Due to a clerical error, the incorrect version of the financial report was included in the originally published Board meeting packet for the October 17, 2022 Board meeting. This packet was reposted on October 17, 2022 with the correct version of the report.

Washington Township Hospital Development Corporation
2000 Mowry Avenue, Fremont, CA 94538-1716

October 13, 2022

MEETING NOTICE

Welcome to the October 17, 2022 meeting of the Washington Township Hospital Development Corporation Board of Directors. The meeting will commence at 7:30 a.m.

Join the Zoom Meeting:
https://zoom.us/j/97478678595?pwd=eUNrUDFwU0VqckVPSTUyM1VOa09DUT09
Passcode: 923316

Dial by your location + 1 669 219 2599 (San Jose, CA)
Meeting ID: 974 7867 8595
Passcode: 923316

Portions of this meeting held may be in closed session in accordance with Sections of California Health & Safety Code and Sections of the California Government Code.

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the Recording Secretary at (510) 818-7839. Notification two working days prior to the meeting will enable the Recording Secretary to make reasonable arrangements to ensure accessibility to this meeting.

This notice is posted in pursuant to Section 54954 of the Government Code.

Diana Venegas

Diana Venegas
Recording Secretary

Certificate of Posting

I certify that on October 13, 2022, I posted a copy of the foregoing Meeting Notice near the regular meeting place of the Board of Directors of the Washington Township Hospital Development Corporation Board, said time being at least 72 hours in advance of the meeting of the Board of Directors (Government Code Section 54954.2)

Executed at Fremont, California, on October 13, 2022.

Diana Venegas

Diana Venegas, Recording Secretary

Washington Township Hospital Development Corporation
2000 Mowry Avenue, Fremont, CA 94538-1716

BOARD OF DIRECTORS' MEETING
WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION
Monday, October 17, 2022 – 7:30 A.M.
2000 Mowry Avenue, Fremont, CA 94538
Meeting Conducted via Zoom
https://zoom.us/j/97478678595?pwd=eUNrUDFwU0VqckVPSTUyM1VOa09DUT09
Dial by your location + 1 669 219 2599 (San Jose, CA)
Meeting ID: 974 7867 8595
Passcode: 923316

AGENDA

		PRESENTED BY:
I.	**CALL TO ORDER**	*Benn Sah, M.D.* *Board President*
II.	**ROLL CALL**	*Diana Venegas* *Recording Secretary*
III.	**BROWN ACT FINDING** GOVERNMENT Code § 54953(e)(3)(B)(ii)	*Motion Required*
IV.	**CONSIDERATION OF MINUTES OF** **July 18, 2022**	*Motion Required*
V.	**EDUCATION SESSION** Washington Hospital Campus Master Plan	*Ed Fayen, Executive Vice President & Chief of Operations*
VI.	**COMMUNICATIONS** A. Oral B. Written	*Benn Sah, M.D.* *Board President*
VII.	**REPORTS**	**PRESENTED BY:**
	A. Chief Executive Officer Report	*Kimberly Hartz* *Chief Executive Officer*
	B. Financial Report	*Erica Luna* *Assistant Chief Financial Officer*

VIII. ACTION ITEM

A. Consideration of Resolution No. 48 Amendment and Restatement of Peninsula Surgery Center, LLC Operating Agreement — *Motion Required*

B. Consideration of Resolution No. 49 Sale of Interest in Peninsula Surgery Center, LLC

C. Consideration of Resolution No. 50 Modifying Numbering of Board Resolutions

IX. ADJOURN TO CLOSED SESSION

A. Conference involving trade secrets pursuant to Health & Safety Code, Section 32106 — *Benn Sah, M.D. Board President*

B. Consideration of Closed Minutes of July 18, 2022

X. RECONVENE TO OPEN SESSION — *Benn Sah, M.D. Board President*

Report on *permissible actions* taken during Closed Session

XI. ADJOURNMENT — *Benn Sah, M.D. Board President*

NEXT MEETING: MONDAY, JANUARY 30, 2023 - 7:30AM - 9:00AM

In compliance with the Americans with Disabilities Act, if you need assistance to participate in this meeting, please contact the Recording Secretary at (510) 818-7839. Notification two working days prior to the meeting will enable the District to make reasonable arrangements to ensure accessibility to this meeting.

CALL TO ORDER

The meeting of the Board of Directors of the Washington Township Hospital Development Corporation was held on July 18, 2022, via Zoom. Director Sah called the meeting to order at 7:42 a.m.

ROLL CALL

Directors present during roll call: Russ Blowers, Steven Chan, D.D.S., Sue Querner, Benn Sah, M.D., and Pauline Weaver

Absent: None

Also present: Kimberly Hartz, Chief Executive Officer; Tina Nunez, Vice President, Ambulatory Care and Administrative Services, Chris Henry, Vice President and Chief Financial Officer; Walter Choto, Chief, Ambulatory Care Services, Paul Kozachenko, Attorney, and Diana Venegas, Recording Secretary.

Guests: Daniel Nardoni, WTMF Chief Financial Officer, Michelle Hudson, WTMF Chief Operating Officer, Miro Garcia, former DEVCO Board Member.

INTRODUCTION OF PAULINE WEAVER

Director Sah welcomed newly appointed board member Director Pauline Weaver. Director Weaver was appointed to replace Miro Garcia, who resigned on March 7, 2022. The District Board appointed Director Weaver to the DEVCO Board at its meeting of July 13, 2022.

BROWN ACT FINDING

Director Sah welcomed members of the general public to the meeting. He noted that in order to continue to protect the health and safety of the members of the Board, District staff, and members of the public from the dangers posed by the SARS-CoV-2 virus, the Brown Act allows a local agency to continue to hold its meetings remotely as opposed to being required to meet in-person.

Section 54953(e) (3) of the Government Code requires that the Board make certain findings every 30 days to continue meeting remotely. One such finding is that "state or local officials continue to impose or recommend measures to promote social distancing." The Alameda County Health Officer continues to recommend social distancing and the wearing of masks indoors, as referenced by the Alameda County Health Care Services Public Health Department COVID-19 website at www.covid-19.acgov.org.

Director Sah asked that the Board of Directors make the necessary finding required by Section 54953(e)(3)(B)(ii) of the Government Code that "state or local officials continue to impose or recommend measures to promote social distancing." Director Chan made the motion. Director Blowers seconded the motion.

Roll call was taken:

- Benn Sah, MD – aye
- Steven Chan, DDS – aye

- Russ Blowers – aye
- Sue Querner – aye
- Pauline Weaver - aye

The motion unanimously carried.

COMMENDATION OF MIRO GARCIA

The Board then presented a commendation to Miro Garcia. Mr. Garcia resigned from the DEVCO Board on March 7, 2022. A motion was made by Director Chan, seconded by Director Weaver, to approve the Commendation of Miro Garcia.

Roll call was taken:

- Benn Sah, MD – aye
- Steven Chan, DDS – aye
- Russ Blowers – aye
- Sue Querner – aye
- Pauline Weaver – aye

The motion unanimously carried.

Ms. Hartz and Director Sah thanked Mr. Garcia for his 15 years of service. Through his leadership on the DEVCO Board, Mr. Garcia helped improve access to high-quality, advanced health care for our community.

CONSIDERATION OF MINUTES OF April 18, 2022

A motion made by Director Blowers, seconded by Director Chan, to approve the minutes of the meeting of April 18, 2022.

Roll call was taken:

- Benn Sah, MD – aye
- Steven Chan, DDS – aye
- Russ Blowers – aye
- Sue Querner – aye
- Pauline Weaver - abstain

The motion was approved, with one Director abstaining.

COMMUNICATIONS

Ms. Hartz noted that there was no written or oral communication.

CHIEF EXECUTIVE OFFICER REPORT

Ms. Hartz provided a COVID-19 update, commenting on the number of patients and their vaccination status.

Ms. Hartz provided an update on the Trauma Center. Washington Hospital has been approved by the Alameda County Emergency Medical Services Agency (ACEMSA) to become the next designated Level II Adult Trauma Center in the County in the

next 5 years. Ms. Hartz stated that we would collaborate with ACEMSA on a timeline for each complex process of this transition and engage with experts to help the District to prepare. A planning steering committee is in the process of formalization, and at the end of August, the planning staff will meet with the County to begin the planning phase.

Ms. Hartz reported on the Peninsula Surgery Center. We have received the AAAHC certification and are waiting for the CMS certification number. The first Medicare cases were completed at the end of May and billing will begin when we receive the CMS Certification number. Ms. Hartz invited the Board to attend the Peninsula Surgery Center Open House on August 3, 2022.

FINANCIAL REPORT

Mr. Henry reviewed the DEVCO Financial Report for May 2022, including year to date.

ADJOURN TO CLOSED SESSION

Director Sah adjourned the meeting to closed session at 9:05 a.m. Director Sah stated that the public has a right to know what, if any, reportable action takes place during closed session. The public was informed they could contact the Recording Secretary on July 19, 2022 to find out what reportable actions were taken. Director Sah indicated that the minutes of this meeting will reflect any reportable actions.

RECONVENE TO OPEN SESSION

Director Sah reconvened to open session at 9:32 a.m. and reported that the Board approved the Closed Session Minutes of April 18, 2022 by a vote of all Directors present with one abstention.

- Benn Sah, MD - aye
- Steven Chan, DDS - aye
- Russ Blowers - aye
- Sue Querner- aye
- Pauline Weaver –abstain

ACTION ITEM: Approval of the Washington Township Hospital Development Corporation Budget Estimate for Fiscal Year 2022/2023

The Washington Township Development Corporation (DEVCO) Budget Estimate for fiscal year 2022/2023 included total operating revenue of $43,328,554 and total expenses of $40,464,320 less minority interest of $2,005,764 for a budget net income of $858,470. The Capital Budget is estimated at $176,939.

The Board members were informed that the budget estimate takes into account inflation, contracted changes, and operation changes.

Director Querner moved to approve the DEVCO Budget Estimate for fiscal year 2022/2023. Director Blowers seconded the motion.

Roll call was taken:

- Benn Sah, MD – aye
- Steven Chan, DDS – aye
- Russ Blowers – aye
- Sue Querner – aye
- Pauline Weaver – aye

The motion unanimously carried.

ACTION ITEM: Approval of the Washington Township Medical Foundation Budget Estimate for Fiscal Year 2022/2023

The Washington Township Medical Foundation (WTMF) Budget Estimate for fiscal year 2022/2023 budget included total operation revenue of $54,799,000 and total expenses of $80,235,187 for a budgeted net loss of ($25,436,187). The Capital Budget is estimated at $519,692.

The Board members were informed that the budget estimate takes into account inflation, contracted changes, staffing changes, budgetary changes and market and strategic growth for WTMF. It also includes infrastructure expense related to the Quality Improvement Pool (QIP) Program, which is an important Healthcare System quality initiative that focuses on improving the quality of care for WTMF patients.

Director Querner moved to approve the WTMF Budget Estimate for fiscal year 2022/2023. Director Blowers seconded the motion.

Roll call was taken:

- Benn Sah, MD – aye
- Steven Chan, DDS – aye
- Russ Blowers – aye
- Sue Querner – aye
- Pauline Weaver – aye

The motion unanimously carried.

ACTION ITEM: Approval of Resolution #47 to Increase the Amount of the Credit Line Between DEVCO and Peninsula Surgery Center, LLC

Mr. Henry provided an overview of Resolution #47, the purpose of which is to approve an Increase in the Amount of the Credit Line to Peninsula Surgery Center, LLC.

Peninsula Surgery Center received AAAHC accreditation on May 12, 2022 and has since started performing surgeries. Due to the time necessary to ramp up cases and the lag in collections, staff is proposing that DEVCO provide access to an additional $3.0 million dollars of working capital, bringing the maximum line of credit up to $10.0 million dollars. To date, DEVCO has provided approximately $6.5 million in funding.

Director Querner made a motion for the approval of Resolution #47. Director Blowers seconded the motion.

Roll call was taken:

- Benn Sah, MD – aye
- Steven Chan, DDS – aye
- Russ Blowers – aye
- Sue Querner – aye
- Pauline Weaver – aye

The motion unanimously carried.

ADJOURNMENT

There being no further business, Director Sah adjourned the meeting at 9:42 a.m.

The next currently scheduled meeting is October 17, 2022 at 7:30 a.m.

Benn Sah, M.D.
President

Steven Chan, D.D.S.
Secretary

Washington Township Hospital
Development Corporation
Summary Income Statement
July 2022

Current Month					Year-To-Date			
		Favorable/(Unfavorable)					Favorable/(Unfavorable)	
Actual	Budget	Variance	% Variance		Actual	Budget	Variance	% Variance
1,447	1,787	(340)	(19.0%)	(1) Visits	1,447	1,787	(340)	(19.0%)
272	242	30	12.4%	(2) Treatments & Procedures	272	242	30	12.4%
1,719	2,029	(310)	(15.3%)	(3) Total	1,719	2,029	(310)	(15.3%)
				Gross Revenue				
4,167,799	5,176,290	(1,008,491)	(19.5%)	(4) Patient Revenue	4,167,799	5,176,290	(1,008,491)	(19.5%)
917,702	949,802	(32,100)	(3.4%)	(5) Other Revenue	917,702	949,802	(32,100)	(3.4%)
5,085,501	**6,126,092**	**(1,040,591)**	**(17.0%)**	**(6) Total Gross Revenue**	**5,085,501**	**6,126,092**	**(1,040,591)**	**(17.0%)**
				Deductions				
2,507,132	**2,846,960**	**339,828**	**11.9%**	**(7) Total Deductions**	**2,507,132**	**2,846,960**	**339,828**	**11.9%**
60.2%	55.0%	(5.2%)		Contractual Percentage	60.2%	55.0%	(5.2%)	
2,578,369	**3,279,132**	**(700,763)**	**(21.4%)**	**(8) Net Revenue**	**2,578,369**	**3,279,132**	**(700,763)**	**(21.4%)**
				Expenses				
955,914	1,054,798	98,884	9.4%	(9) Salaries	955,914	1,054,798	98,884	9.4%
268,625	309,993	41,368	13.3%	(10) Benefits	268,625	309,993	41,368	13.3%
528,375	546,551	18,176	3.3%	(11) Supplies	528,375	546,551	18,176	3.3%
281,867	385,314	103,447	26.8%	(12) Professional Fees	281,867	385,314	103,447	26.8%
300,524	383,347	82,823	21.6%	(13) Purchased Services	300,524	383,347	82,823	21.6%
186,582	139,847	(46,735)	(33.4%)	(14) Depreciation and Amort	186,582	139,847	(46,735)	(33.4%)
29,130	30,623	1,493	4.9%	(15) Utilities	29,130	30,623	1,493	4.9%
499,518	494,500	(5,018)	(1.0%)	(16) Building Lease	499,518	494,500	(5,018)	(1.0%)
200,408	202,555	2,147	1.1%	(17) Other Expenses	200,408	202,555	2,147	1.1%
3,250,943	**3,547,528**	**296,585**	**8.4%**	**(18) Total Expenses**	**3,250,943**	**3,547,528**	**296,585**	**8.4%**
(672,574)	**(268,396)**	**(404,178)**	**(150.6%)**	**(19) Net Operating Income/Loss**	**(672,574)**	**(268,396)**	**(404,178)**	**(150.6%)**
(214,688)	**121,844**	**336,532**	**276.2%**	**(20) Minority Interest**	**(214,688)**	**121,844**	**336,532**	**276.2%**
(457,886)	**(390,240)**	**(67,646)**	**(17.3%)**	**(21) Net Income/Loss**	**(457,886)**	**(390,240)**	**(67,646)**	**(17.3%)**

Washington Hospital Healthcare System
SINCE 1948

Memorandum

DATE: October 14, 2022

TO: Board of Directors
Washington Township Hospital Development Corporation

FROM: Kimberly Hartz, Chief Executive Officer

SUBJECT: Resolution No. 48 – Amendment and Restatement of Peninsula Surgery Center, LLC' Operating Agreement

The proposed resolution authorizes an amendment to and restatement of the Operating Agreement for Peninsula Surgery Center, LLC ("PSC"). This amendment to PSC's Operating Agreement changes Section 4.2(b) relating to the manner in which a licensed physician or podiatrist may become a Class A Member of PSC. Specifically, this amendment permits a duly licensed physician or podiatrist to become a Class A Member as an individual or through not only a professional corporation but also a limited liability company in which such licensed physician or podiatrist is the sole equity holder. Without this amendment, only professional corporations owned by a licensed physician or podiatrist were permitted to become Class A Member entities. This amendment would also allow a licensed physician or podiatrist to utilize a limited liability company for investment purposes as a Class A Member.

The foregoing proposed amendment requires the approval of both PSC's Controlling Member, namely, Peninsula Surgical Partnership, LLC, and a majority interest of the Class A Members. Washington Township Hospital Development Corporation ("DEVCO") is a Class A Member of PSC, owning twenty-four percent (24%) of the membership interest in PSC. Accordingly, in its capacity as a Class A Member, DEVCO is entitled to vote on approval of this proposed amendment.

In accordance with the District's policies and procedures, it is requested that the Washington Township Hospital Development Corporation Board of Directors approve Board Resolution No. 48 authorizing the amendment and restatement of PSC's Operating Agreement.

RESOLUTION NO. 48

RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION ("DEVCO") TO ADOPT AN AMENDED AND RESTATED OPERATING AGREEMENT FOR PENINSULA SURGERY CENTER, LLC

WHEREAS, Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation ("DEVCO"), previously approved participation in the ownership and operation of an ambulatory surgery center located at 350 Marine Parkway, Redwood City, California, referred to as the Peninsula Surgery Center (the "Surgery Center") and operated by Peninsula Surgery Center, LLC ("PSC");

WHEREAS, DEVCO believes that amending and restating the Operating Agreement for PSC is prudent for the ongoing success of the Surgery Center; and

WHEREAS, attached to this Resolution is the proposed First Amended and Restated Operating Agreement (the "Agreement").

NOW, THEREFORE, be it resolved that:

1. DEVCO hereby approves the proposed Agreement and hereby authorizes the Chief Executive Officer to execute the Agreement on behalf of DEVCO.

2. The Chief Executive Officer is hereby authorized to take any and all actions necessary to execute any and all instruments and do any and all things deemed by her to be necessary or desirable to carry out the intent and purposes of the foregoing Resolution.

3. This Resolution shall be filed in the minute book of the corporation and become a part of the records of the corporation.

Passed and adopted by the Board of Directors of the Washington Township Hospital Development Corporation this 17th day of October 2022 by the following vote:

AYES: _____

NOES: _____

RECUSAL: _____

_____

Benn Sah, MD
President, Board of Directors
Washington Township Hospital Development Corporation

_____

Steven Chan, DDS
Secretary, Board of Directors
Washington Township Hospital Development Corporation

FIRST AMENDED AND RESTATED OPERATING AGREEMENT
OF
PENINSULA SURGERY CENTER, LLC
A California Limited Liability Company

~~August 12, 2019~~

September ___, 2022

THE OFFER AND SALE OF MEMBERSHIP INTERESTS OF PENINSULA SURGERY CENTER, LLC (THE "COMPANY") HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL SECURITIES AND EXCHANGE COMMISSION OR THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT, NOR HAVE ANY OTHER STATE OR FEDERAL REGULATORY AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THE OFFER OR SALE OF THE MEMBERSHIP INTERESTS.

THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED ("THE 1933 ACT"). THE OFFER AND SALE OF THE MEMBERSHIP INTERESTS ARE BEING MADE WITHOUT REGISTRATION PURSUANT TO THE 1933 ACT IN RELIANCE UPON THE PRIVATE OFFERING EXEMPTION PROVIDED BY SECTION 4(2) OF THE 1933 ACT, THE INTRASTATE OFFERING EXEMPTION PROVIDED BY SECTION 3(a)(11) OF THE 1933 ACT, AND/OR THE LIMITED OFFERING EXEMPTION PROVIDED BY RULE 504 OF REGULATION D AS PROMULGATED UNDER THE 1933 ACT. PURSUANT TO ONE OR MORE OF THESE EXEMPTIONS, THE MEMBERSHIP INTERESTS MAY NOT BE OFFERED OR SOLD BY THE COMPANY TO ANY PERSON OR ENTITY WHO OR WHICH IS NOT A RESIDENT OF THE STATE OF CALIFORNIA. BECAUSE THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE 1933 ACT, THEY MAY NOT BE RESOLD, ASSIGNED OR TRANSFERRED, NOR WILL ANY ASSIGNEE, VENDEE, TRANSFEREE OR ENDORSEE BE RECOGNIZED AS HAVING ACQUIRED THE INTERESTS FOR ANY PURPOSES, UNLESS: (A) THEY ARE FIRST REGISTERED UNDER THE 1933 ACT; OR (B) AN EXEMPTION FROM REGISTRATION FOR SUCH RESALE TRANSACTION, ASSIGNMENT OR TRANSFER IS AVAILABLE UNDER THE 1933 ACT. IN ADDITION, RULE 147 AS PROMULGATED UNDER THE 1933 ACT REQUIRES THAT THE MEMBERSHIP INTERESTS NOT BE RESOLD TO ANY PERSON OR ENTITY WHO OR WHICH IS NOT A CALIFORNIA RESIDENT DURING THE PERIOD THEY ARE BEING OFFERED AND SOLD BY THE COMPANY AND FOR A PERIOD OF NINE (9) MONTHS AFTER THE LAST SUCH SALE BY THE COMPANY.

