

**AMENDED**  
**OPERATING AGREEMENT**  
**OF**  
**BLACK HILLS SURGICAL PHYSICIANS, LLC**  
**OF**  
**JULY 7, 2020**

## TABLE OF CONTENTS

<b><u>ARTICLE I: GENERAL PROVISIONS.....</u></b>	<b><u>5</u></b>
SECTION 1.1. FORMATION; EFFECTIVE DATE. ....	5
SECTION 1.2. NAME. ....	5
SECTION 1.3. AGREEMENT. ....	5
SECTION 1.4. REGISTERED OFFICE; REGISTERED AGENT; PRINCIPAL OFFICE IN THE UNITED STATES; OTHER OFFICES.....	5
SECTION 1.5. PURPOSES.....	6
SECTION 1.6. TERM.....	7
<b><u>ARTICLE II: DEFINITIONS.....</u></b>	<b><u>7</u></b>
SECTION 2.1. DEFINITIONS.....	7
<b><u>ARTICLE III: CLASSIFICATION OF MEMBERSHIP UNITS.....</u></b>	<b><u>12</u></b>
SECTION 3.1. CLASSIFICATION.....	12
SECTION 3.2. ISSUANCE. ....	12
SECTION 3.3. COMPANY HELD MEMBERSHIP UNITS. ....	12
SECTION 3.4. NO PREEMPTIVE RIGHTS. ....	12
SECTION 3.5. DISPOSITION OF RESERVE OR TREASURY MEMBERSHIP UNITS.....	12
<b><u>ARTICLE IV: LIABILITY OF MEMBERS .....</u></b>	<b><u>13</u></b>
SECTION 4.1. LIABILITY OF MEMBERS.....	13
SECTION 4.2. INDEMNIFICATION OF MEMBERS AND MANAGEMENT COMMITTEE. ....	13
SECTION 4.3. PERSONAL GUARANTY.....	15
<b><u>ARTICLE V: ADMISSION OF MEMBERS; RIGHTS AND DUTIES OF MEMBERS; PERMISSIBLE RELATIONSHIPS .....</u></b>	<b><u>15</u></b>
SECTION 5.1. NEW MEMBERS. ....	15
SECTION 5.2. LIMITED RIGHT TO PLEDGE MEMBERSHIP UNITS. ....	16
SECTION 5.3. ANNUAL MEETING. ....	17
SECTION 5.4. SPECIAL MEETINGS.....	17
SECTION 5.5. PLACE AND MANNER OF MEETING.....	17
SECTION 5.6. NOTICE.....	17
SECTION 5.7. QUORUM OF MEMBERS. ....	17
SECTION 5.8. WITHDRAWAL OF QUORUM. ....	17
SECTION 5.9. VOTING OF MEMBERSHIP INTEREST. ....	18
SECTION 5.10 PROXIES.....	18
SECTION 5.11 ACTIONS AUTHORIZED BY THE MEMBERS.....	18
SECTION 5.12 ACTION WITHOUT MEETING.....	19
SECTION 5.13 NOTICE FROM MEMBERS.....	19
SECTION 5.14 ACCESS TO SURGICAL HOSPITAL INFORMATION.....	19
SECTION 5.15 REGULATORY COMPLAINTS.....	19
<b><u>ARTICLE VI: CONTRIBUTIONS.....</u></b>	<b><u>20</u></b>
SECTION 6.1 INITIAL CONTRIBUTIONS.....	20
SECTION 6.2 ADDITIONAL CONTRIBUTIONS. ....	21
SECTION 6.3 MAINTENANCE OF CAPITAL ACCOUNTS. ....	21
SECTION 6.4 DISTRIBUTION OF ASSETS. ....	21
SECTION 6.5 INTEREST ON CAPITAL CONTRIBUTION.....	21

SECTION 6.6. WITHDRAWAL OF CAPITAL ACCOUNTS.....	21
SECTION 6.7. NO THIRD PARTY RIGHTS.....	22
<b>ARTICLE VII: VALUATION OF MEMBERSHIP UNITS .....</b>	<b>22</b>
SECTION 7.1. DETERMINATION OF THE PRICE OF MEMBERSHIP UNITS.....	22
SECTION 7.2. APPRAISAL OF UNITS.....	22
SECTION 7.3. ADJUSTMENTS IN CALCULATION-GOVERNMENTAL DECLARATIONS OF EMERGENCY.....	22
<b>ARTICLE VIII: ACCOUNTING AND RECORDS.....</b>	<b>22</b>
SECTION 8.1. FISCAL YEAR; COMPANY BOOKS.....	22
SECTION 8.2. ENGAGEMENT OF INDEPENDENT ACCOUNTANTS.....	23
SECTION 8.3. COMPANY FINANCIAL STATEMENTS.....	23
SECTION 8.4. RECORDS TO BE MAINTAINED.....	23
SECTION 8.5. TAX CONFORMITY; RELIANCE ON ACCOUNTANTS.....	23
<b>ARTICLE IX: ALLOCATIONS AND DISTRIBUTIONS.....</b>	<b>23</b>
SECTION 9.1. FEES AND EXPENSES.....	23
SECTION 9.2. DISTRIBUTION OF OPERATING PROCEEDS.....	24
SECTION 9.3. LIMITATIONS ON DISTRIBUTIONS.....	24
SECTION 9.4. DISTRIBUTIONS DUE TO THE SALE OR EXCHANGE OF SUBSTANTIALLY ALL OF THE COMPANY ASSETS OR DUE TO LIQUIDATION.....	24
SECTION 9.5. ALLOCATION OF GAIN AND LOSS ON CAPITAL TRANSACTIONS.....	24
SECTION 9.6. ALLOCATION OF PROFITS AND LOSSES OTHER THAN GAIN AND LOSS ON CAPITAL TRANSACTIONS.....	24
SECTION 9.7. ALLOCATIONS AMONG MEMBERS.....	25
SECTION 9.8. DETERMINATION OF NET INCOME AND NET LOSSES.....	25
SECTION 9.9. SPECIAL ALLOCATIONS.....	25
SECTION 9.10. TAX ELECTIONS.....	26
<b>ARTICLE X: MANAGEMENT.....</b>	<b>26</b>
SECTION 10.1. MANAGEMENT COMMITTEE.....	26
SECTION 10.2. OFFICERS.....	27
SECTION 10.3. AUTHORITY OF MANAGEMENT COMMITTEE.....	28
SECTION 10.4. SPECIFIC AUTHORITY OF THE MANAGEMENT COMMITTEE.....	28
SECTION 10.5. LIMITATIONS ON AUTHORITY WITH RESPECT TO THE SURGICAL HOSPITAL. .....	29
SECTION 10.6. PROHIBITED TRANSACTIONS.....	31
SECTION 10.7. FIDUCIARY DUTIES.....	31
SECTION 10.8. CONFLICTS OF INTEREST.....	33
SECTION 10.9. MEETINGS.....	33
SECTION 10.10. VOTING; QUORUM.....	33
SECTION 10.11. WAIVER OF NOTICE.....	34
SECTION 10.12. ADJOURNMENT.....	34
SECTION 10.13. ACTION WITHOUT MEETING.....	34
<b>ARTICLE XI: REPURCHASE OF CLASS A MEMBERSHIP UNITS.....</b>	<b>34</b>
SECTION 11.1. REPURCHASE NOTICE FOR CLASS A MEMBERSHIP UNITS.....	34
SECTION 11.2. LIMITATIONS UPON REPURCHASE OF CLASS A MEMBERSHIP UNITS.....	37
SECTION 11.3. CLOSING.....	38
SECTION 11.4. CANCELLATION.....	38
SECTION 11.5. NO LIABILITY.....	38

<b><u>ARTICLE XII: MANDATORY AND OPTIONAL DISPOSITION OF UNITS, TRANSFER RESTRICTIONS, AND PURCHASE LIMITATIONS .....</u></b>	<b><u>40</u></b>
SECTION 12.1. RESTRICTIONS ON THE DISPOSITION OF MEMBERSHIP UNITS. ....	40
SECTION 12.2. PURCHASE EVENTS. ....	40
SECTION 12.3. DETERMINATION OF PURCHASE PRICE AND PAYMENT TERMS. ....	42
SECTION 12.4. CLOSING ON PURCHASED UNITS. ....	43
SECTION 12.5. LIMITATIONS ON PURCHASE, DEFERED PURCHASE AND PRIORITY. ....	44
SECTION 12.6. VIOLATION OF NON COMPETE AGREEMENT. ....	45
SECTION 12.7. DEFAULT ON REPAYMENT OF PLEDGE. ....	46
SECTION 12.8. REGULATORY REDEMPTION. ....	46
SECTION 12.9. FAILURE TO SIGN PERSONAL GUARANTY . ....	47
SECTION 12.10. DEAFULT ON ADDITIONAL CAPITAL CALL. ....	48
SECTION 12.11 MEMBERS BANKRUPTCY. ....	48
SECTION 12.12 MEMBERSHIP STATUS. ....	49
SECTION 12.13 EQUITY MEMBERS OF ENTITY MEMBERS. ....	49
SECTION 12.14 LEGAL RESTRICTION ON COMPANY PURCHASE. ....	49
<b><u>ARTICLE XIII: EXPULSION OF A MEMBER .....</u></b>	<b><u>50</u></b>
SECTION 13.1. EXPULSION OF A MEMBER. ....	50
SECTION 13.2 VOTING RIGHTS. ....	50
SECTION 13.3 DEFINITION "CAUSE". ....	50
<b><u>ARTICLE XIV: DISSOLUTION AND LIQUIDATION.....</u></b>	<b><u>51</u></b>
SECTION 14.1. DISSOLUTION. ....	50
SECTION 14.2. LIQUIDATION. ....	50
SECTION 14.3. FILING OF ARTICLES OF DISSOLUTION. ....	51
SECTION 14.4. RETURN OF CAPITAL. ....	51
<b><u>ARTICLE XV: MISCELLANEOUS .....</u></b>	<b><u>51</u></b>
SECTION 15.1. MF USA APPROVAL RIGHTS. ....	51
SECTION 15.2. NOTICES AND ADDRESSES. ....	51
SECTION 15.3. LAW GOVERNING. ....	51
SECTION 15.4. AMENDMENTS. ....	51
SECTION 15.5. POWER OF ATTORNEY. ....	53
SECTION 15.6. SUCCESSORS AND ASSIGNS. ....	52
SECTION 15.7. COUNTERPARTS. ....	52
SECTION 15.8. MODIFICATIONS TO BE IN WRITING. ....	52
SECTION 15.9. CAPTIONS. ....	52
SECTION 15.10. VALIDITY AND SEVERABILITY. ....	53
SECTION 15.11. RESOLUTION OF DISPUTES SECTION. ....	53
SECTION 15.12. RESOLUTION OF DERIVATIVE ACTION. ....	56
<b><u>BLACK HILLS SURGICAL PHYSICIANS, LLC SIGNATURE PAGE.....</u></b>	<b><u>58</u></b>
<b><u>MEDICAL FACILITIES HOLDINGS (USA), LLC, SIGNATURE PAGE .... ERROR! BOOKMARK NOT DEFINED.</u></b>	
<b><u>EXHIBIT A – FORM OF PURCHASE NOTICE .....</u></b>	<b><u>59</u></b>
<b><u>EXHIBIT B – FORM OF WITHDRAWAL NOTICE .....</u></b>	<b><u>60</u></b>
<b><u>EXHIBIT C – FORM OF OFFER NOTICE.....</u></b>	<b><u>61</u></b>
<b><u>EXHIBIT D - FORM OF SEVERANCE NOTICE.....</u></b>	<b><u>62</u></b>

**AMENDED  
OPERATING AGREEMENT OF  
BLACK HILLS SURGICAL PHYSICIANS, LLC**

**THIS AMENDED OPERATING AGREEMENT** of BLACK HILLS SURGICAL PHYSICIANS, LLC, a South Dakota limited liability company (the “*Company*”), is made and entered into by and among the members hereof and Medical Facilities (USA) Holdings, Inc., a Delaware corporation, effective as of this 29th day of March, 2004, as amended hereby. Certain capitalized terms used herein are defined in Article II herein below.

**ARTICLE I: GENERAL PROVISIONS**

**Section 1.1. Formation; Effective Date.** The Company has been organized as a South Dakota Limited Liability Company by the filing of Articles under and pursuant to the Act and the issuance of a Certificate of Organization for the Company by the Secretary of State of South Dakota (the “*Certificate*”). This Agreement was initially effective March 29, 2004, upon the signing of this Agreement by all of the parties hereto, and is amended July 21, 2004.

**Section 1.2. Name.** The name of the Company is BLACK HILLS SURGICAL PHYSICIANS, LLC.

**Section 1.3. Agreement.** For and in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Members executing this Agreement hereby agree to the terms and conditions of this Agreement, as it may from time to time be amended according to its terms. To the extent any provision of this Agreement is prohibited or ineffective under the Act or any federal law including without limitation 42 U.S.C. § 1320a-7(b) (the “**Fraud and Abuse Statute**”), 42 U.S.C. § 1395nn (the “**Stark Act**”), or other similar statutes, this Agreement shall be considered amended to the smallest degree possible in order to make the Agreement effective under the Act and any applicable federal law, including without limitation, the aforementioned federal statutes. In the event the Act is subsequently amended or interpreted in such a way to make any provision of this Agreement that was formerly invalid valid, such provision shall be considered to be valid from the effective date of such interpretation or amendment. The Members hereby agree that each Member shall be entitled to rely on the provisions of this Agreement, and no Member shall be liable to the Company or to any Member for any action or refusal to act taken in good faith reliance on the terms of this Agreement. The Members and the Company hereby agree that the duties and obligations imposed on the Members of the Company as such shall be those set forth in this Agreement, which is intended to govern the relationship among the Company, the Members and the Management Committee.

**Section 1.4. Registered Office; Registered Agent; Principal Office in the United States; Other Offices.** The registered office of the Company required by the Act to be maintained in the State of South Dakota shall be the office of the initial registered agent named in the Articles or such other office (which need not be a place of business of the Company) as the Members may designate from time to time in the manner provided by law. The registered agent of the Company in the State of South Dakota shall be the initial registered agent named in the Articles or such other Person or Persons as the Members may designate from time to time in the manner provided by law. The

principal office of the Company in the United States shall be at such place as the Members may designate from time to time, which need not be in the State of South Dakota. The principal place of business of the Company shall be at such place as the Members may designate from time to time, which shall be in the State of South Dakota. The Company may have such other offices as the Members may designate from time to time.

**Section 1.5. Purposes.** The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company may do business. The Company was formed for the purpose of owning equity interests in entities organized within the United States which entities may directly or indirectly own and operate ambulatory surgery centers, specialty hospitals or other medical facilities within or outside the United States, including, without limitation, the Surgical Hospital. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose and operate its business as described herein, including, but not limited to, the power to:

- A. Sue and be sued, and defend in its name;
- B. Purchase, receive, lease, or otherwise acquire, and own, hold, improve, use, and otherwise deal with real or personal property, or any legal or equitable interest in property, wherever located;
- C. Sell, convey, mortgage, grant a security interest in, lease, exchange, and otherwise encumber or dispose of all or any part of its property;
- D. Purchase, receive, subscribe for, or otherwise acquire, own, hold, vote, use, sell, mortgage, lend, grant a security interest in, or otherwise dispose of and deal in and with, shares or other interests in or obligations of any other entity;
- E. Make contracts and guarantees, incur liabilities, borrow money, issue its notes, bonds, and other obligations, which may be convertible into or include the option to purchase other securities of the limited liability company, and secure any of its obligations by a mortgage on or a security interest in any of its property, franchises, or income;
- F. Lend money, invest and reinvest its funds, and receive and hold real and personal property as security for repayment;
- G. Be a promoter, partner, member, associate, or manager of any partnership, joint venture, trust, or other entity including but not limited to limited partnerships and limited liability companies;
- H. Conduct its business, locate offices, and exercise the powers granted by SDCL 47-34A within or without this state;
- I. Elect managers and appoint officers, employees, and agents of the limited liability company, define their duties, fix their compensation and lend them money and credit, or otherwise assist its members;

J. Pay pensions and establish pension plans, pension trusts, profit sharing plans, bonus plans, option plans, and benefit or incentive plans for any or all of its current or former members, managers, officers, employees, and agents;

K. Make donations for the public welfare or for charitable, scientific, or educational purposes; and

L. Make payments or donations, or do any other act, not inconsistent with law, that furthers the business of the limited liability company.

**Section 1.6. Term.** The Company commenced its existence on the date the Secretary of State of South Dakota issued the Certificate for the Company, and the term of the Company shall be perpetual, unless the Company shall be dissolved sooner and its affairs wound up in accordance with the Act or this Agreement.

## ARTICLE II: DEFINITIONS

**Section 2.1. Definitions.** As used in this Operating Agreement, the following terms have the following meanings:

A. “**Act**” means the South Dakota Limited Liability Company Act and any successor statute, as amended from time to time.

B. “**Additional Member**” means a Member other than an Initial Member who has acquired a Membership Unit from the Company in accordance with the terms of this Agreement.

C. “**Affiliates**” means any group, entity or individual who is connected with, associated with or provides or receives services or goods to or from a Facility or a Member.

D. “**Agreement**” means this Operating Agreement of Black Hills Surgical Physicians, LLC, as the same may be amended, restated or otherwise modified from time to time and all of its exhibits and attachments.

E. “**Articles**” means the Articles of Organization filed with the Secretary of State of South Dakota on March 15, 2004, under which the Company was organized as a South Dakota Limited Liability Company under and pursuant to the Act.

F. “**Bankruptcy**” means, with respect to a Member, the filing of a petition in bankruptcy, whether voluntary or involuntary, or the taking advantage of any bankruptcy or insolvency laws, or being adjudicated a bankrupt, or the filing of a petition or an answer proposing the adjudication of such Member as a bankrupt and such Member consents to the filing thereof or the same is not discharged or denied within sixty (60) days of the filing thereof.

G. “**Business Day**” means any day other than a Saturday, a Sunday, or a holiday on which national banking associations in the State of South Dakota are closed.

