. **Advances for Expenses.** To the full extent permitted by law, the indemnification and advances provided for herein shall include expenses (including attorneys' fees), judgments, fines and amounts paid in settlement. If the LLC advances expenses to a Responsible Person pursuant to this Article 10 and it is subsequently determined that the Responsible Person is not entitled to indemnification, the Responsible Person will repay such advances within fifteen (15) days of such determination.

10.4. **Indemnification of Officers, Employees and Agents.** An Officer, employee, independent contractor or Agent of the LLC who is not a Responsible Person is entitled to indemnification and advancement of expenses to the same extent as a Responsible Person. The LLC shall also indemnify and advance expenses to

an Officer, employee, independent contractor or Agent who is not a Responsible Person to the extent required, consistent with public policy, by specific action of the Board or by contract.

11. FISCAL MATTERS

11.1. **Books and Records.** The LLC's books and records (including a current list of the names and addresses of all Members) and an executed copy of this Agreement, as currently in effect, shall be maintained at the principal executive office of the LLC, and each Member shall have access thereto at all reasonable times.

11.2. **Fiscal Year.** The fiscal year of the LLC shall be the calendar year.

11.3. **Tax Status; Elections.** Notwithstanding any provision hereof to the contrary, solely for purposes of the federal income tax laws, each of the Members hereby recognizes that the LLC will be subject to all provisions of Subchapter K of Chapter 1 of Subtitle A of the Code; provided, however, the filing of a U.S. Partnership Return of Income shall not be construed to extend the purposes of the LLC or expand the obligations or liabilities of the Members. Upon the transfer of an interest in the LLC or in the event of a distribution of the LLC's property, the Tax Matters Member may, but is not required to, elect pursuant to Section 754 of the Code to adjust the basis of the LLC's property as allowed by Sections 734(b) and 743(b) thereof.

11.4. **Reports to Members.** As soon as reasonably practicable after the end of each fiscal year, but not later than ninety (90) days after the end of each fiscal year, the LLC shall make available to each Member an unaudited balance sheet of the LLC at the end of the previous fiscal year and unaudited statements of income or loss of the LLC for such year. In addition, the LLC will deliver to each Member unaudited monthly summaries of its operations.

All such financial statements shall be prepared on an accrual basis of accounting in accordance with generally accepted accounting principles consistently applied. The LLC shall also furnish to each Member not later than ninety (90) days after the end of each fiscal year whatever information may be necessary for Members to file their federal income tax returns. The LLC will also make available to each Member upon request a copy or summary of all state and/or local tax returns which are filed by the LLC.

11.5. **Banking.** All funds of the LLC shall be initially deposited in a separate bank account or accounts or in an account or accounts of a savings and loan association as shall be determined by the Board, but such funds may be invested as provided in Section 9.3.2.10 hereof.

11.6. Tax Matters Member. BSC shall be the Tax Matters Member within the meaning of the Code.

12. ASSIGNMENT AND TERMINATION OF MEMBERSHIP INTERESTS AND ADMISSION OF NEW MEMBERS

12.1. Assignment of Membership Interests. No assignment of all or any part of a Membership Interest in the LLC (including any Financial Rights, Governance Rights or other rights pertaining to a Membership Interest) shall be made except as follows:

12.1.1. Subject to the provisions of Section 12.2 hereof, a Member may assign all or any part of such Member's Membership Interest to another Member, without the consent of any Member other than the assignee;

12.1.2. Subject to the provisions of Section 12.3 hereof, a Member may assign such Member's Membership Interest to any person who is not a Member who meets, or upon admission as a Member would meet, the requirements to be a Qualified Owner;

12.1.3. A Member may not assign all or any part of such Member's Financial Rights in the LLC except pursuant to a simultaneous assignment of the Governance Rights and other rights pertaining to the entire Membership Interest to which such Financial Rights relate pursuant to this Article 12;

12.1.4. Governance Rights may not be assigned to another person except pursuant to a simultaneous assignment of the Financial Rights and other rights pertaining to the entire Membership Interest to which such Governance Rights relate pursuant to this Article 12;

12.1.5. BSC may assign all or any part of its Membership Interest to an Affiliate of BSC, to another Member, or to a Qualified Owner without the consent of any Member;

12.1.6. The LLC need not recognize any assignment of all or any part of a Membership Interest other than an assignment described in Sections 12.1.1 through 12.1.5 hereof. Any other assignment or attempted assignment shall be void. No assignment shall be effective until written notice thereof has been provided to the LLC and any other applicable requirements set forth in this Agreement or the Articles of Organization have been satisfied.