THE OFFER AND SALE OF THE MEMBERSHIP INTERESTS HAVE NOT BEEN QUALIFIED WITH THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA PURSUANT TO THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968, AS AMENDED (THE "CALIFORNIA SECURITIES LAW"). THE OFFER AND SALE OF THE MEMBERSHIP INTERESTS ARE BEING MADE IN RELIANCE UPON THE LIMITED OFFERING EXEMPTION PROVIDED

CONFIDENTIAL

BY SECTION 25102(f) OF THE CALIFORNIA SECURITIES LAW OR THE EXEMPTION FOR "COVERED SECURITIES" (AS DEFINED IN SECTION 18b OF THE 1933 ACT) UNDER SECTION 25100.l(a) OF THE CALIFORNIA SECURITIES-LAW. PURSUANT TO THE LIMITED OFFERING EXEMPTION, SALES OF MEMBERSHIP INTERESTS MAY BE MADE TO NO MORE THAN THIRTY-FIVE (35) PERSONS, EXCEPT THAT ADDITIONAL SALES MAY BE MADE TO PERSONS WHO CONSTITUTE "EXCLUDED PURCHASERS" FOR PURPOSES OF THE LIMITED OFFERING EXEMPTION.

THE MEMBERSHIP INTERESTS ARE SUBJECT TO FURTHER RESTRICTIONS AS TO THEIR SALE, TRANSFER, HYPOTHECATION, ASSIGNMENT OR OTHER DISPOSITION AS SET FORTH IN THE OPERATING AGREEMENT FOR THE COMPANY AND AGREED TO BY EACH MEMBER. SUCH RESTRICTIONS PROVIDE, AMONG OTHER THINGS, THAT NO INTEREST MAY BE TRANSFERRED VOLUNTARILY WITHOUT FIRST OFFERING THE INTEREST TO THE COMPANY, AND THAT NO ASSIGNEE, VENDEE, TRANSFEREE, OR ENDORSEE OF AN INTEREST HAS THE RIGHT TO BECOME A MEMBER WITHOUT APPROVAL BY THE MANAGERS, WHICH APPROVAL OF MANAGERS MAY BE GIVEN OR WITHHELD PURSUANT TO THE OPERATING AGREEMENT.

THE MEMBERSHIP INTERESTS INVOLVE A DEVELOPMENT STAGE COMPANY WITH NO OPERATING HISTORY. INVESTMENT IN THE COMPANY IS SPECULATIVE, INVOLVES RISK, AND IS SUITABLE ONLY FOR PERSONS WHO HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENTS. MEMBERS MAY SUSTAIN A LOSS OF THEIR TOTAL INVESTMENT.

EACH PROSPECTIVE MEMBER IS ADVISED TO CONSULT WITH SUCH PERSON'S OWN LEGAL, TAX AND ACCOUNTING ADVISORS IN CONNECTION WITH SUCH PERSON'S DECISION TO INVEST IN AND BECOME A MEMBER OF THE COMPANY, INCLUDING WITHOUT LIMITATION REGULATORY MATTERS PERTAINING TO ANY OTHER FINANCIAL RELATIONSHIPS OR COMPENSATION ARRANGEMENTS BETWEEN OR AMONG THE MEMBERS OR BETWEEN THE MEMBERS AND THE COMPANY.

CONFIDENTIAL

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CONFIDENTIAL

FIRST AMENDED AND RESTATED OPERATINGAGREEMENT OF PENINSULA SURGERY CENTER, LLC A California Limited Liability Company

THIS FIRST AMENDED AND RESTATED OPERATING AGREEMENT (the "Agreement") of Peninsula Surgery Center, LLC, a California limited liability company (the "Company"), is made and entered into effective as of ~~August 12, 2019~~ September ___, 2022 (the "Effective Date"), by and among the parties who are identified from time to time on the Member List described in Section 8.l(a) below and are signatories to this Agreement or to a "Joinder Agreement" (as defined in Section 4.3 below) to this Agreement (collectively, the "Members"). ~~The Effective Date of this Agreement is identical to the "Formation Date" of the Company (as defined in Section 1.7 below).~~

RECITALS

(A) WHEREAS, the Members, and each of them, acknowledge that the Company ~~has been~~ was formed as a California limited liability company under the California Revised Uniform Limited Liability Company Act, codified in Sections 17701.01 through 17713.13 of the California Corporations Code, as the same may be supplemented or amended from time to time, and any corresponding provisions of applicable succeeding law (the "Act"); and

(B) ~~WHEREAS, the Members, and each of them, desire to enter into this Agreement in order~~ WHEREAS the original Members of the Company entered into that certain Operating Agreement dated August 12, 2019, to form the Company ~~and~~, provide for the governance of the Company ~~and~~, provide for the conduct of its business~~,~~ and to specify their relative rights and obligations.

(C) WHEREAS, the Members, and each of them, desire to enter into this Agreement in order to provide for the continued governance of the Company, the conduct of its business, and to specify their relative rights and obligations.

NOW, THEREFORE, in consideration of the mutual recitals, covenants, conditions and other terms contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

When used in this Agreement, and to the extent permitted by the Act, the following terms shall have the meanings set forth below, and any other terms not defined in this Article I shall have the meanings specified elsewhere in this Agreement:

1.1 Act. "Act" shall have the definition set forth in the Recitals above.

1.2 Additional Member. "Additional Member" shall have the meaning given to it in Section 4.3 below.

1.3 Adjusted Capital Account Deficit. "Adjusted Capital Account Deficit" shall mean, with respect to any Member, the deficit balance, if any, in such Member's Capital Account as of the end of the relevant Fiscal Year or other period, after giving effect to the following adjustments:

(a) Credit to such Capital Account the amount that such Member is deemed to be obligated to restore pursuant to the penultimate sentences of Regulations Sections 1.704-2(g)(l) and 1.704-2(i)(5); and

(b) Debit to such Capital Account such Member's share of the items described in Regulations Sections 1.704-l(b) (2)(ii)(d)(4), 1.704-l(b)(2)(ii)(d)(5), and 1.704-l(b)(2)(ii) (d)(6).

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

1.4 Affiliate. "Affiliate" shall mean, with reference to a specified Person: (a) any Person, directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with the specified Person, whether through voting stock ownership, partnership or membership interest, contract or otherwise. The term "controlling", including the terms "controlled by" and "under common control with", as used in this Section 1.4, shall mean the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person.

1.5 Agreement. "Agreement" shall mean this Agreement, and all exhibits hereto, as it may be amended from time to time in accordance with the terms of this Agreement.

1.6 Appraised Value. "Appraised Value" shall mean the fair market value of the Company determined in accordance with the following process, which shall be final and binding on the Company and the Controlling Member. The fair market value of the Company shall be determined by an independent appraiser who has experience performing health care valuations of companies similar to the Company and who is selected and hired by mutual agreement of the Company and the Controlling Member. The appraiser shall determine the fair market value based on the value of the Company as a going concern. The fair market value shall be expressed as a single value rather than a range of values. The appraiser shall be instructed to complete the required appraisal report within thirty (30) days.

1.7 Articles. "Articles" shall mean the Articles of Organization for the Company, as originally filed with the California Secretary of State on August 12, 2019 (the "Formation Date"), a copy of which is attached hereto as Exhibit "A", and as they may be amended from time to time.

1.8 Bankruptcy. "Bankruptcy" shall mean, with respect to a Member: (a) the filing of an application by the Member for, or consent to, the appointment of a trustee, receiver or custodian of his, her or its assets; (b) the entry of an order for relief with respect to the Member in proceedings under the United States Bankruptcy Code, as amended or superseded from time to time; (c) the

making by the Member of a general assignment for the benefit of creditors; (d) the entry of an order, judgment or decree by any court of competent jurisdiction appointing a trustee, receiver or custodian of the Member's assets, unless the proceedings and the person appointed are dismissed within ninety (90) days; or (e) the failure of the Member generally to pay his, her or its debts as such debts become due within the meaning of Section 303(h)(l) of the United States Bankruptcy Code, determined by the Bankruptcy Court or by the admission in writing of the Member's inability to pay his, her or its debts as they become due.

1.9 Capital Account. "Capital Account" shall mean, with respect to any Member, the capital account which the Company establishes and maintains for such Member pursuant to Section 3.3 below.

1.10 Capital Contribution. "Capital Contribution" shall mean, with respect to any Member, the total amount of cash and the fair market value of property contributed to, or services provided to or for the Company by such Member at any time. Each Member's aggregate Capital Contributions shall be set forth opposite the name of such Member on the Member List described in Section 8.l(a) below.

1.11 Class A Manager. "Class A Manager" shall mean each Manager who is appointed by the Class A Members.

1.12 Class A Member. "Class A Member" shall mean each Person who (a) has been admitted to the Company as a Class A Member in accordance with the Articles and this Agreement and (b) has not ceased to be a Class A Member for any reason.

1.13 Code. "Code" shall mean the Internal Revenue Code of 1986, as the same may be amended from time to time, any corresponding provisions of applicable succeeding law, and to the extent applicable, the Regulations.

1.14 Company. "Company" shall mean Peninsula Surgery Center, LLC, a California limited liability company.

1.15 Company Minimum Gain. "Company Minimum Gain" shall have the meaning ascribed to the term "Partnership Minimum Gain" in Regulations Section 1.704-2(d).

1.16 Controlling Member. "Controlling Member" shall mean the Person who (a) has been admitted to the Company as the Controlling Member in accordance with the Articles and this Agreement and (b) has not ceased to be the Controlling Member for any reason. The Controlling Member shall be Peninsula Surgical Partnership, LLC, a California limited liability company, and any successor to or transferee of the Controlling Member's entire Membership Interest permitted under this Agreement.

1.17 Controlling Member Manager. "Controlling Member Manager" shall mean each Manager who is appointed by the Controlling Member.

1.18 Dissolution Event. "Dissolution Event" shall mean, with respect to any Member, the Bankruptcy of such Member, or with respect to any Member that is not a natural person, the dissolution of such Member.

1.19 Distributable Cash. "Distributable Cash" shall mean the amount of cash which the Managers deem available for distribution to the Members, after taking into account all debts, liabilities and obligations of the Company then due as well as working capital and other amounts which the Manager deem necessary for the Company's business or to place into reserves for customary and usual claims with respect to such business.

1.20 Exempt Transfer. "Exempt Transfer" shall mean any Transfer by the Controlling Member (including any Transfer by its successor or transferee) of its entire Controlling Member Membership Interest and all of its Controlling Member Membership Units to the Controlling Member's Founding Member (the "Founding Member") or any Affiliate of the Founding Member which controls (as such term is used in Section 1.4 above) the Controlling Member or the Founding Member.

1.21 Fiscal Year. "Fiscal Year" shall mean the Company's fiscal year, which shall be from January 1 through December 31.

1.22 Founding Member. "Founding Member" shall have the meaning given to it in Section 1.20 above; as of the Effective Date, the Founding Member is Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation ("DEVCO").

1.23 Majority Vote of the Managers. "Majority Vote of the Managers" shall mean the affirmative vote, written consent or other action by a majority of the authorized number of Managers, provided that such majority includes at least two (2) Controlling Member Managers.

1.24 Manager(s). "Manager(s)" shall mean each Manager appointed by the Controlling Member and each Manager appointed by the Class A Members.

1.25 Member. "Member" shall mean the Controlling Member, if such Member has not ceased to be a Member for any reason, and each Class A Member who has been or is admitted to the Company as a Class A Member in accordance with the Articles and this Agreement and has not ceased to be a Class A Member for any reason.

1.26 Member List. "Member List" shall have the meaning given to it in Section 8.l(a) below.

1.27 Member Nonrecourse Debt. "Member Nonrecourse Debt" shall have the meaning ascribed to the term "Partner Nonrecourse Debt" in Regulations Section 1.704-2(b)(4).

1.28 Member Nonrecourse Deductions. "Member Nonrecourse Deductions" shall mean items of Company loss, deduction, or Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt.

1.29 Membership Interest or Interest. "Membership Interest" or "Interest" shall mean a Member's entire interest in the Company, including without limitation the Member's economic (or transferable) interest, the Member's right to vote or otherwise participate in the management of the Company, and the Member's right to receive information concerning the business and affairs of the Company, as evidenced by such Member's Membership Units.

1.30 Membership Unit(s). "Membership Unit(s)" shall mean, in the singular, each unit, and in the plural, an aggregate number of units, of ownership of Membership Interest issued to, purchased or held by, and/or Transferred to or by a Member that serve(s) as (a) evidence of the Membership Interest of each Member and (b) the principal basis for calculating each Member's Capital Contributions and Percentage Interest hereunder, as such contributions and percentage may be adjusted from time to time pursuant to this Agreement. Each Member's Membership Units shall be set forth opposite the name of such Member on the Member List.

1.31 Net Profits and Net Losses. "Net Profits" and "Net Losses" shall mean, for each Fiscal Year or other period, all items of income, gain, loss and deduction of the Company in the aggregate or separately stated, as appropriate, determined in accordance with the method of accounting on the Company's information or tax return filed for federal income tax purposes.

1.32 Nonrecourse Liability. "Nonrecourse Liability" shall have the meaning set forth in Regulations Section 1.752-1(a)(2).

1.33 Percentage Interest. "Percentage Interest" shall mean, with respect to any Member, the percentage interest of such Member in allocations of Net Profits and Net Losses of the Company to and among all Members, as specified and set forth opposite the name of such Member on the Member List, and as such percentage may be adjusted from time-to-time pursuant to this Agreement. A Member's Percentage Interest shall equal the Membership Units held by such Member reflected as a percentage of the aggregate number of Membership Units held by all Members as set forth on the Member List. By way of example only, should a Member hold one hundred (100) Membership Units out of an aggregate one thousand (1,000) Membership Units held by all Members, then such Member's Percentage Interest would equal ten percent (10%).

1.34 Permanent Disability. "Permanent Disability" shall mean, with respect to a Member who is a natural person: (a) the permanent or total disability of such Member (or of the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member) within the meaning of "disability" as defined in 42 USC 416(i)(1)(A), or (b) the disability or incapacity of a Member (or of the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member) by reason of illness or any other valid cause, as determined by the Managers in their reasonable discretion, to comply fully with his or her obligations under this Agreement for a period in excess of one hundred eighty (180) days (whether or not consecutive) during any continuous twelve (12) month period.

1.35 Person. "Person" shall mean a natural person, general partnership, limited partnership, limited liability company, limited liability partnership, corporation, joint venture, trust, estate, pension or profit-sharing plan, cooperative, association or any other organization or entity that is not a natural person.

1.36 Regulations. "Regulations" shall mean, unless the context clearly indicates otherwise, final or temporary Treasury Regulations promulgated under the Code, as amended from time to time, and any corresponding provisions of succeeding Treasury Regulations.

1.37 Retirement. "Retirement" shall mean, with respect to a Class A Member (or the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member) who is a physician or podiatrist at least sixty-five (65) years old and has been an active member in good standing, for at least five (5)

continuous years as of the date of Retirement, of the medical staff of the "Company ASC" (as defined in Section 2.6(a) below), such Class A Member's (or such Class A Member's sole ~~shareholder's~~equity holder's) permanent discontinuation of his or her medical or podiatry practice in any capacity or context.

1.38 Supermajority Vote of the Managers. "Supermajority Vote of the Managers" shall mean the affirmative vote, written consent or other action by a Majority Vote of the Managers, provided that such majority includes (a) at least two (2) Controlling Member Managers and (b) at least one (1) Class A Manager, if there are any Class A Managers in office at the time.

1.39 Supermajority Vote of the Members. "Supermajority Vote of the Members" shall mean, with respect to any vote, approval or other action by the Members, the separate, affirmative vote of (a) the Controlling Member and (b) Class A Members, if any, whose Percentage Interests represent in the aggregate more than fifty percent (50%) of the aggregate Percentage Interests held by all Class A Members entitled to vote, if there are any Class A Members at the time.

1.40 Tax Matters Partner. "Tax Matters Partner", as defined in Code Section 6231(a)(7) (and after the effective date of the Bipartisan Budget Act of 2015, the "Partner Representative", as such term is defined in Code Section 6223(a)), shall mean the Controlling Member.

1.41 Transfer. "Transfer" (including any derivation thereof as a noun, verb or adjective) shall mean, with respect to any Membership Interest in the Company, or any portion thereof, a sale, conveyance, exchange, assignment, pledge, encumbrance, gift, bequest, hypothecation, or other transfer or disposition by any other means, whether for value or no value, and whether voluntary or involuntary (including without limitation by operation of law), or an agreement to do (or the doing of) any of the foregoing.

ARTICLE II
ORGANIZATIONAL MATTERS

2.1 Formation. The Articles for the Company, a copy of which is attached hereto as Exhibit "A", were originally filed with the California Secretary of State on August 12, 2019, with File No. 201922510052. The rights, interests, liabilities and obligations of the Members shall be determined pursuant to the Articles, this Agreement and the Act. In the event and to the extent of any inconsistency between any terms and provisions set forth in the Articles and this Agreement and any provisions of the Act regarding the rights, interests, liabilities or obligations of any Member, then the terms and provisions of the Articles and this Agreement shall, to the extent permitted by the Act, govern and control; and in the event and to the extent of any inconsistency between any terms and provisions set forth in this Agreement and any provisions set forth in the Articles, then the terms and provisions of this Agreement shall, to the extent permitted by the Act, govern and control.

2.2 Name. The name of the Company shall be Peninsula Surgery Center, LLC. The Company Business (as defined in Section 2.6 below) may be conducted under that name or, upon compliance with applicable laws, any other name that the Managers deem appropriate or advisable. The Managers shall file any fictitious name certificates and/or trade name statements and similar filings, and any amendments thereto, that the Managers consider appropriate or advisable.

2.3 Term. The term of existence of the company shall be deemed to have commenced as of the Formation Date and shall continue until terminated pursuant to this Agreement or as otherwise expressly provided by law.

2.4 Office and Agent. The Company shall continuously maintain an office and agent for service of process in the State of California. The principal office of the Company shall be located at 2000 Mowry Avenue, Fremont, California 94538, or otherwise as the Managers may determine from time to time (the "Principal Office"). The Company may also have such other offices, anywhere within and without the State of California, as the Managers may determine from time to time. The agent for service of process shall be as stated in the Articles or as otherwise determined by the Managers.

2.5 Names and Addresses of the Members. The respective names and addresses of the Members shall be set forth on the Member List. A Member may change his, her or its address upon notice thereof to the Managers.

2.6 Purpose and Business of the Company. The Company may engage in any and all lawful businesses, purposes and activities for which a limited liability company may be organized under the Act. Without in any way limiting the generality of the foregoing sentence, the Company may engage in the following businesses (collectively, the "Company Business"):

(a) The ownership, development, management and operation of that certain ambulatory surgery center located at 350 Marine Parkway, Redwood City, CA 94065 (the "Company ASC") and the provision of related comprehensive management, supervision and other administrative services for the Company ASC (the "Company ASC Business");

(b) The carrying on of such other activities directly related to and in furtherance of the ownership, development, management and operation of the Company ASC, as may be deemed to be reasonably necessary, advisable or appropriate by the Managers; and

(c) The engagement of such other businesses or activities as the Managers and the Members may determine and approve in accordance with the terms of this Agreement.

2.7 Furtherance of Charitable Purposes. The Members acknowledge that the Controlling Member's Founding Member, DEVCO, is a California nonprofit public benefit corporation which is exempt from taxation pursuant to Code Section 501(c)(3). As such, for as long as (i) the Controlling Member is a Member, (ii) DEVCO is the Founding Member or an Affiliate of the Founding Member, and (iii) DEVCO is a nonprofit corporation exempt from taxation, the Company and the Company Business shall be managed in a manner that furthers the longstanding and recognized charitable and community-based health care purposes and mission of DEVCO and is consistent with the nonprofit, tax-exempt status of DEVCO, by promoting the health of and providing quality health care services to a broad cross-section of the residents and other members of Redwood City, California and other surrounding communities (collectively, with Redwood City, the "Communities") in accordance with the community benefit standard of Rev. Rul. 69-545. To this end, the Company and the Company Business shall be operated at all times in a manner that will not, by itself, cause DEVCO to act other than substantially in furtherance of its nonprofit,

tax-exempt and charitable and community-based health care purposes or adversely affect the nonprofit, tax-exempt status of DEVCO. Specifically, the Company shall:

(a) Further the nonprofit, tax-exempt and charitable and community-based health care purposes of DEVCO by enhancing the quality, availability, convenience and access to medical services provided within the Communities, and by otherwise promoting the general health and well-being of the residents and other members of the Communities;

(b) Provide reasonable access to quality health care goods and services without regard to the patient's race, creed, color, religion, national origin, citizenship, gender, disability, age, insurance coverage or ability to pay or payor source;

(c) Develop, adopt, implement and monitor compliance with policies and procedures, including, without limitation, a charity care policy consistent in principle with DEVCO's charity care policy, to ensure that quality health care services are available and provided to all residents and other members of the Communities, including Medicare and Medi-Cal patients and patients under any other federal or state payor program;

(d) Avoid (i) causing DEVCO to act, in its reasonable opinion based on the advice of its tax counsel, other than exclusively in furtherance of its charitable and community-based health care purposes, (ii) adversely affecting DEVCO's nonprofit, tax-exempt status under Code Section 501(c)(3), or (iii) causing DEVCO's share of the Company's Net Profits to be taxed as "unrelated business taxable income" under Code Section 511;

(e) Adopt and be operated in accordance with a conflicts of interest policy complying with the standards articulated by the IRS for Code Section 501(c)(3) nonprofit, tax-exempt health care organizations (the "Conflicts of Interest Policy"); and

(f) Adhere to any financial assistance and nondiscrimination policies and similar polices that DEVCO may reasonably require, consistent with its nonprofit, tax-exempt and charitable and community-based health care purposes.