H. “**Capital Account**” means the account maintained for a Member determined in accordance with Article VI.

I. “**Capital Contribution**” means any contribution of Property, or the obligation to contribute Property or services made by or on behalf of a Member.

J. “**Capital Transaction**” means a sale, exchange, or other disposition of Company Property for value, other than in the ordinary course of the Company business including an involuntary conversion by condemnation, casualty or otherwise, on which gain or loss is recognized by the Members for federal income tax purposes or a refinancing of Company property.

K. “**Capital Transaction Proceeds**” means all cash received by the Company from a Capital Transaction (including any interest on cash to be received) less the sum of (i) all expenses paid or incurred by the Company in connection with such Capital Transaction, (ii) amounts applied to repayment of indebtedness, (iii) capital expenditures made from the proceeds of such a Capital Transaction, and (iv) such additions to reserves for capital expenditures as the Members may determine to be necessary. All amounts released from such reserves for capital expenditures shall be deemed to be Capital Transaction Proceeds.

L. “**Class A Membership Interests**” means and refers to the percentage interest of a Member in the Company’s Property, business, assets, capital, profits and losses, subject to all provisions of this Agreement, the Articles and the Act, which interests may be repurchased by the Company at the option of the holder thereof as set forth in Article XI below.

M. “**Class A Membership Unit**” means the membership unit(s) issued by the Company to a Member representing his or her Class A Membership Interests. The initial Class A Membership Interests, and the corresponding Class A Membership Units, and their holders, are set forth on Schedule A hereto.

N. “**Class B Membership Interests**” means and refers to the percentage interest of a Member in the Company’s Property, business, assets, capital, profits and losses, subject to all provisions of this Agreement, the Articles and the Act, which interests are not subject to the repurchase rights set forth in Article XI below, but in all other respects are equal to the rights and obligations of the Class A Membership Interests.

O. “**Class B Membership Unit**” means the membership unit(s) issued by the Company to a Member representing his or her Class B Membership Interests. The initial Class B Membership Interests, and the corresponding Class B Membership Units, and their holders, are set forth on Schedule A hereto.

P. “**Code**” means the Internal Revenue Code of 1986 and any successor statute, as amended from time to time.

Q. “**Company**” means Black Hills Surgical Physicians, LLC, a South Dakota limited liability company.

R. “**Dentist**” means an individual person who is licensed to practice dentistry in South Dakota and who is a member of the medical staff of the Facility operated by the Surgical Hospital and has privileges with respect to such Facility.

S. “**Dispose,**” “**Disposing,**” or “**Disposition**” means a gift, sale, assignment, transfer, exchange, trade, mortgage, pledge, grant of a security interest, or other disposition or encumbrance (including, without limitation, by operation of law), or the acts thereof.

T. “**Effective Date**” shall mean the effective date of this Agreement, which shall be the date of the closing of the purchase of Partnership Units in the Surgical Hospital by MF USA in accordance with the terms of that certain Investment Agreement, dated March 29, 2004, among MF USA and certain then partners of the Surgical Hospital.

U. “**Entity**” means any general partnership, limited partnership, limited liability partnership, limited liability limited partnership, limited liability company, corporation, joint venture, association or a trust.

V. “**Exchange Date**” means the first Business Day of the month following a month in which MFC’s financial information for the immediately preceding fiscal quarter, in the case of the first, second and third fiscal quarters or year end, in the case of the fourth fiscal quarter, as the case may be.

W. “**Exchangeable Interests**” means the ownership interests in the Surgical Hospital which are exchangeable for MFC Common Shares.

X. “**Facility**” means the specialty hospital owned and operated by the Surgical Hospital.

Y. “**Initial Member**” means those persons identified on **Schedule A** and **Schedule B** attached hereto and made a part hereof by this reference and who, as of the date hereof, have executed this Agreement directly or through an agent with full power and authority to do so.

Z. “**Manager**” means the Initial Manager appointed by the organizer of the Company, and each subsequent individual elected or appointed pursuant to this Agreement to be a member of the Management Committee.

AA. “**Member**” means each Initial Member, Additional Member, the Member’s estate and each Entity through which an interest in the Company is held.

BB. “**Membership Interests**” means the Class A Membership Interests and the Class B Membership Interests collectively, or individually, as the context so requires.

CC. “**Membership Units**” means the Class A Membership Units and the Class B Membership Units collectively, or individually, as the context so requires.

DD. “*Membership Unit Price*” means the following: 1. for Class A Membership Unit the price determined in accordance with Article XI. or the price determined in accordance with Section 7.1 of this Agreement as applicable; and 2. for Class B Membership Units the price determined in accordance with Section 7.1 of this Agreement.

EE. “*MFC*” means Medical Facilities Corporation, a corporation incorporated under the laws of Ontario, Canada.

FF. “*MFC Common Share*” means a common share of stock issued by MFC.

GG. “*MF USA*” means Medical Facilities (USA) Holdings, Inc., a Delaware corporation.

HH. “*Net Losses*” means the losses of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

II. “*Net Profits*” means the income of the Company determined in accordance with accounting principles consistently applied from year to year employed under the method of accounting adopted by the Company and as reported separately or in the aggregate, as appropriate, on the tax return of the Company filed for federal income tax purposes.

JJ. “*Non-Compete Agreement*” means, as the case may be, (i) that certain Non-Solicitation, Non-Disclosure and Non-Compete Agreement, with an effective date of March 29, 2004, by and among each Initial Member, the Company and MF USA, or (ii) any agreement containing the same terms and conditions as the foregoing described agreement, executed subsequent to the Effective Date by an Additional Member.

KK. “*Operating Proceeds*” means all cash received by the company in the ordinary course of its business (exclusive of loan proceeds and Capital Contributions of Members) less the sum of (i) all expenses paid by the Company but exclusive of depreciation and other non-cash expenses, (ii) amortization of principal of indebtedness, and (iii) amounts paid for capital improvements to a Facility exclusive of improvements paid from Capital Transaction Proceeds.

LL. “*Partnership Unit*” means a partnership unit issued by the Surgical Hospital.

MM. “*Permanently Disabled*” or “*Permanent Disability*” means a degree of physical or mental impairment which substantially and permanently prevents the Member from satisfactorily performing, the usual and customary functions and duties associated with the Member’s occupation as determined by a physician licensed in the area upon which the opinion is being offered and chosen by the Management Committee, except the physician chosen shall not be a Member, an employee or independent contractor of the Surgical Hospital or any other entity owned or operated by the Surgical Hospital.

NN. “*Person*” includes an individual or an Entity (whether domestic or foreign).

OO. “**Physician**” means an individual person who is licensed to practice medicine in the State of South Dakota and who is a member of the medical staff of the Facility operated by the Surgical Hospital and has privileges with respect to such Facility.

PP. “**Physician Member**” means a Member who is also a Dentist, Physician or Podiatrist.

QQ. “**Podiatrist**” means an individual person who is licensed to practice podiatry in the State of South Dakota and who is a member of the medical staff of the Facility operated by the Surgical Hospital and has privileges with respect to such Facility.

RR. “**Proceeding**” means any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative.

SS. “**Property**” means any property, real or personal, tangible or intangible, including money and any legal or equitable interest in such property, but excluding services and promises to perform services in the future.

TT. “**Sabbatical**” means for purposes of this Agreement a voluntary cessation of a Member’s usual occupation for a period not to exceed six (6) months. Further, a Sabbatical for purposes of this Agreement can only occur once in any seven (7) year period.

UU. “**Senior Employees**” means for purposes of the Agreement, the Chief Executive Officer, Chief Operating Officer, Chief Financial Officer, or General Counsel of BSHS.

VV. “**Surgical Hospital**” means Black Hills Surgical Hospital, L.L.P., a South Dakota limited liability partnership.

WW. “**Service Area**” means for purposes of this Agreement the area within a one hundred (100) mile radius of the geographic location of the surgical hospital.

XX. “**Vote**” means a vote by the Members holding outstanding Membership Units, and for each such vote, each outstanding Membership Unit shall be entitled to one vote, and for purposes of this Agreement, “**Majority Vote**” shall mean a vote which equals fifty percent (50%) plus one (1) of the outstanding Membership Units, and “**2/3rd Vote**” shall mean a vote which equals 2/3rds of the outstanding Membership Units. Where a Member has been disqualified from voting, the Membership Units owned by the disqualified Member shall be excluded for the purposes of determining the outstanding Membership Units entitled to Vote and the applicable percentage vote.

Other terms defined herein shall have the meanings as provided in this Agreement.

### ARTICLE III: CLASSIFICATION OF MEMBERSHIP UNITS

**Section 3.1. Classification.** The Company shall be authorized to issue two classes of Membership Units: Class A Membership Units and Class B Membership Units. The Class A Membership Units and the Class B Membership Units shall be equal in all respects unless otherwise provided.

**Section 3.2. Issuance.** The Class A Membership Units shall only be issued to the Initial Members, provided that, if any Class A Membership Units become available for reissuance as set forth in Section 3.3 below, then such Class A Membership Units may be issued to any other Member of the Company.

#### **Section 3.3. Company held Membership Units.**

**A. Reserve of Class A Membership Units.** If any Class A Membership Units shall be acquired by the Company for any consideration other than consideration obtained by the exercise of Exchangeable Interests, such Class A Membership Units shall be held by the Company and shall be available for reissuance by the Company to existing Members or Additional Members as determined by the Management Committee in its sole discretion. If, at any time, such Class A Membership Units have been so acquired by the Company, but have not been reissued to any Member (the “*Reserve Units*”), the Class A Membership Interests represented thereby shall not be allocated any profits or losses, nor shall such Class A Membership Units be entitled to voting or other rights until such time as such Class A Membership Units have been reissued by the Company. Reserve Units may, in the sole discretion of the Management Committee, be allocated distributions which would otherwise be attributable if outstanding for the purpose of repayment of any debt obligation which the Reserve Units are pledged.

**B. Treasury of Class B Membership Units.** If any Class B Membership Units shall be acquired by the Company, such Class B Membership Units shall be held by the Company and shall be available for reissuance by the Company to existing Members or Additional Members as determined by the Management Committee in its sole discretion. If, at any time, such Class B Membership Units have been so acquired by the Company, but have not been reissued to any Member (the “*Treasury Units*”), the Class B Membership Interests represented thereby shall not be allocated any profits or losses, nor shall such Class B Membership Units be entitled to voting or other rights until such time as such Class B Membership Units have been reissued by the Company. Treasury Units may, in the sole discretion of the Management Committee, be allocated distributions which would otherwise be attributable if outstanding for the purpose of repayment of any debt obligation which the Treasury Units are pledged.

**Section 3.4. No Preemptive Rights.** No Member shall have any preemptive or similar rights to acquire or subscribe for any reissuances of Class A Membership Units or additional Class B Membership Units that may be issued by the Company from time to time.

**Section 3.5. Disposition of Reserve or Treasury Membership Units.** If the Company has Reserve Units, or Treasury Units, the Management Committee shall determine whether or not to make such Membership Units available for purchase. The Management Committee may

offer to sell such Membership Units to the Members on a pro-rata basis, per-capita basis or as otherwise determined by the Management Committee. In no event, however, shall the Management Committee sell or make available Reserve Units or Treasury Units in a manner which, directly or indirectly, takes into account or considers a physician's production ability as it relates to Surgical Hospital or the physician's potential ability to generate business or referrals for Surgical Hospital. Upon closing of all the sales of Membership Units,

The Company shall notify all of the Members of

- (a) The identity of the Members purchasing;
- (b) The total number of Membership Units purchased by each such Member;
- (c) The total Membership Units held by each Member as of the closing of all of the sales related to the sale; and

The Company shall issue, or cause to be issued, additional Membership Certificates reflecting the additional Membership Units purchased.

#### **ARTICLE IV: LIABILITY OF MEMBERS**

##### **Section 4.1. Liability of Members.**

A. Except as set forth in any personal guaranties (if any) executed by a Member, no Member shall be liable due to his, her, or its standing as a Member, as such, for the liabilities, debts, or obligations of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Agreement or the Act shall not be grounds for imposing personal liability on the Members for liabilities, debts or obligations of the Company.

B. Except as otherwise expressly provided by SDCL Chapter 47-34A or herein, no Manager or Member shall be liable, responsible or accountable in damages or otherwise to the Company, or to any Member for any acts or omissions performed or omitted in good faith and in a manner reasonably believed by the Manager or Member to be within the scope of the authority conferred upon him or it by this Agreement and in the best interests of the Company. Specifically, and without limiting the scope of the foregoing, the Manager or Member shall not be liable, responsible or accountable in damages or otherwise to the Company or any other Member for any action taken by the Manager or Member, in good faith, including, but not limited to, any actions taken by the Manager or Member as "tax matters partner" in connection with the examination by the Internal Revenue Service of the Company's Federal partnership tax return or the determination, protest, adjustment or adjudication of any Federal or state income tax liability of any Member resulting from the Company.

##### **Section 4.2. Indemnification of Members and Management Committee.**

A. The Company, to the fullest extent permitted by law, shall indemnify and hold harmless each Member, each Manager, and all officers, directors, trustees, members (their heirs, successors, assigns, administrators, and personal representatives of such Member), employees,

and agents of Members and the members on the Management Committee (individually, an “*Indemnitee*”) from and against any and all losses, claims, demands, costs, damages, liabilities, expenses of any nature (including attorneys’ fees and disbursements), judgments, fines, settlements, and other amounts arising from any and all claims, demands, or Proceedings in which an Indemnitee may be involved, or threatened to be involved, as a party or otherwise, arising out of or incidental to the business of the Company including liabilities under the federal and state securities laws, regardless of whether an Indemnitee continues to be a Member, a Manager, or an officer, director, trustee, partner, employee, or agent of a Member at the time any such liability or expense is paid or incurred, if (1) the Indemnitee acted in good faith and in a manner he, she or it reasonably believed to be in, or not opposed to, the interests of the Company, and, with respect to any criminal Proceeding, had no reason to believe its, his, or her conduct was unlawful, and (2) the Indemnitee’s conduct did not constitute actual fraud, gross negligence, self-dealing, embezzlement, or willful or wanton misconduct. The termination of any action, suit, or Proceeding by judgment, order, settlement, conviction, or upon a plea of no contest, 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 that specified in (1) or (2) above.

B. Expenses (including attorney fees, disbursements and expenses) incurred in defending any Proceeding specified in Subsection A of this Section shall be paid by the Company in advance of the final disposition of such Proceeding upon receipt of an undertaking (which need not be secured) by or on behalf of the Indemnitee to repay such amount if it shall ultimately be determined, by a court of competent jurisdiction or otherwise, that the Indemnitee is not entitled to be indemnified by the Company hereunder.

C. The indemnification provided by this Section shall be in addition to any other rights to which each Indemnitee may be entitled under any agreement or Majority Vote of the Members, as a matter of law or otherwise, both as to action in the Indemnitee’s capacity as a Member, a Manager, or as an officer, director, trustee, partner, employee, or agent of the Member, officer, and to action in another capacity, and shall continue as to an Indemnitee who has ceased to serve in such capacity and shall inure to the benefit of the heirs, successors, assigns, administrators, and personal representatives of such Indemnitee.

D. The Company may purchase and maintain insurance on behalf of any one or more Indemnitees, and other such Persons as the Members shall determine, against any liability which may be asserted against or expense which may be incurred by such Person in connection with the Company’s activities, whether or not the Company would have the power to indemnify such Person against such liability under the provisions of this Agreement.

E. Any indemnification hereunder shall be satisfied solely out of Company Property and the Members shall not be subject to personal liability by reason of these indemnification provisions.

F. An Indemnitee shall not be denied indemnification in whole or in part under this Section because the Indemnitee had an interest in the transaction with respect to which the indemnification applies if the transaction was otherwise permitted by the terms of this Agreement.

G. The provisions of this Section are for the benefit of the Indemnitees and the heirs, successors, assigns, administrators, and personal representatives of the Indemnitees and shall not be deemed to create any rights for the benefit of any other Persons.

**Section 4.3. Personal Guaranty.** Upon the affirmative written vote of at least two-thirds [2/3] Vote of the outstanding Membership Units, each Member may be required, from time to time, to execute a personal guaranty for such Member's pro rata portion of the Company debt as the Management Committee may determine is in the best interests of the Company. In the event a Member shall fail to timely execute a required personal guaranty, the Management Committee, at its sole option and discretion, may:

A. exercise the Company's option to redeem such Member's Membership Units as set forth in Article XII; or

B. commence an action against such Member for specific performance of the obligation to execute such personal guaranty, and each Member is hereby deemed to have consented to an action by the Company for specific performance in the event a Member fails to execute the personal guaranty required by the Company pursuant to this Section 4.3. In the event an action for specific performance is commenced against a Member, the Member failing to execute the personal guaranty agrees to pay the reasonable legal fees, costs and expenses of the Company in such action.

**ARTICLE V: ADMISSION OF MEMBERS; RIGHTS AND DUTIES  
OF MEMBERS; PERMISSIBLE RELATIONSHIPS AND ASSURING  
COMPLIANCE**

**Section 5.1. New Members.**

A. **Admission of Additional Members.** The Management Committee, with MF USA's consent, shall make all determinations as to admission of Persons as Members of the Company and issuances of Membership Units. Notwithstanding the foregoing, the Company through the Management Committee may sell or issue, without MF USA's consent, Membership Units to (i) existing Members, (ii) Physicians, Dentists or Podiatrists on the medical staff of the Surgical Hospital or any Facility owned or operated by the Surgical Hospital, (iii) Senior Employees or Members of the governing body of the Company or the Surgical Hospital, (iv) entities providing comprehensive management services to the Surgical Hospital and to MF USA. In no event shall the Management Committee or MFC/USA exercise its rights herein in a manner that will conflict with the provisions of the Fraud and Abuse Statute or the Stark Act or that would be non-compliant with the exception for hospital ownership set forth in the Stark Act at 42 USC 1395nn(d)(3).