12.2. Assignment of Membership Interest to Another Member. A Member may assign all or any portion of such Member's Membership Interest to

another Member if: (a) the assignee accepts such assignment, (b) the assignor and the assignee give written notice of such assignment to the LLC, and (c) the assignment is approved by the Board. Upon satisfaction of the conditions specified in the foregoing sentence, the LLC will cause Exhibit A hereto to be amended to the extent required by Section 12.9 hereof and the assignee will become the holder of the Membership Interest so assigned.

12.3. Assignment of Membership Interest with Consent of Other Members. If an Owner (the "Transferor") desires to transfer, assign or sell all or any portion of his or her Membership Interest (the "Offered Interests") to a third party that meets, or upon admission as a Member would meet, the requirements to be a Qualified Owner (the "Transferee"), the Transferor shall obtain from the Transferee a bona fide written offer to purchase the Offered Interests, stating the terms and conditions upon which the purchase is to be made and the consideration offered therefor (the "Offer"). The Transferor shall give notice to the LLC and the remaining Member(s) of his or her intention to sell, furnishing a copy of the entire Offer (the "Notice").

12.3.1. Right of First Refusal.

12.3.1.1 Within thirty (30) days of the receipt of Notice (the "LLC Option Period"), the LLC may exercise an option to purchase all but not less than all of the Offered Interests proposed to be sold by the Transferor, upon the terms and conditions and for the same consideration stated in the Offer. The LLC, at the direction of the Board, shall exercise such option by giving written notice both to the Transferor and each other Member within the LLC Option Period. Should the LLC fail to give written notice within such LLC Option Period, the LLC shall be deemed to have waived such option.

12.3.1.2 If the LLC does not exercise its option to purchase all (but not less than all) of the Offered Interests, each Member other than the Transferor, within thirty (30) days beginning on the earlier of the expiration of the LLC Option Period or the date of the written notice from the LLC waiving such option (the "Member Option Period"), may exercise an option to purchase the Offered Interests upon the same terms and conditions and for the same consideration stated in the

Offer, on a basis pro rata to their Membership Percentage (or on a basis pro rata to the interest of those remaining Member(s) exercising this second option to purchase.) The other Members shall exercise such options by giving written notice both to the Transferor and each other Member within the Member Option Period. Should a Member fail to give written notice within the Member Option Period, the Member shall be deemed to have waived such option.

12.3.1.3 In the event any Member shall not have exercised his or her option to purchase the Offered Interests, each other Member who exercises in full its option pursuant to subsection (ii) above may, within ten (10) days after the expiration of the Member Option Period (the "Over-Allotment Period"), exercise an option to purchase the remaining Offered Interests upon the terms and conditions and for the same consideration stated in the Offer. In the case of a single Member, his or her option shall be to purchase all of the remaining Offered Interests. In the case of two or more other Members, each such other Member's option shall be to purchase the amount all such other Members may determine by agreement among themselves, or if they cannot agree, by one or more successive allocations in the proportion that the Membership Interest owned by each of the eligible other Members bears to the total Membership Interests owned by all such eligible other Members. Such other Members shall exercise such options by giving written notice both to the Transferor and each other Member within the Over-Allotment Period. Should a Member fail to give written notice within the Over-Allotment Period, the Member shall be deemed to have waived such option.

12.3.1.4 The LLC and the other Members must, in the aggregate, exercise their options to purchase all of the Offered Interests; otherwise, their options shall be forfeited.

12.3.1.5 Notwithstanding anything contained herein to the contrary, the rights under this Section 12.3.1 may be waived with respect to any proposed transfer or assignment by an Owner provided that such transfer or assignment is approved by the Board and the Members elect to waive their rights under this Section 12.3.1.