The Members acknowledge that the foregoing limitations on the actions of the Company and the Company Business are a result of the nonprofit, tax-exempt status and charitable and community-based health care purposes and mission of DEVCO, and each Member agrees that any good faith decision of the Managers, of any officer of the Company, of any Member, or of any third-party management company of the Company or the Company Business to take any action or to forego taking any action in order to reasonably comply with the charitable and community-based health care purposes and tax exemption requirements set forth above shall take precedence over any profit-making motives or objectives of the Company, and shall not be deemed or construed as a breach of the duty of loyalty or a breach of any fiduciary or other duty to the Company or the Members, notwithstanding the fact that any such good faith decision to act or not to act may not be in the best financial interest of the Company or the Members; provided, however, without limiting in any way the generality or scope of the foregoing provisions of this Section 2.7, such good faith decision to take any such action or to forego taking any such action shall not otherwise violate any provision of this Agreement or the Act. In this regard, so long as the Company, the Members, and the Managers comply fully with their respective obligations and

covenants under this Agreement; nothing contained in the foregoing shall operate to cause the Company, the Members, or the Managers to have any further or additional responsibility, obligation or liability (i) for maintaining DEVCO's nonprofit, tax- exempt status, (ii) for DEVCO's losing its nonprofit, tax-exempt status, or (iii) from the failure of DEVCO to maintain its nonprofit, tax-exempt status or to further its charitable and community-based health care purposes and mission, for which DEVCO shall otherwise be solely responsible. DEVCO shall promptly notify the Managers and the Controlling Member of the occurrence of any event which potentially could or actually does adversely affect the maintenance of DEVCO's nonprofit, tax-exempt status, and shall submit in detail the scope and nature of the event at issue to the Managers and the Controlling Member.

ARTICLE III
CAPITAL CONTRIBUTIONS

3.1 Initial Capital Contributions. The Controlling Member's initial Capital Contribution, initial Membership Units and initial Percentage Interest are set forth beside such Controlling Member's name on Exhibit "B" attached hereto. Consistent with Section 4.3 below, Exhibit "B" also shows that, as of the Effective Date, the Controlling Member holds five hundred ten (510) "Controlling Member Membership Units", and Class A Members hold four hundred ninety (490) "Class A Membership Units" in the aggregate (as such Membership Units are described more particularly in Section 4.3 below). All Members hereby acknowledge and agree that the Capital Contributions set forth on the Member List shall represent the amount of money and/or fair market value of the property contributed to or services provided to or for the Company by each Member, and the Membership Units and Percentage Interests set forth on the Member List shall represent the respective Membership Units and Percentage Interests held by each Member, as of the date set forth on the Member List.

3.2 Additional Capital Contributions.

(a) Discretionary Capital Contributions. The Members shall contribute additional capital ("Additional Capital") to the Company in such amounts and at such times as Additional Capital is required, as determined and approved by the Managers from time to time, subject to (i) approval by the Members pursuant to their Voting Rights as set forth in Section 4.15 below, and (ii) Section 3.2(c) below. Upon such determination and approval, the Managers shall give written notice to each Member specifying the amount(s) of Additional Capital required from all Members and that such Member shall have at least fifteen (15) days from the date that such notice is given to contribute his, her or its required share of Additional Capital to the Company. The Members shall each contribute such Additional Capital in proportion to their respective Percentage Interests. Each Member shall receive a credit to his, her or its Capital Account in the amount of any Additional Capital which it contributes to the Company, and such Additional Capital shall be reflected as part of such Member's aggregate Capital Contributions as set forth on the Member List.

(b) Failure to Make Additional Capital Contribution. If any Member fails to contribute Additional Capital that is required pursuant to Section 3.2(a) above, then the other Members may

mutually agree to make a loan or loans and/or additional Capital Contributions to the Company to cover the non-contribution of Additional Capital by such other Member.

Notwithstanding any action by the other Members, and in addition to any other relief or remedies available to the Company pursuant to this Agreement or the Act or as otherwise available at law or in equity, the failure of a Member to make a required contribution of Additional Capital shall subject such Member to Expulsion pursuant to Section 4.5 below.

(c) Third Party and Member Loans. Prior to a determination requiring the contribution of Additional Capital from the Members pursuant to Section 3.2(a) above, the Managers shall consider and, if the Managers determine it to be appropriate, shall seek out and obtain one or more loans either from third party financial institutions or directly from the Members. Except as otherwise expressly provided in this Agreement, no Member shall be required to make any loans or otherwise lend any funds to the Company. Notwithstanding the foregoing sentence, the Members shall be permitted to make loans to the Company if the Managers determine that such loans are necessary or advisable for the business of the Company; provided, however, the terms and conditions of such loans must be at least as favorable to the Company as those that are available from independent third parties. No loans made by any Member to the Company shall have any effect on such Member's Percentage Interest or Capital Account, such loans representing a debt of the Company payable or collectible solely from the assets of the Company in accordance with the terms and conditions upon which such loans were made.

3.3 Capital Accounts. The Company shall establish and maintain an individual Capital Account for each Member in accordance with Regulations Section l.704-l(b)(2)(iv). If a Member Transfers all or a portion of his, her or its Membership Interest in accordance with this Agreement, such Member's Capital Account attributable to the Transferred Membership Interest shall carry over to the new owner of such Membership Interest pursuant to Regulations Section 1.704-1(b)(2)(iv)(l).

3.4 Adjustments to Book Value. Except as otherwise determined by the Managers, the book value of all Company assets shall be adjusted to equal their respective fair market values, at the election of and as determined and approved by the Managers, as of the following times: (a) in connection with the acquisition of a Membership Interest in and from the Company by a new or existing Member for more than a de minimis Capital Contribution; or (b) in connection with the liquidation of the Company as defined in Regulations Section 1.704-1(b)(2)(ii)(g). In the event of a revaluation of any Company assets hereunder, the respective Capital Accounts of the Members shall be adjusted, including without limitation continuing adjustments for depreciation, to the extent provided in Regulations Section l.704-l(b)(2)(iv)(f).

3.5 No Interest. No Member shall be entitled to receive any interest on his, her or its Capital Contributions.

3.6 Capital Withdrawals; Return of Capital. Except as otherwise expressly provided in the Articles and/or this Agreement, (a) no Member shall be entitled to demand or receive a return of his, her or its Capital Contributions or Capital Account, (b) no Member shall be entitled to withdraw or reduce any portion of his, her or its Capital Contributions or receive any distributions

from the Company as a return of capital on account of such Capital Contributions, and (c) the Company shall not be required to redeem or repurchase the Membership Interest (as evidenced by the Membership Units) of any Member.

3.7 No Priority or Preference. No Member shall be entitled to any priority or preference over any other Member, with respect to the return of any Capital Contributions or any distributions or allocations of Net Profits and Net Losses, or any items thereof, except.as otherwise expressly provided in the Articles and/or this Agreement.

ARTICLE IV
MEMBERS

4.1 Classes of Members. There shall be two (2) classes of Members designated respectively as the "Controlling Member," and "Class A Members". Except as otherwise expressly provided in the Articles, this Agreement (including without limitation the Controlling Member's exclusive right to appoint and remove the Controlling Member Managers and the exclusive right of the Class A Members to appoint and remove the Class A Managers) or non-waivable provisions of the Act, the rights, powers and obligations of the Controlling Member and Class A Members shall be identical in all respects; provided, however, the right to vote on any and all matters coming before the Members for action shall rest solely and exclusively with the Controlling Member and the Class A Members, voting as separate classes in accordance with Section 1.39 above.

4.2 Qualifications of Members. All Members shall meet the following qualifications to be Members of their respective class:

(a) Controlling Member. Except as otherwise expressly provided in the Articles and/or this Agreement, there shall be no specific qualifications for the Controlling Member.

(b) Class A Members. Each Class A Member shall be one of the following: (i) a physician duly licensed to practice medicine in California; (ii) a podiatrist holding a duly issued certificate to practice podiatric medicine in California; or (iii) a professional medical corporation or limited liability company whose sole ~~shareholder is such~~ equity holder is a duly licensed physician or a professional podiatric medicine corporation whose sole ~~shareholder~~ equity holder is a holder of such a duly issued podiatry certificate; and in each foregoing case, such Class A Member (or the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member) shall be an active member in good standing of the medical staff of the Company ASC; or DEVCO, but only as of the Effective Date and then only so long as the Managers permit DEVCO to hold any "Class A Membership Units" (as defined hereinbelow), which Class A Membership Units shall be Transferred by DEVCO, from time to time, to any existing Member(s) or Additional Member(s) as and when determined by Supermajority Vote of the Managers pursuant to Section 5.3(a) below.

4.3 Additional Members and Membership Interests. Following the Effective Date, the Company may from time-to-time issue additional Membership Interests (as evidenced by additional Membership Units) in the Company ("Additional Membership Interests") and admit one (1) or more additional Members ("Additional Members"). Unless and until the Company elects to authorize additional Membership Units in accordance herewith ("Additional Authorized Membership Units"), the maximum number of initial authorized Membership Units held by all

Members (of all classes) at any time shall be one thousand (1,000) Membership Units ("Initial Authorized Membership Units"), five hundred ten (510) of which Initial Authorized Membership Units shall be deemed "Controlling Member Membership Units" to be held solely by the Controlling Member (and all of which are held by the Controlling Member as of the Effective Date), and four hundred ninety (490) of which Initial Authorized Membership Units shall be deemed "Class A Membership Units" to be held solely by Class A Members . Except as otherwise expressly provided herein, the authorization of Additional Authorized Membership Units, the issuance of Additional Membership Interests (including without limitation unissued Initial Authorized Membership Units or Additional Authorized Membership Units) in the Company, the admission of Additional Members, and the determination of the numbers, terms, conditions and Capital Contributions, if any, attendant to any such issuance or admission (collectively, "Attendant Conditions") shall be made by the Managers. In addition to and without in any way limiting any other applicable conditions or requirements set forth in this Agreement, each Additional Member shall, as a condition to being admitted to the Company, execute a Joinder Agreement to Operating Agreement substantially in the form of Exhibit "E" attached hereto, by which each such Additional Member shall agree to be bound by the terms and conditions of this Agreement (the "Joinder Agreement"). The Company (through the Managers) shall amend, as appropriate, the Member List to reflect Additional Membership Interests (and concomitant additional Membership Units) issued, Additional Members admitted, additional Capital Contributions made, and any changes to the Percentage Interests of the Members resulting therefrom, all as approved by the Managers in accordance herewith. Notwithstanding the foregoing provisions of this Section 4.3, the Transfer by a Member of all or any portion of his, her or its Membership Interest, including without limitation the approval thereof, shall be governed by the applicable provisions of Article VII below.

4.4 Voluntary Withdrawals. Except as otherwise expressly provided in this Agreement, no Member may voluntarily withdraw or resign or otherwise dissociate as a Member from the Company without the prior approval of the Managers. Except as otherwise expressly provided in this Agreement, any voluntary withdrawal or resignation or dissociation by a Member from the Company, whether or not approved, shall result in the automatic Transfer of such Member's entire Membership Interest to the Company as set forth in Section 7.7(a) below.

4.5 Expulsions. Except as otherwise expressly provided in this Agreement, upon the determination and approval by the Managers, subject to approval by the Members pursuant to their Voting Rights as set forth in Section 4.15 below, and in addition to any other relief or remedies available to the Company hereunder or under the Act or as otherwise available at law or in equity, a Member shall be expelled (each, an "Expulsion") from the Company upon the occurrence of any one (1) or more of the following events or conditions with respect to such Member, or the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member (for purposes of this Section 4.5, also a "Member"):

(a) Such Member's violation (as established by individual or regulatory decree, following final adjudication) of any applicable federal or state fraud and abuse, anti-kickback or self-referral laws, as more particularly described in Section 4.18 below;

(b) Such Member's exclusion or suspension from participation in any federally funded health care program;

(c) Such Member's death, Permanent Disability or Retirement, or the occurrence of a Dissolution Event with respect to such Member;

(d) Any other event which;' were it not for the provisions of this Agreement, would-cause such Member's Interest, or any portion thereof, to be awarded to, confirmed in or otherwise Transferred to, for consideration or otherwise, any Person, whether voluntarily, involuntarily or by operation of law, in violation of any applicable provision of this Agreement;

(e) Such Member's attempted Transfer of all or any portion of his, her or its Membership Interest in violation of any applicable provision of this Agreement;

(f) Such Member's failure to make a required contribution of Additional Capital in accordance with Section 3.2 above;

(g) Such Member's failure to comply with all of the applicable requirements for Members as set forth in this Agreement, including without limitation any qualification requirements specified in Section 4.2 above;

(h) Such Member's material breach of any other provision of this Agreement (i.e., any material breach other than as described in clauses (a) through (g) above), but only after such Member has received a written notice from the Managers of such material breach and a reasonable opportunity (i.e., thirty (30) days or a longer period if determined necessary by the Managers) to cure such material breach and has failed to cure such material breach during such reasonable cure period; or

(i) Such Member's receipt of a vote of "No Confidence" issued by the Managers regarding such Member's continued role as a Member of the Company.

Any Expulsion of a Member from the Company pursuant to this Section 4.5 shall result in the automatic Transfer of such Member's entire Membership Interest and Membership Units to the Company as set forth in Section 7.7(a) below. In the case of any event or condition regarding a Member as set forth in clauses (a), (b), (c), (d), (e), (f), (g) and (h) above, such Member (or such Member's legal representative) shall notify the Managers immediately, in writing, of and upon the occurrence of any such event or condition. A Member's failure to comply with the foregoing notification requirement shall be deemed a material breach of this Agreement by such Member.

4.6 Other Business Activities. Neither the Company nor any Member shall have any right in or to another Member's business activities or ventures which are unrelated to or independent of the Company Business, or any right in or to the income or proceeds derived therefrom. Except as otherwise expressly set forth in Sections 4.7, 4.8 and 4.9 below: (a) this Agreement shall not limit or restrict the right of the Members, as such, to hold any investment opportunity or prospective economic advantage for their own account or to recommend such opportunity to Persons other than the Company; and (b) no Member, as such, shall be obligated to present any investment opportunity or prospective economic advantage to the Company, even if the opportunity is of the character that, if presented to the Company, could be taken and/or held by the Company.

4.7 Non-Competition While a Member.

(a) Prohibition Against Competition by Controlling Member and Class A Members. Notwithstanding anything to the contrary set forth in Section 4.6 above, but subject to the Controlling Member Exceptions set forth below, during the term of existence of the Company, no Member (excluding DEVCO as a Class A Member), nor the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member (for purposes of this Section 4.7 and Sections 4.9 and 4.10 below, also a "Member"), shall, without the prior written consent of the Managers, either directly, indirectly, or through any Affiliate of such Member or any immediate family member of such Member or such Affiliate, provide services for or on behalf of, invest in, provide loans or other funds to, contract or affiliate with, or otherwise participate in the ownership, operation, management, or control of, any Person that is or will be in competition with or that carries on or will carry on a business similar to the Company ASC within the "Defined Area" as defined below.

(b) Defined Area. For the Controlling Member and its Affiliates (subject to the Controlling Member Exceptions set forth below), the Defined Area shall be within a radius of three (3) miles of the Company ASC. For each Class A Member (excluding DEVCO as a Class A Member) and its Affiliates (including the sole ~~shareholder~~ equity holder of a ~~corporate~~ Class A Member), the Defined Area shall be within a radius of twenty-five (25) miles of the Company ASC.

(c) Controlling Member Exceptions. This Section 4.7 shall not apply to (i) any Affiliate of the Controlling Member or of the Controlling Member's Founding Member which is not controlled by (as such term is used in Section 1.4 above) the Controlling Member or by the Founding Member, (ii) the Controlling Member's or Founding Member's ownership or other participatory interest or similar relationship with any ambulatory surgery center business or similar business which is listed on Exhibit D attached hereto, or (iii) any ambulatory surgery center or similar business operated and licensed as (or as part of) a hospital outpatient department of a general acute care hospital owned by any Affiliate of the Controlling Member or Founding Member.

4.8 Non-Competition and Non-Solicitation Following Transfer of Class A Membership Interest.

(a) Protection of Business. In order to provide for the protection of the Company, the Company Business and its goodwill upon any Transfer of a Class A Member's (excluding DEVCO as a Class A Member) entire Class A Membership Interest, the parties hereto covenant and agree to the provisions set forth in this Section 4.8. In this regard, the parties intend that the provisions of this Section 4.8 satisfy the terms of, and be enforceable in accordance with, Sections 16600 et seq. (as applicable) of the California Business and Professions Code (the "B&P Code").

(b) Non-Competition. Notwithstanding anything to the contrary set forth in Section 4.6 above, upon and following the Transfer by any Class A Member (excluding DEVCO as a Class A Member) of his, her or its entire Class A Membership Interest hereunder (thereby becoming a "Former Class A Member"), neither such Former Class A Member nor the sole equity holder ~~shareholder~~ of a ~~corporate~~ Former Class A Member (for purposes of this Section 4.8 and Sections 4.9 and 4.10 below, also a "Former Class A Member") shall, without the prior written consent of the Managers, either directly, indirectly, or through any Affiliate of such Former Class A Member or immediate family member of such Former Class A Member or Affiliate, provide services for or

on behalf of, invest in, provide loans or other funds to, contract or affiliate with, or otherwise participate in the ownership, operation, management, or control of, any Person that is or will be in competition with or that carries on or will carry on a business similar to, within the Defined Area, the Company Business, including the Company ASC Business, for so long as the Company and/or any Member or other Person acquiring, holding or otherwise deriving title to such Former Class A Member's entire Class A Membership Interest carries on like business activities in the Defined Area, but in no event longer than two (2) years following such Transfer (the "Post-Transfer Period").

(c) Non-Solicitation. Until the expiration of the Post-Transfer Period, no Former Class A Member having Transferred all of his, her or its Class A Membership Interest shall, directly, indirectly, or through any Affiliate of such Former Class A Member or immediate family member of such Former Class A Member or Affiliate, engage in the practice of solicitation of any of the Company's Members, officers or employees, without the prior written consent of the Managers. For purposes of this Agreement, "solicitation" shall mean any action which the Managers may reasonably interpret to be designed to persuade a Member, officer or employee to discontinue, restrict or otherwise alter his, her or its relationship with the Company.

(d) Further Assurances. Upon any Transfer of a Class A Member's entire Class A Membership Interest as described above in this Section 4.8, such Class A Member or Former Class A Member (and the sole equity holder ~~shareholder~~ of a ~~corporate~~ Class A Member) shall execute and deliver to the Company such documents as the Managers may reasonably require to confirm, evidence or effect the various non-competition and non-solicitation covenants set forth in this Section 4.8.

4.9 Proprietary Information. Each party hereto agrees that neither such party nor any of such party's Affiliates, nor any immediate family members of such party or any such Affiliate, shall use, divulge, furnish or make accessible to any Person (other than at the written request of the Company) any secret, confidential or proprietary knowledge, property or information of the Company (collectively, the "Company's Proprietary Information"), including without limitation any trade secrets, financial information, customer or client lists, marketing methods, data, properties, specifications, or other information regarding the personnel, organization or internal affairs of the Company; provided, however, this Section 4.9 shall not prohibit disclosure of any information that is legally in the public domain. Except as otherwise expressly provided herein, nothing in this Agreement shall constitute a grant to any party hereto (including without limitation any Former Class A Member or any Affiliate of a Former Class A Member) of ownership in or other rights to use the Company's Proprietary Information. The provisions of this Section 4.9 shall apply to each Member while a Member and after the Member is no longer a Member, and shall survive the termination of this Agreement and/or the dissolution of the Company.

4.10 Severability; Injunctive Relief.

(a) Intent; Severability. Each party hereto recognizes that the territorial, time or other restrictions set forth in Sections 4.7, 4.8 and 4.9 above are reasonable, not burdensome, and are properly permitted by law for the adequate protection of the Company, its goodwill and its Members. If any such territorial, time or other restrictions or any other related provisions contained therein shall be deemed to be illegal, unenforceable or unreasonable by an arbitrator or

a court of competent jurisdiction, each party hereto agrees and submits to the reduction of such territorial, time or other restriction(s) or other provision(s) to such a geographic area; time period or other restriction or provision as such arbitrator or court shall deem reasonable.