B. **Conditions of Admission.** As a condition to admitting any Additional Member, such prospective Additional Member must execute and deliver a joinder to this Agreement pursuant to which such prospective Additional Member agrees to be bound by all the terms and conditions hereof, a Non-Compete Agreement and any other agreements or documents as determined by the Management Committee. Notwithstanding the foregoing, in no event shall the

Management Committee admit any Person as an Additional Member of the Company if such admission would adversely affect the exemption under the Stark Act of the Surgical Hospital.

**C. Maximum Amount of Units Available for Purchase by Additional Members.**

1. The maximum number of Membership Units which shall be available for purchase to prospective new members of the Company shall be limited to 487 Class B Membership Units.

2. The maximum number of Membership Units available for purchase shall be subjected to adjustment or amendment annually by the Members.

3. The limitation on the maximum number of Membership Units available for purchase herein applies with equal force to any prospective Equity Owner of an Entity Member of the Company.

**D. Representations and Warranties.** Each Member hereby represents and warrants to the Company and each other Member that: (a) the Member is acquiring its interest in the Company for the Member's own account as an investment and without an intent to distribute the interest; and (b) the Member acknowledges that the interests have not been registered under the Securities Act of 1933 as amended, or any state securities laws, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such requirements.

**Section 5.2. Limited Right to Pledge Membership Units.** A Member may, as part of his purchase of the Membership Interests or to cover a personal obligation that would otherwise require the Member to sell Membership Units pledge the Membership Units on the following terms:

- A. the pledge is of the economic interest only;
- B. the pledge specifically includes that all the secured party's rights regarding the Membership Units are subject to the terms of the Agreement including but not limited to Disposition or other transfer of the Membership Units;
- C. the secured party agrees the Company has the right to purchase the Membership Units at the valuation determined in the Agreement upon default, a Mandatory Sales Event, or as otherwise provided in the Agreement;
- D. the secured party waives and fully relinquishes any and all rights it may have to bring an action or otherwise attempt to collaterally attack or void any of the provisions of the Agreement or otherwise challenge the Company's Management Committee's rights;
- E. in the event of default on such a pledge, the provisions of Section 12.7. shall apply including but not limited to the 75% of Membership Unit Value;
- F. the secured party acknowledges it has no voting rights; and
- F. no such pledge shall be valid without the prior approval of the Management Committee.

**Section 5.3. Annual Meeting.** The annual meeting of the Members of the Company shall be held each year on a date and at the time and place as determined by the Management Committee, for the purpose of electing Managers and such other business as may be properly brought at such meeting. Immediately following the annual meeting of the Members, the Management Committee shall hold a regular meeting for purposes of organization, the election of officers, if any, and the transaction of other business.

**Section 5.4. Special Meetings.** Special meetings of the Company may be called by the Management Committee or by Member(s) owning 20% of the outstanding Membership Units in the Company. The notice advising the Members of a special meeting shall state the matters to be discussed. No business may be transacted at such special meeting otherwise than as specified in such notice.

**Section 5.5. Place and Manner of Meeting.** All meetings of the Members shall be held at such time and place, within or without the State of South Dakota, as shall be stated in any notice of any meeting or in a duly executed waiver of notice thereof. Members may participate in such meetings by means of conference telephone or similar communications equipment and such participation in a meeting shall constitute presence in person at such meeting.

**Section 5.6. Notice.** All notices may be given in writing or orally but must be given not less than seven (7) days prior to any such meeting unless the Management Committee determines in its sole discretion that an emergency situation requires an immediate meeting in which case notice must be given in writing or orally not less than twenty-four (24) hours prior to such meeting. Written notice may be given by facsimile, electronic mail, hand delivery or by U.S. Mail. If such written notice is by U.S. Mail, it shall be sent by first-class mail, postage prepaid, and addressed to the last known address of each Member, and shall be effective on the date of receipt or on the third day after mailing, whichever is later. Notice sent by facsimile, electronic mail or hand delivery shall be deemed delivered on the date such notice is delivered. Attendance at any meeting, by person or by proxy, shall constitute a waiver of any such notice and such Member shall be bound by the proceedings conducted at such meeting in all respects as if due notice thereof had been given.

**Section 5.7. Quorum of Members.** Members represented either in person or by proxy holding fifty percent (50%) of the outstanding Membership Units plus one (1) outstanding Membership Unit shall constitute a quorum at a meeting of Members. At any meeting of the Members at which a quorum is present, the casting of fifty percent (50%) of the Membership Units plus one (1) Membership Unit represented at such meeting shall be deemed the act of the Members, unless the vote of a differing proportion or number is required by this Agreement or the Act. Except as otherwise provided in this Agreement, actions taken at a Member meeting where a quorum is present shall bind all Members as to the decisions made at such meeting.

**Section 5.8. Withdrawal of Quorum.** The Members present at a duly organized meeting may continue to transact business until adjournment, notwithstanding the withdrawal of enough

**Section 5.9. Voting of Membership Interest.** Each outstanding Membership Unit shall be entitled to one vote on each matter submitted to a vote at a meeting of Members, except to the extent that the voting rights of the Membership Unit are limited or denied by the Articles, this Agreement or by law. A Member may vote either in person or by proxy granted to a Member which is executed in writing by the Member or by his duly authorized attorney in fact. An Entity Member shall designate in writing to the Company one natural person to vote its Membership Units.

**Section 5.9(A). Conflicts of Interest.** No Manger shall be required to manage the Company as his or her sole and exclusive function, and a Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Unless otherwise prohibited by the terms of the Agreement or federal or state law, the Members and any of their Affiliates may deal with, perform other services for and sell goods or services to the Company or the Surgical Hospital without limitations; provided, however, that any compensation for such services or goods shall be limited to amounts and rates consistent with fair market value and the terms of any agreement or arrangement must be commercially reasonable.

**Section 5.10. Proxies.** At all meetings of Members, a Member may vote by written proxy granted to another Member, executed, and signed by the Member or by his or her duly authorized attorney in fact. Such proxy shall be filed with the Secretary of the Company before or at the time of the meeting. No proxy shall be valid after eleven (11) months from the date of its execution. The Member executing the proxy shall have the right at any time to withdraw the proxy authority, if so done in writing and delivered to the proxy holder. A proxy can only be granted to another Member.

**Section 5.11. Actions to be Authorized by the Members.** In addition to the matters set forth in this Section and Section 10.5 of this Agreement, the following actions of the Company must be authorized by the affirmative 2/3 Vote at a duly called meeting of the Members:

- A. A merger, consolidation, combination or other material transaction of that nature by the Company;
- B. A direct or indirect sale of all or substantially all of the assets of the Company;
- C. Adoption by the Company of any plan or proposal for the liquidating, dissolving, reorganizing or recapitalizing or commencing any action seeking relief under any laws relating to bankruptcy, insolvency, conservatorship or relief of debtors;
- D. Consummation by the Company of an acquisition or acquisitions costing, or entering into material contracts in excess of \$500,000, except the Management Committee shall have the authority, without approval from the Members, to purchase Membership Units under Articles XI and XII and finance the redemption of the Membership Units;
- E. Entry into lines of business other than those currently carried on by the Company;

F. Changes to the fiscal year of the Company or material changes to accounting policies or procedures of the Company unless required under the applicable generally accepted accounting principles;

G. Taking, or permitting, any action which would prevent the business of the Company from continuing on an ongoing basis;

H. Effecting a substantive change to the distribution policy of the Company;

I. Entering into transactions outside of the ordinary course of business of the Company; or

J. Agreeing to take any of the foregoing actions.

**Section 5.12. Action Without Meeting.** Any action required to be taken at an annual or special meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting, without prior notice, and without a vote, if a consent or consents in writing, setting forth the actions so taken, shall have been signed by the number of Members required to approve such action, as if a vote had been taken. Every written consent pursuant to this section shall be signed, dated and delivered in the manner required by, and shall become effective at the time and remain effective for the period specified in the writing. A telegram, facsimile, electronic mail or similar transmission by a Member, or a photographic, photostatic or similar reproduction of a writing signed by a Member, shall be regarded as signed by the Member for purposes of this section. Prompt notice of the taking of any action by Members without a meeting by less than unanimous written consent shall be given to those Members who did not consent in writing to the action.

**Section 5.13. Notices from Members.** Members agree to notify the Management Committee of all inquiries from the State Board of Medical Examiners or any other Board or agency which may adversely affect the practitioner's license(s) or the Member's ability to perform services at the Facility.

**Section 5.14. Access to Surgical Hospital's Information.** A Member may submit written requests to the Company's CEO for Surgical Hospital information which is subject to production to Members. The Company's CEO shall request the information as allowed by the Company's direct right to information under the Surgical Hospital's Partnership Agreement. The Company's CEO shall immediately forward the information to the Member upon receipt. The Surgical Hospital's information provided is confidential as provided in Section 10.7.E.

**Section 5.15. Regulatory Compliance.**

**A. Assuring Compliance.** The Members acknowledge and understand that the operations of the Surgical Hospital, and the indirect ownership of the Partnership Units in the Surgical Hospital, are subject to various state and federal laws regulating permissible relationships between the Members and Entities such as the Company or the Surgical Hospital, including 42 U.S.C. § 1320a-7b(b) (the "Fraud and Abuse Statute"), 42 U.S.C. § 1395nn (the

“Stark Act”) and SDCL § 36-2-19. It is the intent of the Members that the Surgical Hospital and the Company operate in a manner consistent with the foregoing statutes. The Members further acknowledge that referrals to the Facility are intended to be in compliance with the Stark Act exception provided in 42 U.S.C. §1395nn(d)(3), generally known as the “whole hospital” exception. Until such time as it is permissible under the Stark Act or other applicable federal health care law, at no time may a MFC Common Share be purchased by, transferred to or beneficially held by a Member or any immediate family member of such Member.

**B. 6001 Compliance.** In addition to and notwithstanding any other provision of this Agreement, the Company, its Management Committee, and all of its existing Members shall not:

1. Condition any physician ownership or investment interests either directly or indirectly on the physician owner or investor making or influencing referrals to the Surgical Hospital or otherwise generating business for the Surgical Hospital.

2. Allow the percentage of the total value of the ownership or investment interests held in the Company or Surgical Hospital, or in an entity whose assets include the Surgical Hospital, by physician owners or investors in the aggregate to exceed such percentage as of March 23, 2010.

3. Offer any ownership or investment interests to a potential or existing physician owner or investor on more favorable terms than the terms offered to a person who is not a physician owner or investor.

4. Directly or indirectly provide loans or financing for any investment in the Company or the Surgical Hospital by a physician owner or investor.

5. Directly or indirectly guarantee a loan, make a payment toward a loan, or otherwise subsidize a loan, for any individual physician owner or investor or group of physician owners or investors that is related to acquiring any ownership or investment interest in the Hospital.

6. Directly or indirectly guarantee any receipt of or right to purchase other business interests related to the Surgical Hospital, including the purchase or lease of any property under the control of other owners or investors in the Hospital or located near the premises of the Surgical Hospital.

7. Offer a physician owner or investor the opportunity to purchase or lease any property under the control of the Hospital or any other owner or investor in the Surgical Hospital on more favorable terms than the terms offered to an individual who is not a physician owner or investor.

## **ARTICLE VI: CONTRIBUTIONS**

**Section 6.1. Initial Contributions.** Contemporaneously with the execution and delivery of this Agreement, each Initial Member shall execute and deliver that certain Transfer and

Contribution Agreement, dated as of March 29, 2004, between each Initial Member and the Company, pursuant to which such Initial Member shall make an initial Capital Contribution to the Company consisting of a contribution of partnership units issued by the Surgical Hospital and held by such Initial Member as described therein. In exchange, for the aggregate number of Partnership Units so contributed, the Company shall issue to such Initial Member that number of Class A Membership Units and Class B Membership Units as specified in the Contribution Agreement and Schedule A hereto.

**Section 6.2. Additional Contributions.** The Management Committee may determine from time to time that additional contributions are needed to enable the Company to conduct its business, provided, however, such additional contributions shall require the approval of Sixty Percent Vote of the Members at a duly called meeting. Upon approval of the Members of such additional capital contribution, the Management Committee shall give notice thereof to all Members in writing, and such additional capital contribution shall be due at least ten (10) Business Days after the date thereof. If a Member has failed to pay such additional capital contribution within thirty (30) days of the due date therefore, the Management Committee in its sole discretion shall have the option to redeem such Member's Membership Units as set forth in Article XII.

**Section 6.3. Maintenance of Capital Accounts.** The Company shall establish and maintain Capital Accounts for each Member. Each Member's Capital Account shall be increased by (1) the amount of any money actually contributed by the Member to the capital of the Company, (2) the fair market value of any Property contributed, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities assumed by the Company or subject to which the company takes such Property, within the meaning of Section 752 of the Code), and (3) the Member's share of Net Profits and of any separately allocated items of income or gain except adjustments required by the Code. Each Member's Capital Account shall be decreased by (1) the amount of any money distributed to the Member by the Company, (2) the fair market value of any Property distributed to the Member, as determined by the Company and the contributing Member at arm's length at the time of contribution (net of liabilities of the Company assumed by the Member or subject to which the Member takes such Property within the meaning of Section 752 of the Code), and (3) the Member's share of Net Losses and of any separately allocated items of deduction or loss.

**Section 6.4. Distribution of Assets.** If the Company at any time distributes any of its assets in-kind to any Member, the Capital Account of each Member shall be adjusted to account for that Member's allocable share (as determined under Article IX below) of the Net Profits or Net Losses that would have been realized by the Company had it sold the assets that were distributed at their respective fair market values immediately prior to their distribution.

**Section 6.5. Interest on Capital Contribution.** No Member shall receive interest on his, her or its Capital Contribution.

**Section 6.6. Withdrawal of Capital Contribution.** No Member shall withdraw any part of his, her or its Capital Contribution.

**Section 6.7. No Third Party Rights.** The provisions of this Article VI are not for the benefit of any creditor or other person other than a Member to whom any debts, liabilities, or obligations are owed by, or who otherwise has any claim against, the Company or any Member and no creditor or other Person shall obtain any rights under this Article VI or by reason of this Article VI, or shall be able to make any claim in respect of any debts, liabilities or obligations against the Company or any Member. No Member shall be obligated to restore a deficit balance, if any, in the Member's Capital Account for the benefit, or on account of, any third party.

#### **ARTICLE VII: VALUATION OF MEMBERSHIP UNITS**

**Section 7.1. Determination of the Price of Membership Units.** Unless otherwise determined at either an annual or special meeting of the Members, the Membership Unit Price for outstanding Class B Membership Units will be determined based on a formula of average annual earnings available for distribution during the past twenty-four (24) months divided by a yield factor of 18.5%. The calculation will be made on a quarterly basis using the immediately preceding trailing calendar quarter data with such calculation to be effective on the first day of February, May, August, and November. For example, the price effective February 1 until April 30 will be based on earnings through the immediately preceding quarter ending December 31. The quarterly calculation, as approved by the Management Committee in accordance with this Section, shall be binding upon the Members for any sale or repurchase of Membership Units.

**Section 7.2. Appraisal of Units.** The Management Committee is authorized to engage the services of outside sources to assist it in making recommendations to the Members regarding the fair value of the Membership Units.

**Section 7.3. Adjustments in Calculation – Governmental Declarations of Emergency.** In the event that a Federal, State, or Local emergency declaration or a disaster declaration is issued covering in whole or in part the Service Area of Company or the Surgical Hospital, and where the grounds or reasons for the declaration have had an adverse impact on Company earnings and distributions which are not considered reflective of the future financial performance, then the Company's Management Committee, in its sole discretion, may exclude all or some of the months or calendar quarters designated in the declaration and so effected from the twenty-four month calculation set forth in 7.1. In such situations, the formula shall be based on the past 24 months of performance, but shall exclude all months, or calendar quarters, subject to the declaration and designated by the Management Committee as not accurately reflecting future financial performance of the Company.

#### **ARTICLE VIII: ACCOUNTING AND RECORDS**

**Section 8.1. Fiscal Year; Company Books.** The Company, for accounting and income tax purposes, shall operate on a calendar year beginning on the 1st day of January each year and ending on the 31st day of December each year. The books of the Company shall be kept on an accrual basis, and the Company shall report its income and loss for federal income tax purposes on an accrual basis, as determined by the Management Committee. The Company's books and records shall be maintained at the principal place of business of the Company. Each Member shall have access thereto at all reasonable times. The records and books are confidential Company

information. A Member shall not disclose any confidential Company information to anyone other than his, her or its attorney, accountant, or banker as required to assist with the Member's individual financial needs. Any Member shall further have the right to a private audit, provided that it shall be made at the expense of the Member desiring it and that it be made at reasonable times, after notice, and during regular business hours.

**Section 8.2. Engagement of Independent Accountants.** The Company shall engage, at Company expense, such independent certified public accountants as the Company shall designate to assist in the annual closing of the Company's books and to prepare the Company's informational tax returns.

**Section 8.3. Company Financial Statements.** At the end of each year, the books and records of the Company shall be reviewed by certified public accountants, and said accountants as a result of said review shall prepare annual financial statements which shall be prepared on the accrual basis of accounting as of the close of each year. Copies of the annual financial statements prepared by the accountants are available for review by the Members at the principal office of the Company. The accountants employed by the Company will prepare and file a Company income tax return as prepared on a calendar year basis and deliver to the Members within 75 days after the end of the year or such other time as allowed by law, or by an approved extension, the applicable schedule K-1 showing the amount of profit or loss allocated to the Member for use in preparing the Member's personal income tax return.

**Section 8.4. Records to be Maintained.** In addition to maintaining the Company's books, the Management Committee shall maintain the following records at the principal office of the Company: (a) a current list of the full name and last known business address of each Member; (b) a copy of the Articles and all amendments thereto; (c) copies of the Company's federal, foreign, state and local income tax returns and reports, if any, for the three most recent years; and (d) copies of this Agreement and all amendments hereto.

**Section 8.5. Tax Conformity; Reliance on Accountants.** The determination of each Member's share of each item of income, gain, loss, deduction or credit of the Company for any period or fiscal year shall, for purposes of Sections 702 and 704 of the Code, be made in accordance with the allocations set forth in this Article VIII. The Managers shall have no liability to the Members or the Company if the Managers rely upon the written opinion of tax counsel or accountants retained by the Company with respect to all matters (including disputes) relating to computations and determinations required to be made under this Article VIII or other provisions of this Agreement.