12.3.2. If the right of first refusal options set forth above are forfeited or waived, then within ten (10) days after the expiration of the last option period granted above, the Transferor may transfer the Offered Interests to the Transferee named in the Notice upon the terms specified therein, provided (i) such Transferor has provided the Notice set forth in subsection (a) above, (ii) such transfer, sale or assignment is in compliance with the Securities Act of 1933, as amended (the "Securities Act"), and all applicable state securities laws, and, if requested by the Board, such Transferor has delivered an opinion of such Transferor's counsel to the LLC, in form and substance reasonably satisfactory to the LLC, to the effect that such transfer is either exempt from the requirements of the Securities Act and the applicable securities laws of any state or that such registration requirements have been complied with, (iii) the Board approves such transfer, sale or assignment (iv) the proposed transfer, assignment or sale is made in compliance with subsection 12.2.3.1 above, and (v) the Transferee executes a joinder to this Operating Agreement and agrees in writing to be bound by the terms hereof. Upon the satisfaction of the conditions set forth in the preceding sentence and the making of the assignment, the LLC will cause Exhibit A hereto to be amended in accordance with Section 12.9 hereof and the assignee will become a Member holding the Membership Interest so assigned.

12.4. **No Withdrawal.** No Member shall have a right to withdraw from the LLC without the written consent of all other Members, which may be granted or withheld in their sole and absolute discretion. Upon a permitted withdrawal, the withdrawing Member shall only be entitled to receive cash in exchange for his or her Membership Interest.

12.5. **Restrictions on Assignment.** No Member shall be permitted to assign such Member's Membership Interest, Financial Rights or Governance Rights if such assignment would result in the LLC being taxed for federal income tax purposes as an association taxable as a corporation or would constitute a violation of any

applicable federal or state law. Each of the Members hereby agrees and acknowledges that the restrictions on assignment contained in this Article 12 are not unreasonable in view of the nature of the parties and their relationships to one another and the nature of the business of the LLC.

12.6. Rights and Obligations of Former Members. A Member who assigns all of the Governance Rights of such Member or whose Membership Interest is otherwise terminated shall cease to be a Member; provided, however, that such former Member or any Successor shall remain liable to the LLC for any obligations of such Member for unlawful distributions as provided in Section 608.428 of the Act.

12.7. Admission of New Members. The admission of a new Member pursuant to the issuance of a new Membership Interest which is not acquired pursuant to any assignment by or from any existing or former Member (a "New Member") must be approved by the Board. The New Member shall receive the total amount of the Membership Interest to be received by the New Member, as determined by the Board (the "New Member Interest"). For all periods following the date of this Agreement:

12.7.1. If BSC's Membership Percentage, at the time any New Member is to be admitted, is greater than 51%, then BSC shall transfer to such New Member the New Member Interest (or first portion thereof) until BSC's Membership Percentage is reduced to 51%; provided, however, that in no event will BSC be required to transfer any portion of its Membership Interest to the New Member that would result in BSC's Membership Percentage, following any such transfer, falling below 51%.

12.7.2. If BSC's Membership Percentage, at the time any New Member is to be admitted or after the initial transfers contemplated by Section 12.7.1 is equal to 51%, then each Owner shall transfer to the New Member his, her or its pro rata share, on the basis of such Owner's then-current Membership Interest as a percentage of the Membership Interests held collectively by all Owners, of the New Member Interest.

12.7.3. All proceeds corresponding to the transfer of any Membership Interest to a New Member pursuant to this Section 12.7 shall belong exclusively to the party transferring such Membership Interest, and, for the avoidance of doubt, neither the LLC nor any other Member shall have any right to such proceeds.

Notwithstanding anything contained herein to the contrary, the Members acknowledge and agree that

it is the Members' intention that BSC will always own a 51% or greater Membership Interest in the LLC.