(b) Injunctive Relief. Each party hereto acknowledges that: (i) the covenants, prohibitions, restrictions and other obligations ("Covenants") contained in Sections 4.7, 4.8 and 4.9 above are a material factor to such party's execution of this Agreement and are necessary and required for the protection of the Company; (ii) such Covenants relate to matters that are of a special, unique and extraordinary character that gives each of such Covenants a special, unique and extraordinary value; and (iii) a breach of any such Covenant will result in irreparable harm and damages to the Company in an amount difficult to ascertain and which cannot be adequately compensated by a monetary award. Accordingly, in addition to any other relief to which the Company may be entitled at law or in equity, the Company shall be entitled to temporary and/or permanent injunctive relief from any breach or threatened breach by a Member, former Controlling Member, or Former Class A Member, or any Affiliate of any Member, former Controlling Member or Former Class A Member or any immediate family member of any Member, former Controlling Member or Former Class A Member or any such Affiliate, of any of the provisions of Sections 4.7, 4.8 or 4.9 above, without proof of actual damages, from any court of competent jurisdiction as a matter of course upon the posting of not more than nominal bond.

4.11 Transactions with the Company. Except as otherwise expressly set forth in this Agreement, any of the Members (each, an "Interested Member") may enter into any transaction with the Company, either directly, indirectly, or through an Affiliate of such Interested Member, provided that such transaction is approved in advance by the Managers after full disclosure of the Interested Member's interest in the transaction. Any such transaction must have terms and conditions that are, on an overall basis, fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing such transactions and/or in similar transactions between parties operating at arm's length.

4.12 Remuneration to the Members. Except as otherwise expressly provided in this Agreement, no Member, as such, is entitled to remuneration for acting in the Company Business.

4.13 Limited Liability. Except as otherwise expressly set forth in this Agreement or in non-waivable provisions of the Act (e.g., prohibition against restricting Member liability for certain money damages) or as otherwise required by law, no Member shall be personally liable in any manner whatsoever for any debt, obligation or liability of the Company, whether such debt, obligation or liability arises in contract, tort or otherwise, solely by reason of being a Member of the Company. Provided, however, each Member's obligation of good faith and fair dealing, as specified under the Act, shall not be eliminated or otherwise limited hereunder except as otherwise expressly set forth in this Agreement.

4.14 Members Are Not Agents. Pursuant to and as qualified by Section 5.1 below and the Articles, the exclusive management of the Company is vested in the Managers. The Members shall have no power to participate in the management of the Company, except as otherwise expressly authorized by this Agreement and/or the Articles. No Member, acting solely in the capacity of a Member, is an agent of the Company, nor does any Member, unless expressly and duly authorized in writing to do so by the Managers, have any power or authority to bind or act on

behalf of the Company in any way, to pledge its credit, to execute any instrument on its behalf, or to render it liable for any purpose.

4.15 Limited Voting Rights. The Members shall have the following voting, approval or consent rights in connection with the management and operation of the Company and the Company Business in addition to any other voting, approval or consent rights expressly provided elsewhere in this Agreement (collectively, "Voting Rights"). Except as otherwise expressly provided in this Agreement, the Articles or non-waivable provisions of the Act, the Members' right to vote on Company matters hereunder shall be limited solely to the following matters and actions and no others, each such Company matter or action also requiring the affirmative determination and approval thereon and thereof by the Managers:

(a) To approve a change, modification or amendment to this Agreement or to the Articles;

(b) To approve a voluntary dissolution and winding up of the Company;

(c) To approve the sale, exchange, lease, mortgage, pledge or other transfer or disposition of all or substantially all of the assets of the Company other than in the ordinary course of business;

(d) To approve a merger, conversion, consolidation or other reorganization or business combination of or involving the Company;

(e) To approve joint ventures and other like strategic alliances and affiliations of or involving the Company;

(f) To approve any action or transaction by the Company outside the ordinary course of business;

(g) To approve a material change in the nature of the Company Business;

(h) To approve required contributions of Additional Capital as determined by the Managers pursuant to Section 3.2 above;

(i) To approve the Expulsion of a Member pursuant to Section 4.5 above;

(j) To approve any compensation of the Managers as reasonably determined by the Managers as set forth in Section 5.7 below; and

(k) To approve determinations by the Managers for Members to serve as Guarantors of any Company Loans/Leases with Required Guaranties pursuant to Section 4.19 below.

4.16 Actions and Meetings of Members.

(a) Manner of Acting. Except as otherwise expressly provided in this Agreement and/or the Articles: (i) with respect to any vote, approval or other action by the Members, the Supermajority Vote of the Members shall constitute the formal act of the Members; and (ii) with

respect to any vote, approval or other action by any class of Members, the affirmative vote of the Members of such class holding a majority of the Percentage Interests held by all Members of such class entitled to vote shall constitute the formal act of such class. On any matters before the Members (or any class of Members) entitled to vote, the entire Percentage Interest held by any Member shall be voted either in favor of or against the transaction, action or other matter under consideration.

(b) Quorum. The presence in person of the Controlling Member and Class A Members holding a majority of the Percentage Interests held by all Class A Members shall constitute a quorum at a meeting of the Members; and in the case of a meeting of any class of Members, the presence in person of Members of such class holding a majority of the Percentage Interests held by all Members of such class shall constitute a quorum at such meeting. The Members present at a duly called and held meeting of the Members or any class of Members, at which a quorum is initially present, may continue to do business until adjournment, notwithstanding the loss of a quorum, as long as any action taken after the loss of a quorum (including adjournment) is approved by the minimum number of votes otherwise required under this Agreement to authorize or take such action.

(c) Waiver of Notice or Consent.

(1) Under the following conditions, the actions taken at any meeting of the Members or any class of Members, however called and noticed and wherever held, shall have the same validity as if taken at a meeting duly held after regular call and notice: (i) if a quorum is present and (ii) if, either before or after the meeting, each of the Members entitled to vote at such meeting who was not present signs a written waiver of notice, or consents in writing to the holding of the meeting, or approves the minutes of the meeting. All such waivers, consents or approvals shall be filed with the Managers and shall be maintained in the Company records.

(2) Attendance by a Member at a meeting shall constitute a waiver of notice of that meeting, except when such Member objects, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. In addition, attendance at a meeting is not a waiver of any right to object to the consideration of matters not included in the Notice of Meeting (as defined below) if that objection is expressly made at the meeting.

(d) Action by Written Consent Without a Meeting. Any action that may be taken at a meeting of the Members or any class of Members may be taken without a meeting, if a consent in writing setting forth the action so taken is signed and delivered to the Company, within thirty (30) days following the record date for such action, by those Members holding not less than the minimum number of votes that would have been necessary to authorize or take such action at a duly called and held meeting at which a quorum is present.

(e) Telephonic Participation by Members at Meetings. The Members may participate in any meeting of the Members or any class of Members through the use of any means of conference telephones or similar communications equipment, as long as all Members participating can hear one another. A Member so participating is deemed to be present in person at the meeting. Any Member may request in writing to the Managers, at least two (2) business days prior to the

date of the meeting, that such Member be permitted to participate in the meeting through teleconference equipment, so long as such equipment can be made reasonably available for the meeting at a nominal cost to the Company.

(f) Proxy. No Member shall be permitted to create or enter into any proxy for purposes of any presence at a meeting or any right to vote or consent to which a Member is otherwise entitled.

(g) Annual Meetings. Annual meetings of the Members shall be held at the sole discretion of the Managers and, if held, on such date and at such place and time as determined by the Managers and described in the Notice of Meeting, provided that the place of any annual meeting shall be either at the Company's Principal Office or at the location of the Company ASC. At any meeting under this Section 4.16(g) or Section 4.16(h) below, the Managers shall appoint a person to preside at the meeting and a person to act as secretary of the meeting. The secretary of such annual or special meeting shall prepare minutes of the meeting which shall be placed in the minute book of the Company.

(h) Special Meetings. Special meetings of the Members or any class of Members may be called by the Managers or, in the case of a special meeting of the Members, by the Controlling Member or Class A Members collectively holding at least ten percent (10%) of the aggregate Percentage Interests held by all Class A Members, or in the case of a special meeting of any class of Members, by any one (1) or more Members of such class collectively holding at least ten percent (10%) of the aggregate Percentage Interests held by all Members of such class, for the purpose of addressing any matters on which the Members or any class of Members, as applicable, may vote. Any special meeting of the Members or any class of Members shall be held on the date and at the time and place described in the Notice of Meeting, provided that the place of any special meeting shall be either at the Company's Principal Office or at the location of the Company ASC.

(i) Notice of Meeting. Written notice of a meeting of the Members or any class of Members (the "Notice of Meeting" or "Notice") shall be given to each Member entitled to vote at the meeting not less than ten (10) nor more than sixty (60) days before the date of the meeting. The Notice must specify the place, date and time of the meeting, the general nature of the business to be transacted, and that no other business may be transacted.

(j) Manner of Giving Notice. Notice of a meeting of the Members or any class of Members shall be given either personally, or by mail, or by other means of written communication (which may include facsimile or electronic mail (email)) addressed to each Member at the address of the Member appearing on the books of the Company or given by the Member to the Company for the purpose of Notice, or, if no address appears or is given, at the place where the Company's Principal Office is located or by publication at least once in a newspaper of general circulation in the county in which the Principal Office is located. The Notice shall be deemed to have been given at the time when delivered personally (by overnight courier or otherwise) or two (2) days following deposit in the U.S. Mail, or at the time sent by other means of written communication. If any Notice addressed to a Member at the address of the Member appearing on the books of the Company is returned to the Company by the U.S. Postal Service, marked to indicate that the U.S. Postal Service is unable to deliver the Notice to the Member at such address, all future Notices shall be deemed to have been duly given without further mailing if they are available for the

Member at the Principal Office for a period of one (1) year from the date of the giving of the Notice to all other Members.

(k) Timing of Notice. Upon written request to the Managers by any person or persons entitled to call a meeting of the Members or any class of Members, the Managers immediately shall cause a Notice of Meeting to be given to the Members entitled to vote at such meeting, specifying that a meeting will be held at a time requested by the person(s) calling the meeting, which shall not be less than ten (10) nor more than sixty (60) days after the receipt of the request. If the Notice is not given within twenty (20) days after the receipt of the request, the person(s) entitled to call the meeting may give the Notice or, upon the application of such person(s), the superior court of the county in which the Company's Principal Office is located shall summarily order the giving of the Notice, after notice to the Company giving it an opportunity to be heard. The procedure provided in subdivision (c) of Section 305 of the California Corporations Code shall apply to such application. The court may issue any order as may be appropriate, including without limitation an order designating the time and place of the meeting, the record date for determination of the Members entitled to vote, and the form of notice.

(l) Adjournment. When a meeting of the Members or any class of Members is adjourned to another time or place, except as provided in this Section 4.16(l), notice need not be given of the adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Members may transact any business which might have been transacted at the original meeting. If the adjournment is for more than forty-five (45) days, or if after the adjournment a new record date is fixed for the adjourned meeting, a Notice of the adjourned meeting shall be given to each Member entitled to vote at the meeting.

4.17 Certificate of Membership Interest.

(a) Certificate. A Membership Interest (including concomitant Membership Units) may be, but shall not be required to be, represented by a certificate of membership. The exact contents of a certificate of membership may be determined by action of the Managers, but shall be issued substantially in conformity with the following requirements. The certificates of membership shall be numbered serially, as they are issued, shall be impressed with the Company seal, if any, and shall be signed by the Managers, and may contain the legends described in Section 11.2 below. Each certificate of membership shall state the name of the Company, the fact that the Company is organized under the laws of the State of California as a limited liability company, the name of the Person to whom the certificate is issued, the date of issue, whether the certificate represents membership as the Controlling Member or a Class A Member, and the number of Membership Units represented thereby.

(b) Cancellation of Certificate. Except as herein provided with respect to lost, stolen or destroyed certificates, no new certificates of membership shall be issued in lieu of previously issued certificates of membership until former certificates for a like number of Membership Units shall have been surrendered and cancelled. All certificates of membership surrendered to the Company for Transfer shall be cancelled.

(c) Replacement of Lost, Stolen or Destroyed Certificate. Any Member claiming that his, her or its certificate of membership is lost, stolen or destroyed may make an affidavit or

affirmation of that fact and request a new certificate. Upon the giving of a satisfactory indemnity to the Company as may be reasonably required by the Managers, a new certificate may be issued representing the same number of Membership Units as was represented by the certificate alleged to be lost, stolen or destroyed and the lost, stolen or destroyed certificate shall be deemed null and void.

4.18 Compliance with Fraud and Abuse Laws.

(a) In General. Each party hereto acknowledges and agrees that the Company ASC Business is subject to various state and federal health care laws regulating permissible relationships between and among the Members and entities such as the Company ("Fraud and Abuse Laws"), including without limitation the federal anti-kickback statute (i.e., 42 U.S.C. Section 1320a-7b), the California anti-kickback statute (i.e., Section 650 of the B&P Code), the federal physician anti-referral statute (i.e., 42 U.S.C. Section 1395nn), and the California physician anti-referral statutes (i.e., Sections 650.01 and 650.02 of the B&P Code). The Controlling Member and Class A Members acknowledge that the Company ASC Business includes ambulatory surgery services being provided to patients covered by federal health care programs, including, but not limited to, the Medicare and Medicaid programs. Accordingly, each Member hereby represents and warrants that it is the intent of such Member that (x) the Company be operated in a manner consistent with the Fraud and Abuse Laws, and (y) each such Member and Member Owner (as defined in Section 4.18(b) below) shall conduct himself/herself/itself in a manner consistent with the Fraud and Abuse Laws.

(b) Responsibilities of Class A Members. Each Class A Member who is a licensed physician or a podiatrist holding a duly issued certificate to perform podiatric medicine or is a ~~corporate~~ Class A Member whose sole ~~shareholder~~ equity holder is a licensed physician or a podiatrist holding such a certificate (any such ~~shareholder~~equity holder, a "Member Owner") agrees to comply (or to cause or ensure that its Member Owner will comply) with the requirements of the "safe harbors" for "ambulatory surgical centers" contained in 42 C.F.R. § 1001.952(r) (the "ASC Safe Harbors"). Accordingly, without in any way limiting the generality or scope of the foregoing provisions of this Section 4.18, each such Class A Member warrants and represents to and agrees with the other Members as follows:

(i) Participation in Federal Health Care Programs. Such Class A Member or its Member Owner has not (nor has any Affiliate or immediate family member of such Class A Member or Member Owner) been banned or suspended from participation in any state or federal governmental health care program (as defined in 42 USC § 1320 a-7b(f)), including, but not limited to, the Medicare and Medicaid programs;

(ii) Unrestricted License. Such Class A Member or its Member Owner has and will maintain an unrestricted license to practice medicine, or an unrestricted certificate to practice podiatric medicine, and to perform surgical procedures in the State of California and will remain qualified to provide such services at all times while such Class A Member is a Member;

(iii) Staff Privileges. Such Class A Member or its Member Owner has and will maintain active staff privileges at the Company ASC at all times while such Class A Member is a Member;

(iv) Malpractice Insurance. Such Class A Member or its Member Owner has and will maintain professional liability insurance in coverage amounts required by the Company at all times while the Class A Member is a Member;

(v) Utilization of Company ASC. Such Class A Member or its Member Owner has derived at least one-third (1/3) of his/her/its medical practice income from all sources for the previous fiscal year or previous twelve (12) month period from his/her/its performance of procedures that may be legally performed within an ambulatory surgical center (i.e., Medicare-covered procedures), and such Class A Member or its Member Owner has performed annually in the Company ASC at least one-third (1/3) of his/her/its procedures that may be legally performed within an ambulatory surgery center;

(vi) Non-Discrimination. Such Class A Member or its Member Owner will treat patients receiving medical benefits or assistance under any federal health care program in a nondiscriminatory manner; and

(vii) Full Disclosure. Such Class A Member or its Member Owner will fully inform each patient, prior to referring such patient to the Company ASC, of his/her/its ownership interest in the Company as required by law and the Company's policies.

(c) Certificate of Compliance. Within ten (10) days of the Company's request from time to time, each Class A Member or its Member Owner shall complete, sign and date a certificate (the "Certificate") pursuant to which such Class A Member or Member Owner shall certify that he/she/it met the requirements set forth in Sections 4.18(a) and 4.18(b) above at all times during the prior calendar or fiscal year and/or with respect to such other period of time as may be specified by the Company in its request. Each such Class A Member or its Member Owner shall provide to the Company, or shall permit the Company to inspect, such documents, books and records as will allow the Company to verify the accuracy of the information provided by the Class A Member or its Member Owner in the Certificate.

(d) Other Applications. In order to ensure that the Company and its Members comply with the Fraud and Abuse Laws and the ASC Safe Harbors, the Company and its Members shall comply with all of the following regarding their relationships with each other and with prospective Members:

(i) Issuance of Additional Membership Interests. The terms on which Additional Membership Interests may be offered to any Person shall not be related to the previous or expected volume of referrals, services furnished or the amount of business otherwise generated by such Person or entity to or for the Company ASC.

(ii) Member Loans to Acquire Membership Interests. Neither the Company nor the Members (nor any Person acting on their behalf) shall loan funds to, or guarantee a loan for, any Person for the purpose of acquiring any Membership Interest or Membership Units in the Company.

(iii) Ancillary Services. All ancillary services for federal health care program beneficiaries performed at the Company ASC must be directly and integrally related to primary

procedures performed at the Company ASC, and none may be separately billed to Medicare or other federal health care programs.

(iv) Distributions to Members. The amount of any distribution by the Company to any Member shall be in accordance with Section 6.5 and Section 9.4 below, and no distribution to any Member shall be related to the previous or expected volume of referrals, services furnished or amount of business otherwise generated by such Member or its Member Owner to or for the Company or to or for the Company ASC.

(v) Use of DEVCO Facilities, Equipment or Personnel. The Company shall not use space, equipment or personnel of DEVCO unless such space, equipment or personnel is leased from DEVCO in accordance with an agreement that complies with the Fraud and Abuse Laws.

(vi) Patient Referrals. The Company and its Controlling Member shall refrain from any actions to require, encourage or influence physicians affiliated with DEVCO, any other Founding Member or any of their respective Affiliates to refer patients to the Company ASC and shall not pay compensation to such physicians which takes into account, directly or indirectly, any referrals that such physicians may make to the Company ASC.

4.19 Company Loans and Leases.

(a) Acknowledgement. Each party hereto hereby acknowledges that the Company may be required to enter into one or more loans or leases for space that the Managers determine are reasonably necessary to provide (i) appropriate working capital or other monies to fund or refinance funding for the development, construction, commencement, start-up, and/or ongoing operations phases and aspects of the Company Business, including the Company ASC Business, and/or (ii) appropriate administrative space for the Company Business including the Company ASC Business (collectively, the "Company Loans and Leases"), and where such Company Loans and Leases also require that all Members of the Company serve as co-signatories and/or guarantors ("Guarantor(s)") and, as such, commit to certain financial obligations thereunder as Guarantors (the "Company Loans/Leases with Required Guaranties").

(b) Notice. In the event (and in each event) that the Managers determine and approve that the Company shall enter into any one or more Company Loans/Leases with Required Guaranties, but not before such determination has been approved by the Members pursuant to their Voting Rights as set forth in Section 4.15 above, the Managers shall give each Member at least twenty (20) days prior written notice specifying the anticipated execution and effective date for such approved Company Loans/Leases with Required Guaranties and summarizing the scope of such Member's financial obligations thereunder as a Guarantor ("Prior Notice").

(c) Compliance. Following receipt of Prior Notice from the Managers, and upon request from the Managers or other party or parties to the subject Company Loans/Leases with Required Guaranties (as approved), or as otherwise required by the subject Company Loans/Leases with Required Guaranties, each Member shall execute and deliver such loan, lease and/or guaranty documents and instruments and perform such acts, all in a timely manner and as otherwise requested or required, that may be necessary and appropriate to execute, effectuate and perform in accordance with the subject Company Loans/Leases with Required Guaranties and such Member's

commitments thereunder as a Guarantor; provided, however, with regard to any approved Company Loans/Leases with Required Guaranties, all Members shall be required to execute documents or instruments that only reflect either (i) identical joint and several guaranties among the Members or (ii) individual guaranties that mirror their respective "Pro Rata Responsibility", as described more fully in Section 4.19(d) below. In this regard, the Managers shall use their best efforts, in connection with any approved Company Loans/Leases with Required Guaranties, to negotiate reasonable caps or other limits on any guaranties to which the Members shall be obligated hereunder. Each Member hereby acknowledges and agrees that compliance with the requirements of this Section 4.19 by each other Member constitutes an essential part of the consideration for this Agreement. Accordingly, a Member's failure to comply fully with such requirements shall constitute a material breach of this Agreement by such Member.