## **ARTICLE IX: ALLOCATIONS AND DISTRIBUTIONS**

### **Section 9.1. Fees and Expenses.**

A. The Members shall be entitled to reimbursement for reasonable out-of-pocket expenses, including travel and entertainment expenses, incurred in connection with the business of the Company.

B. The Company shall pay all of its own expenses, including legal, accounting, and such other professional fees and expenses incurred in the operation of the Company.

C. The Management Committee may authorize the payment of salaries, fees and bonuses which it determines are in the best interests of the Company.

**Section 9.2. Distribution of Operating Proceeds.** The amounts of any cash distributions from Operating Proceeds shall be distributed to the Members in accordance with their respective Membership Units at such times and in such amounts as the Management Committee may determine. The Management Committee may elect to retain Operating Proceeds for reasonable business or investment purposes. All such distributions shall be made pro rata to the holders of Membership Units during the fiscal year for which such distributions are to be made based upon the number of Membership Units held by each Member and the number of days during the fiscal period that such Membership Units have been held by such Member.

**Section 9.3. Limitations on Distributions.** No distribution shall be declared and paid, if such distribution would be in contravention of this Agreement, any agreement with an unrelated third party to which the Company is subject (including, but not limited to, agreements governing the terms of indebtedness for borrowed money from institutional lenders) or the laws of the State of South Dakota.

**Section 9.4. Distributions due to the Sale or Exchange of Substantially All of the Company Assets or due to Liquidation.** If the Company has sufficient funds due to the sale or exchange of all, or substantially all of the Company's assets, due to the liquidation of the Company, or merger, the distributions shall be in accordance with the following:

- A. To discharge the Company's obligations to its creditors, including Members who are creditors;
- B. Next, to all Members in accordance with their positive Capital Account balances; and
- C. Last, to all Members in accordance with their pro-rata share of the Membership Units.

**Section 9.5. Allocation of Gain and Loss on Capital Transactions.** A gain or loss recognized by the Company on a Capital Transaction will be allocated among the Members in proportion to the number of Membership Units then outstanding as of the date the Capital Transaction occurred.

**Section 9.6. Allocation of Profits and Losses Other Than Gain and Loss on Capital Transactions.** At the end of each year of the Company, or at the end of such intervening accounting period(s) as the Management Committee shall elect, and after giving effect to the allocation provided by this Agreement with respect to Capital Transaction Proceeds and Special Allocations, respectively, all unallocated items of Company income, gain, loss, expense and credit shall be determined for the accounting period then ending and shall be allocated to a Member based

upon his ownership interest in proportion to the total number of Membership Units outstanding.

**Section 9.7. Allocations among Members.** All allocations and distributions made pursuant to this Agreement to the Members shall be made and distributed pro rata to the holders of Membership Units during the calendar year for which such allocations or distributions are to be made based upon the number of Membership Units held by each Member and the number of days during the fiscal period that such Membership Units have been held by such Member for federal income tax purposes.

**Section 9.8. Determination of Net Income and Net Losses.** Except for various adjustments required under Code Section 704(b) and the Treasury Regulations promulgated thereunder, the net income and net losses of the Company shall be determined on a federal income tax basis. The determination by the Company's accountant(s) as to the amount of such net income and net losses shall be binding upon all of the Members.

**Section 9.9. Special Allocations.** Anything elsewhere contained in this Article IX to the contrary notwithstanding:

A. “*Company Minimum Gain*” within the meaning of Treas. Reg. §1.704-2(b)(2) means an amount of gain that would be realized by the Company on the Disposition of Company Property subject to nonrecourse indebtedness, equal to the amount by which such nonrecourse indebtedness exceeds the adjusted tax basis (or book value, if the Property has been properly entered on the books of the Company at a value different from its then adjusted tax basis) of the Property. If for any Company fiscal year, there is a net decrease in Company Minimum Gain, each Member shall be allocated items of Company income and gain in accordance with Treas. Reg. §1.704-2(f)(1)(A); and “*Minimum Gain Chargeback*” means for such year (and, if necessary, for subsequent years) an amount equal to such Member's share of such net decrease of Company Minimum Gain. For this purpose, the order and rules set forth in Treas. Reg. §1.704-2(j)(2) shall be followed in the case of Minimum Gain Chargeback and a Member's share of the net decrease and Company Minimum Gain shall be determined under Treas. Reg. §1.704-2(g)(2). This paragraph 9.9 is intended to comply with Treas. Reg. §1.704-2(f)(1) and shall be interpreted consistently therewith.

B. Losses shall not be allocated to a Member if the allocation would cause such Member to have a negative balance in his Capital Account in excess of the sum of (i) the amount such Member is obligated to restore to the Company under this Agreement, and (ii) the amount such Member is deemed to be allocated to be restored to the Company pursuant to the penultimate sentences of the Treas. Reg. §§1.704-2(g)(1)(ii) and 1.704-2(i)(5). Losses which cannot be allocated to a Member shall be allocated to the remaining Members.

C. If any Member at any time unexpectedly receives any adjustment, allocation or distribution described in Treas. Reg. §§1.704-1(b)(2)(ii)(d)(4), 1.704-1(b)(2)(ii)(d)(5) or 1.704-1(b)(2)(ii)(d)(6), and if such adjustment, allocation or distribution results in a deficient balance in such Member's Capital Account in excess of the sum of (1) the amount such Member is obligated to restore to the Company under this Agreement, and (2) the amount such Member is deemed to be obligated to restore to the Company pursuant to the second to the last sentences of Treas. Reg.

§1.704-2(g)(1)(ii) and 1.704-2(i)(5), then items of Company income and gain shall be specially allocated to such Member so as to eliminate, to the extent required by Treas. Reg. §1.704-1(b)(2)(ii)(D), such deficient balance in its Capital Account as quickly as possible.

D. Any allocation to a Member under subparagraph (A) or (C) of this Section 9.9. (“**Regulatory Allocation**”) shall be taken into account in determining subsequent allocations, so that the net amount of Regulatory Allocations and all other items allocated under the provisions of this Article IX shall, to the extent possible, be equal to the net amount that would have been allocated to such Member under the provisions of this Article IX if no Regulatory Allocation had been made.

**Section 9.10 Tax Elections.** Each party to this Agreement agrees that the Management Committee may cause the Company to timely file an election under Section 754 of the Code for the first taxable year of the Company or for any subsequent taxable years.

## **ARTICLE X: MANAGEMENT, CONFLICT OF INTEREST, AND MEMBER/MANAGER FIDUCIARY DUTIES**

**Section 10.1. Management Committee.** The Management Committee shall have exclusive authority to manage the operations and affairs of the Company and to make all decisions regarding the business of the Company, subject only to those matters which are reserved for the vote or approval of the Members by the terms of this agreement (by the vote herein specified) or by the terms of the Act. Subject to the foregoing, it is understood and agreed that the Management Committee shall have all of the rights and powers of Managers as provided in the Act and as otherwise provided by law, and any action taken by the Management Committee in accordance with this Article X shall constitute the act of, and serve to bind the Company and its Members. In addition, the Management Committee shall control the day-to-day business and affairs of the Company. The Management Committee shall retain and delegate such decision-making authority as the Management Committee may so authorize.

A. The Management Committee shall be comprised of five (5) Managers.

B. Managers shall be elected at the annual meeting of Members. The CEO of the Company shall send out Notice of Election at least 14 days prior to the Annual Meeting. All nominations of Managers are due to CEO on or before 7 days from Notice of Election. Any nomination received thereafter shall be invalid and not included on the ballot. The Managers shall be listed on one ballot. The Managers shall be elected by a plurality of the votes of the Membership Units present in person or represented by proxy at the meeting and entitled to vote on the election of Managers.

C. Managers shall be elected to serve staggered two year terms. Any Manager whose two year term has expired shall continue to serve in that capacity with all rights and obligations including but not limited to compensation to the extent it is provided until a successor is elected except that such service will lapse if a successor is not chosen within three (3) months of the end of said Manager’s term, and no Physician Manager may serve beyond his or her term unless a

written opinion is obtained from counsel that such service and compensation is permissible under state and federal laws and regulations.

D. A Manager may be expelled for cause from the Management Committee (and the Company pursuant to Article XIII, if it is so decided) upon a vote of the Members holding at least 2/3rds of the outstanding Membership Units at a regular or a special meeting of the Members of the Company. Cause for removal shall mean a breach of the provisions of this agreement by a Manager, a breach of the Manager's fiduciary duties as a Manager to the Members, or a Manager's bankruptcy, incompetency, conviction of a felony or a creditor's levy upon or attachment of a Manager's Membership Units.

E. Vacancies occurring on the Management Committee due to the death, disability, expulsion or resignation of a Manager shall be filled by the Management Committee.

F. Managers may receive compensation for their services if first approved by the Members.

**Section 10.2. Officers.** At the first meeting of the Management Committee following the annual meeting of the Members, the following officers may be elected:

- A. Chairman;
- B. Two Vice-Chairmen;
- C. Treasurer; and
- D. Secretary.

The officers elected shall serve for one-year terms and until their successors are elected. The duties of the officers shall be as follows:

A. Chairman. The Chairman shall preside at all meetings of the Company and of the Management Committee and shall have authority to execute any and all documents on behalf of the Company.

B. Vice-Chairman. There shall be two Vice-Chairmen who shall preside in the absence of the Chairman. The Vice-Chairmen may execute documents for and on behalf of the Company in the absence of the Chairman. The Vice-Chairmen shall be designated as the First Vice Chairman and the Second Vice Chairman, with the First Vice Chairman having priority to act in the absence of the Chairman.

C. Treasurer. The Treasurer shall have oversight over all funds and securities of the Company and oversight over all deposits in the name of the Company in such banks, trust companies or other depositories as shall be selected by the Company, and in general perform all of the duties incidental to the office of Treasurer and such other duties as from time to time assigned to him or her by the Management Committee.

D. **Secretary.** The Secretary or his or her designate shall record the minutes and the actions taken by the Management Committee and of the Company.

The Management Committee may appoint such further officers of the Company as it deems necessary, and each such officer so appointed shall similarly serve a one (1) year term.

**Section 10.3. Authority of Management Committee.**

A. **Authority.** No person or entity dealing with the Company shall be required to inquire as to the authority of the Management Committee to take any action or to make any decision on behalf of the Company. Only the Management Committee and agents of the Company authorized by the Management Committee shall have the authority to bind the Company. No Member who is not a Manager or is otherwise authorized as an agent of the Company shall take any action to bind the Company, and each unauthorized Member shall indemnify the Company for any costs or damages incurred by the Company as a result of any unauthorized action of such Member.

B. **Committees.** The Management Committee may appoint such standing committees or ad hoc committees as the Management Committee deems necessary to assist in the management of the business of the Company.

**Section 10.4. Specific Authority of the Management Committee.** Except to the extent such authority is limited by Section 5.11, the Management Committee shall have all the right, power and authority necessary, appropriate, desirable or incidental to carry out the conduct of the Company's business, including, but not limited to, the right, power and authority:

A. to incur and pay all costs, expenses and expenditures, including payments and reimbursements to Affiliates of the Members in accordance with this Agreement, incurred in good faith in the course of the conduct of the Company's business;

B. to finance the operation of the Company's business by causing it to borrow funds upon such terms and conditions as the Management Committee deems proper and to take any and all actions and to execute, acknowledge and deliver all documents in connection therewith; *provided, however,* that the Management Committee shall have no right or power to create or impose personal liability on any Member for any of the Company's obligations without the express written consent of such Member;

C. to employ and dismiss from employment any and all employees, agents, independent contractors, consultants, appraisers, attorneys and accountants, and to pay such fees, expenses, salaries, wages or other compensation to such person, as the Management Committee determines to be reasonable;

D. to acquire, purchase or contract to purchase, or sell or contract to sell, or to lease or hire any property, real or personal, and to pay the purchase price or make the capital contribution required therefore, for any purposes connected with the Company's business except

that the Management Committee may not purchase or contract to purchase any property, real or personal, or enter or incur any liability in excess of Five Hundred Thousand Dollars (\$500,000) per transaction, except the Management Committee shall have the authority without approval from the Members to purchase Membership Units under Articles XI and XII herein and finance the redemption of Membership Units.

E. to sell, in the ordinary course of business, the Company's property, any other assets of the Company, or any interest therein, at any time upon such terms as the Management Committee determines to be in the best interest of the Company;

F. to pay, extend, renew, modify, submit to arbitration, prosecute, defend or compromise, upon such terms as the Management Committee deems proper and upon any evidence as they may deem sufficient, any obligation, suit, liability, cause of action or claim, either in favor of or against the Company;

G. to pay or cause to be paid any and all taxes, charges or assessments that may be levied, assessed or imposed on any of the Property or assets of the Company;

H. to invest funds which, in the judgment of the Management Committee, are not immediately required for the conduct of the Company's business, in such investments as may be selected by the Management Committee;

I. to take such other actions as may be necessary to effectuate any authority conferred upon the Management Committee under the terms of this Agreement, including, without limitation, admitting additional Members and redeeming Membership Units; and

J. to execute, acknowledge, and deliver any and all instruments to effectuate any and all of the foregoing.

**Section 10.5. Limitations on Authority with respect to the Surgical Hospital.** The Company's approval, as well as the approval of MF USA, is required before certain actions may be taken. Except as provided herein below, the Management Committee shall be authorized to vote the Partnership Units held by the Company in the Surgical Hospital, without the consent of the Members. However, the Management Committee shall not vote the Partnership Units in the Surgical Hospital, without the affirmative vote of the Members holding 2/3rds of the outstanding Membership Units at a duly convened meeting, with respect to any of the following actions:

A. Amendments to the governing documents of the Surgical Hospital, other than amendments of a clerical or inconsequential nature and which do not adversely affect the interests of the Members in such Entity in any material respect;

B. Sales or other dispositions of any Partnership Units in the Surgical Hospital, other than the Exchangeable Interests;

C. A merger, consolidation, combination or other material transaction of that nature by the Surgical Hospital;

D. A direct or indirect sale of all or substantially all of the assets of the Surgical Hospital;

E. Adoption by the Surgical Hospital of any plan or proposal for the liquidating, dissolving, reorganizing or recapitalizing or commencing any action seeking relief under any laws relating to bankruptcy, insolvency, conservatorship or relief of debtors;

F. Consummation by Surgical Hospital of an acquisition or acquisitions costing, or entering into material contracts (other than payor contractors and contracts relating to capital expenditures within an approved budget of the Surgical Hospital) in excess of \$500,000;

G. Entry into lines of business other than those currently carried on by the Surgical Hospital;

H. Changes to the fiscal year of the Surgical Hospital or material changes to accounting policies or procedures of the Surgical Hospital unless required under the applicable generally accepted accounting principles;

I. Taking, or permitting, any action by the Surgical Hospital which would prevent the business from continuing on an ongoing basis;

J. Effecting a substantive change to the distribution policy of the Surgical Hospital;

K. Issuing, redeeming, purchasing, transferring or agreeing to the transfer of any Partnership Units of the Surgical Hospital, other than the exercises of Exchangeable Interests;

L. Entering into transactions outside of the ordinary course of business of the Surgical Hospital; Approving a long-term compensation plan (herein "LTCP") for non-Physician Surgical Hospital senior management, the maximum amount of awards under such Plans being as follows (for purposes of this subsection, Threshold Amount means 2003 EBITDA (\$18,975,000 with 5% annual growth compounding); if the surplus over the Threshold Amount is 5%, then 0% of the surplus is available for LTCP; if the surplus over the Threshold Amount is 5% or more but less than 10%, then 10% of the surplus over the Threshold Amount is available for LTCP; if the surplus over the Threshold Amount is 10% or more but less than 15%, then 15% of the surplus is available for LTCP; and if the surplus over the Threshold Amount is 15% or more, then 20% of the surplus is available for LTCP;

M. Agreeing to take any of the actions contemplated by subsections (C) through (M) above;

N. Nominating and electing members to the governing body of the Surgical Hospital, provided that the Management Committee may vote the Partnership Units held by the Company and the Surgical Hospital, without the consent of the Members, to cause those Persons serving as Managers of the Company to be elected or appointed to serve in a similar capacity on the Surgical Hospital's management committee;

O. Nominating or appointing the representative(s) of the Company on the Board of Managers for MF USA, or removing or causing the replacement of nominees or appointees previously approved in accordance with this Agreement (the “**MF USA Representatives**”);

P. Approving of the MF USA Representatives taking any action with respect to special approval rights, if any, of the MF USA Representatives under the governing documents of MF USA; or

Q. Exercising any tag along right with respect to a change of control of MF USA or Medical Facilities Corporation, a Canadian corporation.

**Section 10.6. Prohibited Transactions.** The Management Committee shall not have the authority to:

A. Take any action in contravention of this Agreement or any other agreement to which the Company is bound; or

B. Perform any act which makes it impossible to carry on the ordinary business of the Company or the Surgical Hospital.

**Section 10.7. Fiduciary Duties.** Members and Managers of the Company owe a duty of loyalty and a duty of care to the Company and other Members of the Company as follows:

A. A Member’s duty of loyalty to the Company and its other Members is limited to the following:

1. To account to the Company and to hold as trustee for it any property, profit, or benefit derived by the Member in the conduct or winding up of the Company’s business or derived from a use by the Member of the Company’s property, including the appropriation of a Company’s opportunity;

2. To refrain from conduct individually or on behalf of a third party which is adverse to the Company or Surgical Hospital; and

3. To refrain from competing with the Company in the conduct of the Company’s or Surgical Hospital’s business before the dissolution of the Company or Surgical Hospital in the Service Area, except for ownership and investment interests disclosed on Exhibit A attached to the Non-Compete Agreement.

4. To refrain from being employed by a specialty hospital, general hospital, ambulatory surgery, or entity providing cardiac catheterization or employed by a Person or other business association which is or becomes owned, in whole or in part, by a specialty hospital, general hospital, ambulatory surgery, or entity providing cardiac catheterization, including a subsidiary, division, joint venture, or other business entity of any of the above, in the Service Area.