12.8. Government Regulation. If a Fundamental Regulatory Change should occur or if a fact or circumstance arises which the parties agree will give rise to a Fundamental Regulatory Change in the future, BSC or its Affiliates or assigns may, at their option, such option to be exercised and the purchase consummated if at all within 90 days of the earlier to occur of the Fundamental Regulatory Change or the fact or circumstance which the parties agree will give rise to the Fundamental Regulatory Change, purchase some or all of the Membership Interests of Owners for a purchase price equal to (a) three (3) times the LLC Profit plus the LLC's interest expense for the preceding twelve (12) calendar months from the earlier to occur of the date of the Fundamental Regulatory Change or the fact or circumstance which the parties agree will give rise to the Fundamental Regulatory Change (if the Center has not been in operation for a full twelve (12) months, the last six (6) months of LLC Profit will be annualized for this calculation), minus (b) the LLC's outstanding Principal Indebtedness, with this amount multiplied by the Membership Interest of Owners being purchased hereunder.

The determination that a Fundamental Regulatory Change has occurred shall be made by (a) counsel to BSC, with the concurrence of counsel to Owners, (b) counsel to Owners, with the concurrence of counsel to BSC or (c) if counsel to BSC and Owners cannot concur, by a nationally recognized law firm with expertise in health care law jointly selected by BSC and Owners.

The Membership Interest that may be purchased by BSC pursuant to this Section will not exceed the minimum Membership Interest required to be purchased as a result of the Fundamental Regulatory Change. For purposes of this Section, the Owners will not be treated as "Terminating Owners" for purposes of determining the LLC Profit.

In the event of a Fundamental Regulatory Change and the exercise by BSC of its option as described above, the purchase price of the Membership Interest purchased shall be determined and payable in the manner hereinafter set forth:

12.8.1. Owners shall be paid the purchase price (net after reduction for any obligations owed by any Owner to the LLC) in cash.

12.8.2. If in dispute, all determinations of LLC Profit required under this Section 12.8 shall be made by an independent certified public accountant acceptable to both Owners and BSC and any such determination so made shall be binding on all parties.

12.8.3. If an Owner's Membership Interest is acquired pursuant to this Section 12.8, such Owner will be distributed a pro rata share of the Available Cash Flow allocated to that Membership Interest for the month in which BSC purchases the Membership Interest based upon the number of days during such month prior to such purchase in relation to the total number of days in such month. Such distribution shall be made within ninety (90) days after the end of such month.

12.8.4. No payment other than those specifically provided for herein shall be due or payable with respect to the Membership Interest of any Owner. Any debt due by the LLC to any Owner shall be payable according to its terms.

12.8.5. Any closing of the purchase of an Owner's Membership Interest pursuant to this Section 12.8 shall be held at the principal office of the LLC within ninety (90) days following the earlier to occur of the Fundamental Regulatory Change or the fact or circumstance which the parties agree will give rise to the Fundamental Regulatory Change.

At the closing, BSC shall pay, upon the terms specified hereinabove, the determined value of such Membership Interest to such Owner, after receiving appropriate releases and satisfactions.

12.8.6. BSC may transfer or assign any of its rights to purchase the Membership Interest of an Owner to BSC's Affiliates or assigns.

12.8.7. If BSC or its Affiliate purchases some or all of the Membership Interest of an Owner pursuant to this Section 12.8, BSC will use its best efforts to have such Owner released from the appropriate portion of Principal Indebtedness, if any, guaranteed by such Owner. In the event that an Owner is not so released, BSC will indemnify and hold harmless such Owner from liability resulting from that portion of such guaranty.

In the event of a Fundamental Regulatory Change and the failure of BSC to exercise its option as described above within ninety (90) days from the earlier to occur of the Fundamental Regulatory Change or the fact or circumstance which the parties agree will give rise to the Fundamental Regulatory Change, the Owners shall have the option to sell their Membership Interest to one or more third parties. In the event that the Owners propose to sell their Membership Interest to one or more third parties as described above, at least thirty (30) days prior to such transfer, the Owners shall deliver a written notice (the "Sale Notice") to BSC, specifying in reasonable detail the identity of the prospective

transferee(s) and the terms and conditions of the transfer. BSC may elect to participate in the contemplated transfer by delivering written notice to the Owners within fifteen (15) days after receipt of the Sale Notice. If BSC has elected to participate in such transfer, BSC shall be entitled to sell and assign in the contemplated transfer, at the same price and on the same terms, all, but not less than all, of its Membership Interest. The Owners shall use best efforts to obtain the agreement of the prospective transferee(s) to the participation of BSC in any contemplated transfer, but if the prospective transferee(s) refuse to enter into a transaction to purchase BSC's Membership Interest, BSC shall have the option (i) to purchase the Owners' Membership Interests on the same terms and conditions as set forth in the Sale Notice or (ii) to permit the Owners to sell their Membership Interests to such prospective transferee(s) as set forth in the Sale Notice.