(d) Indemnity. Without limiting in any way the generality and scope of the foregoing commitments, obligations and requirements of each Member under this Section 4.19, it is the intent of the Members hereunder that all Members should be responsible for their respective pro rata share of any and all payments actually made by the Members as Guarantors under any approved Company Loans/Leases with Required Guaranties (collectively, "Guarantor Payments") in proportion to their respective Percentage Interests ("Pro Rata Responsibility"). Therefore, with regard to Guarantor Payments made under any approved Company Loans/Leases with Required Guaranties, each Member (an "Indemnifying Member") shall indemnify and reimburse each other Member who has made any such Guarantor Payments (an "Indemnified Member") within sixty (60) days following such Indemnifying Member's receipt of written notice from the Managers of such payments; provided, each such Indemnifying Member's indemnification and reimbursement obligation hereunder, with regard to any Guarantor Payments made by each Indemnified Member, shall be limited to such Indemnifying Member's Pro Rata Responsibility for any such Guarantor Payments based on such Indemnifying Member's Percentage Interest as of the date upon which such Guarantor Payments were actually made. The Members shall cooperate in good faith with each other in the performance of this Section 4.19(d), including without limitation timely written notification from each Indemnified Member to the Managers regarding any Guarantor Payments made by such Indemnified Member under any approved Company Loans/Leases with Required Guaranties.

(e) Former Members. The parties hereto acknowledge and agree that (i) nothing in this Section 4.19 shall be construed to limit, waive or otherwise modify or alter any respective, continuing financial or other obligations of any Former Class A Members as Guarantors under any approved Company Loans/Leases with Required Guaranties, and (ii) no Former Class A Member shall be entitled, in any manner whatsoever, to any indemnification or reimbursement from any Member pursuant to Section 4.19(d) above for any Guarantor Payments made by such Former Class A Member following the Transfer of such Former Class A Member's entire Membership Interest ("Post-Transfer Payments"). Notwithstanding the foregoing, (x) nothing in this Section 4.19(e) shall be construed to limit or waive any Former Class A Member's, any other former Member's or any Member's available rights to or claims for equitable contribution relating to any Guarantor Payments made by such Former Class A Member, other former Member or Member, and (y) the Company may, in its sole and absolute discretion, undertake to cause the termination or removal of any- Former Class A Member or other former Member as a Guarantor under any approved Company Loans/Leases with Required Guaranties to the extent that such termination or removal is in the best interests of the Company and its Members.

4.20 Anti-Dilution. Notwithstanding anything in this Agreement to the contrary, the Percentage Interest of the Controlling Member (or its successor or transferee, if any) shall not be diluted to a Percentage Interest which is less than fifty-one percent (51%) without the prior written consent of the Controlling Member (or such successor or transferee).

4.21 Additional Representations. Each party hereto hereby represents and warrants, and each other party hereby relies on such representation, that to the best knowledge of such party after reasonable inquiry, (a) such party is not in any manner whatsoever breaching any other agreement, covenant or obligation, or otherwise violating any statute, regulation or ordinance, by entering into this Agreement or otherwise acting as a party hereto, and (b) the consent of any third party is not required in any manner whatsoever for such party to enter into this Agreement and/or act as a party hereto.

ARTICLE V
MANAGEMENT AND CONTROL OF THE COMPANY

5.1 Management of the Company by Managers.

(a) Exclusive Management by Managers. Except as otherwise expressly provided in this Agreement, the Act and/or the Articles, the Managers shall have sole and exclusive control of the management of the business, property and affairs of the Company. In connection therewith, except where the vote, approval or consent of the Members is expressly required by this Agreement, the Act and/or the Articles, and subject to any other limitations expressly set forth in this Agreement, the Managers shall have full, complete and exclusive authority, power and discretion to manage and control the business, property and affairs of the Company, to make all decisions regarding those matters, and to perform any and all other acts or activities customary or incident to the management of the Company's business, property and affairs.

(b) Scope of Powers of Managers. Without limiting in any way the generality or scope of Section 5.l(a) above, but subject to the Members' Voting Rights under Section 4.15 above, and to any other limitations expressly set forth in this Agreement, the Act and/or the Articles, the Managers shall have all exclusive and necessary powers to manage and carry out the purposes, businesses and affairs of the Company, including without limitation the power to exercise on behalf of and in the name of the Company all of the powers described in Section 17701.05 of the Act.

(c) Management Company. The Managers may, in the name of and on behalf of the Company, retain and contract with one or more management companies and may delegate to any such management company any of the Managers' responsibilities for the day-to-day operation of the Company Business, including the Company ASC Business, except that (a) the Managers may not delegate any of those specific actions listed in Section 5.3 below which are to be approved by the Managers, and (b) no such delegation: shall deprive the Members of their right to approve those matters and actions listed in Section 4.15 above or any other Voting Rights of the Members as provided in this Agreement. The Managers may authorize the Company to retain any such management company in which any Manager or Member shall have a financial, ownership or other economic, voting or beneficial interest and may authorize any agreement between the Company

and any such management company, subject to and in accordance with Section 4.11 above and Section 5.6 below, as applicable.

5.2 Appointment of Managers.

(a) Authorized Number of Managers. The authorized number of Managers shall at all times be five (5), all of whom shall be appointed exclusively by the Controlling Member until any Class A Membership Interests have been issued. Upon the issuance of any Class A Membership Interests, and as long as there are any Class A Membership Interests outstanding, the Class A Members shall be entitled to appoint (by vote of the Class A Members): (i) one (1) of the five (5) Managers, and the Controlling Member shall be entitled to appoint four (4) of the five (5) Managers, as long as the total of all issued and outstanding Class A Membership Interests represents not more than a twenty-five percent (25%) Percentage Interest (i.e., based on Percentage Interests held by all Members); or (ii) two (2) of the five (5) Managers, and the Controlling Member shall be entitled to appoint three (3) of the five (5) Managers, as long as the total of all issued and outstanding Class A Membership Interests represents more than a twenty- five percent (25%) Percentage Interest (Managers appointed by the Controlling Member, "Controlling Member Managers"; Managers appointed by the Class A Members, "Class A Managers"). Each appointed Manager, including the initially appointed Managers, shall serve for a term of two (2) years, with each initial term of office commencing as of the Effective Date. Unless a Manager resigns or is removed, such Manager shall hold office for the appointed term and until a successor shall have been appointed and qualified. Except as otherwise expressly provided in this Agreement, Managers may be re-appointed for additional or successive terms of office.

(b) Resignation. A Manager may resign at any time by giving written notice to the other Managers and to the Controlling Member without prejudice to the rights, if any, of the Company under any employment contract to which such Manager is a party. The resignation of a Manager shall take effect upon receipt of such notice or at such later time as shall be specified in the notice. Unless otherwise specified in the notice, the acceptance of the resignation shall not be necessary to make it effective. If a resigning Manager is also a Member, such resignation shall not affect by itself such Manager's rights as a Member or constitute a voluntary withdrawal, resignation, dissociation or Expulsion of such Member.

(c) Removal. Any Controlling Member Manager may be removed at any time, with or without cause, by the Controlling Member. Any Class A Manager may be removed at any time, with or without cause, by vote of the Class A Members. Any removal shall be without prejudice to the rights, if any, of such Manager under any employment contract and, if a removed Manager is also a Member, shall not affect by itself such Manager's rights as a Member or constitute a voluntary withdrawal, resignation, dissociation or Expulsion of such Member.

(d) Vacancies. Any vacancy occurring for any reason in the office of a Controlling Member Manager shall be filled; not later than twenty (20) days following the occurrence of such vacancy, by the appointment of a successor Controlling Member Manager. Any vacancy occurring for any reason in the office of a Class A Manager shall be filled, not later than twenty (20) days following the occurrence of such vacancy, by the appointment of a successor Class A Manager. Any such successor Manager shall hold office for the remainder of the vacated term.

5.3 Actions by Managers. Except for those actions requiring a Supermajority Vote of the Managers as set forth in Section 5.3(a) below or any other provision of this Agreement, the Act or the Articles, any action required or permitted to be taken by the Managers shall be taken (and/or approved or consented to) by a Majority Vote of the Managers. Any action, whether to be approved by a Majority Vote of the Managers or by a Supermajority Vote of the Managers, may be taken (and/or approved or consented to) by the Managers with or without a meeting. In connection therewith, any such action taken (and/or approved or consented to) by the Managers may, in their collective discretion, be evidenced or otherwise confirmed by the written consent or other writing of the Managers:

(a) Supermajority Vote of the Managers. The following actions require approval by a Supermajority Vote of the Managers:

(i) Approving a change, modification or amendment to this Agreement or to the Articles;

(ii) Approving a voluntary dissolution or winding up of the Company;

(iii) Approving the sale, exchange, lease, mortgage, pledge or other transfer or disposition of all or substantially all of the assets of the Company;

(iv) Approving any merger, conversion, consolidation or other reorganization or business combination of or involving the Company;

(v) Approving any joint ventures and other like strategic alliances and affiliations involving the Company;

(vi) Approving any action or transaction by the Company outside the ordinary course of business;

(vii) Approving a material change in the nature of the Company Business;

(viii) Requiring contributions of Additional Capital from the Members pursuant to Section 3.2 above;

(ix) Authorizing, issuing or granting any Additional Authorized Membership Units or Additional Membership Interests, admitting Additional Members and determining the Attendant Conditions thereto pursuant to Section 4.3 above;

(x) Expelling a Member from the Company pursuant to Section 4.5 above;

(xi) Determining any compensation of the Managers pursuant to Section 5.7 below;

(xii) Entering into any Company Loans/Leases with Required Guaranties pursuant to Section 4.19 above;

(xiii) Approving the Transfer (except for Exempt Transfers and for Transfers to the Company otherwise expressly permitted or required by Section 7.3 or Section 7.7 below) of any Membership Interest(s), or any portion thereof, or any Membership Units, held by any Member, and (if applicable) admitting transferees of Permitted Transfers (as defined in Section 7.1 below) as Additional Members;

(xiv) Approving the purchase of Membership Interests by the Company pursuant to its first refusal rights under Section 7.3 below; and

(xv) Issuing a vote of "No Confidence" regarding a Member's continued role as a Member of the Company.

(b) Manager Actions by Majority Vote of the Managers. The following actions, which are listed below by way of example only and without limiting in any way the generality or scope of the first sentence of this Section 5.3 above, shall require the approval by a Majority Vote of the Managers:

(i) Approving the voluntary withdrawal, resignation or dissociation of any Member pursuant to Section 4.4 above;

(ii) Approving any action or transaction otherwise restricted or prohibited pursuant to Section 4.7 or Section 4.8 above involving any Member or Former Class A Member or any Affiliate or immediate family member thereof;

(iii) Voting any membership interest, shares or other equity interest held by the Company in any other limited liability company, corporation or other entity;

(iv) Incurring any indebtedness by the Company;

(v) Guarantying or securing the indebtedness of another party;

(vi) Approving any transaction or expenditure, or any series of related transactions or expenditures, of or by the Company in excess of Twenty-Five Thousand Dollars ($25,000);

(vii) Approving a transaction with any Interested Member pursuant to Section 4.11 above or with any Manager pursuant to Section 5.6 below;

(viii) Approving any operating or capital-budget or modification thereto and any financial statements applicable to the Company or any portion or division of the Company or the Company Business;

(ix) Approving any distributions of Distributable Cash pursuant to Section 6.5 below;

(x) Approving the retention of and the agreement by which the Company retains a management company to administer the day-to-day operations of the Company Business including the Company ASC Business in accordance with Section 5.1(c) above;

(xi) Electing to purchase the Transferring Member's Interest pursuant to Section 7.3 below; and

(xii) Approving any other action or transaction in the ordinary course of the Company Business.

5.4 Liability of Managers. Each of the parties hereto acknowledges and agrees and confirms his, her or its informed consent that, except as otherwise expressly provided hereinbelow or in non-waivable provisions of the Act (e.g., prohibition against restricting a Manager's liability for certain money damages), the scope of each Manager's fiduciary duties owed to the Company and to the Members shall be limited such that no Manager shall be liable to the Company or to any Member for any loss or damage sustained by the Company or any Member, unless the loss or damage shall have been the result of fraud, deceit, bad faith, gross negligence, reckless or intentional misconduct, or a knowing violation of law by such Manager; provided, however, each Manager's discrete duty of loyalty and duty of care to the Company and to the Members and obligation of good faith and fair dealing, as specified under the Act, shall not be eliminated or otherwise limited hereunder except as otherwise expressly provided in this Agreement.

5.5 Devotion of Time. No Manager is obligated to devote all of his or her time or business efforts to the affairs of the Company. Each Manager shall devote whatever time, effort and skill as he/she/it deems appropriate and necessary for the operation of the Company.

5.6 Transactions with the Company. Notwithstanding that it may constitute a conflict of interest, the Managers (or any of them) may, and may cause any of their respective Affiliates to, engage in any transaction (including without limitation the purchase, sale, lease or exchange of any property or the rendering of any service, or the establishment of any salary, other compensation or other terms of employment) with the Company, so long as such transaction is not expressly prohibited by this Agreement, and so long as such transaction is approved in advance by the Managers after full disclosure of the interested Manager's interest in the transaction. Any such transaction must have terms and conditions that are, on an overall basis, are fair and reasonable to the Company and are at least as favorable to the Company as those that are generally available from Persons capable of similarly performing such transactions and/or in similar transactions between parties operating at arm's length.

5.7 Compensation of Managers. Subject to the approval of the Members pursuant to their Voting Rights as set forth in Section 4.15 above, the Managers, by Supermajority Vote of the Managers, may reasonably decide whether and to what extent to compensate the Managers, as such, for services rendered to the Company. Notwithstanding the foregoing sentence the Managers shall be entitled to reimbursement from the Company on a monthly basis, as reasonably determined by the Managers, for all out-of-pocket costs and expenses incurred for or on behalf of the Company.

5.8 Officers.

(a) Appointment of Officers. The Managers may appoint officers at any time. The officers of the Company, if deemed necessary by the Managers, may include, without limitation, a chief executive officer, secretary and chief financial officer or other officers as determined by

the Managers from time to time. The officers shall serve at the pleasure of the Managers, subject to all rights, if any, of an officer under any employment contract. No officer is required to be a Member or a Manager. Any individual may hold any number of offices. The officers shall exercise such powers and perform such duties as specified in this Agreement and as may be determined from time to time by the Managers.

(b) Removal, Resignation and Filling of Vacancy of Officers. Subject to the rights, if any, of an officer under an employment contract, any officer may be removed, with or without cause, by the Managers at any time. Any officer may resign at any time by giving written notice to the Managers. Any resignation shall take effect upon the date of receipt of such notice or at any later time specified in such notice; and, unless otherwise specified in such notice, acceptance of the resignation shall not be necessary to make it effective. Any resignation is without prejudice to the rights, if any, of the Company under any contract to which the officer is a party. A vacancy in any office because of death, resignation, removal, disqualification or any other cause shall be filled in the manner prescribed in this Agreement for appointments to that office.

(c) Salaries of the Officers. The salaries of all officers of the Company shall be fixed and approved by the Managers.

(d) Duties and Powers of the Chief Executive Officer. The chief executive officer shall be subject to the ultimate control of the Managers, shall have general and active management of the business of the Company and shall see that all actions, approvals, resolutions and consents of the Members and the Managers are carried into effect. The chief executive officer shall have the general powers and duties of management usually vested in the office of president of a corporation, and shall have such other powers and duties as may be prescribed by the Managers or this Agreement.

(e) Duties and Powers of the Secretary. The secretary shall attend all meetings of the Members and shall record all the proceedings of the meetings in a book to be kept for that purpose, and shall perform like duties for any standing committees when required. The secretary shall give, or cause to be given, notice of all meetings of the Members and shall perform such other duties as may be prescribed by the Managers. The secretary shall have custody of the seal, if any, and shall have authority to affix the same to any instrument requiring it, and when so affixed, it may be attested by his or her signature. The Managers may give general authority to any other officer to affix the seal of the Company, if any, and to attest the affixing by his or her signature. The secretary shall keep, or cause to be kept, at the Principal Office of the Company, a register, or a duplicate register, showing the names of all Members and their addresses, their Membership Units and Percentage Interests, the number and date of certificates issued for the same, if any, and the number and date of cancellation of every certificate surrendered for cancellation. The secretary shall also keep and maintain, or cause to be kept or maintained, all documents described in Section 8.1 below and such other documents as may be required under the Act. The secretary shall have the general duties, powers and responsibilities of a secretary of a corporation.

(f) Duties and Powers of the Chief Financial Officer. The chief financial officer shall keep and- maintain, or cause to be kept and maintained, adequate and correct books and records of accounts of the properties, operations and business transactions of the Company, including without limitation accounts of its assets, liabilities, receipts, disbursements, gains, losses, capital,

Membership Interests and each Member's Capital Contributions. The books of account shall at all reasonable times be open to inspection by the Managers. The chief financial officer shall have the custody of the funds and securities of the Company, and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Company, and shall deposit all moneys and other valuable effects in the name and to the credit of the Company in such depositories as may be designated by the Managers. The chief financial officer shall disburse the funds of the Company as may be ordered by the Managers, taking proper vouchers for such disbursements, and shall render to the chief executive officer and the Managers, on a regular basis, or when Members so require, at a meeting of the Members, if any, an account of all of his or her transactions as chief financial officer and of the financial condition of the Company. The chief financial officer shall have the general duties, powers and responsibilities of a chief financial officer of a corporation, and shall be the chief financial accounting officer of the Company.

5.9 Limited Liability. Except as otherwise expressly set forth in this Agreement or in non-waivable provisions of the Act or as otherwise required by law, no Person who is a Manager or an officer or both a Manager and an officer of the Company shall be personally liable in any manner whatsoever for any debt, obligation or liability of the Company, whether such debt, obligation or liability arises in contract, tort or otherwise, solely by reason of being a Manager or an officer or both a Manager and an officer of the Company.

ARTICLE VI
ALLOCATIONS OF NET PROFITS AND NET LOSSES AND DISTRIBUTIONS

6.1 Allocations of Net Profits and Net Losses.

(a) Net Losses. Net Losses of the Company for any Fiscal Year shall be allocated to and among the Members in proportion to their respective Percentage Interests. Notwithstanding the previous sentence, loss allocations to a Member shall be made only to the extent that such loss allocations will not create an Adjusted Capital Account Deficit for that Member at the end of any Fiscal Year. Any losses not allocated to a Member because of the foregoing provision shall be allocated to the other Members (to the extent that the other Members are not similarly limited with regard to allocation of losses under this Section 6.l(a)). In the event that there are any remaining Net Losses in excess of the limitations set forth in the preceding two sentences, such remaining Net (Losses shall be allocated among the Members in proportion to their respective "Percentage Interests. Any losses reallocated under this Section 6.l(a) shall be taken into account in computing subsequent allocations of income and losses pursuant to this Article VI upon liquidation of the Company, so that the net amount of any item(s) so allocated and the income and losses allocated to each Member pursuant to this Article VI upon liquidation of the Company, to the extent possible, shall be equal to the net amount that would have been allocated to each Member pursuant to this Article VI if no reallocation of losses had occurred under this Section 6.l(a).

(b) Net Profits. Net Profits of the Company for any Fiscal Year shall be allocated to and among the Members in proportion to their respective Percentage Interests.

6.2 Special Allocations. Notwithstanding the provisions of Section 6.1 above.

(a) Minimum Gain Chargeback. If there is a net decrease in Company Minimum Gain during any Fiscal Year, each Member shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to the portion of such Member's share of the net decrease in Company Minimum Gain that is allocable to the disposition of Company property subject to a Nonrecourse Liability, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(g)(2). Allocations pursuant to this Section 6.2(a) shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.2(a). The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(f). This Section 6.2(a) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(f) and shall be interpreted consistently therewith.

(b) Chargeback of Minimum Gain Attributable to Member Nonrecourse Debt. If there is a net decrease in Company Minimum Gain attributable to a Member Nonrecourse Debt during any Fiscal Year, each Member who has a share of the Company Minimum Gain attributable to such Member Nonrecourse Debt (which share shall be determined in accordance with Regulations Section 1.704-2(i)(5)) shall be specially allocated items of Company income and gain for such Fiscal Year (and, if necessary, in subsequent Fiscal Years) in an amount equal to that portion of such Member's share of the net decrease in Company Minimum Gain attributable to such Member Nonrecourse Debt that is allocable to the disposition of Company property subject to such Member Nonrecourse Debt, which share of such net decrease shall be determined in accordance with Regulations Section 1.704-2(i)(5). Allocations pursuant to this Section 6.2(b) shall be made in proportion to the amounts required to be allocated to each Member under this Section 6.2(b).

The items to be so allocated shall be determined in accordance with Regulations Section 1.704-2(i)(4). This Section 6.2(b) is intended to comply with the minimum gain chargeback requirement contained in Regulations Section 1.704-2(i)(4) and shall be interpreted consistently therewith.

(c) Nonrecourse Deductions. Any nonrecourse deductions (as defined in Regulations Section 1.704-2(b)(1)) for any Fiscal Year or other period shall be specially allocated to the Members in proportion to their respective Percentage Interests.

(d) Member Nonrecourse Deductions. Those items of Company loss, deduction, or: Code Section 705(a)(2)(B) expenditures which are attributable to Member Nonrecourse Debt for any Fiscal Year or other period shall be specially allocated to the Member who bears the economic risk of loss with respect to the Member Nonrecourse Debt to which such items are attributable in accordance with Regulations Section 1.704-2(i).

