

Membership

No Person shall be eligible to become a Class A Member (or remain a Class A Member, as applicable) unless the following eligibility requirements are satisfied:

1. such Class A Member shall be a physician, licensed and registered, in good standing, to practice medicine in the State where the Center is located;
2. such Class A Member abides by the Safe Harbor Requirements of this Section;
3. such Class A Member shall maintain an active practice of medicine in the greater [city of Center] metropolitan area and, if permitted by the Stark Act and the Safe Harbor Requirements to refer patients to the Center for services, shall be able to perform surgical services at the Center (such physician shall maintain active privileges at the Center and privileges at least one hospital within thirty (30) miles of the Center); and
4. under applicable law, such Class A Member's ownership shall not disqualify (and, without further action, would not disqualify) the Company or the Center from engaging in operations as a Medicare certified ambulatory surgical center for any reason or from having such physician perform cases at the Center.

A physician who meets such requirements may be referred to herein as an "Eligible Physician." The requirements of this Section shall not apply to the Class B Member(s).

Safe Harbor Requirements

The Members understand that the Company's and the Center's operations are subject to various state and federal laws regulating permissible relationships between the Members and entities such as the Company, including 42 U.S.C. § 1320a-7b(b) (the "Anti-Kickback Statute" or "Fraud and Abuse Statute"), and 42 U.S.C. § 1395nn (the "Stark Act"). It is the intent of the parties that the Company and the Center operate in a manner consistent with the foregoing statutes. Accordingly, each Member represents and warrants that he or she:

- has not received loans for the purpose of investing in the Center from the Company or from any investor in the Company;
- has not been barred or suspended from participation in the Medicare and/or Medicaid programs;
- if a Class A Member, shall derive at least one-third (1/3) of his or her medical practice income from all sources for the previous fiscal year or previous 12-month period from his or her own performance of procedures that are ambulatory surgery procedures;
- if a Class A Member, shall perform at least one-third (1/3) of such physician's procedures that require or can be performed at an ambulatory surgery center at the Center;
- shall fully inform each patient, prior to referring such patient to the Center, of such physician's investment interest in the Center; and
- shall treat patients receiving medical benefits or assistance under any federal health care program in a nondiscriminatory manner. These requirements shall be referred to herein as the "Safe Harbor Requirements."

Class B Special Powers

Notwithstanding any other provision of this Agreement, the Class B Member shall have the power to unilaterally take any and all actions required that are reasonably needed to:

- ensure that the Company as its primary objective serves community and charitable purposes;
- protect and promote the community benefits served by the Class B Member and to ensure that the assets and income of the Class B Member and the Company are used to serve community objectives; or
- maintain the tax-exempt status of the Class B Member or any of its Affiliates, including the right to unilaterally transfer the Class B Member's interests in the Company to an Affiliate.

Consistent with this Section, the Class A Member(s) shall cooperate fully with the Class B Member regarding any action taken under this Section. Notwithstanding the foregoing, this Section shall not be used in any manner that would:

- cause the Center to provide a greater percentage of charitable and Medicaid care for outpatient surgical services than the Class B Member provides;
- amend this Agreement;
- provide payment of any sort to the Class B Member or an Affiliate or provide competitive advantage to the Class B Member;
- change the proportion of ownership;
- require additional Capital Contributions;
- require personal guarantees; or
- take any other action that would specifically change the split of the profits and losses hereunder.

Sample Provision: Establishing a Purchase Price

If any Member's Units are purchased by the Company because of the occurrence of an Adverse Terminating Event, the amount the Company shall pay for the Units owned by such Member shall be the Formula Amount determined as of the date of the Terminating Event multiplied by the Member's Unit Proportion, discounted by forty percent (40%) (the "Adverse Purchase Price"). If any Member's Units are purchased by the Company because of the occurrence of a Non-Adverse Terminating Event, the amount the Company shall pay for the Units owned by such Member shall be the Formula Amount multiplied by the Member's Unit Proportion (the "Non-Adverse Purchase Price").

The "Formula Amount" shall mean the deemed value of the Company for purposes of redemption of a Member's ownership interest in the Company, and shall be equal to the product of a multiple (which initially shall be four (4)) (the "Multiple") times the Company's net operating income (in accordance with generally accepted accounting principles), excluding extraordinary gains and losses, calculated before deduction of interest, taxes, depreciation and amortization ("EBITDA"), then minus all of the Center's outstanding long term debt and long term liabilities (including equipment lease financing obligations) as of the date of the Terminating Event determined in accordance with generally accepted accounting principles.