In the event that the Owners propose to transfer their Membership Interests to one or more third parties as described above, the Owners may (but shall not be required to), upon ten (10) days' prior written notice to BSC, specifying in reasonable detail the identity of the prospective transferee(s) and the terms and conditions of the transfer, require that BSC participate in such contemplated transfer and sell and assign in the contemplated transfer, at the same price and on the same terms, all, but not less than all, of BSC's Membership Interest to the prospective transferee(s).

12.9. **Amendment to Exhibit A.** An appropriate amendment to the amounts shown for Capital Contributions and Membership Percentages on Exhibit A hereto shall be made upon: (a) any assignment or termination of a Membership Interest described in Sections 12.1.1 through 12.1.5 hereof, (b) the admission of any New Member under Section 12.7 hereof, or (c) any purchase of a Membership Interest pursuant to Section 12.8 hereof.

12.10. **Pledge of Membership Interest.** No pledge or an Owner's interest may be made without the approval of BSC. The pledge of or the granting of a security interest, lien or other encumbrance in or against any or all of a Member's Membership Interest shall not constitute an assignment or transfer of such Membership Interest for purposes of this Article 12, or cause such Member to cease to be a Member or to cease to have the power to exercise any of its rights or powers as a Member. Any such pledgee shall not be a Member and shall not be entitled to any rights of a Member, other than the right to receive profit and loss allocations and distributions to the extent permitted by applicable law, unless such pledgee becomes a Member pursuant to Section 12.3 hereof. In any event, the foreclosure of or exercise of other secured party remedies with respect to such pledge, security interest, lien or other encumbrance resulting in an Assignment of any such Membership

Interest shall nonetheless be an Assignment subject to the restrictions of Article 12. BSC shall have the right to pledge or grant a security interest, lien or other encumbrance in or against any or all of its Membership Interest.

13. DISSOLUTION, WINDING UP, AND TERMINATION OF THE LLC'S EXISTENCE

13.1. Term. The term of the LLC shall continue until earlier terminated in accordance with the provisions of this Agreement. The Members intend for the term of the LLC, and their involvement in the operation thereof, to continue until the Members mutually agree otherwise. Neither Member shall take any action unilaterally to terminate the LLC or withdraw as a Member.

13.2. Events Causing Dissolution and Winding Up. The LLC shall be dissolved and its affairs wound up only upon the occurrence of the following events (individually, a "Dissolution Event"):

13.2.1. At any time with the prior approval of those Members holding 100% of the voting power and 100% of the Membership Interests in the LLC; or

13.2.2. Termination of this Agreement pursuant to Section 14.13 hereof.

13.3. Winding Up Affairs on Dissolution. Upon dissolution of the LLC, the Officers or other persons required or permitted by law to carry out the winding up of the affairs of the LLC shall promptly notify all Members of such dissolution; shall wind up the affairs of the LLC; shall prepare and file all instruments or documents required by law to be filed to reflect the dissolution of the LLC; and, after collecting the debts and obligations owed to the LLC and after paying or providing for the payment of all liabilities and obligations of the LLC, shall distribute the assets of the LLC in accordance with Section 6.5. In determining the final balance of the Book Capital Accounts, assets of the LLC which are distributed in kind to the Members, if any, shall be treated as if sold for their fair market value and allocations shall be made pursuant to Sections 6.1 and 6.2 hereof.

13.4. Waiver of Right to Partition and Decree of Dissolution. As a material inducement to each Member to execute this Agreement, each Member covenants and represents to each other Member that, during the period beginning on the date of this Agreement, no Member, nor such Member's heirs, representatives, successors, transferees or assigns, will attempt to make any partition whatever of the assets of the LLC or any interest therein whether now owned or hereafter acquired, and each Member waives all rights of partition provided by statute or principles of law or equity, including partition

in kind or partition by sale. The Members agree that irreparable damage would be done to the goodwill and reputation of the LLC if any Member should bring an action in a court to dissolve the LLC. The Members agree that this Agreement provides fair and just provisions for payment and liquidation of the interest of any Member in the LLC, and fair and just provisions to prevent a Member from selling or otherwise alienating its interest in the LLC. Accordingly, each Member hereby waives and renounces its right to such a court decree of dissolution or to seek the appointment by court of a liquidator or receiver for the LLC.

14. GENERAL PROVISIONS

14.1. Notices. Except as otherwise provided in this Agreement, any notice, payment, demand or communication required or permitted to be given by any provision of this Agreement shall be duly given

14.1.1. if delivered in writing, personally to the person to whom it is authorized to be given; or

14.1.2. if sent by certified or registered mail, overnight courier service or facsimile to the address of the Member or Director reflected in the records of the LLC.

Any such notice shall be deemed to be given as of the date so delivered, if delivered personally, as of the date on which the same was deposited in the United States mail, postage prepaid, addressed and sent as aforesaid, or on the date received if sent by overnight courier services or electronic facsimile.

14.2. Section Captions. Section and other captions contained in this Agreement are for reference purposes only and are in no way intended to describe, interpret, define or limit the scope, extent or intent of this Agreement or any provision hereof.

14.3. Applicable Law. This Agreement and the rights of the Members shall be governed by and construed and enforced in accordance with the laws of the State of Florida.

14.4. Severability. In case any one or more of the provisions contained in this Agreement or any application thereof shall be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein and any other application thereof shall not in any way be affected or impaired thereby. Without limiting the foregoing, the Members agree that in the event a court or arbitrator with appropriate jurisdiction determine that the geographic area and/or the time restrictions set forth in Section 8.2 hereof are unenforceable as a matter of law, then the court or arbitrator may modify the unenforceable provision in order to make it enforceable and such modification will be deemed to be valid amendment to this Agreement to

which each Owner and his or her Affiliates will be bound.

14.5. **Binding Effect.** Except as herein otherwise provided to the contrary, this Agreement shall be binding upon, and inure to the benefit of, the Members and their respective heirs, executors, administrators, successors, and permitted transferees and assigns.

14.6. **Terminology.** All personal pronouns used in this Agreement, whether used in the masculine, feminine, or neuter gender, shall include all other genders; and the singular shall include the plural, and vice versa.

14.7. **Amendment.** This Agreement may be amended in writing (a) with the consent of all of the Members and (b) with respect to Exhibit A hereto, under the circumstances set forth in Sections 4.8 and 12.9 hereof.

In the event that the parties hereto agree to admit a New Member pursuant to Section 12.7 hereof, the parties will amend and restate this Agreement accordingly to reflect the fact that the LLC thereafter will have more than two (2) Members.

14.8. **Parties in Interest.** Each and all of the covenants, terms, provisions and agreements herein contained shall be binding upon and inure to the benefit of the Members hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors and assigns.

14.9. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

14.10. **Interpretation in Accordance with Requirements for Partnership Tax Treatment.** The LLC is intended to be treated as a partnership for federal income tax purposes, and this Agreement shall be interpreted in a manner consistent with such intended tax treatment.

14.11. **Arbitration.** All disputes relative to interpretation of the provisions of this Agreement shall be resolved by binding arbitration in Tampa, Florida pursuant to the rules of procedure for arbitration of the American Health Lawyers Association Alternative Dispute Resolution Service then pertaining. Those arbitration rules of procedure shall be modified by this Section 14.11. No one shall serve as arbitrator who is in any way financially interested in this Agreement or in the affairs of any Member. If the disputing parties cannot agree on the appointment of a single arbitrator, there shall be three arbitrators selected to resolve the dispute pursuant to this Section 14.11, one named in writing by each of the disputing parties within fifteen (15) days after notice of arbitration is served upon one Member by another Member and a third arbitrator

selected by the two arbitrators selected by the Members within fifteen (15) days thereafter. The arbitrator will apply the substantive law of Florida and the United States.