(e) Qualified Income Offset. If a Member unexpectedly receives any adjustments, allocations or distributions described in Regulations Section 1.704-1(b)(2)(ii)(d)(4), (5) or (6), or any other event creates a deficit balance in such Member's Capital Account in excess of such Member's share of Company Minimum Gain (including without limitation such Member's share of Company Minimum Gain attributable to Member Nonrecourse Debt), items of Company income and gain shall be specially allocated to such Member in an amount and manner sufficient to eliminate such excess deficit balance as quickly as possible. Any special allocations of items of income and gain pursuant to this Section 6.2(e) shall be taken into account in computing subsequent allocations of income and gain pursuant to this Article VI, so that the net amount of

any item(s) so allocated and the income, gain, and losses allocated to each Member pursuant to this Article VI, to the extent possible, shall be equal to the net amount that would have been allocated to each such Member pursuant to this Article VI if such unexpected adjustments, allocations or distributions had not occurred.

6.3 Code Section 704(c) Allocations. Notwithstanding any other provision in this Article VI, in accordance with Code Section 704(c) and the Regulations promulgated thereunder, income, gain, loss, and deduction with respect to any property contributed to the capital of the Company shall, solely for tax purposes, be allocated among the Members so as to take account of any variation between the adjusted basis of such property to the Company for federal income tax purposes and its fair market value on the date of contribution. Allocations pursuant to this Section 6.3 are solely for purposes of federal, state and local taxes. As such, they shall not affect or in any way be taken into account in computing a Member's Capital Account or share of Net Profits, Net Losses or other items of allocation or distribution pursuant to any provision of this Agreement.

6.4 Allocations and Distributions Regarding Transferred Interests. If any Membership Interest is Transferred, or is increased or decreased by reason of the admission of a new Member or otherwise, during any Fiscal Year of the Company, Net Profits, Net Losses, each item thereof, and all other items attributable to such Membership Interest for such Fiscal Year shall be divided and allocated between the transferor and the transferee by taking into account their varying interests during such Fiscal Year in accordance with Code Section 706(d), using conventions permitted by law and selected by the Managers. All distributions on or before the date of such Transfer shall be made to the transferor, and all distributions thereafter shall be made to the transferee.

6.5 Distributions of Distributable Cash. Subject to applicable law and any limitations expressly set forth elsewhere in this Agreement, the Managers shall distribute Distributable Cash to the Members, at such times as determined by the Managers, in proportion to the respective Percentage Interests of the Members, and not in proportion to the respective unreturned Capital Contributions of the Members. All such distributions shall be made only to the Persons who, according to the books and records of the Company, are the holders of record of Membership Interest in respect of which such -distributions are made on the actual date of distribution. Subject to the provisions of Section 6.7 below, neither the Company nor-the Managers shall incur any liability for making distributions in accordance with this Section 6.5.

6.6 Form of Distribution. A Member, regardless of the nature of such Member's Capital Contributions, has no right to demand and receive any distribution from the Company in any form other than money.

6.7 Restrictions on Distributions.

(a) No distribution shall be made by the Managers if, after giving effect to the distribution:

(i) The Company would not be able to pay its debts as they become due in the usual course of business; or

(ii) The Company's total assets would be less than the sum of its total liabilities plus, unless this Agreement provides otherwise, the amount that would be needed, if the Company

were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members, if any, upon dissolution that are superior to the rights of the Member receiving the distribution.

(b) The Managers may base a determination that a distribution is not prohibited on any of the following:

(i) Financial statements prepared on the basis of accounting practices and principles that are reasonable in the circumstances;

(ii) A fair valuation; or

(iii) Any other method that is reasonable in the circumstances.

Except as provided in Section 17704.05 of the Act, the effect of a distribution is measured as of the date upon which the distribution is authorized if the payment occurs within one hundred twenty (120) days after the date of authorization, or the date on which payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

6.8 Return of Distributions. Members who receive distributions made in violation of the Act or this Agreement shall return such distributions to the Company. Except for those distributions made in violation of the Act or this Agreement, no Member shall be obligated to return any distribution to the Company or pay the amount of any distribution for the account of the Company or to any creditor of the Company. The amount of any distribution returned to the Company by a Member or paid by a Member for the account of the Company or to a creditor of the Company shall be added to the account or accounts from which it was subtracted when it was distributed to the Member.

6.9 Obligations of Members to Report Allocations. The parties hereto acknowledge that they each are aware of the income tax consequences of the allocations made by this Article VI and hereby agree to be bound by the provisions of this Article VI in reporting their allocable shares of Company income and loss for income tax purposes.

ARTICLE VII
TRANSFER OF INTERESTS

7.1 No Transfer of Membership Interest; Exceptions. Except for Exempt Transfers, which the Members hereby acknowledge and agree are not prohibited under this Agreement, and unless otherwise expressly permitted or required under this Agreement, no Member may Transfer all or any portion of his, her or its Membership Interest, whether now owned or later acquired, unless: (i) such Transfer is approved in advance by a Supermajority Vote of the Managers; (ii) the Transfer of such Membership Interest, when added to the total of all other Membership Interests Transferred in the preceding twelve (12) consecutive months, would not cause a tax termination of the Company under Code Section 708(b)(l)(B); and (iii) all of the requirements and conditions set forth in Sections 7.1 through 7.5 have been fully met (a "Permitted Transfer"). The Managers' consent to a proposed Transfer may be conditioned upon the following requirements and conditions, among others as determined by the Managers:

(a) The proposed transferee satisfies all applicable sophistication, net worth or other requirements of state and federal securities laws;

(b) The proposed transferee satisfies the qualifications set forth in Section 4.2 above;

(c) The proposed transferee, if so requested by the Managers, delivers to the Managers an opinion of counsel, in a form acceptable to the Managers, stating that the proposed Transfer complies with all applicable federal and state laws and regulations, including without limitation the federal Securities Act of 1933, as amended, and the California Corporate Securities Law of 1968, as amended;

(d) The Member proposing to Transfer all or any portion of his, her or its Membership Interest (the "Transferring Member"), if so requested by the Managers, delivers to the Managers an opinion of counsel, in a form acceptable to the Managers, stating that the proposed Transfer will not affect the tax status of the Company, either by the tax termination of the Company or by causing the Company to be classified as an association taxable as a corporation;

(e) The proposed transferee, if so requested by the Managers, delivers to the Managers an investment letter, in a form acceptable to the Managers, stating that he/she/it is acquiring the Membership Interest or an interest therein for investment, and not for the purpose of reselling or otherwise distributing such Membership Interest; and

(f) The Transferring Member and the proposed transferee execute and acknowledge such instruments as the Managers may deem necessary or desirable to effect such Transfer, including without limitation guarantees of the genuineness and effectiveness of signatures, the proposed transferee's written acknowledgement and "informed consent" of the scope and express limitations of each Manager's fiduciary duties hereunder; the written acceptance and adoption by the proposed transferee of the provisions of this Agreement .and execution of any related subscription agreement and/or investor questionnaire (as a condition to being admitted as an Additional Member), and the execution and delivery by the Transferring Member of any documents required by the Managers pursuant to Section 4.8(d) above.

7.2 Transferee Members. In addition to any other requirements and conditions set forth in this Article VII, a Permitted Transfer as approved pursuant to Section 7.1 above shall not become effective unless and until: (a) there has been full compliance with all requirements and conditions set forth in Section 7.1 above, as determined by the Managers; and (b) the Managers have approved the Permitted Transfer and the admission of the proposed transferee (if applicable) pursuant to Section 5.3(a) above, whereupon the proposed transferee (if applicable) shall be admitted as an Additional Member of the Company.

7.3 Right of First Refusal. Except as otherwise expressly provided in this Agreement and except for Exempt Transfers, and without limiting the effectiveness of Section 7.1 above, each time a Transferring Member proposes to Transfer all or any portion of his, her or its Membership Interest to a proposed transferee that is not the Company (or is required by operation of law or other involuntary Transfer to do so), the Transferring Member shall first offer such Interest (as evidenced by the Transferring Member's Membership Units) to the Company in accordance with the following provisions:

(a) Transfer Notice. The Transferring Member shall deliver a written notice (the "Transfer Notice") to the Managers, stating in reasonable detail: (i) the Transferring Member's bona fide intention to Transfer such Interest, (ii) the name and address of the proposed transferee, (iii) the Interest proposed to be Transferred, and (iv) the purchase price, terms of payment and other terms on which the Transferring Member proposes to Transfer such Interest.

(b) Notice of Election to Purchase. Within thirty (30) days after receipt of the Transfer Notice described in Section 7.3(a) above, the Company (by a Majority Vote of the Managers) shall notify the Transferring Member in writing of its desire and election to purchase the Interest proposed to be Transferred. The Company's failure to submit a notice within the applicable period shall constitute an election on the part of the Company not to purchase such Interest, which may then be so Transferred in accordance with Section 7.3(c) below. If the Company gives timely notice of its election to purchase the Transferring Member's Interest, then the Company shall, within ninety (90) days after receipt of the Transfer Notice described in Section 7.3(a) above, complete the purchase of the Transferring Member's Interest, for the price and upon the terms of payment designated in the Transfer Notice; provided, the Company may, at its option, pay the purchase price entirely in cash; and provided further, if such Transfer Notice provides for the payment of non-cash consideration, the Company may, at its option, pay an amount of cash equal to a good faith estimate of the fair market value of the non-cash consideration offered, as solely determined by a Majority Vote of the Managers.

(c) Right to Transfer. If the Company elects not to purchase the Membership Interest designated in the Transfer Notice, then the Transferring Member may Transfer such Membership Interest to the proposed transferee, provided that: (i) such Transfer is completed within sixty (60) days after the expiration of the Company's right to give notice of its desire to purchase such Interest; (ii) such Transfer is made on terms that are not materially different from those designated in the Transfer Notice, and are not more favorable to the purchaser; and (iii) the approval and other requirements and conditions set forth in Sections 7.1 and 7.2 above have been fully met.

7.4 Closing for Permitted Transfers. The closing for the Permitted Transfer of a Transferring Member's Interest (or a portion thereof) as contemplated above shall be held at 10:00 a.m. at the Company's Principal Office, on a date set by the Managers, no later than ninety (90) days after receipt of the Transfer Notice described in Section 7.3(a) above. At the closing, the Transferring Member and, if applicable, the proposed transferee shall deliver such instruments and other documents as may be required and/or approved by the Managers pursuant to this Agreement, including without limitation an instrument of Transfer (containing unlimited warranties of title and no encumbrances) conveying such Member's Membership Interest or applicable portion thereof (and any concomitant Membership Units).

7.5 Effective Date of Permitted Transfers. Any Permitted Transfer by a Member of all or any portion of his, her or its Membership Interest shall be effective as of the date immediately following the date upon which all of the requirements and conditions set forth in Sections 7.1 through 7.4 above have been fully met.

7.6 No Effect to Prohibited Transfers. Any attempted Transfer of all or any portion of a Member's Interest in violation of any applicable provisions of this Article VII shall be null and void.

7.7 Transfers Resulting from Voluntary Withdrawal, Resignation, Dissociation or Expulsion of Members.

(a) Automatic Transfer of Membership Interest. Except as otherwise expressly provided in this Agreement, any voluntary withdrawal, resignation, dissociation and/or Expulsion of a Member from the Company pursuant to Section 4.4 and/or Section 4.5 above shall automatically, without further action by such Member or the Company, (i) be deemed hereunder to be a Transfer of such Member's entire Membership Interest (and such Member's Membership Units) to the Company and (ii) result in the termination and cancellation of such Member's entire Membership Interest in the Company and such Member's status as a Member of the Company. Notwithstanding the Company's Transfer Payment, Compensation Payment or Appraised Value Payment and the timing or manner thereof as set forth in Section 7.7(b), Section 7.7(c) and Section 7.7(d) below, such Transfer, termination and cancellation shall be deemed effective as of the date upon which the voluntary withdrawal, resignation, dissociation and/or Expulsion is determined to be effective by the Managers.

(b) Transfer Payment. Except as otherwise expressly provided in this Agreement, in the event of (i) any voluntary withdrawal or resignation (other than Retirement) or dissociation of a Class A Member approved in accordance with Section 4.4 above, or (ii) any Expulsion of a Class A Member pursuant to Section 4.5 above, except Expulsion on account of the death, Permanent Disability or Retirement of a Class A Member, such Class A Member shall be entitled to a payment (the "Transfer Payment") from the Company upon the automatic Transfer of such Class A Member's entire Membership Interest to the Company in accordance with Section 7.7(a) above. The Transfer Payment shall be an amount equal to the product of such Class A Member's Percentage Interest as of the effective date of such voluntary withdrawal, resignation or dissociation or Expulsion multiplied by twenty-five percent (25%) of the Company's earnings before interest, taxes, depreciation and amortization ("EBITDA") for the Company's most recent full fiscal year ended immediately preceding the effective date of such voluntary withdrawal, resignation, disassociation or Expulsion of the Class A Member, as shown on the Company's income statement for such full fiscal year, as customarily prepared by the Company's accountants. The Transfer Payment shall be paid, in cash, to such Class A Member by the Company at such time as determined by the Managers but in no event later than twelve (12) months following the effective date of the subject voluntary withdrawal, resignation, dissociation, or Expulsion. Notwithstanding anything in this Section 7.7(b) to the contrary, and without limiting any other relief or remedies available to the Company hereunder or under the Act or as otherwise available at law or in equity, in the event that a Class A Member voluntarily withdraws or resigns (not including the Class A Member's Retirement) or dissociates without the required approval pursuant to Section 4.4 above, then such Class A Member shall not be entitled to receive any Transfer Payment, a return of his, her or its Capital Account balance or any other payment or consideration of any kind from the Company for the resulting automatic Transfer, termination and cancellation of his, her or its entire Membership Interest in the Company and his, her or its status as a Member of the Company.

(c) Compensation Payment. Except as otherwise expressly provided in this Agreement, in the event of the Expulsion of a Class A Member on account of such Class A Member's death, Permanent Disability or Retirement, such Class A Member (or his or her estate) shall be entitled to a payment (the "Compensation Payment") from the Company upon the

automatic Transfer of such Class A Member's entire Interest to the Company in accordance with Section 7.7(a) above. The Compensation Payment shall be an amount equal to the product of such Class A Member's Percentage Interest as of the effective date of such Expulsion multiplied by the Company's EBITDA for the Company's most recent full fiscal year ended immediately preceding the effective date of such Expulsion, as shown on the Company's income statement for such full fiscal year, as customarily prepared by the Company's accountants. The Compensation Payment shall be paid, in cash, to the Class A Member at such time as determined by the Managers, but in no event later than twelve (12) months following the effective date of the Expulsion of the Class A Member on account of such Class A Member's death, Permanent Disability or Retirement.

(d) Appraised Value Payment. Except as otherwise expressly provided in this Agreement, in the event of (i) any voluntary withdrawal, resignation or dissociation of the Controlling Member approved in accordance with Section 4.4 above, or (ii) any Expulsion of the Controlling Member pursuant to Section 4.5 above, the Controlling Member shall be entitled to a payment (the "Appraised Value Payment") from the Company upon the automatic Transfer of the Controlling Member's entire Interest to the Company in accordance with Section 7.7(a) above. The Appraised Value Payment shall be an amount equal to the product of the Controlling Member's Percentage Interest as of the effective date of such voluntary withdrawal, resignation, dissociation or Expulsion multiplied by the Appraised Value. In determining the Appraised Value, the fees and expenses of the appraiser shall be shared equally by the Company and the Controlling Member. The Appraised Value Payment shall be paid, in cash, to the Controlling Member at such time as determined by the Managers, but in no event later than twelve (12) months following the effective date of the subject voluntary withdrawal, resignation, dissociation or Expulsion.

(e) Other Remedies. Notwithstanding the foregoing provisions of this Section 7.7, nothing in this Section 7.7 shall be construed or intended to prohibit or otherwise limit, in any way, any other relief or remedies available to the Company hereunder or under the Act or otherwise available at law or in equity, including without limitation the right of offset, in the event of any voluntary withdrawal, resignation, dissociation or Expulsion of a Member from the Company.

7.8 Drag Along Rights.

(a) Drag Along Notice. If the Controlling Member (including any successor or transferee of the Controlling Member) desires to Transfer all or any portion of its Membership Interest (subject to compliance with Section 7.1 above) in a transaction that is contingent upon the Transfer of all of the Membership Interests or Membership Units in the Company (a "Drag-Along Sale"), the Controlling Member, upon obtaining the approval of the Managers, shall have the right, after providing each of the Class A Members written notice at least twenty (20) days prior to the proposed Transfer (the "Drag Along Notice") containing (i) the name and address of the proposed transferee and (ii) the proposed purchase price and the terms of payment and other material terms and conditions of the proposed Drag Along Sale, to require all of the Class A Members to sell or Transfer all of their respective Membership Interests and Membership Units on the same terms and conditions as are applicable to the Drag-Along Sale by the Controlling Member (i.e., each Member would receive the same per-Unit purchase price) (the "Drag-Along Right").

(b) Drag Along Sale. After the Controlling Member has given the Drag Along Notice, each Class A Member shall be obligated to sell or Transfer such Class A Member's Membership

Interests and Membership Units in accordance with the terms set forth in the Drag Along Notice, provided that (i) the consideration to be received by the Class A Members for such sale or Transfer shall be in the same form and amount per Membership Interest or Membership Unit as to be received by the Controlling Member for its Membership Interest and Membership Units (or, if the Controlling Member has an option as to the form and amount of consideration to be received, the same option shall be given to each Class A Member), and (ii) the terms and conditions of such sale or Transfer by the Class A Members shall, except as otherwise provided in the next sentence, be the same as those for which the Controlling Member sells or Transfers its Membership Interest and Membership Units in the Drag Along Sale. Each Class A Member shall make or provide the same representations, warranties, covenants, indemnities and agreements as the Controlling Member makes or provides in connection with the Drag Along Sale (except that in the case of representations, warranties, covenants, indemnities and agreements pertaining specifically to the Controlling Member, each Class A Member shall make or provide comparable representations, warranties, covenants, indemnities and agreements pertaining specifically to such Class A Member), provided that: (x) all representations, warranties, covenants and indemnities shall be made by the Controlling Member and each Class A Member severally and not jointly; (y) any indemnification obligation shall be pro rata based on the amount of consideration received by the Controlling Member and each Class A Member, in each case in an amount not to exceed the aggregate proceeds received by the Controlling Member and each Class A Member in the Drag Along Sale; and (z) no Class A Member shall be required to agree to a non-competition covenant.

(c) Closing of Drag Along Sale. Each Class A Member shall take all actions as may be reasonably necessary to consummate the Drag Along Sale, including, without limitation, entering into agreements and delivering certificates and instruments, in each case, consistent with the agreements being entered into and the certificates being delivered by the Controlling Member.

ARTICLE VIII
ACCOUNTING, RECORDS, REPORTING BY MEMBERS

8.1 Books and Records. The books and records of the Company shall be kept, and the financial position and the results of its operations recorded, in accordance with the accounting methods followed by the Company for federal income tax purposes. The books and records of the Company shall reflect all the Company transactions and shall be appropriate and adequate for the Company's business. The Company shall maintain at its offices in California all of the following:

(a) A current list of the full name and last known business or residence address of each Member set forth in alphabetical order, together with the current aggregate Capital Contributions Membership Units and Percentage Interest of each Member (the "Member List");

(b) A current list of the full names and business or residence addresses of the Managers;

(c) A copy of the Articles and any and all amendments thereto, together with executed copies of any powers of attorney pursuant to which the Articles or any amendments thereto have been executed;

(d) Copies of the Company's federal, state and local income tax or information returns and reports, if any, for the six (6) most recent taxable years;

(e) A copy of this Agreement and any and all amendments thereto, together with executed copies of any powers of attorney pursuant to which this Agreement or any amendments thereto have been executed;

(f) Copies of the financial statements of the Company, if any, for the six (6) most recent Fiscal Years; and

(g) The Company's books and records as they relate to the internal affairs of the Company for at least the current and past four (4) Fiscal Years.

8.2 Delivery to Members and Inspections.

(a) Upon the request of any Member for purposes reasonably related to the interest of that Person as a Member, the Managers shall promptly deliver to the requesting Member, at the expense of the Company, a copy of the information required to be maintained under Sections 8.l(a), 8.l(b), 8.l(d) and 8.l(e) above.

(b) Each Member and each Manager has the right, upon reasonable request, for purposes reasonably related to the interest of the Person as Member or Manager, to:

(i) Inspect and copy during normal business hours any of the Company records described in Sections 8.l(a) through 8.l(g) above; and

(ii) Obtain from the Managers, promptly after their becoming available, a copy of the Company's federal, state and local income tax or information returns for each Fiscal Year.

(c) Any Member may make a written request to the Managers for an income statement of the Company for the initial three (3) month, six (6) month or nine (9) month period of the current Fiscal Year ended more than thirty (30) days prior to the date of the request, and a balance sheet of the Company as of the end of that period. Such statement shall be accompanied by the report thereon, if any, of the Company's accountants or, if there is no report, a certificate of the Managers that the statement was prepared without audit from the books and records of the Company. If so requested, the statement shall be delivered or mailed to the Members within thirty (30) days thereafter.