5. To refrain from serving or agreeing to serve as Chief of the Medical Staff or Chief of Surgery of a specialty hospital, general hospital, ambulatory surgery, or entity providing cardiac catheterization, or other business association which is or becomes owned, in whole or in part, by a specialty hospital, general hospital, ambulatory surgery, or entity providing cardiac catheterization, including a subsidiary, division, joint venture, or other business entity of the above, in the Service Area.

6. To refrain from serving or agreeing to serve on the Board of Directors, Board of Trustees, Management Committee, or any other similar governing board or entity of a specialty hospital, general hospital, ambulatory surgery, or entity providing cardiac catheterization, or other business association which is or becomes owned, in whole or in part, by a specialty hospital, general hospital, ambulatory surgery center, or entity providing cardiac catheterization, including subsidiary, division, joint venture, or other business entity of the above, in the Service Area.

7. Notwithstanding the provisions of Subparagraphs 1-6 above, a specific act or transaction that would otherwise violate the duty of loyalty set forth therein may be authorized or ratified by the Management Committee in their sole discretion by the affirmative vote of three (3) Members of the Management Committee, provided there is a full disclosure of all material facts by the Member in question and provided the specific act or transaction is not otherwise in violation of the Non-Compete Agreement.

8. Members shall disclose to a member of the Management Committee, in writing, their intention to enter into an agreement or relationship with any entity listed in items 4, 5, or 6 above. Such notice shall be provided at least five (5) days in advance of the date the Member intends to enter into such agreement or relationship.

B. A Member's duty of care to the Company and its other Members in the conduct of and winding up of the Company's business is limited to refraining from engaging in grossly negligent or reckless conduct, intentional misconduct, or a knowing violation of law.

C. A Member shall discharge his or her duties to the Company and its other Members consistent with the obligation of good faith and fair dealing.

D. Unless otherwise prohibited by the terms of this Agreement or federal or state law, a Member may lend money to and transact other business with the Company. As to each loan or transaction, the rights and obligations of the Member are the same as those of a person who is not a Member, subject to other applicable law.

E. A Member shall have a duty to maintain the confidentiality of the Company, the Members and the Surgical Hospital regarding the business and affairs of the Company and the Surgical Hospital.

F. The fiduciary duties set forth in this section applies to all equity owners in an Entity Member and to a person acting as the personal or legal representative of a Member or an

equity owner of an Entity Member and for purposes hereof a Member includes a shareholder, owner, or member of any entity which is a member of the Company.

G. A Manager shall have in addition to the above duties in this Section 10.7, a duty and responsibility as a Manager to carry out the business of the Company in a fiduciary manner.

H. Patient referrals are not mandated by this section or Agreement, nor shall this section or this Agreement be construed in any way as an inducement or payment for the referral of patients, and no patient referrals are required by any Member or equity owner of an Entity Member as a condition or prerequisite to comply with his or her fiduciary duties herein.

**Section 10.8. Conflicts of Interest.** No Manager shall be required to manage the Company as his or her sole and exclusive function, and a Manager may have other business interests and may engage in other activities in addition to those relating to the Company. Unless otherwise prohibited by the terms of this Agreement or federal or state law, the Members and any of their Affiliates may deal with, perform other services for and sell goods or services to the Company or the Surgical Hospital without limitations; provided, however, that any compensation for such services or goods shall be limited to amounts and rates consistent with fair market value and the terms of any agreement or arrangement must be commercially reasonable.

**Section 10.9. Meetings.** Regular or special meetings of the Management Committee shall be held at such time and place as set forth in the notice of the meeting, which notice shall be delivered at least twenty-four (24) hours in advance of the meeting, unless said notice is waived by each Manager. Regular meetings shall be held on a quarterly basis, or a more frequent schedule as the Management Committee agrees. In the absence of the designation of a place, regular or special meetings shall be held at the principal office of the Company. The notice for the special meeting shall include an agenda of items to be discussed. Any meeting may be held by telephone conference or similar communications device, and so long as all Managers participating in such meeting can hear each other, and all such Managers shall be deemed to be present in person at such meeting. The Chairman of a meeting may call the meeting into executive session and exclude all persons from the meeting, other than as determined appropriate by the majority of the Management Committee, for discussion of the following items only:

1. any threatened, pending, or outstanding litigation,
2. the negotiation or settlement discussion of any outstanding or threatened litigation,
3. employment issues,
4. compliance issues,
5. peer review, or
6. Severance Event issues.

**Section 10.10. Voting; Quorum.** Except as otherwise provided in this Agreement, a majority of the authorized number of Managers shall constitute a quorum for the transaction of day to day business, except to adjourn as hereinafter provided. Every act or decision done or made

by a majority of the Managers present at a meeting duly held and for which a quorum is present shall be regarded as the act of the Management Committee. A meeting at which a quorum is initially present may continue to transact business notwithstanding the withdrawal of a Manager, if any action is approved by at least a majority of the required quorum for such meeting.

**Section 10.11. Waiver of Notice.** The transactions of any meeting of the Management Committee, however called and noticed or wherever held, shall be as valid as though conducted at a meeting duly held after regular call and notice if a quorum is present and if, either before or after the meeting, each of the Managers not present signs a written waiver of notice, a consent to holding the meeting or an approval of the minutes thereof. The waiver of notice or consent need not specify the purpose of the meeting. All such waivers, consents, and approvals shall be filed with the Company books and records. Notice of a meeting shall also be deemed given to any Manager who attends the meeting without objecting to the lack of notice.

**Section 10.12. Adjournment.** A majority of the authorized number of Managers present in person or by telephone, whether or not constituting a quorum, may adjourn any meeting to another time and place.

**Section 10.13. Action without Meeting.** Any action required or permitted to be taken by the Managers may be taken without a meeting, if all Managers individually or collectively consent in writing to such action. Such action by written consent shall have the same force and effect as a unanimous vote of the Management Committee. Such written consent or consents shall be filed with the Company books and records.

## **ARTICLE XI: REPURCHASE OF CLASS A MEMBERSHIP UNITS**

### **Section 11.1. Repurchase Notice for Class A Membership Units.**

#### **A. Repurchases.**

1. **Member's Restricted Right to Dispose.** Subject to the limitations set forth in Section 11.2 of this Agreement, each holder of Class A Membership Units shall only have the right to Dispose of the Member's Class A Membership Units to the Company. The Company shall repurchase all or a portion of the Member's Class A Membership Units as applicable. The Member shall exercise this right to Dispose of the Member's Class A Membership Units by sending written notice to the Management Committee no later than 7 days prior to the next Exchange Date. . The notice shall be in the form attached hereto as **Exhibit A** (a "Purchase Notice"). The Purchase Notice shall be a demand to purchase the Class A Membership Units on the next Exchange Date. Any notice not received 7 days prior to the Exchange Date will be treated as a notice for the next succeeding Exchange Date.

2. **Article XII Repurchase.** A Member, whose Membership Units are subject to a repurchase in accordance with Article XII of this Agreement, shall have his, her or its Class A Membership Units purchased either pursuant to this Article XI or pursuant to the provisions in Article XII as the Member shall elect. If no election is made the Management Committee shall make said election and the same shall be binding on the Member.

## **B. Consideration.**

**1. Determination by the Management Committee.** If any Member has submitted or is deemed to have submitted a Repurchase Notice, the Management Committee shall elect, in its sole discretion, at a special meeting, or at its next regularly scheduled meeting following the Repurchase Notice, to repurchase such Class A Membership Units either (i) directly by the Company or (ii) by causing the Company to exchange Exchangeable Units for MFC Common Shares or cash from the sale of such MFC Common Shares for subsequent distribution to such Member. Each Member acknowledges and agrees to be bound by the decision of the Management Committee with respect to the consideration to be paid for the repurchase of the Class A Membership Units.

**2. Provisions regarding repurchases for MFC Common Shares.** Subject to the limitations set forth in Section 11.2 and the disclosure and insider trading policies adopted by the Management Committee, if the Management Committee elects to pay for such repurchase by exercising Exchangeable Interests, it shall promptly exchange a proportionate number of Exchangeable Interests. Upon the Company's receipt of MFC Common Shares, the Company shall transfer such MFC Common Shares less (a) the proportionate costs of sale incurred by the Company for the disposition of the Exchangeable Interests; and (b) as adjusted for currency exchange rate fluctuations between the U.S. and Canadian Dollars; and (c) as adjusted for the effect, if any, on the market price caused by the disposition of Exchangeable Interests on the Toronto Stock Exchange to the Member submitting the Repurchase Notice. For purposes of such exchange, a Member shall receive that number of MFC Common Shares for his, her or its Class A Membership Interests based upon an exchange ratio (the "*Exchange Ratio*") equal to the ratio of (i) aggregate distributions by the Surgical Hospital during the preceding twelve month period divided by the weighted average number of Membership Units in the Company during the period, to (ii) distributions by the Surgical Hospital, together with distributions by all other applicable subsidiaries of MF USA during the preceding twelve month period divided by the weighted average number of MFC Common Shares during the period, provided that if fewer than twelve months have elapsed from the Effective Date, such lesser number of months shall be substituted for the twelve month period in the preceding sentence all as defined and identified in the Exchange Agreement. For purposes of the Exchange Ratio, the number of MFC Common Shares outstanding shall be determined as if no MFC Common Share issued for cash was outstanding until the cash proceeds of its issuance were expended by MFC or its subsidiaries.

### **3. Valuation of Repurchased Class A Membership Units for Cash.**

**(a) Repurchase by the Company.** In the event that the Management Committee elects to have the Company repurchase a Member's Class A Membership Units directly, the repurchase price shall be determined by multiplying (i) that number of MFC Common Shares that the Class A Membership Units could be exchanged for based upon the Exchange Ratio, by (ii) the lesser of the ten (10) day average closing price for such MFC Common Shares on the Toronto Stock Exchange immediately prior to the most recent Exchange Date after the taking into account the appropriate date based on the election made pursuant to Article XII or the actual closing price on the Exchange Date on the Toronto Stock Exchange,

unless otherwise mutually agreed to by the Management Committee and the Member exercising the exchange rights, provided that such repurchase price shall be adjusted by the Management Committee, acting in good faith, for

(AA) any fluctuations in the currency exchange between Canadian Dollars and U.S. Dollars; and for

(BB) all costs associated with, and incurred by the Company for the repurchase by the Company and all costs which would have been otherwise incurred had the Class A Membership Units been exchanged on the Toronto Stock Exchange; and for

(CC) any adverse effect on the market which would have been caused had the Company exchanged such Exchangeable Interests for cash.

If MFC Common Shares are not traded on the Toronto Stock Exchange, the fair market value shall be as determined in good faith by the Management Committee; which determination shall include, but not necessarily be limited to, the considerations stated above in subsections (AA) through (CC).

**(b) Repurchase by exchanging Exchangeable Interests For Cash.**

In the event that the Management Committee elects to exchange Exchangeable Interests for cash the purchase price shall be the amount of cash realized by the Company pursuant to the terms of the Exchange Agreement as adjusted for but not limited to the following:

(AA) any fluctuations in the currency exchange between Canadian Dollars and U.S. Dollars; and

(BB) all costs associated with, and incurred by the Company for the repurchase by the Company and all costs which would have been incurred had the Class A Membership Units been exchanged on the Toronto Stock Exchange; and for

(CC) Changes in the market price between the Exchange Date and the date of closing for such IPD Units on the Toronto Stock Exchange. In no event shall the repurchase price be more than the proportionate share of cash in U.S. Dollars as is actually received by the Company for such Exchangeable Interests.

**Section 11.2. Limitations upon Repurchase of Class A Membership Units.** If the Management Committee elects to repurchase any Class A Membership Units by exercising Exchangeable Interests, the obligation of the Company to repurchase such Class A Membership Units shall be subject to and conditioned upon (i) the right to exchange Exchangeable Interests, including limitations imposed upon the Company under that certain Exchange Agreement, dated March 29, 2004 (the “*Exchange Agreement*”), by and among the Company, MFC, Sioux Falls Surgical Physicians, a South Dakota limited liability company, and (ii) the restrictions set forth in this Section 11.2.

A. **Volume Restrictions.** As set forth in the Exchange Agreement, the Company may be required to exchange a minimum number of Exchangeable Interests (the “*Exchange Floor*”) or may be limited as to the maximum number of Exchangeable Interests that may be exchanged at any given time (the “*Exchange Ceiling*”). Therefore, each Member agrees to the following volume limitations:

1. **Exchange Ceiling.** If the Company is unable to exercise that number of Exchangeable Interests necessary to satisfy the repurchase obligations of the Company on any given Exchange Date, then the number of Class A Membership Units that the Company is obligated to repurchase shall be ratably decreased in proportion to the Class A Membership Units tendered for repurchase in such Repurchase Period or carried over for repurchase from prior Exchange Dates. The Company shall notify each Member who gave a Repurchase Notice (or whose Class A Membership Units are carried over from a prior Exchange Date) of such proportionate decrease in the number of Class A Membership Units to be repurchased by the Company. The balance of the Class A Membership Units that were not repurchased shall be carried forward to the next succeeding Exchange Date and the previous Repurchase Notice will continue to be effective with respect to such Class A Membership Units, unless a Member notifies the Company in writing that such Member is withdrawing his, her or its Repurchase Notice. Any such Class A Membership Units that are carried forward shall not have any priority with respect to the repurchase thereof under Article XI, including this Section 11.2A.1, and such Class A Membership Units shall be repurchased on parity with any additional Class A Membership Units for which a Repurchase Notice is given on subsequent Exchange Date(s).

2. **Exchange Floor.** If the Company, due to the Exchange Floor, will not be able to exchange Exchangeable Interests unless the Company pays the costs associated therewith, the Company shall not be obligated to repurchase such Class A Membership Units, and the Class A Membership Units shall be carried forward to the next succeeding Exchange Date and the previous Repurchase Notice will continue to be effective with respect to such Class A Membership Units. Such Class A Membership Units that are carried forward shall not have any priority with respect to the repurchase thereof under Article XI, including Sections 11.2A.1 and 2, and such Class A Membership Units shall be repurchased on parity with any additional Class A Membership Units for which a Repurchase Notice is given on subsequent Exchange Date(s).

Notwithstanding the foregoing, if a Member agrees in writing to pay the costs for exercising Exchangeable Interests below the Exchange Floor, the Company shall notify all other Members who have given a Repurchase Notice on such Exchange Date of such Member's agreement, and such other Members may elect to join in such exchange by giving written notice thereof to the Company, and the costs associated therewith shall be allocated among all such Members on a ratable basis in proportion to (i) the number of Class A Membership Units to be repurchased from each such Member to (ii) the total number of Class A Membership Units to be repurchased notwithstanding the Exchange Floor. The Company, upon such receipt of an agreement from a Member to pay such costs, shall be obligated to repurchase such Member's Class A Membership Units, as well as the Class A Membership Units of any other Members joining in such cost sharing agreement, by causing the Company to exercise the exchange of the Exchangeable Interests. The Company shall be entitled to offset from the proceeds from such exchanges below the Exchange Floor any costs of the Company associated therewith that are not paid by such Members notwithstanding their agreement to do so.

B. **Regulatory Restrictions.** Notwithstanding anything to the contrary contained in this Agreement, the Company shall not be obligated to repurchase Class A Membership Units by exercising Exchangeable Interests if such repurchase would adversely affect any of the Surgical Hospital's exemptions under the Stark Act or the exemption of the other subsidiaries of MF USA

under the Stark Act, or would otherwise violate any federal or state laws applicable to the Company or the Surgical Hospital. If the Management Committee determines that a repurchase of Class A Membership Units could reasonably be expected to have an adverse impact on the Surgical Hospital's exemption under the Stark Act, or the exemption of any other subsidiary of MF USA, or would violate federal or state law applicable to the Company or the Surgical Hospital, then the Management Committee shall notify such Member of its determination and the repurchase of such Member's Class A Membership Units for MFC Common Shares shall be postponed until such time as the repurchase would be permitted under the Stark Act or any other applicable federal or state law.

Notwithstanding the foregoing and subject to the limitations set forth in the other provisions of this Section 11.2, the Management Committee may, if commercially and legally feasible, assign the Company's right to that number of Exchangeable Interests necessary to satisfy the repurchase obligations of the Company and to distribute to the Company the cash received therefrom. The Company shall then distribute such cash to the Members to satisfy the Company's repurchase obligations with respect to their Class A Membership Units.

**Section 11.3. Closing.** The Closing on repurchases of Class A Membership Units shall occur at the principal offices of the Company at such time and date as determined by the Management Committee, provided that such date shall be no later than: (i) if the purchase is to be made by the Company directly thirty (30) Business Days from the date of the meeting of the Management Committee electing to repurchase such Class A Membership Units by the Company, or (ii) if the repurchase is to be paid by MFC Common Shares (or cash from the exchange of Exchangeable Interests), no later than five (5) Business Days from the date the Company receives the distribution of MFC Common Shares or cash, as the case may be.. The Company will provide the selling Member after the close of the Company's taxable year a Form K-1 which will provide the selling Member with the required information to file his, her or its tax return for the year in which the Class A Membership Unit(s) were repurchased.

**Section 11.4. Cancellation.** Any Class A Membership Units that are repurchased in exchange for issuance of MFC Common Shares shall be cancelled by the Company and shall not be available for reissuance. However, if the Company elects to repurchase any Class A Membership Units, upon payment of the purchase price, and transfer of the Class A Membership Units to the Company, such Class A Membership Units may be held by the Company and reserved for future issuance as provided in Article III. If a Member elected to have only a portion of his, her or its Class A Membership Units repurchased, the Company shall, upon the request of a Member, cancel the previous Membership Certificate issued to such Member and issue a new Membership Certificate to such Member evidencing such Member's Class A Membership Units that were not repurchased by the Company.