Each Member shall pay its own expenses of arbitration and one-half of the expenses of the arbitrator. If any position by either Member hereunder, or any defense or objection thereto, is deemed by the arbitrator to have been unreasonable, the arbitrator shall assess, as part of the award against the unreasonable Member or reduce the award to the unreasonable Member, all or part of the arbitration expenses (including reasonable attorneys' fees) of the other Member and of the arbitrator.

14.12. **Access to Books and Records by Governmental Officials.** Upon written request of the Secretary of Health and Human Services or the Comptroller General or any other duly authorized representatives thereof, each Member shall make available to the Secretary those contracts, books, documents and records necessary to verify the nature and extent of the cost of providing its services to the Center. Such inspection shall be available up to four (4) years after such services are rendered. If either Member carries out any of the duties of this Agreement through subcontract with a value of Ten Thousand Dollars (\$10,000) or more over a twelve (12) month period with a related individual or organization, such Member agrees to include this requirement in such subcontract. If a request from the Secretary or his representative is served on a Member, that Member will notify the LLC in writing prior to responding to the request.

14.13. **Limited Renegotiation.** This Agreement shall be construed to be in accordance with any and all federal and state laws, including laws relating to Medicare, Medicaid and other third party payors. In the event there is a change in such laws, whether by statute, regulation, agency or judicial decision that has any material effect on any term of this Agreement, then the applicable term(s) of the Agreement shall be subject to renegotiation and either Member may request renegotiation of the affected term or terms of this Agreement, upon written notice to the other Member, to remedy such condition.

The Members expressly recognize that upon request for renegotiation, each Member has a duty and obligation to the other only to renegotiate the affected term(s) in good faith and, further, each Member expressly agrees that its consent to proposals submitted by the other Member during renegotiation efforts shall not be unreasonably withheld.

Should the Members be unable to renegotiate the term or terms so affected so as to bring it/them into compliance with the statute, regulation or judicial opinion that rendered it/them unlawful or unenforceable within thirty (30) days of the date on which notice of a

desired renegotiation is given, then either Member shall be entitled, after the expiration of said thirty (30) day period, to terminate this Agreement upon thirty (30) additional days written notice to the other Member.

14.14. Integrated Agreement. This Agreement constitutes the entire understanding and agreement between the Members with respect to the subject matter hereof, and there are no agreements, understandings, restrictions, representations or warranties among the Members other than those set forth herein or herein provided for.

The Members acknowledge that they have independently negotiated the provisions of this Agreement, that they have relied upon their own counsel as to matters of law and application and that no Member has relied on any other Member with regard to such matters. The Members expressly agree that there shall be no presumption created as a result of any Member having prepared in whole or in part any provision of this Agreement.

[Remainder of page intentionally left blank]

Exhibit B

Members of Trinity Following the Effective Time

| | |
|------------------------------------|----------|
| Paul M. Arnold | 0.5598% |
| Yasser Bassel | 1.7968% |
| Joseph Daly | 0.5598% |
| Miguel De la Garza | 0.4492% |
| Salvatore Delellis | 1.1195% |
| Noah Devicente | 0.8984% |
| Brian D. Hale | 0.5598% |
| Eric Haynes | 0.5598% |
| Alan Klibanoff | 1.5687% |
| Herbert Knauf | 2.3566% |
| Richard LaCamera | 1.5687% |
| Randall Latorre | 1.4582% |
| Rudolfo Panganiban | 0.8396% |
| Michael Peebles | 0.5598% |
| Juan J. Rivera | 0.5598% |
| Wanda Torres | 0.4492% |
| Laurence Zeitlin | 0.5598% |
| Sang Choi | 5.3362% |
| Eric Steckler | 0.4492% |
| Steven Mirabello | 5.3362% |
| Joseph Staffetti | 4.1398% |
| Maxwell Rent | 3.5890% |
| Dilip Ghanekar | 2.3471% |
| Paul J. Gonzalez, | 4.1891% |
| as Trustee of the Paul J. Gonzalez | |
| Living Trust | |
| Curtis Freedland | 1.7963% |
| BayCare Surgery Centers, LLC | 56.3936% |