(d) Any request, inspection or copying by a Member under this Section 8.2 may be made by that Person or that Person's authorized agent or attorney.

(e) The Managers shall promptly furnish to a Member a copy of any amendment to the Articles or to this Agreement executed by the Managers pursuant to a power of attorney from the Member.

8.3 Annual Statements.

(a) The Managers shall cause an annual report to be sent to each of the Members not later than one hundred twenty (120) days after the close of the Fiscal Year. The report shall contain a balance sheet as of the end of the Fiscal Year and an income statement and statement of changes in financial position for the Fiscal Year. Such financial statements shall be accompanied by the

report thereon, if any, of the Company's Accountants or, if there is no report, a certificate of the Managers that the financial statements were prepared without audit from the books and records of the Company.

(b) The Managers shall cause to be prepared at least annually, at Company expense, information necessary for the preparation of the Members' federal and state income tax returns. The Managers shall send or cause to be sent to each Member, within ninety (90) days after the end of each taxable year, such information as is necessary to complete federal and state income tax or information returns, as well as a copy of the Company's federal, state and local income tax or information returns for that year.

(c) The Managers shall cause to be filed, at least biennially with the California Secretary of State, the statement required under Section 17702.09 of the Act.

8.4 Financial and Other Information. The Managers shall provide such financial and other information relating to the Company or any other Person in which the Company owns, directly or indirectly, an equity interest, as a Member may reasonably request. The Managers shall distribute to the Members, promptly after the preparation or receipt thereof by the Managers, any financial or other information relating to any Person in which the Company owns, directly or indirectly, an equity interest, including any filings by such Person under the federal Securities Exchange Act of 1934, as amended, that is received by the Company with respect to any equity interest of the Company in such Person.

8.5 Filings. The Managers, at Company expense, shall cause the income tax returns for the Company to be prepared and timely filed with the appropriate authorities. The Managers, at Company expense, shall also cause to be prepared and timely filed, with appropriate federal and state regulatory and administrative bodies, amendments to, or restatements of, the Articles and all reports required to be filed by the Company with those entities under the Act or other then current applicable laws, rules and regulations. If the Managers, when required by the Act to execute or file any document, fails, after demand, to do so within a reasonable period of time or refuses to do so, any Member may prepare, execute and file such document with the California Secretary of State or other appropriate authorities, agencies or entities.Bank Accounts. The Managers shall maintain the funds of the Company in one or more separate bank accounts in the name of the Company, and shall not permit the funds of the Company to be commingled in any fashion with the funds of any other Person.

8.7 Accounting Decisions and Reliance on Others. All decisions as to accounting matters, except as otherwise specifically set forth in this Agreement, shall be made by the Managers. The Managers may rely upon the advice of the Company's accountants as to whether such decisions are in accordance with accounting methods followed by the Company for federal income tax purposes.

8.8 Tax Matters Partner. The Tax Matters Partner (the "Partner Representative") of the Company shall initially be the Controlling Member. The Partner Representative shall from time to time cause the Company to make such tax elections as it deems to be in the best interests of the Company and the Members. The Partner Representative shall represent the Company (at the Company's expense) in connection with all examinations of the Company's affairs by tax

authorities, including without limitation resulting judicial and administrative proceedings, and shall expend the Company funds for professional services and costs associated therewith. The Partner Representative shall oversee the Company's tax affairs in the overall best interests of the Company. If, for any reason, the Partner Representative can no longer serve in that capacity or ceases to be a Member, the Managers shall designate another Member to be the successor Partner Representative.

ARTICLE IX
DISSOLUTION AND WINDING UP

9.1 Dissolution. The Company shall be dissolved, its assets shall be disposed of, and its affairs shall be wound up on the first to occur of the following:An entry of a decree of judicial dissolution under the Act;

(b) A resolution to dissolve adopted by a Supermajority Vote of the Managers and approved by a Supermajority Vote of the Members; or

(c) A sale or other disposition of all or substantially all of the assets of the Company.

9.2 Certificate of Dissolution.

As soon as possible following the occurrence of any of the events specified in Section 9.1 above, the Members shall execute a Certificate of Dissolution in such form as prescribed by the California Secretary of State and shall file such Certificate as required by the Act.

9.3 Winding Up. Upon the occurrence of any event specified in Section 9.1 above, the Company shall continue solely for the purpose of winding up its affairs in orderly manner, liquidating its assets, and satisfying the claims of its creditors. The Managers shall be responsible for overseeing the winding up and liquidation of the Company, shall take full account of the liabilities of the Company and assets, and shall cause its assets either to be sold or distributed; if the assets are sold, the Managers shall cause the proceeds therefrom, to the extent sufficient therefor, to be applied and distributed as provided in Section 9.4 below. The Managers winding up the affairs of the Company shall give written notice of the commencement of winding up, by mail, to all known creditors and claimants whose addresses appear on the records of the Company. The Managers winding up the affairs of the Company shall be entitled to reasonable compensation for such services.

9.4 Order of Payment Upon Dissolution.After determining that all known debts and liabilities of the Company, including without limitation debts and liabilities to Members who are creditors of the Company, have been paid or adequately provided for, the remaining assets shall be distributed to the Members in accordance with their respective positive Capital Account balances, after taking into account income and loss allocations for the Company's taxable year during which liquidation occurs. Such liquidating distributions shall be made by the end of the Company's taxable year in which the Company is liquidated, or, if later, within ninety (90) days after the date of such liquidation.

(b) The payment of a debt or liability, whether the whereabouts of the creditor is known or unknown, shall have been adequately provided for if the payment has been provided for by either of the following means:

(i) Payment thereof has been assumed or guaranteed in good faith by one or more financially responsible persons or by the United States government or any agency thereof, and such provision, including the financial responsibility of any such Person, was determined in good faith and with reasonable care by the Members to be adequate at the time of any distribution of the assets pursuant to this Section 9.4(b); or

(ii) The amount of the debt or liability has been deposited as provided in Section 2008 of the California Corporations Code.

Notwithstanding the foregoing, this Section 9.4(b) shall not prescribe the exclusive means of making adequate provision for debts and liabilities.

9.5 Limitations on Payments Made in Dissolution. Except as otherwise expressly provided in this Agreement, each Member shall be entitled to look solely to the assets of the Company for the return of his, her or its positive Capital Account balance and shall have no recourse for his, her or its positive Capital Account balance and/or share of Net Profits (upon dissolution or otherwise) against the Managers or any other Member; provided, however, under no circumstances at any time shall a Member be obligated or required to restore to the Company or to another Member the negative balance in his, her or its Capital Account.

9.6 Certificate of Cancellation. The Members who filed the Certificate of Dissolution shall cause to be filed, in the office of, and on a form prescribed by, the California Secretary of State, a Certificate of Cancellation of the Articles upon the completion of the winding up of the affairs of the Company.

ARTICLE X
INDEMNIFICATION AND INSURANCE

10.1 Definitions. For purposes of this Article X, the following definitions shall apply:

(a) "Expenses" shall include without limitation attorneys' fees, disbursements and retainers, court costs, transcript costs, fees of accountants, experts and witnesses, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other expenses of the types of customarily incurred in connection with prosecuting, defending, preparing to prosecute or defend, investigating, or being or preparing to be a witness or other participant in a Proceeding.

(b) "Proceeding" includes any action, suit, arbitration, alternative dispute resolution mechanism, investigation, administrative hearing or other proceeding, whether civil, criminal, administrative or investigative in nature, except a proceeding initiated by a Person pursuant to Section 10.8(b) below to enforce such Person's rights under this Agreement.

10.2 Indemnification of the Members, Managers and Officers. Except as otherwise expressly provided hereinbelow or in non-waivable provisions of the Act, the Company shall indemnify, to

the fullest extent permitted by applicable law (including the Act) in effect as of the Effective Date, and to such greater extent as applicable law may hereafter from time to time permit, any current or former Member, Manager or officer of the Company who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any Proceeding (including any Proceeding by or in the right of the Company) by reason of the fact that such Member, Manager or officer is or was an agent of the Company (the "Indemnitee"), against all Expenses, amounts paid in settlement, judgments, fines, penalties and ERISA excise taxes actually and reasonably incurred by such Member, Manager or officer in connection with such Proceeding, provided (i) the Indemnitee's conduct did not constitute gross negligence, willful misconduct, recklessness, or a breach of fiduciary duty; (ii) the action is not based on a material breach of this Agreement by or the professional negligence of the Indemnitee; (iii) the Indemnitee acted in good faith and in a manner he/she/it reasonably believed to be in the best interests of the Company and within the scope of such Indemnitee's authority; and (iv) with respect to a criminal action or proceeding, the Indemnitee had no reasonable cause to believe his/her/its conduct was unlawful. Notwithstanding the foregoing, the Company shall not indemnify an Indemnitee (a) in connection with a Proceeding by or in the name of the Company in which the Indemnitee was adjudged liable to the Company, or (b) in connection with any other Proceeding charging that the Indemnitee derived an improper personal benefit, whether or not involving action in his/her/its official capacity, in which Proceeding he/she/it was adjudged liable on the basis that he/she/it derived an improper personal benefit. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere, or its equivalent, shall not, in and of itself, create a presumption or otherwise constitute evidence that the Indemnitee acted in a manner contrary to the standards of conduct described in this Section 10.2 above.

10.3 Indemnification of Other Agents. Except as otherwise expressly provided hereinbelow or in non-waivable provisions of the Act, the Company shall, upon approval by Majority Vote of the Managers, indemnify, to the fullest extent permitted by applicable law (including the Act) in effect as of the Effective Date, and to such greater extent as applicable law may hereafter from time to time permit, any Person (other than a Member, a Manager or an officer of the Company) who was or is a party or is threatened to be made a party to, or otherwise becomes involved in, any Proceeding (including any Proceeding by or in the right of the Company) by reason of the fact that such Person is or was an agent of the Company, against all Expenses, amounts paid in settlement, judgments, fines, penalties and ERISA excise taxes actually and reasonably incurred by such Person in connection with such Proceeding.

10.4 Advancement of Expenses. Expenses incurred by an Indemnitee in defending any Proceeding may, from time to time, be advanced by the Company prior to the final disposition of such Proceeding if: (a) the Indemnitee furnishes the Company a written affirmation of his/her/its good faith belief that he/she/it has met the applicable standard of conduct described in Section 10.2 above; (b) the Company receives a written undertaking by or on behalf of the Indemnitee to repay any such advances if it shall ultimately be determined that such Person is not entitled to be indemnified as authorized in Section 10.2; and (c) a determination is made that the facts then known to those making the determination would not preclude indemnification under Section 10.2 or the Act. The Company may advance Expenses to other agents of the Company whom the Company has determined to indemnify in accordance with Section 10.3 above, subject to the same conditions set forth in the preceding sentence for advancement of expense to Indemnitees.

10.5 Indemnity Not Exclusive. The indemnification and advancement of Expenses provided by, or granted pursuant to, the provisions of this Article X shall not be deemed exclusive of any other rights to which any Person seeking indemnification or advancement of Expenses may be entitled under any agreement, vote, determination or approval of the Managers and/or the Members, or otherwise, both as to action in such Person's capacity as an agent of the Company and as to action in another capacity while serving as an agent. All rights to indemnification under this Article X shall be deemed to be provided by a contract between the Company and each Indemnitee. Any repeal or modification hereof or thereof shall not affect any such rights then existing.

10.6 Insurance. The Company shall have the power to purchase and maintain insurance on behalf of any Person who is or was an agent of the Company against any liability asserted against such Person and incurred by such Person in any such capacity, or arising out of such Person's status as an agent, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Article X or under applicable law (including the Act). In the event that a Person shall receive payment from any insurance carrier or from the plaintiff in any action against such Person with respect to indemnified amounts after payment on account of all or part of such indemnified amounts having been made by the Company pursuant to this Article X, such Person shall reimburse the Company for the amount, if any, by which the sum of such payment by such insurance carrier or plaintiff and payments by the Company to such Person exceeds such indemnified amounts. In addition, upon payment of indemnified amounts under the terms and conditions of this Agreement, the Company shall be subrogated to such Person's rights against any insurance carrier with respect to such indemnified amounts (to the extent permitted under such insurance policies). Such right of subrogation shall be terminated upon repayment to the Company of all indemnified amounts by such Person pursuant to the second sentence of this Section 10.6.

10.7 Heirs, Executors and Administrators. The indemnification and advancement of Expenses provided by, or granted pursuant to, this Article X shall, unless otherwise provided when authorized, continue as to a Person who has ceased to be an agent of the Company and shall inure to the benefit of such Person's heirs, executors and administrators.

10.8 Right to Indemnification Upon Application.

(a) Any indemnification or advance required under this Article X shall be made promptly, and in no event later than sixty (60) days, after the Company's receipt of a written request therefor from a current or former Member, Manager or officer of the Company.

(b) The right of an Indemnitee to indemnification as provided in this Article X shall be enforceable in any court of competent jurisdiction. Neither the failure by the Managers or the Members of the Company or its independent legal counsel to have made a determination that indemnification is proper in the circumstances, nor any actual determination by the Managers or the Members of the Company or its independent legal counsel that indemnification is not proper, shall be a defense to the action or create a presumption that indemnification is not proper. The burden of proving that indemnification is not proper shall be on the Company. In any such action, the Person seeking indemnification shall be entitled to recover from the Company any and all

expenses of the types described in the definition of Expenses in Section 10.l(a) above actually and reasonably incurred by such Person in such action, but only if such Person prevails therein.

10.9 Limitations on Indemnification. No payments pursuant to this Agreement shall be made by the Company:

(a) To indemnify or advance funds to any Person with respect to a Proceeding initiated or brought voluntarily by such Person and not by way of defense, except as provided in Section 10.8(b) above with respect to a Proceeding brought to establish or enforce a right to indemnification under this Agreement, other than as expressly required under California law;

(b) To indemnify or advance funds to any Person who fails to comply with any of such Person's fiduciary duties set forth hereunder or in non-waivable provisions of the Act; or

(c) If a court of competent jurisdiction finally determines that any indemnification or advance of Expenses hereunder is unlawful.

ARTICLE XI
INVESTMENT REPRESENTATIONS

Each party hereto represents and warrants to, and agrees with, the Managers, the other parties hereto, and the Company as follows:

11.1 Specific Investment Representations. By executing and entering into this Agreement, such party:

(a) Understands that an investment in the Company represented by the Membership Interest is, by its nature, speculative, and that such party could sustain a loss of one hundred percent (100%) of such investment; and further understands that an investment in the Company represented by the Membership Interest, because of the restrictions on Transfers imposed by federal and state securities laws, is an investment with limited liquidity, that it may not be possible to quickly liquidate such investment in case of emergency or receive fair value therefor in a forced sale, and that it may be necessary to hold such investment for an unlimited period;

(b) Acknowledges that, in deciding to purchase his, her or its Membership Interest, such party has not relied on any statements or representations of the Company; if such party has been advised regarding the purchase of such Membership Interest, such party has relied upon the advice of his, her or its own personal legal counsel and accountants or other personal/financial advisors with respect to the tax and other consequences involved in purchasing such Membership Interest;

(c) Acknowledges that his, her or its Membership Interest is being acquired for his, her or its own account without a view to public distribution or resale, and that such party has no contract, undertaking, agreement or arrangement to sell or otherwise Transfer or dispose of his, her or its Membership Interest or any portion thereof to any other person;

(d) Understands that his, her or its Membership Interest has not been registered under the federal Securities Act of 1933, as amended (the "1933 Act"), or registered or qualified under the securities laws of California or any other state, and that his, her or its Membership Interest is subject to substantial restrictions on Transfer as described in federal and state securities laws and this Agreement;

(e) Agrees that such party will not sell or otherwise Transfer or dispose of his, her or its Membership Interest or any portion thereof unless: (i) such Membership Interest is registered under the 1933 Act and registered or qualified under any applicable state securities laws, or such party obtains an opinion of counsel which is satisfactory to the Company (which opinion may be waived by the Company) that such Membership Interest may be sold in reliance on an exemption from such registration or qualification requirements; and (ii) the Transfer is otherwise made in accordance with applicable law and this Agreement;

(f) Understands that the Company has no obligation or intention to register or qualify any portion of such party's Membership Interest for resale or Transfer under the 1933 Act or any state securities laws or to take any action (including the filing of reports or the publication of information required by Rule 144 under the 1933 Act) which would make available any resale exemption from the registration or qualification requirements of any such laws;

(g) Acknowledges that such party has been encouraged to rely upon the advice of his, her or its own personal legal counsel and accountants or other financial advisors with respect to the tax and other considerations relating to the purchase of his, her or its Membership Interest and has been offered, during the course of any discussions concerning the purchase of such Membership Interest, the opportunity to ask such questions and inspect such documents concerning the Company and its formation and business and affairs so as to understand more fully the nature of the investment and to verify the accuracy of the information supplied;

(h) Understands that the Company can make no assurances that any qualified retirement or other employee benefit plans of which such party is a beneficiary will continue to qualify for favorable tax treatment under the Internal Revenue Code, and that the Company does not at the present time intend to seek a ruling from the Internal Revenue Service regarding the tax consequences of any investment in the Company;

(i) Understands that the Company is not intended to be a "tax shelter", and that the Company does not intend to produce any tax benefits that may be used to offset income or tax, and that it should not be assumed that the Company will produce significant amounts of any such tax benefits; and

(j) Acknowledges that such party: (1) if a natural person, is at least twenty-one (21) years of age; (2) if a natural person, is a California resident; (3) has adequate means of providing for his, her or its current needs and personal contingencies; (4) has no need for liquidity in this investment; (5) has sufficient net worth to allow it to bear the economic risk inherent in purchasing such party's Membership Interest; and, if applicable and required by the Company for securities registration or qualification exemption purposes, (6) (x) had individual income in excess of $200,000, or joint income with a spouse in excess of $300,000, in each of the last two (2) years, and reasonably expects to reach the same income level in the current year; or (y) has an individual

net worth (or joint net worth, if married) of at least $1,000,000, provided that the calculation of such net worth in either case shall not include the value of such individual's or such individual's and his/her spouse's (as applicable) primary residence; or (z) is otherwise an "accredited investor" as defined in Rule 501(a) under the 1933 Act;

(k) Acknowledges that such party, either alone or together with his, her or its personal advisors, has such knowledge and experience in financial and business matters that he, she or it is capable of evaluating the merits and risks of an investment in the Company and the purchase of his, her or its Membership Interest and otherwise protecting his, her or its own interests in connection with such investment and purchase transaction; and

(l) Understands that no federal or state agency, including the United States Securities and Exchange Commission and the securities regulatory agency of any state, has approved or disapproved the Membership Interest, or has passed upon or made any finding or determination as to the fairness of the Membership Interest for investment.

11.2 Legends. The certificates, if any, evidencing such party's Membership Interest and concomitant Membership Units, as well as any counterpart of this Agreement, or subscription agreement, if any, or other document or instrument representing a Membership Interest, may bear one or all of the following legends:

(a) "THE OFFER AND SALE OF MEMBERSHIP INTERESTS OF PENINSULA SURGERY CENTER, LLC (THE "COMPANY") HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE FEDERAL SECURITIES AND EXCHANGE COMMISSION OR THE CALIFORNIA DEPARTMENT OF BUSINESS OVERSIGHT, NOR HAVE ANY OTHER STATE OR FEDERAL REGULATORY AUTHORITIES PASSED UPON OR ENDORSED THE MERITS OF THE OFFER OR SALE OF THE MEMBERSHIP INTERESTS.

THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE FEDERAL SECURITIES ACT OF 1933, AS AMENDED ("THE 1933 ACT"). THE OFFER AND SALE OF THE MEMBERSHIP INTERESTS ARE BEING MADE WITHOUT REGISTRATION PURSUANT TO THE 1933 ACT IN RELIANCE UPON THE PRIVATE OFFERING EXEMPTION PROVIDED BY SECTION 4(2) OF THE 1933 ACT, THE INTRASTATE OFFERING EXEMPTION PROVIDED BY SECTION 3(a) (l 1) OF THE 1933 ACT, AND/OR THE LIMITED OFFERING EXEMPTION PROVIDED BY RULE 504 OF REGULATION D AS PROMULGATED UNDER THE 1933 ACT. PURSUANT TO ONE OR MORE OF THESE EXEMPTIONS, THE MEMBERSHIP INTERESTS MAY NOT BE OFFERED OR SOLD BY THE COMPANY TO ANY PERSON OR ENTITY WHO OR WHICH IS NOT A RESIDENT OF THE STATE OF CALIFORNIA. BECAUSE THE MEMBERSHIP INTERESTS HAVE NOT BEEN REGISTERED UNDER THE 1933 ACT, THEY MAY NOT BE RESOLD, ASSIGNED OR TRANSFERRED, NOR WILL ANY ASSIGNEE, VENDEE, TRANSFEREE OR ENDORSEE BE RECOGNIZED AS HAVING ACQUIRED THE INTERESTS FOR ANY PURPOSES, UNLESS: (A) THEY ARE FIRST REGISTERED UNDER THE 1933 ACT; OR (B) AN EXEMPTION FROM REGISTRATION FOR SUCH RESALE TRANSACTION, ASSIGNMENT OR TRANSFER IS AVAILABLE UNDER THE 1933 ACT. IN ADDITION, RULE 147 AS PROMULGATED UNDER THE 1933 ACT REQUIRES THAT THE MEMBERSHIP INTERESTS NOT BE RESOLD TO ANY PERSON OR ENTITY WHO OR

WHICH IS NOT A CALIFORNIA RESIDENT DURING THE PERIOD THEY ARE BEING OFFERED AND SOLD BY THE COMPANY AND FOR A PERIOD OF NINE (9) MONTHS AFTER THE LAST SUCH SALE BY THE COMPANY.