**Section 11.5. No Liability.** Neither the Management Committee nor the Company shall be liable to any Member seeking to have the Company repurchase his, her or its Class A Membership Units for (i) any decrease in the value of the Class A Membership Units or MFC Common Shares or (ii) changes in the trading price of the MFC Common Shares, or the common shares which comprises a portion thereof, on the Toronto Exchange during the time period from

when he, she or it gives, or is deemed to have given, a Repurchase Notice and the date on which the closing of such purchase occurs.

## **ARTICLE XII: MANDATORY AND OPTIONAL DISPOSITION OF UNITS, TRANSFER RESTRICTIONS, AND PURCHASE LIMITATIONS**

**SECTION 12.1. Restrictions on the Disposition of Membership Units.** Subject to repurchase limitations in Section 12.5, each Member and holder shall only have the right to Dispose of the Membership Units to the Company. Any Disposition or attempted Disposition by a Member or holder of Membership Units to any third party other than through the Company shall be null and void in all respects and shall confer no title or rights on the purported transferee of the Membership Units or any obligation on behalf of the Company.

### **SECTION 12.2. Purchase Events.**

A. **Company's Obligation to Purchase on Occurrence of Mandatory Sales Event.** Subject to the repurchase limitations set forth in Section 12.5, the Company shall have the mandatory obligation to purchase Membership Units of a Member, and the Member shall have the mandatory obligation to sell all owned Membership Units, on the occurrence of a Mandatory Sales Event. The following are Mandatory Sales Event for purposes of this Agreement:

1. Death of a Member;
2. A Member's Permanent Disability as defined in this Agreement;
3. A Member's voluntary withdrawal from the Company as set forth in Section 12.2(B);
4. A Member attaining the age of sixty-eight (68), except this does not apply to any Member who is sixty-eight (68) years old or older at the time of enactment of this amendment.
5. The Physician Member:
  - a. loses or no longer has privileges at the Surgical Hospital for any reason;
  - b. has a revocation of his or her privileges at the Surgical Hospital; or
  - c. has a suspension of his or her privileges at the Surgical Hospital for six (6) months or longer (other than a summary or precautionary suspension under applicable Staff Bylaws)
  - d. loses or has a restriction, revocation, or suspension (other than a summary suspension pending investigation) of a relevant state or federal license to engage in the practice of medicine, dentistry or podiatry, or to dispense controlled substances.
6. The Non-Physician Member is no longer a Senior Employee or a member of the Management Committee of the Company, the Surgical Hospital, or Black Hills Surgical, LLC; or
7. The Member is excluded from Medicare or Medicaid programs or is determined by final adjudication, consent, or plea to have engaged in Medicare, Medicaid, or health insurance fraud and/or abuse.

8. The Member relocates the Member's Primary Residence outside the Service Area. For the purposes of this Section, the Member shall have relocated the Member's Primary Residence Outside the Service Area if the Member is not physically inhabiting his or her primary residence in the Service Area for the majority of a consecutive six (6) month period, except if during the said time a Member's absence is the result of a Sabbatical or participation in an accredited fellowship or other educational program. The burden of proof to demonstrate that a Member has inhabited a primary residence in the Service Area as required by this Section is on the Member. This Section does not apply to any Member who does not have a primary residence in the Service Area as of the date of this amendment, July 14, 2014, but who does have active staff membership at the Surgical Hospital.
9. The Member is convicted of a felony. (If convicted of a felony, the Management Committee in its sole discretion may elect to expel the Physician Member from the Company under Section 13, rather than exercise its right to purchase under this Section.

The Member shall provide written notice to the Company of the occurrence of any of the events described in 2 through 9 above, within forty-eight (48) hours of the occurrence of said events. The Management Committee, in its sole discretion based on extenuating circumstances, has the authority to waive the forty-eight (48) hour notice requirement provision.

**B. A Member's Right to Voluntarily Withdraw from the Company.** Subject to the repurchase limitations set forth in Section 12.5 and any holding period required by applicable security law or regulation, a Member shall have a right to voluntarily withdraw from the Company and the Company shall purchase the Member's Membership Units. To voluntarily withdraw from the Company the Member shall submit a fully completed *Withdrawal Notice* in the form attached to this Agreement as **Exhibit B**. On the *Withdrawal Notice* the withdrawing Member shall elect to have his Class A Units purchased under Article XI or the Article XII.

**C. Determination of Mandatory Sales Event or Other Repurchase Event.** The Management Committee shall have the authority to determine if a Mandatory Sales Event under Section 12.2(B) or another redemptive or repurchase event under this Article 12 has in fact occurred and the date of the occurrence of said event. If the involved Member disagrees with the Management Committee's determination, then said Member shall provide the Company written notice of the Member's disagreement within ten (10) days of the date of the Management Committee's determination. The Member shall specify in writing, the specific grounds for the Member's disagreement. The Management Committee shall promptly upon receipt of said notice hire outside legal counsel (counsel not currently representing either Company or Surgical Hospital) to review and determine whether the Management Committee's determination of a Mandatory Sales Event and date thereof was accurate, or inaccurate, considering all relevant facts and circumstances. The outside counsel's written opinion shall be determinative on whether a Mandatory Sales Event under the Agreement has occurred and the date of said occurrence. This determination shall be binding on the Company and the Member involved in the determination. The Member involved and the Company shall cooperate fully with outside legal counsel and provide outside legal counsel with all information requested that outside legal

counsel in its sole discretion determines is reasonably necessary for a full and complete opinion. Outside legal counsel in reaching its determination shall be allowed to interview the Member under oath and the Management Committee Members in connection with its determination, and do all things reasonably necessary in Counsel's sole discretion for a full and complete determination if a Mandatory Sale Event has in fact occurred.

D. **Member's Right to Offer Class B Units to Company for Purchase.** In addition to the other rights and obligations contained herein, a Member may offer a portion, but not all, of the Member's Class B Membership Units to the Company for purchase. The Member shall make the offer by sending written notice to the Company, the *Offer Notice*. The Offer Notice shall be in the form attached hereto as **Exhibit C**. The Offer Notice shall specify the number of Class B Membership Units offered to the Company. The offer is irrevocable and open for acceptance by the Company for thirty (30) days from the date on the Offer Notice. The Management Committee in its sole discretion shall determine whether to exercise the Company's option. If the Management Committee elects to purchase the Class B Units offered for purchase, then the Management Committee shall notify the offering Member in writing of its acceptance of the offer. The purchase price shall be Membership Unit Value pursuant to Section 7.1. The closing on the purchase shall be held and conducted as provided in Section 12.4. **Closing on Purchased Units.**

E. **Notice Requirements.** If a Member is subject to a Mandatory Sales Event as set forth in Section 12.2(B), the Management Committee shall notify the Member of the occurrence of said event, by a *Severance Notice* in the form attached hereto as **Exhibit D**. Within ten (10) days of the date of said notice from the Company, the Member shall make a written election for the purchase of any Class A Membership Units held by the Member specifying whether the Member's Class A Units should be purchased under either Article XI or Article XII of this Agreement. If the Member does not make the election within the ten (10) timeframe, then the Management Committee shall have the authority, in its sole discretion, to make the election for the Member that the Class A Units be purchased under either Article XI or Article XII. The election so made by the Management Committee shall be binding on the Member.

F. **Company's Other Rights to Purchase.** The following are in addition to the Company's right to purchase in the event of a Mandatory Sales Event: (1) Company redemptions of Membership Units arising from default on repayment of a pledge as provided in Section 12.7; (2) Company redemptions of Membership Units arising from violation of the Non-Compete Agreement as provided in Section 12.6; (3) Company redemptions of Membership Units for a Regulatory Redemption in Section 12.8; (4) failure of a Member to make a required capital contribution as provided in Section 12.10; (5) failure of a Member to sign a personal guaranty as provided in Section 12.9; (6) a Member's Bankruptcy as provided in Section 12.11 and (7) expulsion of a Member as provided in Section 13 herein.

**Section 12.3. Determination of Purchase Price and Payment Terms.** The following purchase terms shall be applicable to all purchases under this Article, except as otherwise specifically noted.

**A. Membership Unit Price.** The Membership Unit Price for Class B Units purchased by Company, and for Class A Membership Units purchased under this Article XII, shall be determined in accordance with Section 7.1 of this Agreement and as maybe otherwise specifically reduced or otherwise adjusted in a specific Section.

**B. Payment Terms.** Subject to the repurchase limitations in Section 12.5, the Management Committee in its sole discretion has the option to pay for Membership Units being purchased under this Article in either cash or on an installment basis. If the Management Committee elects to pay for such Membership Units on an installment basis, the Company:

- a. May pay the purchase price over a period of years by the use of one or more installment purchase agreements;
- b. Shall not enter into an installment purchase agreement which, when taken into consideration with all other purchases or Deferred Repurchases by the Company, results in a total purchase of Class B Membership Units or Class A Membership Units that exceeds the four (4%) limitation on purchases of Class B Membership Units in Section 12.5, unless otherwise agreed to by the Management Committee. For purposes of determining the four percent (4%) limitation on purchases by the Company, prior year installment purchase agreements shall not be considered;
- c. Each installment purchase agreement shall be for an initial term of five years, unless otherwise agreed to by the Management Committee, and shall be payable in equal principal installments, together with interest thereon at the lowest applicable federal interest rate;
- d. Shall make the initial payment at the closing of each installment purchase agreement; and shall pay each subsequent payment under the installment purchase agreement to the selling Member on each subsequent annual anniversary date of the promissory note; and
- e. Shall re-value the Class B Membership Units subject to a second, or subsequent, installment purchase agreement with a Member, and all of such second or subsequent installment purchase agreements shall be subject to all conditions of Section 12.5 and of this Section the same as if such second or subsequent installment purchase agreement was an initial installment purchase agreement with the Member.

The Company shall have the right to prepay the entire purchase price, or any portion thereof, in full at any time without penalty.

**Section 12.4. Closing on Purchased Units.** The closing on the sale and purchase of Membership Units under this Section, except as otherwise specifically noted shall occur within sixty (60) days of the date of the Withdrawal Notice, Offer Notice or Severance Notice or sixty (60) days from the determination of outside counsel, if applicable. In all other cases the closing will occur within sixty (60) days of the event, occurrence, or the decision or determination of the

Management Committee which gave rise to the Company's decision or right to purchase unless otherwise provided in this Agreement. A Member at closing is obligated to execute any and all documents necessary to complete a full and final sale of the Member's Membership Units. The Management Committee in its sole discretion may close any purchase or sale under this Section sooner than the 60 days. The provisions of Section 12.3 shall be available at the option of the Management Committee, except for purchases under 12.2(E).

**Section 12.5. Limitations on Purchase, Deferred Purchases, and Priority.** The following terms shall be applicable to all purchases under this Article, except as otherwise specifically noted.

A. **Maximum Repurchase Obligation.** In any calendar year, the Company shall only be required to purchase four percent (4%) of the outstanding and issued Class B Membership Units as of December 31 of the calendar year prior to the Mandatory Sales Event or other event giving rise to the Company's right to purchase, **Maximum Repurchase Obligations.** As to Class A Membership Units purchased pursuant to Article XI, the terms of Article XI shall determine maximum and minimum repurchase requirements.

B. **Deferred Repurchase for Purposes of This Agreement.** If the Company for any calendar year has reached the Maximum Repurchase Obligation of four percent (4%) of outstanding Units as set forth above, then it is not obligated to purchase any further Class B Units and may defer those Purchases to subsequent years. "A **Deferred Repurchase**" is the delayed purchase of Membership Units after the Maximum Repurchase Obligation is reached in any year. The Deferred Repurchase shall be carried forward to be repurchased in the subsequent years and all subsequent year repurchase shall also be subject at all times to the Maximum Repurchase Obligation. Deferred Repurchases shall occur upon the following terms:

1. the Membership Units shall be purchased on or before January 30 of the next year following the year in which the Maximum Repurchase limitation has been reached.
2. the purchase price shall be at the Membership Unit Price in effect at the time of the consummation of such Deferred Repurchase, (as valued pursuant to Section 7.1.)
3. neither the Company nor the Management Committee shall have any liability whatsoever for any decrease or increase in the purchase price resulting from such Deferred Repurchase.
4. Any repurchases in subsequent years shall likewise be subject to the Maximum Repurchase Obligation.

C. **Priority for Purchase.**

1. **Yearly Priority.** The priority for the purchase of Membership Units pursuant to this Article XII shall be as follows:

- i. 1<sup>st</sup> priority shall be pro rata to any Membership Units subject to the Deferred Repurchase from the prior year;
- ii. Priority thereafter shall be first in time which shall be determined by the date on the Mandatory Sale or Trigger Event Form, the date of the Management Committees acceptance of an offer notice, or the date of notice of Other Redemptive Event form, until such time as the Maximum Repurchase Obligation is reached.

D. The Management Committee shall have the discretion to repurchase Membership Units in excess of the Maximum Repurchase Obligation, provided that under no circumstances will the Company's repurchases adversely affect either the Surgical Hospital's "whole hospital" exemption under the Stark Act, the exemption under the Stark Act of the other subsidiaries of MF USA, or any other regulation or law based on opinion of counsel.

E. To the extent that all of a Member's Membership Units are not repurchased by the Company due to the Maximum Repurchase Obligation limitation, the Member shall assume the status of an assignee only as to the Membership Units not purchased by the Company and will have the right only to the economic interests, i.e., distribution rights, and will have no other rights as to such Membership Units subject to Deferred Repurchase, including no right to participate in management or to vote such Deferred Repurchase Membership Units.

**Section 12.6. Violation of Non-Compete Agreement.** Without limiting any other remedies set forth in the Non-Compete Agreement, each Member acknowledges and agrees that if such Member should breach or violate any of the terms or provisions of the covenants and agreements contained in Section 2 of the Non-Compete Agreement, such Member shall, as partial payment to the Surgical Hospital for the irreparable loss, damage, and injury suffered by the Surgical Hospital the Company, and MF USA as a consequence of such breach or violation, owe to the Company a sum of money equal to the value of such Member's Membership Units in the Company and any undistributed distributions from the Company, and each member hereby grants an irrevocable power of attorney to each Chairperson and Vice-Chairperson of the Company's Management Committee, or other designee of the Company, to effectuate the transfer of such Member's Membership Units in the Company in the event of such breach or violation by such Member. The Member agrees the power of attorney can immediately transfer the Membership Units to the Company upon breach or violation of the Non-Compete. Member agrees that it would be difficult to determine the actual damages incurred by the Company for Member's breach and that the amount of liquidated damages is reasonable and relates to the anticipated harm the Company would suffer. This clause is not a penalty. It is expressly understood and agreed by and between the parties hereto that the foregoing rights of the Company shall not be a limitation upon, but shall be in addition to any other remedies provided by the laws of the State of South Dakota including but not limited to the right to sue for actual damages if determinable and in excess of the liquidated damages. The Company shall be entitled to its legal fees and costs should they be required to exercise its rights under this Section. The Management Committee in their sole and complete discretion shall have the authority to determine if a violation of the Non-Compete Agreement has occurred. However, should any Member disagree, the Member shall specify in writing, the specific grounds for the Member's

disagreement within 14 business days of receipt of the Management Committee's notice. The Management Committee shall promptly upon receipt of said notice hire outside legal counsel (counsel not currently representing either Company or Surgical Hospital) to review and determine whether the Management Committee's determination of a violation of the Non-Compete Agreement has occurred and date, considering all relevant facts and circumstances. The outside counsel's written opinion shall be determinative on whether a violation of the Non-Compete Agreement has occurred and the date of said occurrence. This determination shall be binding on the Company and the Member involved in the determination. The Member involved and the Company shall cooperate fully with outside legal counsel and provide outside legal counsel with all information requested that outside legal counsel in its sole discretion determines is reasonably necessary for a full and complete opinion. Outside legal counsel in reaching its determination shall be allowed to interview the Member and the Management Committee Members in connection with its determination, and do all things reasonably necessary in Counsel's sole discretion for a full and complete determination if a Mandatory Sale Event has in fact occurred.

**Section 12.7. Default on Repayment of Pledge.** In the event a Member pledges the Member's Membership Units for the purpose of securing financing, and such Member defaults on such Member's repayment or other obligations to the lender to whom such Membership Units are pledged, the Company shall be notified in writing within 10 days by such defaulting Member and such Member's lender of the precise nature of such default. Upon such time as the Company becomes aware of such default, the Company shall have the right, but not the obligation, to cure such default in such manner as the Management Committee shall determine is in the best interests of the Company. By way of example, and not for purposes of limiting the actions of the Management Committee in the event of such default, the Management Committee may redeem all or such lesser portion of such pledged Membership Units from the Lender, or purchase all, or any lesser portion, from the Member and hold the same as Treasury Units to be held, cancelled, re-sold, or otherwise disposed of as the Management Committee shall determine is in the best interests of the Company. The Management Committee shall have 90 days from the date of notice of default on a pledge to determine what if any action it wants to take. Any such Membership Units obtained by the Company as a result of curing a default of a Member shall be treated as a withdrawal by the Member, as to such Membership Units obtained by the Company, however, such Membership Units shall be valued as to such defaulting Member at not more than seventy-five percent (75%) of the Membership Unit Price as determined pursuant to Section 7.1 of this Agreement. Member agrees that the Company shall be entitled to this reduction in purchase price as liquidated damages for violation of the breach of the pledge and the need to purchase or cure on short notice or allow a third party assignee. Member agrees that it would be difficult to determine the actual damages incurred by the Company for Member's breach and that the amount of liquidated damages is reasonable and relates to the anticipated harm the Company would suffer. This clause is not a penalty. The closing on the Purchase shall be held and conducted as provided in Section 12.4. **Closing on Purchased Units** and the purchase price may be paid in accordance with Section 12.3 (B).