THE OFFER AND SALE OF THE MEMBERSHIP INTERESTS HAVE NOT BEEN QUALIFIED WITH THE COMMISSIONER OF THE DEPARTMENT OF BUSINESS OVERSIGHT OF THE STATE OF CALIFORNIA PURSUANT TO THE CALIFORNIA CORPORATE SECURITIES LAW OF 1968, AS AMENDED (THE "CALIFORNIA SECURITIES LAW"). THE OFFER AND SALE OF THE MEMBERSHIP INTERESTS ARE BEING MADE IN RELIANCE UPON THE LIMITED OFFERING EXEMPTION PROVIDED BY SECTION 25102(f) OF THE CALIFORNIA SECURITIES LAW OR THE EXEMPTION FOR "COVERED SECURITIES" (AS DEFINED IN SECTION 18b OF THE 1933 ACT) UNDER SECTION 25100.l(a) OF THE CALIFORNIA SECURITIES LAW. PURSUANT TO THE LIMITED OFFERING EXEMPTION, SALES OF MEMBERSHIP INTERESTS MAY BE MADE TO NOT MORE THAN THIRTY-FIVE (35) PERSONS, EXCEPT THAT ADDITIONAL SALES MAY BE MADE TO PERSONS WHO CONSTITUTE "EXCLUDED PURCHASERS" FOR PURPOSES OF THE LIMITED OFFERING EXEMPTION.

THE MEMBERSHIP INTERESTS ARE SUBJECT TO FURTHER RESTRICTIONS AS TO THEIR SALE, TRANSFER, HYPOTHECATION, ASSIGNMENT OR OTHER DISPOSITION AS SET FORTH IN THE OPERATING AGREEMENT FOR THE COMPANY AND AGREED TO BY EACH MEMBER. SUCH RESTRICTIONS PROVIDE, AMONG OTHER THINGS, THAT NO INTEREST MAY BE TRANSFERRED VOLUNTARILY WITHOUT FIRST OFFERING THE INTEREST TO THE COMPANY, AND THAT NO ASSIGNEE, VENDEE, TRANSFEREE OR ENDORSEE OF AN INTEREST HAS THE RIGHT TO BECOME A MEMBER WITHOUT APPROVAL BY THE MANAGERS, WHICH APPROVAL OF MANAGERS MAY BE GIVEN OR WITHHELD PURSUANT TO THE OPERATING AGREEMENT.

THE MEMBERSHIP INTERESTS INVOLVE A DEVELOPMENT STAGE COMPANY WITH NO OPERATING HISTORY. INVESTMENT IN THE COMPANY IS SPECULATIVE, INVOLVES RISK, AND IS SUITABLE ONLY FOR PERSONS WHO HAVE NO NEED FOR LIQUIDITY IN THEIR INVESTMENTS. MEMBERS MAY SUSTAIN A LOSS OF THEIR TOTAL INVESTMENT.

EACH PROSPECTIVE MEMBER IS ADVISED TO CONSULT WITH SUCH PERSON'S OWN LEGAL, TAX AND ACCOUNTING ADVISORS IN CONNECTION WITH SUCH PERSON'S DECISION TO INVEST IN AND BECOME A MEMBER OF THE COMPANY, INCLUDING WITHOUT LIMITATION REGULATORY MATTERS PERTAINING TO ANY OTHER FINANCIAL RELATIONSHIPS OR COMPENSATION ARRANGEMENTS BETWEEN OR AMONG THE MEMBERS OR BETWEEN THE MEMBERS AND THE COMPANY."

(b) Any legend otherwise required by applicable federal or state securities laws.

ARTICLE XII
MISCELLANEOUS

12.1 Complete Agreement. This Agreement and the Articles constitute the complete and exclusive statement of agreement among the parties hereto with respect to the subject matter herein and therein and replace and supersede all prior written and oral agreements or statements by and among the parties or any of them with regard to such subject matter. No representation, statement, condition or warranty not contained in this Agreement or the Articles shall be binding on the parties hereto or have any force or effect whatsoever. To the extent that any provision of the Articles conflicts with any provision of this Agreement, the Articles shall control.

12.2 Binding Effect. Subject to the provisions of this Agreement relating to transferability, this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective permitted successors and assigns.

12.3 Parties in Interest. Except as otherwise expressly set forth in Article X of this Agreement, nothing in this Agreement shall confer any rights or remedies under or by reason of this Agreement on any Persons other than the parties hereto and their respective permitted successors and assigns, nor shall anything in this Agreement relieve or discharge the obligation or liability of any third person to any party to this Agreement, nor shall any provision hereof give any such Person any right of subrogation or action over or against any party to this Agreement.

12.4 Pronouns; Statutory References. All pronouns and all variations thereof shall be deemed to refer to the masculine, feminine or neuter, singular or plural, as the context in which they are used may require. Any reference to the Code, the Regulations, the Act or other statutes or laws will include all amendments, modifications or replacements of the specific sections and provisions concerned.

12.5 Headings. All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Agreement.

12.6 Interpretation. In the event that any claim is made by any party hereto relating to any conflict, omission or ambiguity in this Agreement, no presumption or burden of proof or persuasion shall be implied by virtue of the fact that this Agreement was prepared by or at the request of a particular party or its counsel.

12.7 References to this Agreement. Numbered or lettered articles, sections and subsections contained herein refer to articles, sections and subsections of this Agreement, unless otherwise expressly stated.

12.8 Jurisdiction. Each party hereto hereby consents to the exclusive jurisdiction of the state and federal courts sitting in the State of California in any action on a claim arising out of, under or in connection with this Agreement or the transactions contemplated by this Agreement, provided that such claim is not required to be arbitrated pursuant to Section 12.9 below. Each party further agrees that personal jurisdiction over it may be affected by service of process by registered or certified mail addressed as provided in Section 12.14 below, and that when so made shall be as if served upon it personally within the State of California.

12.9 Arbitration. Except as otherwise expressly set forth hereinbelow or in Article X of this Agreement, any controversy, dispute or claim arising out of, in connection with, or related to the interpretation, performance or breach of this Agreement shall be resolved by final and binding arbitration (the "Arbitration"). The Arbitration shall be initiated and administered by and in accordance with the then existing Comprehensive Arbitration Rules and Procedures of JAMS, Inc. ("JAMS") or, if JAMS is not located or actively conducting arbitrations in Alameda County or in San Mateo County, with the Commercial Rules of the American Arbitration Association. The Arbitration proceeding shall be held in or in close proximity to Fremont or Redwood City, California, unless the parties mutually agree to have such proceeding in some other locale; the exact time and location shall be decided by the arbitrator(s) selected in accordance with the then existing Comprehensive Arbitration Rules and Procedures of JAMS or, if applicable, the Commercial Rules of the American Arbitration Association. The arbitrator(s) shall apply California substantive law, or federal substantive law where state law is preempted. Civil discovery for use in the Arbitration may be conducted in accordance with the provisions of California law that would apply if the matter were being litigated in a Superior Court in the State of California. The arbitrator(s) selected shall have the power to enforce the rights, remedies, duties, liabilities and obligations of discovery by the imposition of the same terms, conditions and penalties as can be imposed in like circumstances in a civil action by a court of competent jurisdiction of the State of California. The provisions of California law governing discovery in a civil action filed in a Superior Court of the State of California (including without limitation depositions) are incorporated herein by reference and made applicable to this Agreement. The arbitrator(s) shall have the power to grant all legal and equitable remedies provided by California law and award compensatory damages provided by California law, except that punitive damages shall not be awarded. The arbitrator(s) shall prepare in writing and provide to the parties an award including factual findings and the legal reasons on which the award is based. The arbitrator(s) shall not have the power to commit errors of law or legal reasoning. Any judicial review of the arbitrator(s)' decision shall be governed by Sections 1285 et seq. of the California Code of Civil Procedure, except that the parties hereto expressly grant the Superior Court the authority to correct errors of law and modify the arbitrator(s)' ruling to avoid errors of law. The prevailing party or parties in any Arbitration hereunder shall be awarded reasonable attorneys' fees, expert and nonexpert witness costs and expenses incurred directly or indirectly with said Arbitration, including without limitation the fees and expenses of the arbitrator(s) and any other expenses of the Arbitration. Notwithstanding the foregoing provisions of this Section 12.9, in the event that any party hereto wishes to obtain injunctive relief or a temporary restraining order, such party may initiate an action for such relief in a court of general jurisdiction in the State of California. The decision of the court with respect to the requested injunctive relief or temporary restraining order shall be subject to appeal only as allowed under California law. Such courts shall not, however, have the authority to review or grant any request or demand for damages.Attorneys' Fees. Notwithstanding and in addition to the provisions of Section 12.9 above, if legal action shall be required by any party hereto to enforce the terms of this Agreement, the prevailing party or parties in such action shall be entitled to reimbursement for reasonable costs and attorneys' fees incurred in connection therewith.

12.11 Exhibits. All Exhibits attached to this Agreement are incorporated and shall be treated as if set forth herein.

12.12 Severability. If any provision of this Agreement or the application of such provision to any Person or circumstance shall be held invalid, the remainder of this Agreement or the application of such provision to Persons or circumstances other than those to which it is held invalid shall not be affected thereby and shall continue to be valid and binding upon the parties hereto.

12.13 Additional Documents and Acts. Each party hereto agrees to execute and deliver such additional documents and instruments and to perform such additional acts as may be necessary and appropriate to effectuate, carry out and perform all of the terms, provisions and conditions of this Agreement and the transactions contemplated hereby.

12.14 Notices. Except as otherwise expressly provided in this Agreement, any notice, request or other communication (each, a "notice") to be given or to be served upon the Company or any party hereto in connection with this Agreement shall be in writing and shall be deemed to have been given and received upon delivery (which may include facsimile transmission) to the address specified by the party to receive the notice. Such notices shall be given to a Member at the address specified in the Member List. Any party may, at any time by giving five (5) days' prior written notice to the other parties, designate any other address in substitution of the foregoing address to which such notice shall be given.

12.15 Amendments. Except as otherwise expressly provided in this Agreement, and subject to the provisions of Sections 4.15 and 5.3 above regarding approval by the Members and the Managers of amendments to this Agreement and the Articles, this Agreement may be amended only in writing, which writing shall be signed by the Controlling Member and, if any, Class A Members whose Percentage Interests represent in the aggregate more than fifty percent (50%) of the aggregate Percentage Interests held by all Class A Members entitled to vote. Notwithstanding the previous sentence, in the absence of any opinion of legal counsel as to the effect thereof, no amendment to this Agreement or to the Articles shall be made which violates any non-waivable provisions of the Act or is likely to cause the Company to be taxed as a corporation.

12.16 Reliance on Authority of Person Signing Agreement. If any party hereto is not a natural person, neither the Company nor any other party shall (a) be required to determine the authority of the individual signing this Agreement, make any commitment or undertaking on behalf of such entity, or determine any fact or circumstance bearing upon the existence of the authority of such individual, or (b) be responsible for the application or distribution of proceeds paid or credited to individuals signing this Agreement on behalf of such entity.

12.17 No Interest in Company Property. No party hereto has any interest in specific property of the Company.

12.18 Multiple Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument.

12.19 Remedies Cumulative. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which the Company or any other Person may be lawfully entitled.

12.20 Consent of Spouse. Each party hereto who is a natural person shall deliver a duly executed Consent of Spouse, in the form prescribed in Exhibit "C" attached hereto, at the time of execution of this Agreement, such Consent of Spouse to be executed by such party's legal spouse or any other natural person recognized by applicable law to have community property or other interests equal or similar to a legal spouse (each, a "Spouse"). Each party shall also have such Consent of Spouse executed by any new or other Spouse in the future. Each party hereby agrees and acknowledges that compliance with the requirements of this Section 12.20 by each other party who is a natural person constitutes an essential part of the consideration for this Agreement.

[signature page to follow]

IN WITNESS WHEREOF, the Controlling Member and the initial Class A Members of Peninsula Surgery Center, LLC, a California limited liability company, have executed this Agreement as of the Effective Date, and each such Member hereby consents to be bound by all of the recitals, covenants, conditions, and other terms set forth in this Agreement.

Controlling Member:

Peninsula Surgical Partnership, LLC

By: _____

_____, Manager

Class A Members:

John T. Dearborn, M.D.

By: _____

Washington Township Hospital Development Corporation

By: _____

_____, CEO

EXHIBIT "A"

COPY OF FILED ARTICLES OF ORGANIZATION

1. See Attached

EXHIBIT "B"

MEMBERS AND MEMBERSHIP INTERESTS

AS OF ~~AUGUST 12, 2019~~SEPTEMBER ___, 2022

Name of Member	Member's Address	Member's Capital Contribution	Member's Membership Units	Member's Percentage Interest
Controlling Member				
Peninsula Surgical Partnership, LLC	2000 Mowry Avenue Fremont, CA 94538	$1,020,000	510	51%
Class A Members				
John T. Dearborn, M.D.		$500,000	250	25%
Washington Township Hospital Development Corporation	2000 Mowry Avenue Fremont, CA 94538	$480,000	240	24%

EXHIBIT "C"

CONSENT OF SPOUSE

I hereby acknowledge that I have read the First Amended and Restated Operating Agreement, as may be amended from time to time (the "Agreement") of Peninsula Surgery Center, LLC, a California limited liability company (the "Company"), dated as of the Effective Date of the Agreement (as defined therein), and that I know its contents. I am aware that by its provisions, the Agreement requires the Transfer (as defined therein), under certain circumstances, and permits the Transfer, under certain circumstances and pursuant to certain conditions, of the entire Membership Interest of _____ ("my Spouse"), or any portion thereof, in the Company. I hereby acknowledge and agree that any and all such Transfer(s), whether required or permitted, of all or any portion of my Spouse's Membership Interest include any and all community property or other interest that I may have or acquire therein; and I hereby consent to any and all such Transfer(s), approve of each and every provision of the Agreement, and agree to be bound thereby. I further agree that I shall not bequeath such Membership Interest, or any portion thereof, by my will or by trust, and that I shall direct that the residuary clause in my will shall not be deemed to apply to any community property interest that I may have in such Membership Interest. I further agree that in the event of a dissolution of marriage or legal separation, my Spouse shall have the absolute right to have my interest, if any, in such Membership Interest set apart to him or her, whether through a property settlement agreement or by decree of court, or otherwise.

Executed on this _____(____) day of _____,20__ at _____

EXHIBIT "E"

JOINDER AGREEMENT TO OPERATING AGREEMENT

This Joinder Agreement to Operating Agreement is made and entered into effective as of_ _____, _____ (the **"Effective Date")** by the undersigned to agree to and become bound by the terms and conditions of the First Amended and Restated Operating Agreement as may be amended from time to time (the **"Operating Agreement")** of Peninsula Surgery Center, LLC (the **"Company"),** a California limited liability company, in order for the undersigned to become a Class A Member (as defined in the Operating Agreement) of the Company upon the issuance or Transfer to the undersigned of Class A Membership Units (as defined in the Operating Agreement) in the Company.

1. ~~Subscription~~ Agreement **to Purchase Class A Membership Units.** The undersigned has subscribed or otherwise agreed to purchase ____Class A Membership Units in the Company.

2. **Admission.** Upon the Company's acceptance of the undersigned's subscription or other agreement to purchase the Class A Membership Units, the undersigned shall be admitted as a Class A Member of the Company as provided in the Operating Agreement.

3. **Agreement to Be Bound by Operating Agreement.** The undersigned acknowledges that the undersigned has received a copy of and reviewed the Operating Agreement as currently in effect. The undersigned agrees to be bound by all of the terms and conditions of the Operating Agreement, as may be amended from time to time.

4. **Capital Contribution.** Upon the Company's acceptance of the undersigned's subscription or other agreement to purchase the Class A Membership Units, the undersigned shall be allocated with the Capital Contribution (as defined in the Operating Agreement) which the undersigned has paid to purchase the issued Class A Membership Units or is otherwise assigned following Transfer of the Class A Membership Units.

IN WITNESS WHEREOF, the undersigned has executed this Joinder Agreement to Operating Agreement, effective as of the date first above written.

_____
Signature

_____
Print Name

_____
Date

Washington Hospital Healthcare System

SINCE 1948

Memorandum

DATE: October 17, 2022

TO: Board of Directors
Washington Township Hospital Development Corporation

FROM: Kimberly Hartz, Chief Executive Officer

SUBJECT: Resolution No. 49 - Sale of Interest in Peninsula Surgery Center, LLC

Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation ("DEVCO") directly owns twenty-four percent (24%) of the membership interests in Peninsula Surgery Center, LLC ("PSC"). The proposed resolution authorizes the CEO to execute the sale of forty (40) membership units representing four percent of DEVCO's directly held membership interest to KOS Ventures, LLC, a California limited liability company wholly owned by a single member, John Costouros, M.D. ("KOS") for a purchase price of Two Hundred Thousand Dollars ($200,000).

In accordance with the District's policies and procedures, it is requested that the Washington Township Hospital Development Corporation Board of Directors approve Board Resolution No. 49 authorizing the sale of forty (40) membership units representing four percent of DEVCO's directly held membership interest to KOS.

RESOLUTION NO. 49

RESOLUTION OF THE BOARD OF DIRECTORS OF WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION ("DEVCO") TO SELL A PORTION OF ITS MEMBERSHIP INTEREST IN PENINSULA SURGERY CENTER, LLC AND AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE THE MEMBERSHIP INTEREST PURCHASE AGREEMENT

WHEREAS, Washington Township Hospital Development Corporation, a California nonprofit public benefit corporation ("DEVCO"), previously approved participation in the ownership and operation of an ambulatory surgery center located at 350 Marine Parkway, Redwood City, California, referred to as the Peninsula Surgery Center (the "Surgery Center") and operated by Peninsula Surgery Center, LLC;

WHEREAS, DEVCO believes that adding an KOS Ventures, LLC as an owner of the of the Surgery Center is prudent for the ongoing success of the Surgery Center; and

WHEREAS, attached to this Resolution is the form of Membership Interest Purchase Agreement (the "Agreement"), which is required in order to transfer a portion of DEVCO's interest in Peninsula Surgery Center, LLC to KOS Ventures, LLC.

NOW, THEREFORE, be it resolved that:

1. The Chief Executive Officer is hereby authorized to enter into the Agreement.

2. The Chief Executive Officer is hereby authorized to take any and all actions necessary to execute any and all instruments and do any and all things deemed by her to be necessary or desirable to carry out the intent and purposes of the foregoing Resolution.

3. This Resolution shall be filed in the minute book of the corporation and become a part of the records of the corporation.

Passed and adopted by the Board of Directors of the Washington Township Hospital Development Corporation this 17th day of October 2022 by the following vote:

AYES: _____

NOES: _____

RECUSAL: _____

_____	_____
Benn Sah, MD	Steven Chan, DDS
President, Board of Directors	Secretary, Board of Directors
Washington Township Hospital Development Corporation	Washington Township Hospital Development Corporation

RESOLUTION NO. _50___

WASHINGTON TOWNSHIP HOSPITAL DEVELOPMENT CORPORATION

RESOLUTION OF THE BOARD OF DIRECTORS

WHEREAS, the staff of the Board of Directors of Washington Township Hospital Development Corporation ("DEVCO") has discovered that two of its formal resolutions have been numbered as Resolution No. 41;

WHEREAS, to avoid future confusion concerning the numbering of the Board's resolutions, the Board desires to address the ambiguity to renumber the two resolutions as Resolution No. 41A and Resolution No. 41B as shown in the chart on Exhibit A (Exhibit A is attached hereto and incorporated herein by this reference).

NOW, THEREFORE, BE IT RESOLVED, that the Board of Directors authorizes the Chief Executive Officer and her designee(s) to revise the numbering of the Board's resolutions to match the numbering described on Exhibit A; and

RESOLVED FURTHER, that each officer of the corporation be authorized and directed to take any and all actions necessary to execute any and all instruments and do any and all things deemed by them to be necessary, or desirable, to carry out the intent and purposes of the foregoing resolutions.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK, SIGNATURE PAGE FOLLOWS]

[SIGNATURE PAGE TO RESOLUTION]

Passed and adopted by the Board of Directors of the Washington Township Hospital Development Corporation this 17th day of October 2022 by the following vote:

AYES:

NOES:

ABSENT:

Ben Sah, M.D.

President, Board of Directors

Washington Township Hospital Development Corporation

Steven Chan, DDS

Secretary, Board of Directors

Washington Township Hospital Development Corporation

EXHIBIT A

Number	Resolution
41A	Corporate Resolution Fremont Bank – Operating Accounts 11/18/2019
41B	Resolution of the Board of Directors to Provide Financing to Peninsula Surgery Center, LLC – July 12, 2021