**Section 12.8 Regulatory Redemption.** The Company shall have the right but not the obligation to purchase in the case of either of the following circumstances:

A. **Material Change in Law.** In the event that the Company or the Surgical Hospital obtain a written opinion of qualified legal counsel that, due to a material change in the law or official interpretation thereof arising subsequent to the date of this Agreement, any Member's status as a Member creates a substantial risk of violating the Fraud and Abuse Statute or the Stark Act or that would be non-compliant with the exception for hospital ownership set forth in the Stark Act at 42 USC. 1395nn(d)(3), or other similar statute, with respect to the Company or the Surgical Hospital, the Company shall have the right upon a vote of two-thirds [2/3] of the Management Committee, in its sole discretion, to redeem the Membership Units of such Member. The purchase shall occur as soon as reasonably possible after knowledge of the risk and vote by the Management Committee. The purchase shall be at the Membership Unit Price. The closing on the Purchase shall be held and conducted as provided in Section 12.4. **Closing on Purchased Units.** The Management Committee shall have the option to pay the full value of the Membership Units in a lump sum notwithstanding the Maximum Repurchase Obligation or any other limitation contained in this Agreement or may be paid in accordance with Section 12.3 (B).

B. **Direct or Indirect Referral Risk.** The Management Committee may also redeem a Member's Membership Units upon a two-thirds [2/3] vote of the Management Committee if it believes in its sole discretion there exists a significant risk that the ownership of Membership Units by a Member, together with the potential for direct or indirect referrals to the Surgical Hospital by the Member poses a substantial risk of non-compliance with applicable federal or state law. The Management Committee, before redeeming the Member's Membership Units, shall endeavor to develop a means to lessen the legal risk to the Company or the Surgical Hospital, which may include, if commercially reasonable and is not likely to cause, in the determination of the Management Committee, undue cost or financial burden to the Company or the Surgical Hospital, screening referrals so as not to accept referrals that may pose a risk of violation, not billing for such services generated by such referrals, or otherwise devising a reasonable means of reducing any such legal risk. If the Management Committee, acting in good faith, does not believe it is reasonably able to reduce such risk, then it shall be free to redeem such Member's Membership Units upon a two-thirds [2/3] vote of the Management Committee. To exercise such redemption there need not be a change in law or its regulations or interpretation. The purchase shall occur as soon as reasonably possible after vote of the Management Committee. The purchase shall be at the Membership Unit Price. The closing on the Purchase shall be held and conducted as provided in Section 12.4.

**Section 12.9 Failure to Sign Personal Guaranty.** The Company shall have the right but not the obligation to purchase if a Member does not meet sign a personal guaranty pursuant to Section 4.3. The purchase price shall be seventy five percent (75%) of the Membership Unit Price determined in accordance with Section 7.1 and may be paid in accordance with Section 12.3 B. Member agrees that the Company shall be entitled to this reduction in purchase price as liquidated damages for violation of the breach of the pledge and the need to purchase or cure on short notice or allow a third party assignee. Member agrees that it would be difficult to determine the actual damages incurred by the Company for Member's breach and that the amount of liquidated damages is reasonable and relates to the anticipated harm the Company would suffer. This clause is not a penalty. The Management Committee in its sole discretion shall decide whether to exercise the option to purchase. The Management Committee shall exercise its option by

providing written notice of purchase any time within 90 days of the Member's failure to sign the guaranty. In addition to the reduced price, the defaulting Member shall be liable to the Company for any and all fees and expenses of the Company with respect to such default, including, but not limited to, attorneys' and accountants' fees and costs. A defaulting Member shall have no right to Dispose of his, her or its Membership Units until such default is cured, including, without limitation, exercising any repurchase rights associated with any Class A Membership Units held by such Member. The closing on the Purchase shall be held and conducted as provided in Section 12.4. **Closing on Purchased Units** and the purchase price may be paid in accordance with Section 12.3 (B).

**Section 12.10 Default on Additional Capital Call.** The Company shall have the right but not the obligation to purchase if a Member does not meet an additional capital call pursuant to Section 6.2. The Management Committee in its sole discretion shall decide whether to exercise the option to purchase. The Management Committee shall exercise its option by providing written notice of purchase any time within 90 days of the Member's failure to meet the capital call. The purchase price shall be seventy five percent (75%) of the Membership Unit Price determined in accordance with Section 7.1 and may be paid in accordance with Section 12.3 B. Member agrees that the Company shall be entitled to this reduction in purchase price as liquidated damages for violation of the breach of the pledge and the need to purchase or cure on short notice or allow a third party assignee. Member agrees that it would be difficult to determine the actual damages incurred by the Company for Member's breach and that the amount of liquidated damages is reasonable and relates to the anticipated harm the Company would suffer. This clause is not a penalty. In addition to the reduced price, the defaulting Member shall be liable to the Company for any and all fees and expenses of the Company with respect to such default, including, but not limited to, attorneys' and accountants' fees and costs. A defaulting Member shall have no right to Dispose of his, her or its Membership Units until such default is cured, including, without limitation, exercising any repurchase rights associated with any Class A Membership Units held by such Member. The closing on the Purchase shall be held and conducted as provided in Section 12.4. **Closing on Purchased Units** and the purchase price may be paid in accordance with Section 12.3 (B).

**Section 12.11 Member's Bankruptcy.** The Company shall have the right but not the obligation to purchase if a Member is subject to Bankruptcy. The Management Committee in its sole discretion shall decide whether to exercise the option to purchase. The Management Committee shall exercise its option by providing written notice of purchase any time within 180 days of the Management Committees knowledge of the Member's Bankruptcy. The purchase price shall be seventy five percent (75%) of the Membership Unit Price determined in accordance with Section 7.1 and may be paid in accordance with Section 12.3 B. Member agrees that the Company shall be entitled to this reduction in purchase price as liquidated damages for violation of the breach of the pledge and the need to purchase or cure on short notice or allow a third party assignee. Member agrees that it would be difficult to determine the actual damages incurred by the Company for Member's breach and that the amount of liquidated damages is reasonable and relates to the anticipated harm the Company would suffer. This clause is not a penalty. In addition to the reduced price, the defaulting Member shall be liable to the Company for any and all fees and expenses of the Company with respect to such default, including, but not limited to, attorneys' and accountants' fees and costs. A defaulting Member shall have no right to Dispose of his, her or its Membership

Units until such default is cured, including, without limitation, exercising any repurchase rights associated with any Class A Membership Units held by such Member. The closing on the Purchase shall be held and conducted as provided in Section 12.4. **Closing on Purchased Units** and the purchase price may be paid in accordance with Section 12.3 (B).

**Section 12.12. Membership Status.** In all cases where any of the Member's Membership Units are subject to purchase for any the reason, the Member shall assume the status of an assignee as to the Membership Units subject to purchase as of the date of the event giving rise to the purchase. A Member subject to complete divestiture will no longer be considered a Member for any purpose including but not limited to no right to participate in management, to vote, or participate in any future offerings of Membership Units. The Member will only have the right to the economic interests, i.e., distribution rights until the time of the closing for any Membership Units subject to purchase.

**Section 12.13. Equity Members of Entity Members.** Family Owned Entities. If an Entity Member has a Mandatory Sales Event, defaults on repayment of a pledge as set forth in Section 12.7, is disassociated for violation of the Non-Compete Agreement as set forth in Section 12.6, is subject to a purchase for non-compliance with laws and regulations as set forth in Section 12.8, Members Bankruptcy as set forth in Section 12.11, or is subject to expulsion pursuant to Section 13, and the Membership Interests of the Member or Entity Member are held, owned, or controlled by or for the benefit of a Member or a Member's spouse, child, or other family member of the Member or equity owner of an Entity Member, then

A. this shall give rise to the obligation or option to purchase one hundred percent (100%) of such Membership Units, whether such Membership Units are directly held by the member or are held, owned, or controlled by or for the benefit of such Member or such Member's spouse, child, or other family member of the Member or equity owner of an Entity Member; and

B. the Management Committee shall secure written agreements, in form and substance satisfactory to the Management Committee, with all equity owners or interested parties of such equity owners of such Entity Member confirming such right of the Company to purchase one hundred percent (100%) of the Membership Units held by the Entity Member.

By way of example, assume an Entity Member owns ten percent (10%) of the Class B Membership Interests in the Company, the Entity member has five (5) equity owners, only one of whom is credentialed at the Surgical Hospital and the other four are the spouse or other family members of the credentialed Physician. Further, assume that a Mandatory Sales Event occurs as to the credentialed Physician, one of the equity owners of the Entity member. In this example, the Company will have the obligation, or option, as the case may be, to purchase one hundred percent (100%) of the Membership Interests held by such Entity member, without regard to whether or not the credentialed Physician equity owner of the Entity Member owns all of the equity interests of the Entity Member.

**Section 12.14. Legal Restriction on Company Purchase.** Notwithstanding the Company's obligation or right to purchase in this Agreement as may be the case, if the Company is unable to purchase due to a violation of or breach of any statute, regulation, or other law

including but not limited to the statutory and regulatory restriction on the percentage ownership of physicians in the Company, the Company shall have the following rights and obligations to assign the Company's rights or obligation to repurchase:

A. The Company shall have the right but not the obligation to assign the Company's option to purchase to a qualified Person to purchase the Membership Units. The Person chosen by the Company shall purchase the Membership Units upon the same terms, conditions, and privileges as would be applicable to the purchase by the Company itself under this Agreement, provided said purchase does not violate any law or regulation governing the Hospital or its Members.

B. The Company shall have the obligation to designate a qualified Person to purchase the Membership Units that the Company is obligated to purchase pursuant to this Agreement. The Person chosen by the Company shall purchase the Membership Units upon the same terms as would be applicable to the purchase by the Company itself.

### **ARTICLE XIII: Expulsion of a Member**

**Section 13.1. Expulsion of a Member.** A Member may be expelled for cause from the Company upon 2/3rd Vote, not including the Member's Membership Units whose expulsion is under consideration, at a regular or a special meeting of the Company. Upon such expulsion, the expelled Member will be paid for his or her Membership Unit(s) either within thirty (30) days of the Vote or pursuant to Section 12.5 in the Company's sole discretion, subject to the restrictions and repurchase limitations of Articles XI and XII. Notwithstanding anything contained in Article XI or XII, in all expulsion cases, such Member's Membership Units shall be valued at not more than Fifty Percent (50%) of the Membership Unit Price as determined pursuant to Section 7.1 of this Agreement. Member agrees that the Company shall be entitled to the applicable reduction in purchase price as liquidated damages for the Cause related to the expulsion. Member agrees that it would be difficult to determine the actual damages incurred by the Company for Member's breach, that the amount of liquidated damages is reasonable and relates to the anticipated harm the Company would suffer, and this clause is not a penalty.

**Section 13.2. Voting Rights.** The expelled Member shall have no voting rights, any rights to any distribution, or any other rights as a Member after the expulsion vote is made by the Members.

**Section 13.3. Definition "Cause".** For purposes of this Section, "cause" shall mean a material breach of any provision of this Agreement by a Member, a breach of a Member's fiduciary duty as a Member, a breach of a Member's fiduciary duty as a Manager, a Member's conviction of a felony, or a Member's failure to follow the provisions of Section 15.11 and Section 15.12 regarding mediation, arbitration, and derivative action. For purposes hereof, a Member includes an equity owner of an Entity Member including but not limited to a shareholder, owner, partner or member of any Entity which is a Member of the Company.

### **ARTICLE XIV: Dissolution and Liquidation**

**Section 14.1. Dissolution.** The occurrence of any of the following events will constitute a liquidation event (“*Liquidation Event*”):

- A. The expiration of any term provided in the Articles.
- B. The affirmative vote by the Members holding 2/3rds of the outstanding Membership Units to dissolve the Company.
- C. Any other event which would trigger a dissolution as set forth in SDCL 47-34A-801.

**Section 14.2. Liquidation.** Upon dissolution of the Company, a liquidator or liquidating committee approved by the Management Committee shall be responsible for the liquidation. The Person or Persons who assume such responsibility (whether the Members or not) are referred to herein as the “Liquidator”. The Liquidator (if other than the Members) shall be entitled to receive such compensation for its services as may be approved by the vote of a Majority of the Members. The Liquidator shall agree not to resign at any time without 15 days’ prior written Notice to the Members and may be removed at any time, with or without cause, by Notice of removal approved by vote of a Majority of the Members. Upon dissolution, removal or resignation of the Liquidator, a successor and substitute Liquidator (who shall have and succeed to all rights, powers and duties of the original Liquidator) shall within 30 days thereafter be selected by the vote of a Majority of the Members. The right to appoint a successor or substitute Liquidator in the manner provided herein shall be recurring and continuing for so long as the functions and services of the Liquidator are authorized to continue under the provisions hereof, and every reference herein to the Liquidator will be deemed to refer also to any such successor or substitute Liquidator appointed in the manner herein provided. Except as expressly provided in this Article, the Liquidator appointed in the manner provided herein shall have and may exercise without further authorization or consent of any of the parties hereto, all of the powers conferred upon the Members under the terms of this Agreement (but subject to all of the applicable limitations, contractual and otherwise, upon the exercise of such powers) to the extent necessary or desirable in the good faith judgment of the Liquidator to carry out the duties and functions of the Liquidator hereunder for and during such period of time as shall be reasonably required in the good faith judgment of the Liquidator to complete the winding up and liquidation of the Company. The Liquidator shall, subject to all of the limitations placed on the powers and rights of the Members acting unanimously herein, liquidate the assets of the Company, and apply and distribute the proceeds of such liquidation, together with any remaining Cash Available for Distribution, in the following order of priority, unless otherwise required by mandatory provisions of applicable law:

- A. To those liabilities of creditors, in the order of priority provided by law, except those liabilities to Members on account of their Contributions; and
- B. The balance, to the Members in accordance with their Capital Accounts.

Unless the Members shall unanimously otherwise determine, all of the Liquidating Distributions shall be made to the Members in cash, or in kind, or partly in cash or in kind, as determined by vote of the Management Committee.

**Section 14.3. Filing of Articles of Dissolution.** Upon the completion of the Distribution of Company Property, articles of dissolution shall be filed if required by the Act.

**Section 14.4. Return of Capital.** The Members shall not be personally liable for the return of any contribution of any Member, or any portion thereof. The return of contributions shall be made solely from Company assets.

#### ARTICLE XV: MISCELLANEOUS

**Section 15.1. MF USA Approval Rights.** Notwithstanding anything to the contrary contained herein, the Company shall not without the prior consent of MF USA transfer, sell, pledge, encumber or otherwise convey, directly or indirectly, any Partnership Unit held by the Company.

**Section 15.2. Notices and Addresses.** Unless otherwise stated, all notices required to be given under this Agreement shall be in writing and shall be mailed or shall be hand delivered to the Members. Such notices as are mailed shall be mailed to the Members at the addresses set forth on their signature pages after the signature of such Members below, or at the address given by a Member to the Company and maintained in the office of the Company. Any notices to be sent to the Company shall be mailed to the office of the Company or at such other address as the Company may specify in a notice sent to all of the Members.

**Section 15.3. Law Governing.** This Agreement shall be governed by and construed in accordance with the laws and decisions of the State of South Dakota.

**Section 15.4. Amendments.** The Agreement can be amended under either of the following manners:

A. **Member Vote.** Amendments to this Agreement may be proposed by any Member and shall be first submitted to the Management Committee for its review and recommendation. The Management Committee may propose amendments to this Agreement at any time. Notwithstanding the fact that the Management Committee does not endorse or recommend a proposed amendment submitted by a Member, all proposed amendments shall be presented to and voted upon by the Members at either a special or the annual meeting of the Members. Any amendment shall become effective only upon receiving a vote which equals 2/3rds or more of the outstanding Membership Units of the Company. Any provision contained in Section 3.1, Section 5.1, Section 15.1 and Articles XI or XII of this Agreement cannot be amended without also obtaining the prior written consent of MF USA.

B. **Emergency Amendment.** In the event that the Company or the Surgical Hospital obtains a written opinion of a qualified legal counsel that due to a material change in the law or official interpretation any provision of this Agreement with respect to the Company or the

Surgical Hospital is contrary to the Fraud and Abuse Statute or the Stark Act or that would be non-compliant with the exception for hospital ownership set forth in the Stark Act at 42 USC 1395nn(d)(3), or other similar State or Federal Acts, and/or regulations promulgated pursuant thereto, the Management Committee shall, subject to the prior advice and consent of MFC/USA, which consent shall not be unreasonably withheld, have the right in its sole discretion to amend this Agreement and cause the removal of any non-compliant provisions or sections of this Agreement. The Management Committee shall provide twenty-four (24) hours of said amendment to all Members of the Company pursuant to Article V. The provisions of Section 15.4 A. shall not apply.

**Section 15.5. Power of Attorney.** Each Member, by execution of this Agreement or a counterpart of this Agreement, or by authorizing such execution on his, her or its behalf, does irrevocably constitute and appoint the Chairman of the Management Committee as his or her true and lawful attorneys and agents (with full power of substitution), with full power and authority in his or her name, place and stead to execute, swear to, acknowledge, deliver, file and record in the appropriate public offices: (i) all certificates and other instruments (including counterparts of this Agreement) which such attorney-in-fact deems necessary or appropriate to qualify or continue the Company as a Company in the State of South Dakota; and (ii) all instruments which such attorney-in-fact deems necessary or appropriate to effect a change or modification of the Company in accordance with the terms of this Agreement. The foregoing grant of authority: (i) is and shall survive the death, incompetence or termination of existence of any or all of the Members; (ii) may be exercised by such attorney-in-fact for the Member together with all of the Members; (iii) shall bind any person who becomes a substitute or Additional Member pursuant to this Agreement. Upon the request of the attorney-in-fact, the Members shall execute any certificate or other instrument with respect to which the attorney-in-fact could have invoked this power of attorney. A Member shall be liable for any legal fees incurred by the Company for failing to deliver such instrument.

**Section 15.6. Successors and Assigns.** This Agreement and all the terms and provisions hereof shall be binding upon and inure to the benefit of the Members and their legal representatives, heirs, successors and assigns.

**Section 15.7. Counterparts.** This Agreement may be executed in multiple counterparts, each of which shall be an original, but all of which shall constitute one instrument.

**Section 15.8. Modifications to be in Writing.** This Agreement constitutes the entire understanding of the parties hereto with respect to the subject matter hereof, and no amendment, modification or alteration of the terms hereof shall be binding unless the same be in writing and adopted in accordance with the provisions of Section 15.4 hereof.

**Section 15.9. Captions.** The captions herein are inserted for convenience of reference only and shall not affect the construction of this Agreement.

**Section 15.10. Validity and Severability.** If any provision herein shall be held invalid or unenforceable, such decision shall not affect the validity or enforceability of any other provisions hereof, all of which other provisions shall, in such case, remain in full force and effect.

**Section 15.11. Resolution of Disputes.** Any dispute or difference arising:

1. between a Member and the Company,
2. between Members regarding the Company,
3. between Managers regarding the Company,
4. between a Manager and the Company,
5. between a Member and a Manager regarding the Company, or
6. out of the operation or business of the Company

whether as a result of this Agreement or otherwise, shall be subject to binding arbitration. All parties including but not limited to the Company, the Members, the Managers, and their representatives or agents agree that any dispute or difference regarding the Company shall be resolved in accordance with the dispute resolution provisions in this Section in a confidential and private manner.

Prior to submitting the dispute or difference to arbitration, the person(s) with the dispute or difference shall provide a written notice of the dispute and the facts surrounding it to the other party. If applicable the person shall also comply with Section 15.12. The parties shall submit the dispute to American Arbitration Association for mediation. The Association shall appoint a mediator within 20 days of submission. The mediator shall have either healthcare operation or health care law experience. The mediation shall be held 30 days after appointment of the mediator. The costs of the mediation shall be split equally between the mediating parties. Each party shall be responsible for their own legal fees and costs. The Company shall be represented at the mediation by the Management Committee.

In the event that a Member who is in a dispute with the Company is on the Management Committee, he or she will refrain from participating as a member of the Management Committee for the purposes of resolving the dispute in mediation and arbitration. Both parties may be represented by counsel in the mediation and arbitration. In the event that the mediation is unsuccessful, either party may submit the dispute to binding arbitration in accordance with the American Arbitration Association Commercial Arbitration Rules then in effect within thirty (30) days of the unsuccessful mediation. If the claimant fails to bring the dispute to arbitration within 30 days after the mediation, then claimant shall be deemed to have forever waived any right to pursue the claim. Additionally, at the request of the respondent, a default judgment, or its equivalent in arbitration, shall be entered in favor of the respondent and against the claimant. The following supersede any contrary rules of the American Arbitration Association:

A. The party submitting the dispute to arbitration shall within 24 hours request a list of the qualified arbitrators from the American Arbitration Association. The party shall upon receipt of the arbitrator list provide a copy to the other party within 24 hours of receipt. If the filing party fails to acquire the list within 24 hours the responding party shall request the list.

The responding party shall provide a copy to the filing party within 24 hours of receipt and in which case the filing party shall be responsible for the full costs of the list.

B. Upon receipt of the arbitrator list, both parties shall select one arbitrator within 5 days of receipt of the list. The two selected arbitrators shall then select a third arbitrator within 10 days of their acceptance of the appointment. All the arbitrators shall have significant experience in health care operation or health care law..

C. The arbitration shall take place in Rapid City, Pennington County, South Dakota, and each party shall have an equal time to present their case or defense.

D. The arbitration hearing shall occur not more than sixty (60) days after selection of the third arbitrator.

E. Each party shall be entitled to one set of written discovery. The written discovery shall not exceed 30 questions with 5 subparts under each question. The discovery shall be simultaneous and submitted on or before 15 days from the appointment of the third arbitrator. The responses to discovery will be due 20 days after receipt of the discovery. Expert reports shall be simultaneous and released no later than 25 days before the arbitration date. Each party shall have the right to depose the opposing expert anytime up to 5 days before the arbitration date. Other than the expert depositions, no other depositions shall be allowed. No discovery, except as noted herein, shall be allowed. All discovery shall be limited to relevant information only.

F. Each party shall bear their own attorney fees and half of the cost of the arbitration. The arbitrators shall not have the right to award any costs or attorney fees under any statute, regulation, or common law including but not limited to actions brought as derivative claims.

G. The arbitration shall be limited to those issues pled with particularity and specifically in the arbitration complaint, counterclaims and crossclaims. No general averments shall be allowed in the pleadings. Any issue, claim or cause of action not pled with particularity shall be dismissed by the arbitrators at the first hearing and denied any further hearing in the arbitration. For the purposes of example only, if a cause of action of Management self dealing is raised each fact or action of Management implicating this cause of action shall be pled in particularity and no additional facts or actions of Management not identified in the initial pleadings. Only claims and facts initially pled shall be tried or allowed into evidence in the arbitration. The parties shall not have the right to amend any pleading. No causes of action, issues or claims shall be tried by implication or consent. The arbitrators shall have no authority to determine any issue or claim that has not been pled with particularity and specifically in the complaint, counterclaim or crossclaim as the case may be. The arbitrator shall have no authority to grant amendments to conform to the evidence.

H. The evidence, discovery, the existence and resolution of the arbitration proceedings, and all testimony shall be kept confidential by the parties and by the arbitrators, except as required by law. Further, no record shall be taken or kept of any of the arbitration proceedings.

I. The arbitrators shall render their decision by majority vote within Fifteen (15) Business Days of the hearing as a standard award.

J. Any judgment or order entered by the arbitrators may be entered in any court having jurisdiction thereof.

K. Notwithstanding the provisions of this Section, the parties agree that the Company shall be entitled to institute an action in federal or state court of competent jurisdiction to obtain temporary or permanent injunctive relief against any actual or threatened breach of the covenants contained herein, without having to first comply with the requirements of this Section.

L. The parties specifically agree that any Court action which is necessary to enforce an award or seek immediate injunctive relief shall be sealed from the public to the full extent allowed by law.

**Section 15.12. Resolution of Derivative Action.** In addition to the requirements set forth in Section 15.11 regarding the resolution of disputes, a Member who wishes to maintain a derivative action as permitted by Article 11 of SDCL § 47-34A or common law (“*Derivative Member*”), shall in lieu of proceeding in Court proceed as follows:

A. The Derivative Member shall submit to the Management Committee a detailed written report setting forth the Derivative Member’s basis for commencing a derivative action. The Management Committee may review the written report for up to 30 days.

B. After the applicable time period for review by the Management Committee has expired, the Derivative Member shall submit to mediation, within 30 days, only the claim detailed in the written report pursuant to the terms and requirements of Section 15.11. If the Derivative Member fails to submit the claim before the deadline, the Derivative Member shall be deemed to have forever waived any right to pursue the claim.

C. If the mediation to resolve the dispute is unsuccessful, the decision to proceed with the derivative action shall be subject to determination by the Special Litigation Committee prior to any arbitration or legal action. The “Special Litigation Committee” shall consist of all qualified, independent Members of the Company, not including the Derivative Member or any other Member having a conflict of interest as identified in Section 10.8. Each Entity Member shall appoint one representative to serve on the Special Litigation Committee if qualified and independent. The Arbitrator or the Court, as applicable, shall stay any action improperly commenced including but not limited to the discovery thereon until the Special Litigation Committee has investigated and acted on the derivative claim. In determining whether to proceed with a derivative action, the Special Litigation Committee shall conduct an investigation including reviewing all of the information provided and used as part of the mediation and any other information it deems necessary to investigate the derivative claim fully. The Special Litigation Committee as a whole shall make any requests for information from the Company to the Company’s CEO. The CEO shall immediately have the information accumulated and provided to the Special Litigation Committee. The Special Litigation Committee shall have the right to hire any professionals it deems appropriate for investigating the claim, however, no report of a professional shall supplant

the independent decision of the Special Litigation Committee.

D. After investigation the Special Litigation Committee shall determine by a majority vote of the disinterested and independent members of the Special Litigation Committee whether it is in the best interests of the Company that the proceeding:

1. continue under control of the plaintiff;
2. continue under the control of the Special Litigation Committee;
3. be settled on terms approved by the Special Litigation Committee; or
4. be dismissed.

The vote to proceed on the derivative action shall be an open vote and published to the Members showing each Member's vote on the proposed derivative action. The Special Litigation Committee shall in addition provide a report of the results of its investigation with its findings and conclusions supporting the vote. The Special Litigation Committee's decision shall be final and binding on all parties. The Arbitrator or the Court shall enforce the same except for the limited review allowed below in paragraph F.

E. If the Special Litigation Committee determines that the derivative action shall proceed, the derivative action shall be submitted to binding arbitration as set forth in Section 15.11 above, within 30 days of the Special Litigation Committee's determination. If the Derivative Member or the Special Litigation Committee as the case may be fails to submit the claim before the deadline, the Derivative Member shall be deemed to have forever waived any right to pursue the claim.

F. In all cases in which either an arbitrator or a Court as maybe applicable reviews a determination of the Special Litigation Committee's, whether made before commencement or after commencement of the proceeding, the arbitrator's or Court's review shall be limited to the following:

1. was the determination made in good faith,
2. was the determination made with reasonable care, and
3. was the Special Litigation Committee independent.

If the arbitrator or the Court find that the Special Litigation Committee was disinterested and independent and that the Special Litigation Committee acted in good faith, independently, and with reasonable care, the arbitrator or the Court as applicable shall enforce the determination of the Special Litigation Committee. Otherwise, the arbitrator or the Court shall dissolve the stay of discovery entered and allow the action to proceed under the direction of the plaintiff in arbitration pursuant to the procedures of Section 15.11 above.

**IN WITNESS WHEREOF**, the undersigned have executed this Agreement as of the date first above written.

**BLACK HILLS SURGICAL PHYSICIANS, LLC SIGNATURE PAGE**

The undersigned, a Member pursuant to the Operating Agreement of Black Hills Surgical Physicians, LLC, dated as of March 29, 2004, and any amendments hereof, hereby agrees to all of the terms of said Agreement and agrees to be bound by the terms and provisions thereof. The undersigned further constitutes and appoints the Chairman of the Management Committee of the Company as his, her or its true and lawful attorney-in-fact as provided in Section 15.5 of said Agreement for the purpose of, among other things, making such filings as are required in order to evidence the admission of the undersigned as a Member in the Company, which filing the undersigned hereby joins in and executes, hereby authorizing this signature page to be attached thereto.

**ADOPTED** by the Membership of Black Hills Surgical Physicians, LLC, the 7<sup>th</sup> day of July, 2020.

**Black Hills Surgical Physicians, LLC**

By: “Lew Papendick”

Its: Chair, Management Committee

**EXHIBIT A**  
**Purchase Notice**  
**(Class A Membership Units)**

Black Hills Surgical Physicians, LLC (the “*Company*”)  
216 Anamaria Drive  
Rapid City, South Dakota 57702

Date: \_\_\_\_\_

Re: Class A Membership Units

To: Management Committee:

Reference is hereby made to the Operating Agreement of Black Hills Surgical Physicians, LLC, (as the same may be amended from time to time, the “*Operating Agreement*”). Capitalized terms used, but not otherwise defined herein, shall have the meaning set forth in the Operating Agreement. I, \_\_\_\_\_, a Member of the Company, hereby elect to cause the Company to repurchase the following Class A Membership Units: \_\_\_\_\_. I further direct the Company to cause such repurchase as follows (check only box below):

**Alternative 1:**  Repurchase the Class A Membership Units under Article XI of the Operating Agreement, in which event, the Company may elect to pay me in cash or by delivery of MFC Common Shares in accordance with the terms and conditions of Article XI, subject to the limitations set forth therein.

**OR**

**Alternative 2:**  Repurchase the Class A Membership Units under Article XII of the Operating Agreement, in which event the Company may elect to pay me in cash in one payment or installment payments as set forth in the Operating Agreement, subject to the terms, conditions and limitations therein.

**If I fail to elect an alternative, the Company shall notify me of such failure, and if I fail to make an election within five (5) Business Days of the date of such notice, then, in accordance with the Operating Agreement, the Management Committee, in its sole and absolute discretion, shall determine whether such repurchase is to be under Alternative 1 or Alternative 2, and I will be bound by such determination of the Management Committee.**

I further represent and warrant that: (i) I am the legal and beneficial owner of the Membership Units, (ii) such Membership Units have not been pledged and are not subject to any liens or other encumbrances, and (iii) the repurchase of such Membership Units is subject to the limitations set forth in the Operating Agreement.

\_\_\_\_\_  
Printed Name:

**EXHIBIT B**  
**Withdrawal Notice**

Black Hills Surgical Physicians, LLC (the “*Company*”)  
216 Anamaria Drive  
Rapid City, South Dakota 57702

Date: \_\_\_\_\_

Re: Membership Units

To: Management Committee:

Reference is hereby made to the Operating Agreement of Black Hills Surgical Physicians, LLC, (as the same may be amended from time to time, the “*Operating Agreement*”). Capitalized terms used, but not otherwise defined herein, shall have the meaning set forth in the Operating Agreement. I, \_\_\_\_\_, a Member of the Company, hereby elect to cause the Company to repurchase all of my Membership Units and withdraw from the Company pursuant to the terms of the Operating Agreement. I further direct the Company to cause such repurchase as follows for My Class A Membership Units (check only box below):

**Alternative 1:**  Repurchase the Class A Membership Units under Article XI of the Operating Agreement, in which event, the Company may elect to pay me in cash or by delivery of MFC Common Shares in accordance with the terms and conditions of Article XI, subject to the limitations set forth therein.

**OR**

**Alternative 2:**  Repurchase the Class A Membership Units under Article XII of the Operating Agreement, in which event the Company may elect to pay me in cash in one payment or installment payments as set forth in the Operating Agreement, subject to the terms, conditions and limitations therein.

**If I fail to elect an alternative, the Company shall notify me of such failure, and if I fail to make an election within five (5) Business Days of the date of such notice, then, in accordance with the Operating Agreement, the Management Committee, in its sole and absolute discretion, shall determine whether such repurchase is to be under Alternative 1 or Alternative 2, and I will be bound by such determination of the Management Committee.**

I further represent and warrant that: (i) I am the legal and beneficial owner of the Membership Units, (ii) such Membership Units have not been pledged and are not subject to any liens or other encumbrances, and (iii) the repurchase of such Membership Units is subject to the limitations set forth in the Operating Agreement.

\_\_\_\_\_  
Printed Name:

**EXHIBIT C**  
**Offer Notice**

Black Hills Surgical Physicians, LLC (the “*Company*”)  
216 Anamaria Drive  
Rapid City, South Dakota 57702

Date: \_\_\_\_\_

Re: Membership Units

To: Management Committee:

Reference is hereby made to the Operating Agreement of Black Hills Surgical Physicians, LLC, (as the same may be amended from time to time, the “*Operating Agreement*”). Capitalized terms used, but not otherwise defined herein, shall have the meaning set forth in the Operating Agreement. I, \_\_\_\_\_, a Member of the Company, offer \_\_\_\_\_ Class B Membership Units to the Company pursuant to the terms of the Operating Agreement.

I further represent and warrant that: (i) I am the legal and beneficial owner of the Membership Units, (ii) such Membership Units have not been pledged and are not subject to any liens or other encumbrances, and (iii) the repurchase of such Membership Units is subject to the limitations set forth in the Operating Agreement.

\_\_\_\_\_  
Printed Name:

**EXHIBIT D**  
**Form of Severance Notice**

[Letterhead of Black Hills Surgical Physicians, LLC,]

[Name and address of Member]

Re: Severance Event

Dear \_\_\_\_\_:

Reference is hereby made to the Operating Agreement of Black Hills Surgical Physicians, LLC, (the “*Company*”), (as the same may be amended from time to time, the “*Operating Agreement*”). Capitalized terms used, but not otherwise defined herein, shall have the meaning set forth in the Operating Agreement.

The Company hereby notifies you that a repurchase event has occurred in accordance with Section of the Operating Agreement and the Company will be repurchasing your Membership Units in accordance with the terms, conditions and limitations of the Operating Agreement. The Company’s records reflect that you own \_\_\_\_ Class A Membership Units represented by Certificate of Membership No. \_\_, and \_\_\_\_ Class B Membership Units represented by Certificate of Membership No. \_\_, you must elect, by indicating below, whether you want the Class A Membership Units to be repurchased under Article XI or Article XII of the Operating Agreement. You shall make the following election within ten (10) days of the date of said notice from the Company for the purchase of any Class A Membership Units pursuant to one of the following options to have the Company repurchase any Class A Membership Units (check only one box below):

**Alternative 1:**  Repurchase the Class A Membership Units under Article XI of the Operating Agreement, in which event, the Company may elect to pay me in cash or by delivery of IPS Units in accordance with the terms and conditions of Article XI, subject to the limitations set forth therein.

**OR**

**Alternative 2:**  Repurchase the Class A Membership Units under Article XII of the Operating Agreement, in which event the Company may elect to pay me in cash in one payment or installment payments as set forth in the Operating Agreement, subject to the terms, conditions and limitations therein.

I further represent and warrant that: (i) I am the legal and beneficial owner of the Membership Units, (ii) such Membership Units have not been pledged and are not subject to any liens or other encumbrances, and (iii) the repurchase of such Membership Units is subject to the limitations set forth in the Operating Agreement.

**YOU MUST RETURN A SIGNED AND COMPLETED COPY OF THIS LETTER TO THE COMPANY WITHIN TEN (10) DAYS OF THE DATE OF THIS LETTER. IF A COPY OF THIS LETTER IS NOT TIMELY RETURNED TO THE COMPANY, THEN, AS SET FORTH IN THE OPERATING AGREEMENT, THE MANAGEMENT COMMITTEE WILL DETERMINE, IN ITS SOLE AND ABSOLUTE DISCRETION, WHETHER THE REPURCHASE OF YOUR CLASS A MEMBERSHIP UNITS WILL BE PURSUANT TO ALTERNATIVE 1 OR ALTERNATIVE 2 (AS DESCRIBED BELOW), AND YOU WILL BE BOUND BY THE DECISION OF THE MANAGEMENT COMMITTEE.**

Dated: \_\_\_\_\_.  
BLACK HILLS SURGICAL PHYSICIANS, LLC,

By: \_\_\_\_\_  
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its

I, \_\_\_\_\_, a Member of the Company, hereby elected to cause the Company to repurchase my Class A Membership Units pursuant to the election marked above in accordance with the terms of the Operating Agreement.

\_\_\_\_\_  
Printed Name: