

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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**WISCONSIN FERTILITY AND REPRODUCTIVE  
SURGERY ASSOCIATES, S.C., a Domestic Corporation**

3146 Deming Way  
Middleton, WI 53562

**DAVID L. OLIVE, M.D.,**

9526 Blue Heron Drive  
Middleton, WI 53562-6068

**ELIZABETH A. PRITTS, M.D.**

9526 Blue Heron Drive  
Middleton, WI 53562-6068

**Plaintiffs,**

**vs.**

**Case No. 14-cv-00168**

**FEMPARTNERS OF WISCONSIN, INC.,**

A Foreign Corporation,  
c/o Registered Agent Solutions, Inc.  
901 S. Whitney Way  
Madison, WI 53711

**FEMPARTNERS FERTILITY CENTER OF WISCONSIN, INC.**

A Foreign Corporation,  
c/o Registered Agent Solutions, Inc.  
901 S. Whitney Way  
Madison, WI 53711

**FEMPARTNERS, INC.**

A Delaware Corporation  
c/o Registered Agent Solutions, Inc.  
1679 S. DuPont Highway, Suite 100  
Dover, DE 19901

**WISCONSIN FERTILITY INSTITUTE, LP,**

A Foreign Limited Partnership  
c/o Registered Agent Solutions, Inc.  
S8386 Hemlock Rd.  
North Freedom, WI 53951-9760

**JACK THOMPSON**

FemPartners  
1300 Post Oak Boulevard, Suite 600  
Houston, TX 77056

**J.R. STEVENS**

FemPartners  
1300 Post Oak Boulevard, Suite 600  
Houston, TX 77056

**ARTHUR MCCLURE**

FemPartners  
1300 Post Oak Boulevard, Suite 600  
Houston, TX 77056

**Defendants.**

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**AMENDED COMPLAINT**

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NOW COME the Plaintiffs, Wisconsin Fertility and Reproductive Surgery Associates, S.C., David L. Olive, M.D., and Elizabeth A. Pritts, M.D., by their attorneys, Haley Palmersheim, S.C., by Attorney Kevin J. Palmersheim, and as and for a claim against Defendants herein alleges as follows:

**PARTIES**

1. Plaintiff Wisconsin Fertility and Reproductive Surgery Associates, S.C., is a Wisconsin service corporation, in good standing in the State of Wisconsin, with its principle place of business at 3146 Deming Way, Middleton, Dane County, Wisconsin, 53562.
2. Plaintiff David L. Olive, M.D., is an adult citizen of the State of Wisconsin, residing at 9526 Blue Heron Drive, Middleton, Dane County, Wisconsin, 53562.
3. Plaintiff Elizabeth A. Pritts, M.D., is an adult citizen of the State of Wisconsin, residing at 9526 Blue Heron Drive, Middleton, Dane County, Wisconsin, 53562.

4. Defendant FemPartners of Wisconsin, Inc. is a Delaware corporation, duly authorized to conduct business in the State of Wisconsin as a registered foreign corporation, with its principle place of business 1300 Post Oak Blvd, Suite 600, Houston, Texas, 77056. FemPartners' registered agent is Registered Agent Solutions, Inc., 901 S. Whitney Way, Madison, Wisconsin, 53711.
5. Defendant FemPartners Fertility Center of Wisconsin, Inc. is a Delaware corporation, duly authorized to conduct business in the State of Wisconsin as a registered foreign corporation, with its principle place of business 1300 Post Oak Blvd, Suite 600, Houston, Texas, 77056. FemPartners' registered agent is Registered Agent Solutions, Inc., 901 S. Whitney Way, Madison, Wisconsin, 53711.
6. Defendant Wisconsin Fertility Institute, L.P. is a Texas limited partnership, duly authorized to conduct business in the State of Wisconsin as a foreign Limited Partnership, with its principle place of business at 1300 Post Oak Blvd, Suite 600, Houston, Texas, 77056. Wisconsin Fertility Institute's registered agent is Registered Agent Solutions, Inc., S8386 Hemlock Road, North Freedom, Wisconsin 53951.
7. Defendant FemPartners, Inc. is a Delaware corporation with a registered agent's address of 1679 DuPont Highway, Suite 100, Dover, Delaware 19901. Upon information and belief, FemPartners, Inc.'s principal office is 1300 Post Oak Blvd., Suite 600, Houston, Texas, 77056.
8. At all times pertinent to this Complaint, Defendant Jack Thompson was the President and Chief Executive Officer of Defendant FemPartners, Inc., and a citizen of the State of Texas. At all times pertinent to this Complaint, Thompson was also President of FemPartners Fertility Center of Wisconsin, Inc. and FemPartners of Wisconsin, Inc. His current residential address is unknown.

9. At all times pertinent to this Complaint, Defendant J.R. Stevens was the Chief Financial Officer of Defendant FemPartners, Inc., and a citizen of the State of Texas. Upon information and belief, Defendant J.R. Stevens was also the Chief Financial Officer for FemPartners Fertility Center of Wisconsin, Inc., and FemPartners of Wisconsin, Inc. His current residential address is unknown.
10. At all times pertinent to this Complaint, Defendant Arthur McClure was the Vice President of Operations of Defendant FemPartners, Inc., and a citizen of the State of Texas. Upon information and belief, McClure was also the Vice President of Operations for FemPartners Fertility Center of Wisconsin, Inc., and FemPartners of Wisconsin, Inc. His current residential address is unknown.

#### **BACKGROUND**

11. Drs. Olive and Pritts are physicians whose practice is primarily in fertility treatment and related services.
12. In 2006, Drs. Olive and Pritts decided to form their own fertility treatment practice, and went into a business relationship with FemPartners of Wisconsin, Inc. for purposes of managing that practice, also called a “managed practice.”
13. Upon information and belief, FemPartners, Inc. provides services to other such medical practices by setting up similar subsidiary FemPartners entities in other states.
14. Upon information and belief, FemPartners of Wisconsin, Inc. is a wholly-owned subsidiary of FemPartners, Inc., and is managed by the parent company and the parent company’s officers and employees.
15. Upon information and belief, FemPartners Fertility Center of Wisconsin, Inc., is a wholly-owned subsidiary of FemPartners, Inc., and is managed by the parent company and the parent company’s officers and employees.

16. For purposes of this Complaint, and unless specifically designated otherwise, FemPartners, Inc., FemPartners of Wisconsin, Inc., and FemPartners Fertility Center of Wisconsin, Inc. (“FemPartners Fertility”) are collectively designated herein as “FemPartners.”
17. As part of this business relationship, Drs. Olive and Pritts and formed a service corporation, Wisconsin Fertility and Reproductive Surgery, S.C. (“Wisconsin Fertility”), in which each are 50% shareholders.
18. A Service Agreement was entered into between Wisconsin Fertility and FemPartners, a copy of which is attached hereto as Exhibit A.
19. Under this Service Agreement, FemPartners provided Wisconsin Fertility with offices, facilities, equipment, supplies, some support personnel, management and financial advisory services, and other non-medical functions of the practice.
20. Under this Service Agreement, Wisconsin Fertility and its physicians would have complete and independent control over the medical services provided to patients, etc.
21. All bills for medical services are prepared by FemPartners, and fees are collected by FemPartners, and deposited into an account at Chase Bank. FemPartners maintains sole control over this account and Plaintiffs are unable to access the account or make transfers without authorization from FemPartners.
22. Each month, FemPartners is required to prepare a financial statement containing a balance sheet and a statement of income from clinic operations.
23. Each month, FemPartners is to deposit the net clinic revenues and net of service fees charged by FemPartners, as defined in Section 7 of the Service Agreement, into the Chase bank account.

24. As part of the Wisconsin Fertility medical practice, Drs. Olive and Pritts utilize a fertility center for purposes of performing such things as invitro fertilization, lab functions and other services related to fertility treatments.
25. As part of this business relationship, Drs. Olive and Pritts entered into a Limited Partnership with FemPartners called Wisconsin Fertility Institute, L.P., herein referred to as the "Lab." Dr. Olive holds a 27.5% partnership interest, Dr. Pritts holds a 27.5% partnership interest, FemPartners, Inc. holds a 44% partnership interest, and FemPartners Fertility holds the remaining 1% partnership interest in the Lab. FemPartners Fertility is the General Partner, and all other partners are Limited Partners. A copy of the Limited Partnership Agreement is attached hereto as Exhibit B.
26. Profits and losses are to be allocated to the partners in proportion to their respective "sharing Ratios," as that term is defined in Section 3.6 of the Lab's Limited Partner Agreement.
27. FemPartners Fertility, as General Partner, is responsible for the management and administration of all non-medical functions and services, for which it is paid a monthly fee of 6%. The General Partner also maintains sole control over the bank account of the partnership, into which the fees collected by the lab are deposited.
28. In late 2012, Drs. Pritts and Olive had concerns about the finances related to the Service Agreement between Wisconsin Fertility, FemPartners and the Lab.
29. The financial records of Wisconsin Fertility and the Lab were audited by a certified public accountant in 2013.
30. Defendants Thompson, McClure and Stevens were the senior managers principally responsible for negotiating and finalizing the Service Agreement and the Limited Partnership Agreement and were aware of the terms of those agreements.

31. Defendants Thompson, McClure and Stevens (hereinafter, the “Individual Defendants”) were the individuals who were primarily responsible for FemPartners’ performance under the various agreements with Plaintiffs.
32. Defendants Thompson, McClure and Stevens were aware that the Service Agreement required that all revenues and other funds relating to the business of Wisconsin Fertility and Reproductive Surgery Associates, S.C., were to be deposited in a bank account owned solely by that corporation. These individual defendants were further aware that such funds were to be disbursed to creditors of Wisconsin Fertility and other persons on behalf of Wisconsin Fertility, with records being maintained by FemPartners of Wisconsin, Inc.
33. Defendants Thompson, McClure and Stevens were aware that all funds of the limited partnership were to be deposited into a bank account or bank accounts solely in the name of the limited partnership, and were not to be moved to any other accounts belonging to any other entity. Defendants were further aware that FemPartners Fertility Center of Wisconsin, Inc. was to keep complete books and records of the funds and any disbursements, and to report to Plaintiffs Olive and Pritts regarding such funds.

**CLAIM ONE – CIVIL THEFT  
AGAINST FEMPARTNERS OF WISCONSIN, INC. AND FEMPARTNERS, INC.  
AND THE INDIVIDUAL DEFENDANTS**

34. Plaintiffs hereby incorporate by reference Paragraphs 1-33 of this Complaint, the same as if said paragraphs were repeated herein.
35. The audit revealed that for the year ending December 31, 2011, FemPartners had diverted approximately \$410,000.00 from Wisconsin Fertility to an undisclosed “inter-company” entity.

36. The Individual Defendants were not only aware that money was being diverted from the accounts belonging to Wisconsin Fertility and the limited partnership, but the Individual Defendants were actively involved in directing the diversion of money for improper purposes.
37. Upon information and belief, the Individual Defendants directed that limited partnership funds be moved from the partnership account into other accounts owned by the Defendant entities or other related entities.
38. Upon information and belief, the Individual Defendants directed that money be permanently transferred from the Wisconsin Fertility corporate bank account to corporate accounts belonging to one or more of the Defendant entities or other related entities.
39. Upon information and belief, the Individual Defendants were aware of and directed that the funds belonging to the limited partnership and to Plaintiff Wisconsin Fertility be used for improper purposes and for the benefit of the Defendants and other related entities.
40. Upon information and belief, the Individual Defendants each have or had an ownership interest in FemPartners, Inc.
41. The Individual Defendants intentionally concealed from Plaintiffs the fact that money belonging to Plaintiffs or the limited partnership was being diverted to one or more of the corporate Defendants or other related entities, or diverted for payment of obligations of the Defendant entities.
42. The nondisclosure by Defendants was done with an intent to defraud Plaintiffs and to deprive Plaintiffs and the limited partnership of access and use of money that rightfully belonged to the Plaintiffs or the limited partnership.



43. The audit revealed that as of June 30, 2013, the amount owed by FemPartners to Wisconsin Fertility had increased to nearly \$600,000.00.
44. By virtue of their business, FemPartners and the Individual Defendants, having possession and custody of money belonging to Wisconsin Fertility, have intentionally used, transferred, concealed and retained possession of such money without the consent of Wisconsin Fertility, contrary to its authority, and with the intent to convert to its own use.
45. FemPartners and the Individual Defendants have failed and refused to deliver money to Wisconsin Fertility upon its demand, in violation of Wis. Stat. sec. 943.20(1)(b).
46. FemPartners' and the Individual Defendants' violation of Wis. Stat. sec. 943.20(1)(b) is a Class G felony under Wis. Stat. sec. 943.20(3)(c).
47. Plaintiffs notified FemPartners and the Individual Defendants of the results of the audit and the theft and breach by FemPartners in a letter dated October 26, 2013.
48. FemPartners responded to Plaintiffs in an e-mail dated October 29, 2013, asking that FemPartners "be provided a few days to clarify a couple of items as presented" in Plaintiffs' correspondence.
49. Plaintiffs received another e-mail from FemPartners on or about November 12, 2013, apologizing for the delay and stating that because of the CFO being ill with diabetes a response "has taken a little longer than expected," but that he expects to be back the next day and FemPartners will respond as soon as feasible.
50. No response has been received by FemPartners, and no further clarification has been made regarding the audit or the missing funds.
51. Upon information and belief, after Wisconsin Fertility's October 21, 2013 demand that all diverted funds be returned, and Thompson's assertions that he could not adequately

respond because of Stevens' alleged illness, additional funds were diverted from Wisconsin Fertility and the limited partnership.

52. Upon information and belief, Stevens never had any illness which would have prevented him or a member of his staff from responding adequately to Wisconsin Fertility's demands. Thompson's emails were simply a delaying tactic so that FemPartners and the Individual Defendants could continue their theft of Wisconsin Fertility's assets.
53. Up until October of 2013, FemPartners wired clinic revenues to Wisconsin Fertility by the 15<sup>th</sup> of every month, after deducting their service fees. In October of 2013, no wire transfer was made and Wisconsin Fertility received a check for payment on October 16. No payment has been received from FemPartners for November or December of 2013, or for January of 2014.
54. FemPartners has failed to make rent payments for November and December of 2013, and January of 2014, as required.
55. FemPartners has been failing to make the required 401K matching payments for employees of the Wisconsin Fertility clinic and the lab, which FemPartners was obligated to make pursuant to the Service Agreement and Partnership Agreement. The matching payments for 2010 were made two years late, no matching payments have been made for 2011 and 2012.
56. Other than as set forth in this Complaint, Plaintiffs have received no communication from FemPartners since Plaintiffs served them with the October 21, 2013, letter. Moreover, upon information and belief the vice president of operations for FemPartners has left the parent company.
57. Plaintiff Wisconsin Fertility is entitled to recover its actual damages, including all costs of investigation and litigation that are reasonably incurred, including the value of time

spent by any employee or agent of Wisconsin Fertility, and also including its reasonable attorney fees.

58. Plaintiff Wisconsin Fertility is also entitled to recover exemplary damages of not more than 3 times the amount awarded to it under this claim.

**CLAIM TWO – CIVIL THEFT  
AGAINST FEMPARTNERS FERTILITY CENTER OF WISCONSIN, INC.,  
FEMPARTNERS, INC. AND THE INDIVIDUAL DEFENDANTS**

59. Plaintiffs hereby incorporate by reference Paragraphs 1-58 of this Complaint, the same as if said paragraphs were repeated herein.
60. In addition to the money diverted from Wisconsin Fertility, the audit revealed that for the year ending December 31, 2011, FemPartners Fertility and FemPartners, Inc. had diverted approximately \$655,000.00 of money from the Lab to an undisclosed “inter-company” entity.
61. The audit revealed that for the year ending December 31, 2012, the amount diverted from the Lab to an undisclosed “intercompany” entity had increased to over \$1,000,000.00.
62. The Individual Defendants were responsible for diverting the money in violation of Wisconsin law.
63. Upon information and belief, the Individual Defendants had an ownership interest in FemPartners, Inc., which either received the diverted funds or was the owner of other companies that received the diverted funds. The diversion of funds benefited the Individual Defendants.
64. FemPartners Fertility, FemPartners, Inc., and the Individual Defendants have intentionally transferred and concealed the property of the Lab, Dr. Olive and Dr. Pritts, with-

out their consent and with the intent to deprive them of possession of this property, in violation of Wis. Stat. sec. 943.20(1)(a).

65. By virtue of its position as General Partner, FemPartners Fertility, under the direction of FemPartners, Inc., and the Individual Defendants having possession and custody of money belonging to the Lab, Dr. Olive and Dr. Pritts, has intentionally used, transferred, concealed and retained possession of such money without the consent of the Lab, Dr. Olive and Dr. Pritts, contrary to its authority, and with the intent to covert to its own use.
66. FemPartners and the Individual Defendants have failed and refused to deliver money, either directly or through the limited partnership, to Dr. Olive and Dr. Pritts upon their demand, in violation of Wis. Stat. sec 943.20(1)(b).
67. FemPartners, FemPartners Fertility and the Individual Defendants' violation of Wis. Stat. sec 943.20(1)(b) is a Class G felony under Wis. Stat. sec 943.20(3)(c).
68. Plaintiffs Dr. Olive and Dr. Pritts are entitled to recover their actual damages, including all costs of investigation and litigation that are reasonably incurred, including the value of time spent by any employee or agent of Wisconsin Fertility, and also including its reasonable attorney fees.
69. Dr. Olive and Dr. Pritts are also entitled to recover exemplary damages of not more than 3 times the amount awarded to it under this claim.

**CLAIM THREE – BREACH OF CONTRACT  
AGAINST FEMPARTNERS OF WISCONSIN, INC.**

70. Plaintiffs hereby incorporate by reference Paragraphs 1-69 of this Complaint, the same as if said paragraphs were repeated herein.
71. By its conduct in diverting funds belonging to Wisconsin Fertility, FemPartners of Wisconsin has breached the Service Agreement between them. (Ex. A).

72. FemPartners of Wisconsin's wrongful diversion of funds has had a material adverse effect on Wisconsin Fertility's business and operations.
73. FemPartners of Wisconsin has defaulted under the Service Agreement.
74. FemPartners has failed to cure its default, as provided in Section 10.2.2 of the Service Agreement.
75. Pursuant to Section 10.2 of the Service Agreement, the contract has been terminated.
76. Pursuant to Section 10.4.2, Wisconsin Fertility is entitled to purchase the assets of the practice at book value, according to Generally Accepted Accounting Principles (GAAP).
77. Wisconsin Fertility is also entitled to recover from FemPartners of Wisconsin its actual damages as a result of the breach of contract by FemPartners.

**CLAIM FOUR – BREACH OF CONTRACT  
AGAINST FEMPARTNERS FERTILITY CENTER OF WISCONSIN, INC.**

78. Plaintiffs hereby incorporate by reference Paragraphs 1-77 of this Complaint, the same as if said paragraphs were repeated herein.
79. By diverting funds from Wisconsin Fertility to an undisclosed entity, FemPartners Fertility has acted outside the scope of its authority under the Limited Partnership Agreement.
80. By diverting funds from Wisconsin Fertility to an undisclosed entity, FemPartners Fertility has acted with bad faith.
81. FemPartners Fertility's actions in diverting funds to an undisclosed entity represent willful misconduct.
82. FemPartners Fertility has committed fraud upon Wisconsin Fertility.
83. FemPartners Fertility's actions are the result of active and deliberate dishonesty.

84. FemPartners Fertility has failed to act in the best interests of the Lab and the Limited Partners.
85. FemPartners Fertility or its affiliates has received an improper personal benefit in money.
86. FemPartners Fertility knew or should have known that these acts were unlawful.
87. FemPartners Fertility has breached the Limited Partnership Agreement.
88. FemPartners Fertility has caused damages to the Limited Partners.
89. Due to the interconnected relationship between FemPartners Fertility and FemPartners, damages suffered by Dr. Olive and Dr. Pritts are direct and distinct.
90. Dr. Olive and Dr. Pritts have been directly damaged by the actions of FemPartners Fertility.

**CLAIM FIVE – CONSPIRACY**

91. Plaintiffs hereby incorporate by reference Paragraphs 1-90 of this Complaint, the same as if said paragraphs were repeated herein.
92. The FemPartners entities and the Individual Defendants combined, agreed and engaged in a mutual undertaking to purposely and willfully injure Plaintiffs, their business and profession, and their reputation, by unlawfully diverting money from accounts belonging to the Plaintiffs and funneling it to FemPartners, Inc. and other FemPartners entities.
93. The FemPartners entities and the Individual Defendants combined, agreed and engaged in a mutual undertaking to purposely and willfully injure Plaintiffs, their business and profession, and their reputation, by preventing or hindering FemPartners Fertility Center of Wisconsin, Inc. and FemPartners of Wisconsin, Inc. from performing the services required under the Service Agreement and Partnership Agreement.

94. The FemPartners Defendants and the Individual Defendants have acted in concert to commit fraud upon the Plaintiffs, and to commit theft of Plaintiffs' funds.
95. Plaintiffs have been injured as a result of Defendants' conspiracy, and have caused Plaintiffs to incur damages.
96. Defendants' conduct was in an intentional disregard of Plaintiffs' rights. In addition to compensatory damages, Plaintiffs are entitled to punitive damages from Defendants.

**CLAIM SIX – UNLAWFUL INTERFERENCE WITH CONTRACT**

97. Plaintiffs hereby incorporate by reference Paragraphs 1-96 of this Complaint, the same as if said paragraphs were repeated herein.
98. FemPartners, Inc. was aware of the contracts between the Plaintiffs and FemPartners of Wisconsin, Inc., and FemPartners Fertility Center of Wisconsin, Inc. and the Wisconsin Fertility Institute, L.P.
99. By virtue of the conduct alleged in this Complaint, FemPartners, Inc. has unlawfully interfered in the contractual relationship between Plaintiffs and the other named Defendants.
100. The unlawful interference by FemPartners, Inc., was in an intentional disregard of Plaintiffs' rights.
101. The unlawful interference has injured Plaintiffs and caused them to incur damages.
102. FemPartners, Inc. has acted with an intentional disregard of Plaintiffs' rights. In addition to compensatory damages, Plaintiffs are entitled to punitive damages from FemPartners, Inc.

**CLAIM SEVEN – INTENTIONAL MISREPRESENTATION  
AGAINST ALL DEFENDANTS**

103. Plaintiffs hereby incorporate by reference Paragraphs 1-102 of this Complaint, the same as if said paragraphs were repeated herein.

104. All Defendants made representations of fact to the Plaintiffs that FemPartners would abide by the terms of the contracts between the parties, and would send to Wisconsin Fertility any and all accounts receivable as required by the Service Agreement (among other promises).
105. Defendant Thompson made a representation of fact to Wisconsin Fertility when he indicated to Plaintiffs in his October 29, 2013, email that the apparent diversion of funds by FemPartners and the Individual Defendants was simply confusion over the complicated financial structure of the managed care practice model and not theft.
106. Defendant Thompson further represented to Wisconsin Fertility that he was unable to further clarify the confusion because of the alleged illness of the CFO, Defendant Stevens.
107. Defendant Thompson continued to represent to Wisconsin Fertility via email in November that FemPartners could not clarify the accounting issues because Defendant Stevens was still ill.
108. All of the representations made by the Defendants were untrue.
109. The Individual Defendants also intentionally failed to disclose to Plaintiffs that money was being diverted from accounts of Wisconsin Fertility and the limited partnership contrary to contractual requirements. Such diversion was for the direct benefit of the Defendants.
110. The Defendants made the representations knowing that they were not true, or recklessly not caring whether they were true or false.
111. The Defendants failed to disclose, knowing that the failure to disclose would result in the Plaintiffs not being aware of the truth, and inducing Plaintiffs into not acting to protect Plaintiffs' interests.



112. The Defendants made the representations, and failed to disclose to Plaintiffs, with the intent to deceive the Plaintiffs in order to induce them to act or fail to act to Plaintiffs' pecuniary damage.
113. The Defendants have in fact engaged in a course of fraudulent conduct as outlined in this Complaint, to the detriment of the Plaintiffs.
114. During the October to November time period when Thompson was communicating with the Plaintiffs via email the Individual Defendants and FemPartners continued to steal money from the Plaintiffs while making false representations to them about the theft.
115. Plaintiffs believed Thompson's representations were true and relied on them to their detriment.
116. Plaintiffs further relied on all Defendants to fully disclose facts regarding the handling of money for Plaintiffs and the limited partnership, and the nondisclosure resulted in detriment to the Plaintiffs.
117. Plaintiffs have been damaged by Defendants' misrepresentations.

**EIGHTH CLAIM – FRAUD IN THE INDUCEMENT  
AGAINST ALL DEFENDANTS**

118. Plaintiffs hereby incorporate by reference Paragraphs 1-117 of this Complaint, the same as if said paragraphs were repeated herein.
119. All Defendants made representations of fact to the Plaintiffs that the Defendants would abide by the proposed terms of the contracts between the parties, including the promise that all funds collected by FemPartners and properly belonging to Wisconsin Fertility under the agreements would be paid to Wisconsin Fertility.

120. These representations were untrue, were made by the Defendants knowing that they were untrue or recklessly not caring if they were true or false, and were made by the Defendants with the intent to deceive the Plaintiffs to their pecuniary damage.
121. Wisconsin Fertility relied on these representations to their detriment.
122. Upon information and belief, the Defendants were aware that at the time the contracts with Plaintiffs were entered into, the Defendants were failing to abide by the contractual obligations with other medical practices and that funds of other medical practices were being diverted contrary to the agreements with those contractual partners.
123. Upon information and belief, the Defendants induced Plaintiffs to enter into the contractual agreements with the knowledge and expectation that the Defendant entities would not be able to live up to their contractual obligations to Plaintiffs.
124. These representations were made to induce Wisconsin Fertility to enter into the contractual relationship outlined in this Complaint and were made to Wisconsin Fertility prior to the formation of the contracts.
125. Plaintiffs have been damaged by Defendants' misrepresentations and were fraudulently induced into contracting with Defendants to Plaintiffs' detriment.

WHEREFORE, Plaintiffs seek judgment against Defendants as follows:

- (a) Judgment in favor of Plaintiff Wisconsin Fertility and Reproductive Surgery Associates, S.C., and against FemPartners of Wisconsin, Inc., FemPartners Fertility Center of Wisconsin, Inc. and FemPartners, Inc., Jack Thompson, J.R. Stevens and Arthur McClure for theft.
- (b) Judgment in favor of Plaintiff Wisconsin Fertility and Reproductive Surgery Associates, S.C., and against FemPartners of Wisconsin, Inc. and FemPartners Fertility Center of Wisconsin, Inc. for breach of contract.

- (c) Judgment in favor of Plaintiffs against all Defendants for damages incurred by Plaintiffs as a result of Defendants' conspiracy.
- (d) Judgment in favor of Plaintiffs against FemPartners, Inc. for damages caused due to FemPartners, Inc.'s unlawful interference with contracts.
- (e) Judgment in favor of Plaintiffs against all Defendants for damages caused due to Defendants' intentional misrepresentations.
- (f) Judgment in favor of Plaintiffs against all Defendants for damages caused by Defendants' fraudulently inducing the Plaintiffs to enter into contractual relationships with Defendants.
- (g) Judgment in favor of Plaintiffs against all Defendants for punitive damages related to theft, conspiracy, unlawful interference with contracts, intentional misrepresentation and fraud in the inducement.
- (h) An order requiring funds that are either currently in the name of the limited partnership, or are recovered for the benefit of the limited partnership, be paid to Plaintiffs Olive and Pritts.
- (i) Recovery of treble damages as authorized by statute for Defendants' theft.
- (j) Recovery of all of Plaintiffs' costs, interest and attorney fees as permitted by law.
- (k) Any and all other relief the Court deems just and equitable in the premises.

Dated this 30<sup>th</sup> day of May, 2014.

**HALEY PALMERSHEIM, S.C.**

/s/ Kevin J. Palmersheim  
Kevin J. Palmersheim  
Wisconsin State Bar #1020726  
Cathleen A. Dettmann  
Wisconsin State Bar #1048315  
Attorneys for Plaintiffs  
1424 N. High Point Road, Ste. 202  
P.O. Box 628005  
Middleton, WI 53562-8005  
(608) 836-6400

**SERVICE AGREEMENT**

**BETWEEN**

**FEMPARTNERS OF WISCONSIN, INC.**

**AND**

**WISCONSIN FERTILITY AND REPRODUCTIVE SURGERY ASSOCIATES, S.C.**

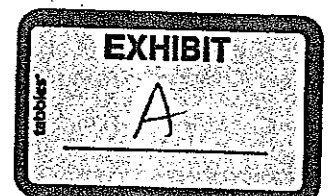


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## SERVICE AGREEMENT

Service Agreement ("Agreement") dated as of September \_\_, 2006, to be effective commencing on the Effective Date, at 12:01 a.m., between FemPartners of Wisconsin, Inc. ("MSO"), a Delaware corporation, and Wisconsin Fertility and Reproductive Surgery Associates, S.C., a Wisconsin corporation ("GROUP"). The Physician Members are executing this Agreement to confirm their obligations hereunder.

### RECITALS:

WHEREAS, GROUP is an obstetrical and gynecological and fertility specialist group medical practice with offices located in Wisconsin (the "Clinic");

WHEREAS, MSO is in the business of owning and leasing certain assets of and managing and administering medical clinics, and providing non-professional support services to and furnishing medical practices with the necessary facilities, equipment, personnel, supplies and support staff; and

WHEREAS, GROUP desires to engage MSO to provide management services to GROUP in order to enable GROUP to devote full time to the practice of medicine and the delivery of medical services to its patients.

### AGREEMENT:

NOW, THEREFORE, in consideration of the premises and the mutual promises and covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the parties to this Agreement, MSO and GROUP hereby agree as follows:

#### 1. RESPONSIBILITIES OF THE PARTIES

1.1 **General Responsibilities of the Parties.** MSO shall provide GROUP with offices, facilities, equipment, supplies, non-GROUP Employee support personnel, and management and financial advisory services. GROUP shall pay MSO for the provision of the above described items and services as described herein. MSO shall neither exercise control over nor interfere with the physician-patient relationship, which shall be maintained strictly between the physicians of GROUP and their patients. Only GROUP shall practice medicine and provide medical services and shall be responsible for recruitment and hiring of physicians and all issues related to patient care and documentation thereof.

1.2 **GROUP's Matters.** GROUP shall maintain absolute and independent control over the diagnosis and treatment of patients and all other medical and ethical affairs of GROUP. GROUP shall maintain sole discretion and authority over the financial and legal matters regarding its independent corporate existence and affairs. It shall set compensation levels for GROUP Employees. GROUP will also be responsible for all other matters pertaining to the operation of GROUP, including tax planning, pension and investment planning, and expenses related solely to these internal business matters, subject to the provisions of Section 4.8 hereof.

1.3 **Patient Referrals.** The parties agree that the benefits to GROUP do not require, are not payment for, and are not in any way contingent upon the admission, referral or any other arrangement for the provision of any item or service offered by MSO to any of GROUP's patients in any facility or laboratory controlled, managed or operated by MSO.

1.4 **Corporate Practice of Medicine.** Notwithstanding any provision to the contrary contained herein, this Agreement is not intended to (a) constitute the use of a medical license or the practice of medicine by anyone other than a licensed physician; (b) aid MSO or any other corporation to practice medicine when in fact such corporation is not authorized to practice medicine; or (c) do any other act or create any other arrangements in violation of the Wisconsin Medical Practices Act (Wis. Stat. § 448.01 et seq.) or the Wisconsin Service Corporation Act (Wis. Stat. § 180.1901 et seq.). MSO and GROUP specifically acknowledge the following:

1.4.1 **Clinical Services.** GROUP shall remain entirely independent of MSO as to the diagnosis and treatment of patients and all other medical, professional and ethical affairs of GROUP. GROUP accepts the full responsibility to these patients for the nature and character of all professional medical services rendered.

1.4.2 **Professional Fees.** GROUP shall determine all fees for professional services rendered by GROUP Medical Professionals.

1.4.3 **Medical Professionals.** MSO may assist GROUP in recruiting of Medical Professionals. However, the selection and control of any such Medical Professionals shall be, and remain, the sole responsibility of GROUP.

## 2. **JOINT OPERATING BOARD**

2.1 **Formation and Operation of the Joint Operating Board.** A Joint Operating Board will be established which shall be responsible for the major policies which will serve as the basis for operations of the Clinic. The Joint Operating Board shall consist of two members of GROUP's Board of Directors (the "GROUP Representatives"), together with two representatives selected by MSO in its sole discretion (the "MSO Representatives"). Members of the Joint Operating Board designated by MSO and/or GROUP shall be entitled to attend and vote in person or by proxy at any meeting of the Joint Operating Board. A quorum for purposes of Joint Operating Board meetings shall be at least one (1) GROUP Representative and one (1) MSO Representative present in person. Except as may otherwise be provided herein, the concurrent approval of a majority of the GROUP Representatives and a majority of the MSO Representatives, voting by class, shall be the act of the Joint Operating Board.

2.2 **Duties and Responsibilities of the Joint Operating Board.** During the Term (as defined below), the Joint Operating Board shall have the following duties and responsibilities:

2.2.1 **Annual Budgets.** All annual capital and operating budgets prepared by MSO as set forth in Section 3 and employing MSO's expertise shall be subject to the review and approval of the Joint Operating Board.

**2.2.2 Administrators.** The selection and retention of the Administrator(s) pursuant to Section 3.2 shall be subject to the reasonable approval of the Joint Operating Board. If GROUP is dissatisfied with the services provided by the Administrator, GROUP shall refer the matter to the Joint Operating Board. MSO and the Joint Operating Board shall in good faith determine whether the performance of the Administrator(s) could be brought to acceptable levels through counsel and assistance, or whether the Administrator(s) should be terminated. MSO, in consultation with GROUP, shall have the ultimate authority to terminate the Administrator(s).

**2.2.3 Advertising.** All advertising, marketing, and public relations shall be subject to the prior review and approval of the Joint Operating Board, in compliance with applicable laws and regulations governing professional advertising and in accordance with the standards and medical ethics of the American Medical Association, Wisconsin Medical Society and the Wisconsin Medical Examining Board.

**2.2.4 Ancillary Services.** The Joint Operating Board shall approve Clinic-provided ancillary services based upon the pricing, access to and quality of such services, and shall also approve the discontinuance of any such services, or any material change in the providers of those services.

**2.2.5 Capital Improvements and Expansion.** The Joint Operating Board shall determine the priority for any renovation, expansion plans and major equipment expenditures with respect to the Clinic, based upon economic feasibility, physician support, productivity and market conditions.

**2.2.6 Exceptions to Inclusion in the Net Revenue Calculation.** The exclusion of any revenue of GROUP or GROUP Employees from Net Clinic Revenues that would otherwise be included in the definition of Net Clinic Revenues (as defined herein), whether now or in the future, shall be subject to the approval of the Joint Operating Board.

**2.2.7 Grievance Issues.** Subject to the provisions of Section 1.2 of this Agreement, the Joint Operating Board shall consider and make final decisions regarding grievances pertaining to matters not specifically addressed in this Agreement as referred to it by GROUP's Board or MSO.

**2.2.8 Physician Hiring.** Subject to and consistent with Sections 1.2, 3.1.15 and 3.3, the Joint Operating Board, with information and analysis provided by MSO, shall determine the number and type of physicians required for the efficient operation of the Clinic and GROUP shall determine the individual physicians to be hired to fill such positions. The approval of MSO shall be required for any variations to the restrictive covenants in any physician contract from those included in the Employment Agreement.

**2.2.9 Provider and Payor Relationships.** The Joint Operating Board shall make the decisions regarding the establishment and maintenance of relationships with institutional health care providers and payors.

2.2.10 **Strategic Planning.** The Joint Operating Board, with the assistance of MSO, shall develop long-term strategic planning objectives.

### 3. **ADMINISTRATIVE SERVICES PROVIDED BY MSO**

During the Term, MSO shall provide or arrange for the services set forth in this Section 3, the cost of all of which shall be included in Clinic Expenses except as specifically provided herein. MSO is hereby expressly authorized, and MSO hereby agrees, to perform its services under this Agreement in a commercially reasonable manner, in accordance with policies approved by the Joint Operating Board, and including without limitation, performance of some functions at locations other than the Clinic Facilities. GROUP will cooperate with MSO's business arrangements and, subject to the final sentence of Section 1.2, will not act in a manner which would prevent MSO from managing the Clinic Facilities' operations in an efficient and businesslike manner.

3.1 **Management and Administration.** During the Term, GROUP hereby appoints MSO as the sole and exclusive manager and administrator of all non-medical functions and services related to the Clinic. MSO agrees that the purpose and intent of this Agreement is to relieve the Physician Members and Physician Employees to the maximum extent possible of the responsibility for coordinating, supervising, overseeing and performing the administrative, accounting, personnel, and business aspects of GROUP's practice, with MSO assuming responsibility and being given all necessary authority to coordinate, supervise, oversee and perform these functions. MSO agrees that GROUP and only GROUP will perform the medical functions of its practice. MSO shall have no authority, directly or indirectly, to perform, and will not perform, any medical function. To the extent that they assist GROUP in performing medical functions, all clinical support personnel provided by MSO shall be subject solely to the direction and supervision of GROUP and, in the performance of such medical functions, shall not be subject to any direction or control by, or liability to, MSO, except as may be specifically authorized by GROUP. MSO may, however, advise GROUP as to the relationship between its performance of medical functions and the overall administrative and business functioning of the Clinic. Without limiting the generality of the foregoing, MSO shall provide the following administrative, management and marketing services as may be required in conjunction with the Clinic:

3.1.1 **Annual Budgets.** MSO shall provide financial planning and prepare annual budgets. Annually, MSO shall prepare and deliver to GROUP capital and operating budgets reflecting in reasonable detail anticipated revenues, expenses, and sources and uses of capital necessary to maintain and enhance GROUP's medical practice and Clinic services. MSO, as part of the annual budget, shall recommend fees, charges, premiums or other amounts due in connection with services and goods provided by GROUP; provided, however, that GROUP shall determine such fees, charges, premiums, or other amounts in its sole discretion.

3.1.2 **Financial Statements.** MSO shall cause to be prepared monthly unaudited financial statements of GROUP containing a balance sheet and a statement of income from Clinic operations. MSO shall also prepare a fiscal year unaudited financial statement containing a balance sheet and a statement of income which shall be delivered to GROUP within 90 days of the close of each fiscal year. If GROUP desires an audit or



review of GROUP's financial statements in addition to the information provided by MSO, such an audit or review may be performed at GROUP's expense; provided, however, that if, as a result of such audit or review, any material discrepancies that are adverse to GROUP are discovered in the financial statements prepared by MSO, the cost of such audit or review shall be a MSO Expense and each of the parties hereto shall promptly reimburse the other party for any amounts to which such other party is entitled under the provisions hereof as a result of the correction of such discrepancies. MSO shall establish and administer accounting procedures, controls and systems for the development and preparation of administrative and financial records and books of account relating to the Clinic and the provision by GROUP of medical services, all of which shall be prepared and maintained to the extent applicable in accordance with GAAP.

**3.1.3 Personnel.** MSO will provide with the Joint Operating Board's approval all personnel reasonably necessary for the conduct of Clinic operations ("MSO Personnel") with the exception of Medical Professionals. The Joint Operating Board shall agree on a protocol with respect to the hiring of MSO Personnel which shall be administered by the MSO. MSO shall determine and cause to be paid the salaries, fringe benefits, and any sums for income taxes, unemployment insurance, social security taxes, or any other withholding required by applicable law or governmental authority, of all such MSO Personnel, with the amounts and levels of salaries and benefits being determined by the Joint Operating Board. The MSO Personnel shall maintain such time records as may be necessary to appropriately allocate expenses under this Agreement. MSO Personnel shall be under the direction, supervision and control of MSO, with those personnel performing patient care services subject to the professional supervision of GROUP as described in Section 3.1. If GROUP is dissatisfied with the services of any person, GROUP shall consult with MSO. MSO shall in good faith determine whether the performance of that employee could be brought to acceptable levels through counsel and assistance, or whether such employee should be reassigned or terminated. At MSO's option some or all of the MSO Personnel (including Technical Employees) may be carried on the books of GROUP as GROUP's employees, but in such event the costs associated with such MSO Personnel shall be a Clinic Expense. MSO shall provide administrative services such as scheduling, personnel policies, and payroll administration for Physician Extenders and Technical Employees.

**3.1.4 Quality Assurance and Utilization Management.** MSO will assist GROUP in fulfilling its obligation to its patients to maintain high quality medical and professional services, including patient satisfaction programs, employee education, outcomes analysis, utilization programs, clinical protocol development and risk management programs. The costs of such programs as may be authorized by the Joint Operating Board shall be a Clinic Expense.

**3.1.5 Facilities and Equipment.** MSO shall provide all equipment, fixtures, office supplies, furniture and furnishings deemed reasonably necessary by MSO for the operation of the Clinic Facilities and reasonably necessary for the provision of medical service by the Clinic. MSO also will use its reasonable efforts to supervise or otherwise provide for the maintenance of and the proper cleanliness of the Clinic Facilities and the

proper maintenance of and cleanliness of the equipment, furniture and furnishings utilized in the Clinic Facilities. Subject to exceptions approved by the Joint Operating Board, MSO shall provide GROUP with the use of the equipment, furniture, fixtures, furnishings and other personal property acquired by MSO; provided that nothing herein shall be construed as precluding MSO from selling, leasing or otherwise disposing of all or any part of such personal property; provided further that any such disposition shall not eliminate or diminish MSO's obligations hereunder.

**3.1.6 Inventory Control and Purchasing Supplies.** MSO shall order, procure and purchase inventory and supplies, and such other ordinary, necessary or appropriate materials which MSO or GROUP shall deem to be reasonably necessary in the operation of the Clinic. GROUP shall not order or purchase inventory and supplies without the prior approval of MSO, which shall not be unreasonably withheld. The ultimate oversight, supervision and ownership of all medical supplies is and shall remain the sole responsibility of GROUP. As used in this provision, the term "medical supplies" shall mean all drugs, pharmaceuticals, products, substances, items or devices whose purchase, possession, maintenance, administration, prescription or security requires the authorization or order of a licensed health care provider or requires a permit, registration, certification or other governmental authorization held by a licensed health care provider as specified under any federal or state law.

**3.1.7 Third Party Payor Contracting.** On behalf of GROUP, MSO shall market, negotiate, and administer all third party payor contracts, subject to the provisions of Section 2.2.9 and shall consult with GROUP on all professional and clinical matters relating thereto. On behalf of GROUP, MSO will use its reasonable efforts to identify, negotiate with, and enter into contracts with payors on terms reasonably satisfactory to GROUP, and GROUP will reasonably cooperate with MSO's third party payor contracting efforts.

**3.1.8 Billing and Collections.** On behalf of GROUP, MSO shall manage the billing of patients and collect all fees for services (including ancillary services) performed by GROUP inside or outside the Clinic Facilities or arrange for such billing and collection, either pursuant to this Agreement, or in the case of Medicare and Medicaid billings, pursuant to the Billing Agent Agreement attached hereto as Exhibit 3.1.8 (the "Billing Agent Agreement"). GROUP hereby appoints MSO, for the Term, to be its true and lawful attorney-in-fact for the following purposes (other than with respect to Medicare and Medicaid services which shall be governed by the terms of the Billing Agent Agreement): (i) to bill patients in GROUP's name and on its behalf; (ii) to collect accounts receivable resulting from such billing in GROUP's name and on its behalf; (iii) to receive payments from health plans, and all other third party payors, (iv) to receive the cash proceeds of any accounts receivable; (v) to take possession of and endorse in the name of GROUP (and/or in the name of an individual physician, any such payment intended for purpose of payment of a physician's bill) any notes, checks, money orders, insurance payments and other instruments received in payment of accounts receivable; (vi) to sign checks, drafts, bank notes, or other instruments on behalf of GROUP, and to make withdrawals from the GROUP Account (defined in Section 3.1.9) for payments specified in this Agreement and as requested from time to time by GROUP; and (vii) in

accordance with policies adopted by the Joint Operating Board, to initiate legal proceedings, with the approval of the Group, in the name of GROUP to collect any accounts and monies owed to GROUP, to enforce the rights of GROUP as creditors under any contract or in connection with the rendering of any service, and to contest adjustments and denials by governmental agencies (or its fiscal intermediaries) as third-party payors. GROUP and the Physician Members may perform the functions or exercise the rights set forth in this Section 3.1.8 only with the consent of the MSO. GROUP shall cooperate and shall cause each Physician Member to cooperate with the MSO; and at the request of the MSO, GROUP shall provide and shall cause each Physician Member to provide reasonable assistance to the MSO with respect to the functions set forth herein. All adjustments made for uncollectible accounts, professional courtesies and other activities that do not generate a collectible fee shall be done in a reasonable and consistent manner acceptable to MSO's independent certified public accountants. Notwithstanding anything to the contrary set forth therein, the term of the Billing Agent Agreement shall be coterminous with this Agreement such that the Billing Agent Agreement will automatically terminate upon termination of this Agreement.

**3.1.9 Deposit of Net Clinic Revenues.** During the Term, all Net Clinic Revenues collected shall be deposited directly into a bank account of which GROUP shall be the owner ("GROUP Account"). MSO and GROUP shall maintain their accounting records in such a way as to clearly segregate Net Clinic Revenues from other funds of MSO or GROUP. During the Term, GROUP hereby appoints MSO as its true and lawful attorney-in-fact to deposit in the GROUP Account all revenues collected and to disburse such deposited funds to creditors and other persons on behalf of GROUP, maintaining records of such receipt and disbursement. GROUP covenants, and shall cause all GROUP Employees to covenant, to forward any payments received with respect to Net Clinic Revenues provided by GROUP and GROUP Employees to MSO for deposit. With respect to funds deposited in the GROUP Account, GROUP (and the authorized signatories on the GROUP Account) shall execute a revocable standing transfer order ("Transfer Order") in a form acceptable to MSO under which the bank maintaining the GROUP Account shall transfer all amounts in the GROUP Account at the end of each business day to a separate bank account owned solely by MSO (the "MSO Account"). GROUP and MSO hereby agree to execute from time to time such documents and instructions as shall be required by the bank maintaining the GROUP Account and mutually agreed upon to effectuate the foregoing provisions and to extend or amend such documents and instructions. Any action by GROUP that interferes with the operation of this Section, including, but not limited to, any failure to deposit or allow MSO to deposit any substantial Net Clinic Revenues into the GROUP Account, or any withdrawal of any funds from the GROUP Account not authorized by the express terms of this Agreement, or any revocation of or attempt to revoke the Transfer Order or MSO's right to disburse funds from the GROUP Account (otherwise than upon expiration or termination of this Agreement), will constitute a breach of this Agreement and, to the extent authorized by law, will entitle MSO, in addition to any other remedies that it may have at law or in equity, to seek a court ordered assignment of the following rights:

- (a) To collect accounts receivable resulting from the provision of services to patients of GROUP and the GROUP Employees;
- (b) To receive payments from patients, third party payor plans, health plans, Medicare, Medicaid and all other payors with respect to services rendered by GROUP and GROUP Employees;
- (c) To take possession of and endorse any notes, checks, money orders, insurance payments and any other instruments received as payment of such accounts receivable; and
- (d) To collect all revenues of GROUP.

**3.1.10 Management Information Systems/Computer Systems.** MSO shall supervise and provide for information systems that are necessary and appropriate for the operation of the Clinic.

**3.1.11 Legal and Accounting Services.** MSO shall select, contract for, arrange for and/or render to GROUP, with the approval of the Joint Operating Board, such business, legal and financial management consultation and advice as may be reasonably required or requested by GROUP and directly related to the operations of the Clinic; provided, however, that such services shall be approved in advance by the Administrator responsible for the Clinic involved. MSO shall not be responsible for rendering any legal advice, tax advice, or personal financial services to GROUP related to its independent corporate existence or affairs or to any employee or agent of GROUP.

**3.1.12 Tax Information.** MSO shall coordinate the preparation of all appropriate GROUP tax returns and reports and financial statements. MSO shall have no responsibility for the payment of GROUP's income and franchise taxes and such costs will not be Clinic Expenses.

**3.1.13 Sales and Use Taxes.** MSO and GROUP acknowledge and agree that to the extent that any of the services to be provided by the MSO or GROUP hereunder may be subject to any state sales and use taxes, MSO may have a legal obligation to collect such taxes and to remit same to the appropriate tax collection authorities. GROUP agrees to pay as a Clinic Expense the applicable state sales and use tax attributable to such MSO or GROUP services. MSO and GROUP agree to use their commercially reasonable efforts to minimize applicable state sales and use tax, including maintaining sufficient records to identify those items subject to sales tax. The Joint Operating Board shall resolve any disputes as to whether any services provided by the GROUP or MSO hereunder are subject to state sales and use tax.

**3.1.14 Negotiation and Payment of Premiums for all Insurance Products Held by GROUP.** MSO shall negotiate for and cause premiums to be paid with respect to the insurance provided for in Section 8. Premiums and deductibles with respect to such policies shall be a Clinic Expense.



**3.1.15 Physician Recruiting.** Subject to and consistent with Sections 1.2 and 3.3, MSO shall assist GROUP in recruiting additional physicians, carrying out such administrative functions as may be appropriate such as advertising for and identifying potential candidates, checking credentials, and arranging interviews; provided, however, that GROUP shall interview and make the ultimate decision as to the suitability of any physician to become associated with the Clinic. All physicians recruited by MSO and accepted by GROUP shall be employed by or contracted with GROUP, and MSO shall not employ or contract with such physicians. If approved by the Joint Operating Board, any expenses incurred in the recruitment of physicians, including, but not limited to, employment agency fees, relocation and interviewing expenses shall be Clinic Expenses.

**3.1.16 Supervision of Ancillary Services.** MSO shall implement, operate and supervise all ancillary services approved by the Joint Operating Board.

**3.1.17 Strategic Planning Assistance.** MSO shall assist with and implement the strategic plan approved by the Joint Operating Board.

**3.1.18 Advertising and Public Relations.** From time to time MSO shall recommend to the Joint Operating Board various advertising and public relations initiatives subject to approval by Joint Operating Board pursuant to Section 2.2.3. All Joint Operating Board approved advertising, public relations and related marketing expenses incurred on behalf of GROUP shall be a Clinic Expense, and shall not in any way be included within the Service Fee paid to MSO.

**3.1.19 Files and Records.** MSO shall supervise and maintain custody of all files and records relating to the operation of the Clinic, including, but not limited to, accounting, billing, patient medical records and collection records, in accordance with all state and federal laws and regulations. MSO acknowledges that it is a "Business Associate" as that term is defined and used in the HIPAA Privacy Regulations. Patient medical records shall at all times be and remain the property of GROUP and shall be located in the Clinic Facilities so that they are readily accessible for patient care. MSO shall preserve the confidentiality of patients medical records and any other records which contain protected health information (as that term is defined under the HIPAA Privacy Regulations)) and use information contained in such records only for the limited purpose necessary to perform the services set forth herein or as permitted by and in compliance with applicable state and federal laws and regulations, including, but not limited to the federal Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereto, and in accordance with the "Business Associates Agreement" executed between MSO and GROUP, the form of which is attached as Exhibit 3.1.19 to this Agreement.

**3.1.20 Other.** MSO shall supervise, manage, and arrange for or otherwise supply to GROUP necessary clerical, accounting, bookkeeping, printing and duplicating services, postage, medical transcribing services and any other ordinary, necessary, or appropriate service for operation of the Clinic.

3.1.21 **Management Services.** MSO shall use and occupy the Clinic Facilities exclusively for the delivery of management services pursuant to this Agreement and shall comply in all material respects with all applicable local rules, ordinances, and other laws.

3.1.22 **MSO Use.** MSO shall use its reasonable efforts to prevent damage, excessive wear and tear, and malfunction or other breakdown of the premises and personal property utilized by the Clinic or any part thereof.

3.2 **Administrators.** MSO shall hire and supervise one or more Administrator(s), subject to the approval of the Joint Operating Board and the provisions of Section 2.2.2, to manage and administer all of the day-to-day business functions of MSO; provided that no more than one Administrator may be hired without the approval of the Joint Operating Board. Under the direction, supervision and control of MSO, the Administrators, subject to the terms of this Agreement, shall implement the policies established by the Joint Operating Board and shall generally perform the duties and have the responsibilities of an administrator.

3.3 **Expansion of Clinic.** MSO will pursue various programs to increase revenue and profitability including assisting GROUP in adding additional office-based procedures and ancillary services as determined by the Joint Operating Board. MSO also will assist in recruiting new physicians and developing relationships and affiliations with other physicians, hospitals, networks, HMOs, etc. GROUP will cooperate with MSO in such expansion efforts and use its reasonable efforts to assist MSO with respect thereto.

3.4 **New Ancillary Services.** All ancillary services referred to in Section 2.2.4 to be provided by GROUP will be subject to the approval of the Joint Operating Board. MSO and GROUP will develop mutually agreeable financial arrangements with respect to any new ancillary services so approved.

3.5 **Events Excusing Performance.** MSO shall not be liable to GROUP for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies, or other events over which MSO has no control for so long as such events continue, and for a reasonable amount of time thereafter.

3.6 **Capital Needs.** Subject to Sections 2.2.1 and 2.2.5, MSO shall provide the level of capital support determined necessary by the Joint Operating Board to deliver quality medical services in a cost effective manner.

#### 4. **OBLIGATIONS OF GROUP**

4.1 **Professional Services.** GROUP shall provide professional services to patients in material compliance at all times with ethical standards, laws and regulations applying to the medical profession. GROUP shall also ensure that any GROUP Employee associated with GROUP required to be licensed by the State of Wisconsin has all required licenses, credentials, approvals, and other certifications to perform his or her duties and services for the Clinic. In the event that any disciplinary actions or medical malpractice actions are initiated against any GROUP Employee, GROUP shall immediately inform the applicable Administrator of such action and the underlying facts and circumstances. GROUP shall carry out a program to monitor GROUP's quality of medical care, with MSO's assistance. GROUP will cooperate with MSO in

taking steps to resolve any utilization review or quality assurance issues which may arise in connection with the Clinic.

**4.2 Employment of Physician Employees.** Subject to and consistent with Sections 1.2, 2.2.8, 3.1.15 and 3.3, GROUP shall have complete control of and responsibility for the hiring, compensation, supervision, evaluation and termination of its Physician Members and Physician Employees, although at the request of GROUP, MSO shall consult with GROUP regarding such matters. GROUP shall, with the advice and assistance of MSO, if requested by GROUP, conduct an appropriate and reasonable review in connection with the hiring of any physician or the acquisition of any physician group or practice. GROUP shall obtain and enforce formal employment agreements with each of its Physician Shareholders and Physician Employees, hired or contracted, in a form approved by the Joint Operating Board. Neither GROUP (with respect to Medical Professionals) nor any Medical Professionals shall have any claim under this Agreement or otherwise against Administrator(s) or MSO for Worker's Compensation, unemployment compensation, or Social Security benefits (with respect to Medical Professionals), all of which shall be the sole responsibility of GROUP and/or the Physician Members, as applicable.

**4.3 GROUP Expenses.** GROUP shall be solely responsible for the payment of all GROUP Expenses.

**4.4 Clinic Facilities.** GROUP shall use and occupy the Clinic Facilities exclusively for the practice of medicine, and shall comply in all material respects with all applicable local rules, ordinances and all standards of medical care. It is expressly acknowledged by the parties that the medical practice or practices conducted at the Clinic Facilities shall be conducted solely by physicians associated with GROUP, and no other physician or medical practitioner shall be permitted to use or occupy the Clinic Facilities without the prior written consent of the Joint Operating Board, except in emergency situations as required by legal and ethical obligations relating to patient health and safety.

**4.5 Professional Insurance Eligibility.** GROUP shall cooperate in the obtaining and retaining of professional liability insurance by assuring that its GROUP Employees are insurable, and participate in an ongoing risk management program.

**4.6 Events Excusing Performance.** GROUP shall not be liable to MSO for failure to perform any of the services required herein in the event of strikes, lock-outs, calamities, acts of God, unavailability of supplies, or other events over which GROUP has no control for so long as such events continue, and for a reasonable amount of time thereafter.

**4.7 Restrictions on Use of Clinic Facilities.** GROUP shall at all times during the Term comply with the policy of MSO stated in Section 6.2 herein.

**4.8 GROUP Employee Benefit Plans.**

**4.8.1 New Plans.** The parties agree that, as soon as practical, GROUP will adopt a new GROUP "employee benefit plan" (as defined in Section 3(3) of the Employee Retirement Income Security Act of 1974, as amended).

4.8.2 **Expenses.** Expenses incurred in connection with any GROUP Plan or other employee benefit plan maintained by GROUP, including without limitation the compensation of counsel, accountants, corporate trustees and other agents shall be an expense of GROUP or GROUP Plan and shall not be included in Clinic Expenses.

4.8.3 **Contribution Costs.** The contribution and administration expenses for Medical Professionals participating in either the MSO or GROUP Plan shall be an expense of GROUP. MSO shall make contributions or payments with respect to any GROUP Plan (the allocable portion of which shall be a Clinic Expense) on behalf of eligible Technical Employees and any MSO Personnel employed by GROUP at MSO's request pursuant to Section 3.1.3.

4.8.4 **Amendments.** MSO shall have the sole and exclusive authority to adopt, amend, or terminate any MSO Plan for the benefit of its employees. MSO shall have the sole and exclusive authority to appoint and remove the trustee, custodian, and administrator of any MSO Plan. GROUP shall have the sole and exclusive authority to appoint and remove the trustee, custodian, and administrator of any GROUP Plan.

4.9 **Physician Powers of Attorney.** GROUP shall require all GROUP Employees to execute and deliver to MSO powers of attorney, satisfactory in form and substance to MSO and GROUP, appointing MSO as attorney-in-fact for each for the purposes set forth in Sections 3.1.8 and 3.1.9, which powers of attorney shall immediately terminate upon termination of this Agreement except with respect to GROUP's billings prior to termination of this Agreement. With respect to such billings, such powers of attorney shall terminate upon the first to occur of (i) 180 days after the termination of this Agreement or (ii) the receipt of payment of the invoices with respect to such billings.

4.10 **Premises and Personal Property.** GROUP shall use, and shall cause the GROUP Employees to use, reasonable efforts to prevent damage, excessive wear and tear, and malfunction or other breakdown of the premises and personal property utilized by the Clinic or any part thereof. GROUP shall, and shall cause GROUP Employees to, promptly inform MSO in writing of any and all necessary replacement, repairs, or maintenance to any of such premises or personal property and any failures of equipment of which they become aware.

## 5. **RECORDS**

5.1 **Patient Records.** Upon termination of this Agreement, GROUP shall retain all patient information maintained by GROUP or MSO in the name of GROUP at the Clinic. All information within the possession of the MSO at locations other than the Clinic shall be subject to return, destruction or continued protection in accordance with the Business Associate Agreement entered into by the GROUP and MSO.

5.2 **Other Records.** All records relating in any way to the operation of the Clinic which are not the property of GROUP under the provisions of Section 5.1 above, including but not limited to financial statements and business records, shall at all times be the property of MSO.



**5.3 Access to Records.** During the Term, and thereafter, GROUP or its designee shall upon 24-hours' notice have reasonable access (for the purpose of examining and copying) during normal business hours to (i) the Joint Operating Board minutes, consents and similar governance documents, (ii) GROUP corporate governance records, (iii) GROUP's and MSO's (to the extent they relate to GROUP) financial and accounting records, including, but not limited to, records of collections, expenses and disbursements as kept by MSO in performing MSO's obligations under this Agreement, and (iv) agreements with institutional health care providers and payers with respect to the Clinic and any other agreements to which GROUP is a party or under which GROUP is obligated. In addition, GROUP shall have such access at any time to GROUP's patient medical records. GROUP may copy any or all of the above records.

## **6. FACILITIES TO BE PROVIDED BY MSO**

**6.1 Facilities.** MSO hereby agrees to provide or arrange and cause to be paid as a Clinic Expense the offices and facilities for Clinic operations, including but not limited to, the Clinic Facilities and all costs of repairs, maintenance and improvements, utilities (telephone, electric, gas, water) expenses, normal janitorial services, related real or personal property lease cost payments and expenses, taxes and insurance, refuse disposal, laundry, and all other costs and expenses reasonably incurred in conducting operations in the Clinic Facilities during the Term.

**6.2 Use of Facilities.** MSO and GROUP agree that GROUP, as an independent contractor, is a separate organization that retains the authority to direct the medical, professional, and ethical aspects of its medical practice. If a Physician Member or a Physician Employee performs abortion procedures in any facility (for example, a hospital facility), MSO shall not receive any MSO Distribution from the revenue generated from such procedures.

## **7. FINANCIAL ARRANGEMENTS**

**7.1 Service Fees.** GROUP and MSO agree that the compensation set forth in this Section 7 is being paid to MSO in consideration of the substantial commitment made by MSO hereunder and that such fees are fair and reasonable and consistent with fair market value. As payment for services rendered to GROUP, each month MSO shall be paid the amount of all Service Fees.

**7.2 Calculation of Payments.** The amounts to be paid to MSO by GROUP under this Section 7 shall be payable monthly, and at MSO's option, accrue monthly. Some amounts may need to be estimated, with Adjustments made as necessary the following month. Any audit Adjustments would be made after completion of the fiscal year audit.

**7.3 Clinic Expenses.** Commencing on the Effective Date, MSO shall pay all Clinic Expenses as they fall due (including without limitation any allocable portion of the expenses of MSO Personnel carried on the books of GROUP); provided, however, that MSO may, in the name of and on behalf of GROUP, contest in good faith any claimed Clinic Expenses as to which there is any dispute regarding the nature, existence or validity of such claimed Clinic Expenses. MSO hereby agrees to indemnify and hold GROUP harmless from and against any liability, loss, damages, claims, causes of action and reasonable expenses of GROUP resulting from the contest of any Clinic Expenses.

**7.4 Accounts Receivable.** To assist GROUP in maintaining reasonable cash flow for payment of Clinic Expenses, on a daily basis, to the extent permitted by law, MSO shall purchase the revenues and accounts receivable of GROUP arising from services rendered during such day, and MSO shall obtain title to such revenues and accounts receivable simultaneously each day as the services are performed. The consideration for the purchase of such revenues and accounts receivable shall be an amount equal to all billed charges recorded each month (net of Adjustments) less Service Fees then due to MSO under Section 7.1, and further reduced by any other accrued but unpaid Service Fees. MSO shall pay for such revenues and accounts receivable that are collected on approximately the 15th day of the following month (unless the 15<sup>th</sup> falls on a weekend day or on a national bank holiday, in which case the applicable date shall be the next weekday that is not a weekend or a national bank holiday) with cash, or other immediately available funds, which shall be deposited directly into an account of GROUP. Although it is the intention of the parties that MSO purchase and thereby become owner of the revenues and accounts receivable of GROUP, in case such purchase shall be ineffective for any reason, GROUP has previously entered into a Security Agreement in the form attached as Exhibit 7.4(a) to grant a security interest in the revenues and accounts receivable to MSO, which covers the revenues and accounts receivable of GROUP at the time such Security Agreement was executed as well as all future revenues and accounts receivable of GROUP arising from services rendered during the Term. In addition, GROUP shall cooperate with MSO and execute and deliver, and cause each GROUP Employee to execute and deliver, all necessary documents in connection with the pledge of such revenues and accounts receivable to MSO, or at MSO's option, its lenders. Such documents shall include, without limitation, one or more security agreements as requested by MSO or its lenders in form(s) similar to that set forth at Exhibit 7.4(b), UCC-1 financing statements in favor of MSO or its lenders, bank deposit agreements, closing certificates and acknowledgements of the lender's senior lender status, and such other documents as may be requested by MSO or its lenders. In furtherance of the foregoing agreements, GROUP has executed the limited power of attorney attached hereto as Exhibit 7.4(c) (the "Power of Attorney"), and agrees that any revocation of or attempt to revoke the Power of Attorney (other than upon expiration or termination of this Agreement), will constitute a breach of this Agreement by GROUP subject to injunctive relief. All collections in respect of such revenues and accounts receivable shall be deposited in a bank account in MSO's name at a bank designated by MSO, or at MSO's option, into the GROUP Account but without any limitation on MSO's ability to withdraw or transfer such funds. To the extent GROUP or any GROUP Employee comes into possession of any payments in respect of such revenues and accounts receivable, GROUP or any GROUP Employee shall direct immediately such payments to MSO for deposit in bank accounts designated by MSO.

**7.5 Working Capital.** MSO shall provide or arrange for working capital up to \$351,000 to pay Clinic Expenses and for equipment and furniture to be utilized by GROUP. The Joint Operating Board shall determine the working capital, equipment and furniture needs of GROUP during the Term.

## **8. INSURANCE AND INDEMNITY**

**8.1 Insurance to be Maintained.** Throughout the Term, MSO will use reasonable efforts and GROUP shall cooperate to provide and maintain, as a Clinic Expense, all necessary insurance (and, on the request of GROUP, will provide GROUP with a certificate evidencing all

coverage), including, but not limited to, comprehensive professional liability insurance for all professional employees of GROUP and of MSO utilized by GROUP with limits for GROUP Medical Professionals as determined to be reasonable by MSO consistent with its national program, comprehensive general liability insurance and property insurance covering the Clinic Facilities and operations; provided that the following shall apply with respect to comprehensive professional liability insurance:

- (a) unless otherwise determined by the Joint Operating Board, throughout the Term, subject to the provision of Sections 4.5 and 8.1, GROUP shall maintain comprehensive professional liability insurance with limits of the greater of (i) those currently provided for the physicians or (ii) those required under the terms of the third party payor contracts, and with a separate limit for GROUP; provided, however, that any exceptions made to this requirement may be revoked by MSO, in its sole discretion, in which case the limits shall revert to those stated above; and provided further, however, that in the event that insurance with such limits is not reasonably obtainable, GROUP shall maintain the next best, reasonably obtainable, comprehensive professional liability insurance.
- (b) All liabilities not paid within the limits of such policies shall be GROUP Expenses.
- (c) MSO shall have the option, upon the approval of the Joint Operating Board, of providing such professional liability insurance through an alternative program, provided such program meets with requirements of the Insurance Commissioner of the State of Wisconsin and is approved by the Joint Operating Board.

**8.2 Tail Insurance Coverage.** GROUP will cause each individual physician associated with the Clinic(s) to enter into an agreement with GROUP that upon termination of such physician's relationship with GROUP, for any reason, tail insurance coverage, satisfactory to MSO, will be purchased for such physician pursuant to employment agreements, restrictive covenant agreements, or other agreements entered into by GROUP and the individual physicians, and GROUP hereby covenants with MSO to enforce such provisions relating to the tail insurance coverage or to provide such coverage, the expense of which shall be a Clinic Expense.

**8.3 Additional Insured.** GROUP and MSO agree to use their reasonable efforts to have each other named as an additional insured on the other's respective professional liability insurance programs at MSO's expense.

**8.4 Mutual Indemnification.** GROUP shall indemnify, hold harmless, and defend MSO, its officers, directors, and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees) to the extent not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of (i) the performance of medical services or any other acts or omissions by or under the supervision of GROUP and/or its members, agents, employees, and/or subcontractors (other than MSO) during the Term, including any claim against MSO by a GROUP Employee, which claim arises out of such GROUP Employee's employment relationship with GROUP or as a result of

services performed by such GROUP Employee and which claim would typically be covered by workers' compensation; and (ii) the breach by GROUP of any provision of this Agreement. MSO shall indemnify, hold harmless, and defend GROUP, its officers, directors, and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees), to the extent not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of (i) the performance of any intentional acts, negligent acts, or omissions by or under the supervision of MSO and/or its shareholders, agents, employees, and/or subcontractors (other than GROUP or GROUP Employees) during the Term, including any claim against GROUP by an MSO employee which would typically be covered by workers compensation, and (ii) the breach by MSO of any provision of this Agreement.

If any claim or action of a third party ("Proceeding") shall be brought or asserted against an indemnified party or successor thereto (the "Indemnified Person") in respect to which indemnity may be sought under this Section 8 from an indemnifying person or any successor thereto (the "Indemnifying Person"), the Indemnified Person will give prompt written notice of such Proceeding to the Indemnifying Person who shall assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Person and the payment of all expenses; provided, that any delay or failure to so notify the Indemnifying Person shall relieve the Indemnifying Person of its obligations hereunder only to the extent, if at all, that it is prejudiced by reason of such delay or failure. The Indemnified Person shall have the right to employ separate counsel in any Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of the Indemnified Person unless the Indemnified Person shall in good faith determine that there exist actual or potential conflicts of interest that make representation by the same counsel inappropriate. In the event that the Indemnifying Person, within ten (10) days after notice of any such Proceeding, fails to assume the defense thereof, the Indemnified Person shall have the right to undertake the defense, compromise, or settlement of such Proceeding for the account of the Indemnifying Person, subject to the right of the Indemnifying Person to assume the defense of such Proceeding with counsel reasonably satisfactory to the Indemnified Person at any time prior to the settlement, compromise, or final determination thereof. The Indemnifying Person shall not, without the Indemnified Person's prior written consent, settle or compromise any Proceeding or consent to the entry of any judgment with respect to any Proceeding for anything other than money damages paid by the Indemnifying Person.

## 9. RESTRICTIVE COVENANTS.

The parties recognize that the services, working capital, lease arrangements, equipment and furnishings to be provided by MSO shall be feasible only if GROUP operates an active medical practice to which the physicians associated with GROUP devote their full time and attention. To that end:

### 9.1 Restrictive Covenants by GROUP.

9.1.1 **Medical Services.** During the Term, GROUP agrees not to acquire, establish, or commence the operation of any satellite location, medical office, ambulatory surgery center, fertility center, health maintenance organization, preferred provider organization, exclusive provider organization, site management organization, clinical



research organization or similar entity or organization established or operated by GROUP after the date hereof without the prior written consent of MSO. Should the expansion of service or establishment of a new clinic or location be approved, MSO, at its option, shall have the exclusive right to provide services at the new clinic or location as applicable. GROUP shall not merge or consolidate with any other entity or liquidate or dissolve or wind-up GROUP's affairs or sell a non-dominus amount of its assets, enter into any partnerships, joint ventures, or sale-leaseback transactions, or purchase or otherwise acquire (in one or a series of transactions) a non-dominus amount of the property or assets of any other person or entity without the prior written consent of MSO. MSO's consent shall be required for GROUP or any Physician Member or Physician Employee to provide medical services at a location other than a Clinic Facility or on behalf of any entity or person other than GROUP, except in emergency situations as required by legal and ethical obligations relating to patient health and safety.

**9.1.2 Management Services.** Except as specifically agreed to by MSO in writing, GROUP covenants and agrees that during the Term and for a period of two (2) years from the date this Agreement is terminated, GROUP shall not directly or indirectly own (excluding ownership of less than five percent (5%) of the equity of any publicly traded entity), manage, operate, control, enter into a management, services or analogous agreement with, or be otherwise associated with, lend funds to, lend its name to, or maintain any interest whatsoever in any enterprise (i) having to do with the provision, distribution, promotion, or advertising of any type of management or administrative services or products to third parties in competition with MSO within thirty (30) miles of any Clinic Facility; and/or (ii) offering any type of service(s) or product(s) to third parties substantially similar to those offered by MSO to GROUP within thirty (30) miles of any Clinic Facility. Notwithstanding the above restriction, nothing herein shall prohibit GROUP or any of its members, or an entity wholly owned by them from providing management and administrative services to its or their own medical practices after the termination of this Agreement.

## **9.2 Restrictive Covenants by Physician Employees and Physician Members.**

GROUP shall obtain and enforce Employment Agreements with a minimum initial term of seven (7) years and in a form approved by the Joint Operating Board for each of its future Physician Employees and Physician Members, in which each Physician Employee and Physician Member agrees that, subject to certain exceptions agreed to by MSO:

**9.2.1** Except to the extent necessary in a medical emergency, during the term of the Employment Agreement, and any extensions thereof, the Physician Employee or Physician Member, as the case may be, shall not, directly or indirectly, establish, own, operate or provide professional medical services at any medical office, clinic, or outpatient and/or ambulatory treatment, fertility center, surgical or diagnostic facility other than such offices, clinics, or facilities owned, operated, managed, staffed, or leased by GROUP, or any affiliate thereof, unless the payments received by Physician Employee or Physician Member are included as Net Clinic Revenues of GROUP. Notwithstanding anything to the contrary in this Section 9.2, Physician Member is not prohibited from (a) taking an occasional short-term locum tenens assignment (on weekends or after-hours), or (b) engaging in other outside professional activities such as guest lectures,

medical/legal consultation or expert testimony, but only to the extent they (i) are not excessive and do not unreasonably interfere with the Physician Member's professional medical services provided for the benefit of the Group, (ii) if related to short-term locum tenens, are disclosed in writing to the Joint Operating Board, and (iii) do not conflict with the best interests of the Group or detract from Physician Member's performance of duties for the Group. Any income derived from such activities are to be the sole income of the Physician Member and not the Group.

9.2.2 For a period of two (2) years after the termination of such Employment Agreement, the Physician Employee or Physician Member, as the case may be, shall not, directly or indirectly, induce or attempt to influence any employee of MSO or any person employed by MSO or GROUP within the prior six months or of any physician practice managed by MSO to terminate his or her employment, or hiring any such employee whether or not so induced or influenced, except that any such employee may be hired with the prior written consent of MSO.

9.3 **Restrictive Covenants by MSO.** During the Term, MSO agrees not to (and shall cause its affiliates not to) acquire, establish, or commence the operation of any fertility center within 150 miles of the City of Madison, Wisconsin without the prior written consent of the Group.

9.4 **Enforcement; Third Party Beneficiary; Waiver of Covenants.** MSO and GROUP acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Section 9 shall be inadequate, either party shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist by law. If any provision of Section 9 relating to territory, scope of activity restricted, or time described therein shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity, restricted or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity, restricted and/or area of restriction deemed to be reasonable and enforceable by the court shall thereafter be the time period, scope of activity, restricted and/or area of restriction applicable to the restrictive covenant provisions in this Section 9. The invalidity or non-enforceability of this Section 9 in any respect shall not affect the validity or enforceability of the remainder of this Section 9 or of any other provisions of this Agreement. GROUP agrees and acknowledges that the MSO is a third party beneficiary of the restrictive covenants required to be in the Employment Agreements pursuant to Section 9.2 and may exercise the rights of GROUP to enforce such covenants. In addition, and notwithstanding MSO's status as a third party beneficiary, GROUP shall take all reasonable steps necessary to enforce the foregoing restrictive covenants in its Employment Agreements. GROUP shall not amend any such covenant, or waive any rights with respect to same, without MSO's prior written consent and GROUP agrees that MSO may cause GROUP, and GROUP agrees to act in good faith, to enforce such restrictive covenants and any other agreements of the GROUP hereunder.

## 10. **TERM RENEWAL; TERMINATION**

10.1 **Term and Renewal.** The term of this Agreement shall commence on the Effective Date hereof and shall continue for twenty-five (25) years (the "Initial Term"), after which it shall automatically renew for successive one-year terms unless either party provides the

other party with at least six (6) months but not more than nine (9) months written notice prior to any renewal date (each, a "Renewal Term"). The Initial Term and any Renewal Term(s) are collectively referred to as the "Term".

**10.2 Termination by GROUP.** GROUP may terminate this Agreement as follows:

**10.2.1 Bankruptcy.** In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by MSO or Parent, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors of MSO or Parent, except for the filing of a petition in involuntary bankruptcy against MSO or Parent which is dismissed within thirty (30) days thereafter, GROUP may give notice of the immediate termination of this Agreement.

**10.2.2 Default.** In the event (a) MSO or Parent shall materially default in the performance of any duty or obligation imposed upon it by this Agreement or any other agreement between MSO or Parent, on the one hand, and GROUP, on the other hand and, such default is not cured within forty-five (45) days after written notice specifically stating the nature of such default has been given to MSO by GROUP; or (b) MSO or Parent shall fail to remit the payments due as provided in Section 7 hereof or under other agreements between MSO or Parent, on the one hand, and GROUP, on the other hand, and such failure to remit shall continue for a period of fifteen (15) days after written notice thereof, then GROUP may terminate this Agreement; provided that, with respect to a default described in (a) above, if MSO has promptly commenced and has continuously used its reasonable efforts to cure such default during such forty-five (45) day period, but such default nonetheless is not cured during such period, then GROUP may not terminate this Agreement as long as MSO continues to use its reasonable best efforts to cure such default, and so long as such default is not having a Material Adverse Effect on GROUP's business or operations. Termination of this Agreement pursuant this Section 10.2.2 by GROUP shall require the affirmative vote of seventy-five percent (75%) of the Physician Members.

**10.3 Termination by MSO.** MSO may terminate this Agreement as follows:

**10.3.1 Bankruptcy.** In the event of the filing of a petition in voluntary bankruptcy or an assignment for the benefit of creditors by GROUP, or upon other action taken or suffered, voluntarily or involuntarily, under any federal or state law for the benefit of debtors of GROUP, except for the filing of a petition in involuntary bankruptcy against GROUP which is dismissed within thirty (30) days thereafter, MSO may give notice of the immediate termination of this Agreement.

**10.3.2 Default.** In the event GROUP shall materially default in the performance of any duty or obligation imposed upon it by this Agreement or in the event a majority of the Physician Members shall materially default in the performance of any duty or obligation imposed upon them by this Agreement or by their employment agreements with GROUP, and such default is not cured within forty-five (45) days after written notice specifically stating the nature of such default has been given to GROUP and such Physician Members by MSO, MSO may terminate this Agreement; provided that, if GROUP has promptly commenced and has continuously used its reasonable

efforts to cure such default during such forty-five (45) day period, but such default nonetheless is not cured during such period, then MSO may not terminate this Agreement as long as GROUP continues to use its reasonable best efforts to cure such default, and so long as such default is not having a Material Adverse Effect on MSO's business or operations.

#### 10.4 Actions After Termination by GROUP or Terminated Physician.

10.4.1 **Service Fees.** Subject to any rights or remedies an aggrieved party may have hereunder or under law, in the event that this Agreement terminates, the Service Fees shall be paid through the effective date of termination. In effectuating the provisions of this Section 10.4, GROUP specifically acknowledges and agrees that MSO shall own and be entitled to collect and receive on behalf of GROUP all cash collections from accounts receivable purchased by MSO (and not purchased by GROUP or a Terminated Physician (as defined below), as appropriate, pursuant to Section 10.4.2) prior to the termination of this Agreement, it being understood that such cash collections will represent, in part, compensation to MSO for management services already rendered and compensation on accounts receivable purchased by MSO. In addition, the various rights and remedies herein granted to the aggrieved party shall be cumulative and in addition to any others such party may be entitled to by law. The exercise of one or more rights or remedies shall not impair the right of the aggrieved party to exercise any other right or remedy at law or otherwise.

10.4.2 **Asset Purchase.** If this Agreement terminates for any reason prior to expiration of the Term, or if a Physician Member's employment with GROUP is terminated for any reason or no reason at all (a "Terminated Physician"), GROUP or the Terminated Physician, as appropriate, shall purchase all assets acquired by MSO and primarily used by GROUP pursuant to the provisions of this Section, including, without limitation, any assets acquired with funds advanced to GROUP pursuant to Section 7.5; provided, however, that if a Physician Member's employment with GROUP is terminated due to such Physician Member's Retirement, then such Physician Member shall have no obligation to purchase any assets pursuant to this Section 10.4.2. Book value of the assets for purposes of this Section 10.4.2 shall be determined in accordance with GAAP; provided, however, in no event shall the assets be depreciated over a period longer than seven (7) years.

- (i) **Improvements.** Upon termination of this Agreement prior to expiration of the Term, GROUP shall purchase all improvements additions or leasehold improvements to real property which were initially purchased by or which have been made subsequently by MSO at book value as reflected on MSO's books as of the last day of this Agreement and which relate solely to the performance of its obligations under this Agreement, if any. Upon termination of a Physician Member's employment with GROUP for any reason other than Retirement, the Terminated Physician shall purchase fifty percent (50%) of such improvements in accordance with this subsection.



- (ii) **Debts.** Upon termination of this Agreement prior to expiration of the Term, GROUP shall assume or otherwise discharge all ordinary and necessary debt, contracts, payables and leases which are obligations of MSO and which relate principally to the performance of its obligations under this Agreement. Upon termination of a Physician Member's employment with GROUP for any reason other than Retirement, the Terminated Physician shall assume fifty percent (50%) of such obligations in accordance with this subsection.
- (iii) **Equipment; Inventories; Accounts Receivable; Etc.** Upon termination of this Agreement prior to expiration of the Term, GROUP shall purchase from MSO at book value as reflected on MSO's books as of the last day of this Agreement:
  - (a) **Equipment.** All of the equipment acquired by MSO for primary use by GROUP pursuant to the performance of MSO's obligations under this Agreement. MSO shall maintain a list of all equipment, including its original cost, amount depreciated and current book value, and will supply such list to GROUP upon its written request;
  - (b) **Inventory.** All stock, including inventory and supplies, of MSO relating to GROUP operations;
  - (c) **Accounts Receivable.** All uncollected accounts receivable of the GROUP theretofore purchased by MSO pursuant to Section 7.4 hereof at the book value thereof on MSO's books; provided that the book value shall be adjusted to account for the historical collection percentage; and
  - (d) **Other Assets.** All other assets including tangibles and intangibles of MSO relating to the operations of GROUP; provided that after seven (7) years from the date hereof, goodwill will be excluded from intangibles required to be purchased.

Upon termination of a Physician Member's employment with GROUP for any reason other than Retirement, the Terminated Physician shall purchase fifty percent (50%) of the assets set forth above, in accordance with this subsection.

- (iv) **Closing of Asset Purchase.** GROUP or the Terminated Physician, as appropriate (for purposes hereof, any such person is referred to as a "Purchaser"), shall pay MSO for the purchased assets in cash or other immediately available funds. The amount of the purchase price shall be reduced by the amount of debt and liabilities of MSO assumed by the Purchaser and by any payment MSO has failed to

make under this Agreement, and shall be increased by any payment GROUP has failed to make under this Agreement; provided, however, that if the purchase is by a Terminated Physician, any amounts owing by MSO and/or GROUP shall be multiplied by 0.50 for purposes of determining any reduction and/or increase to the purchase price pursuant to this subsection. The Purchaser shall execute such documents as may be required to assume the liabilities set forth in Section 10.4.2, subparagraph (ii), and to remove MSO from any liability with respect to such purchased assets and with respect to any property leased or subleased by MSO. The parties hereby agree and acknowledge that the obligations of GROUP and the Physician Members under this Section are joint and several, and that the collective obligation of GROUP and the Physician Members shall be reduced by any amount(s) received by MSO in connection with each purchase; provided, however, that no Physician Member shall be required by this Section 10.4.2 to purchase more than 50% of the assets, or assume more than 50% of the liabilities, set forth above. In the event of a purchase by a Terminated Physician, GROUP, MSO, and the Terminated Physician shall jointly determine the assets to be purchased and liabilities to be assumed by such Terminated Physician. The closing date for the purchase shall be determined by the Purchaser, but shall in no event occur later than one hundred ninety-five (195) days from the date of the notice of termination. The termination of this Agreement shall become effective with respect to the Purchaser upon the closing of the sale of the assets and, (i) in the event of a termination of the entire Agreement, GROUP shall be released from the restrictive covenants provided for in Section 9 on the closing date, except as specified in Section 9.1, and (ii) in the event of termination of a Physician Member's employment with GROUP, the Terminated Physician shall be released from the restrictive covenants provided for in Section 9 on the closing date, except as specified in Section 9.2. From and after any termination, each party shall provide the other party with reasonable access to books and records then owned by it to permit such requesting party to satisfy reporting and contractual obligations which may be required of it.

- (v) **Survival after Termination.** Any and all covenants and obligations of either party hereto which by their terms or by reasonable implication are to be performed, in whole or in part, after the termination of this Agreement, shall survive such termination, including without limitation the obligations of the parties pursuant to the following Sections: 9, 8.2, 8.4, 10.4, and the applicable provisions of Section 13.

## 11. ASSET PURCHASE OPTION

11.1 **Option.** GROUP shall have an option (the "Option"), exercisable at any time during the Term, to purchase all, or any part, of the assets acquired by MSO and primarily used by GROUP, including, without limitation, assets acquired with funds advanced to GROUP pursuant to Section 7.5. Notwithstanding the foregoing, if GROUP elects to purchase the accounts receivable from the MSO hereunder, the parties agree to modify this Agreement to reflect such change, including but not limited to, the termination of the requirement that MSO pay all Clinic Expenses as they fall due.

11.2 **Exercise.** In order to exercise the Option, GROUP must provide written notice to MSO (the "Exercise Notice") stating (i) that it has elected to exercise the Option and pay the Option Payment (as defined below), and (ii) the requested closing date of such purchase, which date shall in no event be later than thirty (30) days from the date of the Exercise Notice. The closing of a purchase pursuant to this Section shall occur on the earlier of (x) the closing date set forth in the Exercise Notice, or (y) the thirtieth (30th) day after actual receipt by MSO of the Exercise Notice.

11.3 **Closing.** GROUP shall pay the Option Payment in cash or other immediately available funds. For purposes hereof, the "Option Payment" shall be equal to the book value of the assets being purchased, as reflected on MSO's books as of the date of the Exercise Notice; provided that the amount of the Option Payment shall be reduced by the amount of the Assumed Liabilities (as defined below). At the closing, GROUP shall execute such documents as may be required to assume and to pay, perform and discharge all liabilities and obligations of MSO relating to or arising out of, or which related to or arose out of, the purchased assets (collectively, the "Assumed Liabilities"), and to remove MSO from any liability with respect to such Assumed Liabilities.

## 12. DEFINITIONS

12.1 **Adjustments** shall mean any adjustments to GROUP's gross billings for uncollectible accounts, discounts, Medicare and Medicaid disallowances, workers' compensation discount, employee/dependent health care benefit programs, professional courtesies, and other activities that do not generate a collectible fee. Any adjustments shall be based on a reasonable historical basis or a reasonable prospective basis should a new payor agreement apply and shall be periodically modified during the year to reflect the actual adjustments. Final Adjustments and any resulting payments owed by one party to the other shall be made within thirty (30) days after completion of the fiscal year audit.

12.2 **Clinic Facility** shall mean all facilities which are utilized primarily by GROUP for the delivery of medical services. Clinic Facility shall not include any facilities or office space used by MSO in connection with its business or the provision of services hereunder.

12.3 **Clinic Expenses** shall mean the amount of all operating and non-operating expenses incurred in the operation of the Clinic including, without limitation:

12.3.1 **Salaries**, benefits (including contributions under any MSO benefit plan), and other direct costs of all employees of MSO or Parent (other than salary and related

expenses of Parent senior management which shall be an MSO Expense) and Technical Employees properly allocable to GROUP, without mark-up by MSO;

12.3.2 **Direct costs**, including salaries and benefits, of all MSO Personnel or consultants of MSO or Parent or affiliates of MSO who, with approval of the Joint Operating Board, provide services at or in connection with GROUP including, but not limited to, work management, purchasing, information systems (and related software and technology), charge and coding analysis, financial analysis, business office consultation, and billing and collection services under the Billing Agent Agreement; provided, however, only that portion of any such person's costs, without mark-up by MSO, that is properly allocable to a Clinic will be a Clinic Expense;

12.3.3 **The expense** of using, leasing, purchasing, or otherwise procuring the Clinic Facilities and related equipment, including depreciation (which shall be in accordance with GAAP but in no event will the assets be depreciated over a period longer than seven (7) years), but not including monies paid by third parties;

12.3.4 **Expense** for continuing medical education for all Physician Members' and Physician Employees' up to a maximum amount of \$2500 per physician, plus the cost of membership in one (1) county medical society, the costs of obtaining and maintaining all necessary drug and medical licenses, and business pager expenses and business long distance telephone expenses of Medical Professionals. Business automobile mileage expenses for Medical Professionals are included at the per mile rate specified from time to time by the Internal Revenue Service;

12.3.5 **The Cost of Capital** (whether as actual interest on indebtedness incurred on behalf of GROUP or as reasonable imputed interest on capital advanced by MSO, excluding the \$351,000 in working capital advanced to GROUP pursuant to Section 7.5 which shall be equal to the average costs of borrowing by MSO as reflected on its most recent published financial statements, or if there is no such average cost of borrowing, then the prime rate as quoted in *The Wall Street Journal*) to finance or refinance obligations of or relating to GROUP, purchase medical or nonmedical equipment of or relating to GROUP, or finance new ventures of or relating to GROUP;

12.3.6 **Personal property** and intangible taxes assessed against MSO's assets used in connection with the operation of, and properly allocable to, Clinic commencing on the date of this Agreement;

12.3.7 **All insurance expenses** for insurance maintained by MSO pursuant to Section 8.1 for MSO's operations attributable to GROUP and for the GROUP Employees, as well as any deductibles and non-insured expenses relating to claims covered by such insurance;

12.3.8 **Other expenses** incurred by MSO in carrying out its obligations under this Agreement, including, but not limited to, supplies and recruitment expenses for new Physician Employees and, subject to Section 3.1.11, legal and accounting expenses necessary for the operations and expansion of GROUP; provided, however, that legal and accounting expenses required by GROUP for its corporate needs related to its



independent corporate existence or affairs not requested by MSO or Parent shall be excluded;

12.3.9 **Amortization Expense** of intangible asset value resulting from the employment of, merger with, or other acquisition of additional physicians as described in Section 3.3;

12.3.10 **Joint Operating Board** approved advertising, public relations and related marketing expenses incurred on behalf of GROUP;

12.3.11 **Any Other Expense** specifically included as a "Clinic Expense" in this Agreement;

12.3.12 **Any Provider Tax** assessed against GROUP or any Physician by the State of Wisconsin and any sales and use taxes assessed against GROUP or any medical professional (other than the sales and use tax described in Section 3.1.13) related to GROUP operations or the practice of medicine by any Medical Professional or assessed against MSO related to services provided hereunder; and

12.3.13 **Any expense** which is incurred in the operation of the Clinic and approved by the Joint Operating Board which is not included as an GROUP Expense or an MSO Expense.

12.4 **Effective Date** shall mean the date on which the MSO begins performing services for the Group.

12.5 **Employment Agreement** shall mean a form of physician employment agreement approved by the Joint Operating Board.

12.6 **FemPartners Management** shall have the meaning set forth in Section 13.18.

12.7 **Main Facility** shall mean the facility at which GROUP Medical Professionals perform the majority of their medical services.

12.8 **Material Adverse Effect** shall mean any change in the business, results of operations, prospects, financial condition, or liabilities (whether or not covered by insurance) that (individually or in the aggregate) is, or may reasonably be expected to be, material and adverse to a party's operations; provided, however, that for all purposes under this Agreement any actual or prospective change or changes that result directly from any change or changes in financial or market conditions, general economic conditions, or economic, market, legal or regulatory changes affecting the health-care industry generally shall not constitute a Material Adverse Effect.

12.9 **Medical Professional** shall mean Physician Members, Physician Employees and Physician Extenders of GROUP.

12.10 **MSO Distribution** shall mean 6% of Net Clinic Revenues; provided, however, that to ensure that the MSO Distribution is at all times consistent with fair market value, for the initial twelve-month period commencing as of the date of this Agreement, the total MSO

Distribution divided by the total number of FTE Physician Employees and Physician Members employed by GROUP (including those who were employed by GROUP for less than the full twelve-month period on a pro-rata basis) at any time during such twelve-month period (the "Average Per Physician MSO Distribution") shall in no event be less than \$10,000 (the "MSO Distribution Floor") nor more than \$100,000 (the "MSO Distribution Cap"); provided, further that if at the end of the initial twelve-month period, the Average Per Physician MSO Distribution is in excess of the MSO Distribution Cap, the difference between the Average Per Physician MSO Distribution and the MSO Distribution Cap times the total number of Physician Employees and Physician Members employed by GROUP (including those who were employed by GROUP for less than the full twelve-month period on a pro-rata basis) shall be retained by GROUP, but shall be expended by GROUP to further the growth and development of GROUP pursuant to an expenditure plan approved by the Joint Operating Board; and provided further, that no later than sixty (60) days after the initial twelve-month period and every twelve months thereafter during the Term, the Joint Operating Board shall, as necessary, adjust the MSO Distribution Floor and the MSO Distribution Cap using a methodology consistent with the methodology used to determine the MSO Distribution Floor and MSO Distribution Cap during the initial twelve-month period to ensure that the MSO Distribution is consistent with fair market value.

12.11 MSO Expenses shall include:

12.11.1 **Corporate overhead charges** or any other expenses of Parent or any corporation affiliated with Parent other than the type of items included as Clinic Expenses, including:

- (a) the salary and related expenses of Parent senior management (which means Parent's Chief Executive Officer, Chief Financial Officer, Vice President of Operations, Vice President of Marketing and Managed Care, Vice President of Information Technology, Executive Vice President of Development and any Regional Vice Presidents of Development);
- (b) bank service charges for Parent bank accounts;
- (c) employment agency fees associated with Parent senior management personnel;
- (d) insurance coverage for assets and office space for Parent use;
- (e) office supplies and telephone expenses for Parent use;
- (f) property taxes for personal and real property for Parent's office use;
- (g) maintenance contracts associated with software, hardware and equipment for Parent's office use;
- (h) meeting and seminar expenses associated with Parent board meetings;
- (i) data processing costs associated with preparation of financial statements of Parent;

- (j) rent for Parent office space;
- (k) equipment purchases and leases by Parent for items for Parent office use; and
- (l) depreciation and amortization of fixed and other assets utilized exclusively by Parent (which shall be in accordance with GAAP but in no event will the assets be depreciated over a period longer than seven (7) years).

12.11.2 Any federal or state income or franchise taxes of Parent or MSO (except to the extent included in the definition of Clinic Expenses or GROUP Expenses);

12.11.3 All salaries and benefits of Parent's and MSO's corporate personnel and any other personnel whose services do not involve the provision of services hereunder and whose expenses are not properly allocable to GROUP under this agreement.

12.12 Net Clinic Revenues shall mean GROUP's gross billings, including ancillaries and any other revenues that have historically been recorded by GROUP for the delivery of medical and other services to patients, and shall include, but not be limited to, professional medical services (including medical research services that involve the supervision or provision of reimbursable professional services or administrative hospital services performed by GROUP Physician Members and Physician Employees), medical ancillary services, pharmaceuticals and other items and supplies sold to patients, clinical trial or research-related revenues, and other fees or income generated by GROUP or GROUP Employees (acting within the scope of their duties to GROUP) for services rendered in an inpatient or outpatient setting, less Adjustments.

12.13 GROUP Employees shall mean all Medical Professionals employed by GROUP at the relevant dates.

12.14 GROUP Expenses shall include:

12.14.1 Any expenses which are expressly designated herein as expenses or responsibilities of GROUP and/or Medical Professionals;

12.14.2 Any federal or state income or franchise taxes of GROUP;

12.14.3 Legal, accounting and other professional services fees related to GROUP's legal and financial affairs;

12.14.4 All salaries and benefits, retirement plan contributions, health, disability and life insurance premiums, payroll taxes, income taxes, membership in professional associations (other than one (1) county medical society), continuing medical education in excess of the amount allocated as a Clinic Expense, board certification fees for Medical Professionals, all automobile expenses (other than those defined as a Clinic Expense in Section 12.3.3), cellular telephone expenses of Medical Professionals, and all expenses of Medical Professionals that are primarily personal in nature.

12.14.5 Any liabilities, judgments or settlements assessed against GROUP or Medical Professionals in excess of any insurance policy limits except to the extent that GROUP is indemnified by MSO therefor under this Agreement.

12.14.6 Any debt service or interest expense relating to any GROUP indebtedness.

12.14.7 Any liabilities of GROUP and/or Medical Professionals to MSO or its affiliates, including, without limitation, pursuant to this Agreement.

12.15 **Parent** shall mean FemPartners, Inc., a Delaware corporation.

12.16 **Physician Employees** shall mean any physicians employed by GROUP and providing medical services to patients on behalf of GROUP.

12.17 **Physician Extenders** shall mean all non-physician professional employees who provide direct patient care for which a billed charge is generated.

12.18 **Physician Members** shall mean any physicians who are Members of GROUP, both as of the date this Agreement (which said Physician Members are parties to this Agreement) and at any future point in time.

12.19 **Retirement** shall mean, with respect to a Physician Member, the occurrence of any of the following events: (a) voluntary cessation of the practice of medicine by such Physician Member; (b) such Physician Member relocates to an area outside the State of Wisconsin for a period of two (2) years; (c) a physical or mental condition that renders a Physician Member permanently unable to perform his or her duties; or (d) death of a Physician Member. In the event of any dispute as to whether a Physician Member is disabled, the Physician Member shall submit to a physical examination by a licensed physician mutually satisfactory to the Physician Member or guardian and the Joint Operating Board with the cost of such examination to be paid by the Group; and the determination of such physician shall be binding on the Physician Member.

12.20 **Service Fees** shall mean the MSO Distribution plus the aggregate amount of the Clinic Expenses. Service Fees also shall include any GROUP Expenses with respect to which MSO is entitled to payment or reimbursement.

12.21 **Technical Employees** shall mean technicians who provide services in the diagnostic area of GROUP's practice.

### 13. GENERAL PROVISIONS.

13.1 **Independent Contractor.** It is acknowledged and agreed that GROUP and MSO are at all times acting and performing hereunder as independent contractors. MSO shall neither have nor exercise any control or direction over the methods by which GROUP or the GROUP Employees practice medicine. MSO shall not, by entering into and performing its obligations under this Agreement, become liable for any of the existing obligations, liabilities or debts of GROUP unless otherwise specifically provided for under the terms of this Agreement. Except as

otherwise provided herein, MSO will in its management role have only an obligation to exercise commercially reasonable care in the performance of its obligations under this Agreement. GROUP shall not, by entering into and performing its obligations under this Agreement, become liable for any of the existing obligations, liabilities, or debts of MSO unless otherwise specifically provided for under the terms of this Agreement. Except as otherwise provided herein, GROUP shall only have an obligation to exercise reasonable care in the performance of its obligations under this Agreement. Neither party shall have any liability whatsoever for damages suffered on account of the willful misconduct or negligent actions or inactions of any employee, agent or independent contractor of the other party (it being understood that MSO Personnel carried on the books of GROUP shall nevertheless be deemed employees, agents or independent contractors, as the case may be, of MSO for this purpose); provided, however, that the foregoing shall not relieve either party from its obligations under this Agreement. Each party shall be solely responsible for compliance with all state and federal laws pertaining to employment taxes, income withholding, unemployment compensation contributions and other employment related statutes regarding their respective employees, agents and servants.

**13.2 Additional Documents.** Each of the parties hereto agrees to execute any document or documents that may be requested from time to time by the other party to implement or complete such party's obligations pursuant to this Agreement.

**13.3 Binding on Successors.** Subject to Section 13.18, this Agreement shall be binding upon the parties hereto, and their successors, permitted assigns, heirs and beneficiaries.

**13.4 Remedies Cumulative.** No remedy set forth in this Agreement or otherwise conferred upon or reserved to any party shall be considered exclusive of any other remedy available to any party, but the same shall be distinct, separate and cumulative and may be exercised from time to time as often as occasion may arise or as may be deemed expedient.

**13.5 Communications.** GROUP and MSO agree that good communication between the parties is essential to the successful performance of this Agreement, and each pledges to use their best efforts to communicate fully and clearly with the other on matters relating to the successful operation of GROUP's practice at the Clinic.

**13.6 Use of Name.** At the request of MSO and subject to the prior written consent of the GROUP (which consent shall not be unreasonably withheld) and to the extent permitted by applicable law, the name of MSO or its affiliates may be included on any letterhead, professional announcements, brochures, promotional material or the like relating to GROUP and/or the name of GROUP and the GROUP Physician Members and Physician Employees may be included in any brochures, promotional materials or the like relating to MSO, at MSO's option. Nothing contained herein shall be construed as restricting or prohibiting the individual Physician Members and Physician Employees from maintaining personal letterhead containing only their names.

### **13.7 Proprietary Property.**

**13.7.1 Disclosure.** Each party agrees that the other party's proprietary property shall not be possessed, used or disclosed otherwise than may be necessary for the performance of this Agreement. Each party acknowledges that its violation of this



Agreement would cause the other party irreparable harm, and may (without limiting the other party's remedies for such breach) be enjoined at the instance of the other party. Each party agrees that upon termination of this Agreement for any reason, absent the prior written consent of the other party, it shall have no right to and shall cease all use of the other party's proprietary property, and shall return all such proprietary property of the other party in its possession to the other party.

**13.7.2 Intellectual Property.** MSO shall be the sole owner and holder of all right, title and interest, to all intellectual property furnished by it under this Agreement, including, but not limited to the trade names "FemPartners," "WomanKind", "FemPartners, Inc." and all substantially similar variations of the same (collectively, the "Trade Names"), all computer software, copyright, services mark and trademark right to any material or documents acquired, prepared, purchased or furnished by MSO pursuant to this Agreement. GROUP shall have no right, title or interest in or to such material and shall not, in any manner, distribute or use the same without the prior written authorization of MSO; provided, however, that the foregoing shall not restrict GROUP from distributing managed care information brochures and materials without the prior written approval of MSO provided no proprietary property of MSO is contained therein. Notwithstanding the preceding, however, MSO agrees that (provided MSO has given written consent) GROUP shall be entitled to use on a nonexclusive and nontransferable basis for the Term the Tradenames as may be necessary or appropriate in the performance of GROUP's services and obligations hereunder. Further, GROUP agrees not to use the trade names "FemPartners of Wisconsin" and "Wisconsin Fertility Institute" during the Term for any purposes other than with respect to the Clinic except as approved by the Joint Operating Board. Any and all other names under which GROUP shall operate shall require the approval of the Joint Operating Board. GROUP agrees that MSO will be entitled to use on a non-exclusive and non-transferable basis for the Term the names, "FemPartners of Wisconsin" and "Wisconsin Fertility Institute", as may be necessary and appropriate in the performance of MSO's services and obligations hereunder.

**13.8 Cooperation.** Each of the parties shall cooperate fully with the other in connection with the performance of their respective duties and obligations under this Agreement.

**13.9 Licenses, Permits and Certificates.** MSO and GROUP shall each obtain and maintain in effect, during the Term, all licenses, permits and certificates required by law which are applicable to their respective performance pursuant to this Agreement. MSO shall, on behalf of and in the name of GROUP, coordinate all development and planning processes, and apply for and use reasonable efforts to obtain and maintain all federal, state and local licenses and regulatory permits required for or in connection with the operation of GROUP and equipment located at any of the Clinic Facilities, other than those relating to the practice of medicine or the administration of drugs by Medical Personnel.

**13.10 Compliance with Rules, Regulations and Laws.** MSO and GROUP shall comply with all federal, state and local laws and regulations in performance of their duties and obligations hereunder. Neither party, nor their employees or agents, shall take any action that would jeopardize the other party's participation, if applicable, in any federal or state health program including Medicare and Medicaid. MSO and GROUP shall take particular care to ensure that no employee or agent of either party takes any action intended to violate Section

1128B of the Social Security Act with respect to soliciting, receiving, offering or paying any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under Title XVIII or XIX of the Social Security Act, or for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any good, facility, service, or item for which payment may be made in whole or in part under Title XVIII or XIX of the Social Security Act.

**13.11 Generally Accepted Accounting Principles (GAAP).** All financial statements and calculations contemplated by this Agreement will be prepared or made in accordance with generally accepted accounting principles consistently applied unless the parties agree otherwise in writing.

**13.12 Notices.** Any notices required or permitted to be given hereunder by either party to the other may be given by personal delivery in writing or by registered or certified mail, postage prepaid, with return receipt requested. Notices shall be addressed to the parties at the addresses appearing on the signature page of the Agreement, but each party may change such party's address by written notice given in accordance with this Section. Notices delivered personally will be deemed communicated as of actual receipt; mailed notices will be deemed communicated as of three (3) days after mailing.

**13.13 Attorneys' Fees.** MSO and GROUP agree that the prevailing party in any legal dispute among the parties hereto shall be entitled to payment of its attorneys' fees by the other party in addition to any other relief granted.

**13.14 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction or applicable state or federal law and their implementing regulations to be invalid, void or unenforceable, the remaining provisions will nevertheless continue in full force and effect.

**13.15 Arbitration.**

**13.15.1 Scope.** The parties hereto agree that any claim, controversy, dispute or disagreement between them arising out of or relating to this Agreement or the breach thereof will be settled by binding arbitration (other than claims involving any noncompetition, confidentiality covenant or development of the annual budgets pursuant to Section 3.1.1) and shall be governed exclusively by the terms and provisions of this Section 13.15; provided, however, that the terms and provisions of this Section 13.15 shall not preclude any party hereto from seeking, or a court of competent jurisdiction from granting, a temporary restraining order, temporary injunction or other equitable relief for any breach of (i) any noncompetition or confidentiality covenant herein or (ii) any duty, obligation, covenant, representation or warranty, the breach of which may cause irreparable harm or damage.

**13.15.2 Arbitrators.** In the event there is any claim, controversy, dispute or disagreement subject to this Section 13.15, then GROUP shall select one arbitrator, and MSO shall select one arbitrator. The two arbitrators so chosen shall then select a third

arbitrator who is experienced in the matter or action that is subject to such arbitration. If such matter or action involves health-care issues, then the third arbitrator shall have such qualifications as would satisfy the requirements of the American Health Lawyers Association Alternative Dispute Resolution Service. Each of the arbitrators chosen shall be impartial and independent of all parties to this Agreement. If either of the parties fails to select an arbitrator within twenty (20) days after notice from the other initiating arbitration and naming its arbitrator, or if the arbitrators chosen fail to select a third arbitrator within twenty (20) days, then any party may in writing request the judge of the Eastern District of Wisconsin senior in term of service to appoint the arbitrator or arbitrators and, subject to this Section 13.15, such arbitrators shall hear all arbitration matters arising under this Section 13.15, and in default of such selection, may ask the American Arbitration Association.

### 13.15.3 Applicable Rules.

- (a) Each arbitration hearing shall be held at a place in Milwaukee, Wisconsin acceptable to a majority of the arbitrators. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the American Arbitration Association to the extent such rules do not conflict with the terms hereof. The decision of a majority of the arbitrators shall be reduced to writing and shall be binding on the parties. Judgment upon the award(s) rendered by a majority of the arbitrators may be entered and execution had in any court of competent jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The charges and expenses of the arbitrators shall be shared equally by the parties to the hearing.
- (b) The arbitration shall commence within thirty (30) days after the arbitrators are selected in accordance with the provisions of this Section 13.15. In fulfilling their duties with respect to determining the amount of a loss or liability, the arbitrators may consider such matters as, in the opinion of the arbitrators, are necessary or helpful to make a proper valuation. The arbitrators may add any interest factor reflecting the time value of money to the amount of a loss or liability and shall not award any punitive damages.
- (c) If any of the arbitrators selected hereunder shall die, resign or be unable to perform his or her duties hereunder, the remaining arbitrators or such senior judge (or such judge's successor) shall select a replacement arbitrator. The procedure set forth in this Section 13.15 for selecting the arbitrators shall be followed from time to time as necessary.
- (d) As to any determination of the amount of a loss or liability, or as to the resolution of any other claim, controversy, dispute or disagreement, that under the terms hereof is made subject to arbitration, no lawsuit based on such claimed loss or liability or such resolution shall be instituted by either of the parties hereto, other than to compel the arbitration proceedings or enforce the award of a majority of the arbitrators.



- (e) All privileges under Wisconsin and federal law, including attorney-client and work-product privileges, shall be preserved and protected to the same extent that such privileges would be protected in a federal court proceeding applying Wisconsin law.

**13.16 Governing Law and Construction of Agreement.** This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin. The parties agree that the terms and provisions of this Agreement embody their mutual interest and agreement and that they are not to be construed more liberally in favor of, nor more strictly against, any party hereto.

**13.17 Assignment and Delegation.** The parties agree that MSO may assign and delegate all of its rights and obligations hereunder to a direct or indirect wholly-owned subsidiary of Parent ("FemPartners Management"); provided that no such assignment shall relieve the MSO of its obligations hereunder. FemPartners Management would then become the MSO under this Agreement. In addition to such assignment, MSO shall have the right to assign its rights hereunder to any person, firm or corporation controlling, controlled by or under common control with MSO and to any lending institution, for security purposes or as collateral, from which MSO or Parent obtains financing for itself and as agent. Except as set forth above, neither MSO nor GROUP shall have the right to assign their respective rights and obligations hereunder without the written consent of the other party. GROUP may not delegate any of GROUP's duties hereunder, except as expressly contemplated herein; provided, however, that MSO may delegate some or all of MSO's duties hereunder to the extent it concludes, in its reasonable discretion, that such delegation is in the mutual interest of the parties hereto; provided, further, however, that MSO shall remain liable under this Agreement for any duties so delegated.

**13.18 Confidentiality.** The terms of this Agreement and in particular the provisions regarding compensation, are confidential and shall not be disclosed except as necessary to the performance of this Agreement or as required by law. In addition, except for disclosure to its bankers, underwriters, investors, or lenders, or as necessary or desirable for the conduct of business, including negotiations with other acquisition candidates, neither party hereto shall disseminate or release to any third party any financial information regarding the other (past, present, or future) that was obtained by such party in the course of the negotiation of this Agreement or in the course of the performance of this Agreement, without the other party's written approval; provided, however, the foregoing shall not apply to information which (i) is generally available to the public other than as a result of a breach of confidentiality provisions; (ii) becomes available on a non-confidential basis from a source other than the other party or its affiliates or agents, which source was not itself bound by a confidentiality agreement; (iii) the disclosing party in good faith believes is required to be disclosed by law including securities laws, or pursuant to court order; or (iv) is financial information presented on a consolidated or combined basis.

**13.19 Waiver.** The waiver of any provision, or of the breach of any provision of this Agreement must be set forth specifically in writing and signed by the waiving party. Any such waiver shall not operate or be deemed to be a waiver of any prior or future breach of such provision or of any other provision.

**13.20 Headings.** The subject headings of the articles and sections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

**13.21 No Third-Party Beneficiaries.** Nothing in this Agreement, express or implied, is intended or shall be construed to confer upon any person, firm or corporation other than the parties hereto, MSO's Parent, and their respective successors or assigns, any remedy or claim under or by reason of this Agreement or any term, covenant or condition hereof, as third party beneficiaries or otherwise, and all of the terms, covenants and conditions hereof shall be for the sole and exclusive benefit of the parties hereto and their successors and assigns.

**13.22 Time is of the Essence.** Time is hereby expressly declared to be of the essence in this Agreement.

**13.23 Modifications of Agreement for Prospective Legal Events.** In the event any state or federal laws or regulations, now existing or enacted or promulgated after the Effective Date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel for both parties in such a manner as to indicate that the structure of this Agreement may be in violation of such laws or regulations, the parties shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying economic and financial arrangements reflected by the terms of this Agreement.

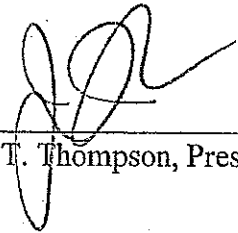
**13.24 Whole Agreement; Enforceability; Modification.** The rights and obligations of the parties hereto shall be determined solely from written agreements. Documents and instruments, and any prior oral agreements between the parties are superseded by and merged into such writings. This Agreement is enforceable in accordance with its terms, and each of the parties hereto agrees not to challenge the enforceability of this Agreement in any arbitration, administrative, judicial or other legal proceeding. This Agreement (as amended in writing signed by both parties from time to time), the exhibits, and the schedules delivered pursuant hereto represent the final agreement between the parties hereto and may not be contradicted by evidence of prior, contemporaneous, or subsequent oral agreements by the parties. There are no unwritten oral agreements between the parties. This Agreement may be modified only by a written amendment executed by both parties.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date and year first above written.

**MSO:**


FEMPARTNERS OF  
WISCONSIN, INC.

By:   
Jack T. Thompson, President

Address: 1300 Post Oak Boulevard, Suite 600  
Houston, Texas 77056

**GROUP:**

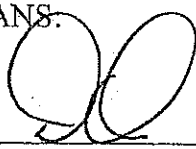
WISCONSIN FERTILITY  
AND REPRODUCTIVE SURGERY  
ASSOCIATES, S.C.

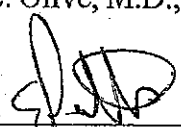
By:   
Name: David L. Olive  
Title: President

Address: \_\_\_\_\_  
\_\_\_\_\_

The Physician Members are executing this Agreement to confirm their obligations under and agreement with the terms hereof.

**PHYSICIANS:**

  
David L. Olive, M.D., Individually

  
Elizabeth A. Pritts, M.D., Individually

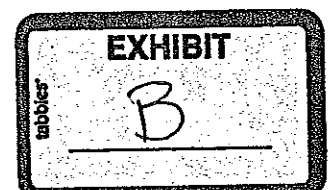
# WISCONSIN FERTILITY INSTITUTE, L.P.

(A Texas Limited Partnership)

## LIMITED PARTNERSHIP AGREEMENT

THESE PARTNERSHIP INTERESTS HAVE NOT BEEN REGISTERED  
UNDER THE SECURITIES ACT OF 1933, AS AMENDED, NOR  
PURSUANT TO THE PROVISIONS OF ANY STATE SECURITIES ACT

CERTAIN RESTRICTIONS ON TRANSFERS OF INTERESTS  
ARE SET FORTH HEREIN



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**AGREEMENT OF LIMITED PARTNERSHIP  
OF  
WISCONSIN FERTILITY INSTITUTE, L.P.**

This Agreement dated effective as of the 6<sup>th</sup> day of September, 2006, is made and entered into by and among FemPartners Fertility Center of Wisconsin, Inc., a Delaware corporation, as General Partner, and the Persons listed on the signature page attached hereto, as Limited Partners, and such Persons who become Partners of the Partnership as hereinafter provided.

**ARTICLE I  
DEFINITIONS**

The following definitions shall for all purposes, unless otherwise clearly indicated, apply to the terms used in this Agreement:

**"Act"** means Securities Act of 1933, as amended.

**"Additional Capital Contribution"** means, as to any Partner, any amount contributed, required to be contributed or deemed to be contributed to the capital of the Partnership by the Partner pursuant to Section 3.1(b).

**"Adjustments"** means any adjustments to the Partnership's gross billings for uncollectible accounts, discounts, workers' compensation discount, employee/dependent health care benefit programs, professional courtesies, and other activities that do not generate a collectible fee. Any adjustments shall be based on a reasonable historical basis or a reasonable prospective basis should a new payor agreement apply and shall be periodically modified during the year, at the General Partner's discretion, to reflect the actual adjustments.

**"Affiliate"** means, with respect to any party hereto, (a) any person controlled by, controlling, or under common control with such party, (b) any person owning or controlling twenty percent (20%) or more of the outstanding voting securities of such party, (c) any officer, director, partner or manager of such party or of any Person specified in (a) or (b) above, and (d) any Entity in which any officer, director, partner or manager of such party is an officer, director or manager.

**"Agreement"** means this Limited Partnership Agreement, as may be amended or supplemented from time to time.

**"Assignee"** means a Person or Entity to whom a Limited Partner's Partnership Interest has been transferred, by assignment or otherwise, and who thereby has an interest in the Partnership equivalent to that of a Limited Partner but (a) limited to the rights and obligations appurtenant to a Partnership Interest as a Limited Partner to share in the income, loss and distributions, including liquidating distributions and (b) otherwise subject to the limitations under the Partnership Law on the rights of an assignee who has not become a substituted Limited Partner in accordance with this Agreement.

**"Bankruptcy" or "Bankrupt"** means any Person who is insolvent, who has filed a voluntary petition in bankruptcy or against whom a third party has filed an involuntary petition in bankruptcy and the same has not been dismissed within thirty (30) days.

**"Book Value"** means, with respect to any asset, the asset's book value as reflected on the Partnership's books on the date of determination, except that (a) the initial Book Value of any asset contributed by a Partner to the Partnership shall be the original cost of such asset; and (b) Book Value shall be adjusted by the Depreciation taken into account with respect to such asset for purposes of computing Profits and Losses; provided that the assets shall be depreciated in accordance with GAAP but in no event shall an asset be depreciated over a period longer than seven (7) years.

**"Capital Account"** means with respect to any Partner, the account maintained for such Partner in a manner which the General Partner determines is in accordance with Treasury Regulations Section 1.704-1(b)(2)(iv).

**"Capital Contributions"** means the total of all capital contributions of the Partners pursuant to Section 3.1, including, but not limited to, the Initial Capital Contributions and the Additional Capital Contributions (if any).

**"Center"** means the fertility center to be constructed and operated by the Partnership and which the Partnership will use reasonable best efforts to license as an ambulatory surgery center.

**"Certificate of Formation"** means the Certificate of Formation of the Partnership filed with the Secretary of State of Texas pursuant to Section 2.4, as amended from time to time.

**"Code"** means the United States Internal Revenue Code of 1986, as amended from time to time.

**"Depreciation"** means, with respect to any asset, for each Fiscal Year or other period, an amount equal to the depreciation reflected on the Partnership's books for such year or other period.

**"Disabled" or "Disability"** means the inability of a Person to substantially perform normal business activities by reason of the mental or physical illness or injury of such Person, in the opinion of an independent physician agreed to by all of the Partners.

**"Disposition"** means, with respect to any asset (including, but not limited to, Partnership Interests or any portion thereof), a sale, assignment, transfer, conveyance, gift, encumbrance, hypothecation, exchange, or other disposition of such asset, whether such disposition be voluntary, involuntary or by operation of law, including, but not limited to, the following: (a) in the case of an asset owned by a natural person, a transfer of such asset upon the death of its owner, whether by will, intestate succession or otherwise; (b) in the case of an asset owned by an Entity, a distribution of such asset in connection with the dissolution, liquidation, winding-up or termination of such Entity (unless, in the case of dissolution, such Entity's business is continued

without the commencement of liquidation or winding-up); and (c) disposition in connection with, or in lieu of, a foreclosure of an encumbrance. Notwithstanding the foregoing, the Partners hereby agree that they may hold their respective interests in the Partnership through a partnership, corporation, limited liability company, trust or other Entity, and that a transfer or other disposition, whether to a single transferee or related group of transferees, of the stock, partnership interest, membership interest or other voting securities or beneficial interest in any such Entity which holds an interest in the Partnership or the General Partner will not constitute a "Disposition" for purposes of this Agreement.

**"Disqualifying Cessation of Practice"** means, with respect to a Physician Limited Partner, the occurrence of any of the following events (a) the suspension, revocation, or cancellation of a Physician Limited Partner's right to practice medicine in the State of Wisconsin; (b) the suspension, revocation, or cancellation of a Physician Limited Partner's clinical privileges at or membership on the medical staff of any hospital, if such suspension, revocation, or cancellation materially prohibits such Physician Limited Partner from performing activities necessary to conduct the business of the Partnership; (c) the imposition of any restrictions or limitations by any governmental authority having jurisdiction over a Physician Limited Partner to such an extent that he or she cannot engage in the practice of medicine; (d) a Physician Limited Partner ceases to perform services on behalf of the Partnership; or (e) a breach by a Physician Limited Partner of any material provision of this Agreement.

**"Distributable Cash Flow"** means, cash available to the Partnership from any source (other than proceeds of liquidation) after (i) paying or making adequate provision for any debts or liabilities of the Partnership or any Operating Cash Expenses and (ii) establishing reserves to meet current or reasonably expected obligations of the Partnership to the extent that the General Partner in its sole discretion shall determine such reserves to be reasonably necessary or advisable. Initial Capital Contributions of the Partners shall not be distributed as part of "Distributable Cash Flow".

**"Entity"** means any Person other than a natural person.

**"Fiscal Year"** means the fiscal year of the Partnership as established in Section 8.6 hereof.

**"General Partner"** means FemPartners Fertility Center of Wisconsin, Inc., a Delaware corporation, or any successor or successors to all or any part of such General Partner's interest, each in the capacity as a general partner of the Partnership.

**"Initial Capital Contribution"** means, as to any Partner, the amount contributed to the capital of the Partnership by a Partner pursuant to Section 3.1(a).

**"Limited Partner"** means each Person or Entity who executes this Agreement and is reflected as a Limited Partner below or who becomes an additional or substituted Limited Partner pursuant to this Agreement, each in the capacity as a limited partner of the Partnership.

**"Majority in Interest"** means, (i) with respect to any group of Partners a combination of such Partners who, in the aggregate, own more than fifty percent (50%) of the Sharing Ratios owned by all of such group of Partners, or (ii) with respect to the Advisory Committee a combination of the Advisory Committee who, in the aggregate, constitute more than a majority of all of the members of the Advisory Committee.

**"Net Revenues"** means, for any given month, the Partnership's gross billings, including ancillaries and any other revenues that are recorded by the Partnership for the delivery of medical and other services to patients, and shall include, but not be limited to, technical fees, facility fees, and laboratory fees, medical ancillary services (including medical research services that involve the supervision or provision of reimbursable professional services or administrative hospital services performed by Physician Limited Partners), pharmaceuticals and other items and supplies sold to patients, clinical trial or research-related revenues, and other fees or income generated by the Partnership or Physician Limited Partners (acting within the scope of their duties to the Partnership but excluding any professional fees generated by any Physician Limited Partner) for services rendered in furtherance of the activities of the Partnership, less Adjustments.

**"Operating Cash Expenses"** means, with respect to any Fiscal Year, the amount of cash disbursed by the Partnership in such period in the ordinary course of its business, including, without limitation, the principal and interest payments on all debt, and such other principal and interest payments required to be made in connection with any loan to the Partnership or any loan secured by a lien on any of the Partnership's property, but not including distributions to any Partner in respect of such Partner's Partnership Interest.

**"Partner"** means a General Partner or a Limited Partner.

**"Partnership"** means the limited partnership established by this Agreement.

**"Partnership Interest"** means with respect to any Partner, all of such Partner's ownership interest as a Limited Partner or General Partner in the Partnership at any particular time including all of the rights and obligations of such Partner under this Agreement and the Partnership Law.

**"Partnership Law"** means the Texas Limited Partnership Law, part of the Texas Business Organizations Code.

**"Person"** or **"person"** means an individual, a corporation, a sole proprietorship, a partnership, a limited liability company, an association, a trust, a joint venture, or any other entity or organization.

**"Physician Limited Partner"** means the individuals listed on Schedule 2 hereto, and any Limited Partner who becomes an additional Physician Limited Partner or substituted Limited Partner pursuant to this Agreement.

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

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

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

(c) Gain or loss resulting from any Disposition of Partnership property with respect to which gain or loss is recognized for federal income tax purposes shall be computed by reference to the Book Value of the property Disposed of, notwithstanding that the adjusted tax basis of such property differs from such Book Value;

(d) In lieu of the depreciation, amortization and other cost recovery deductions taken into account in computing such taxable income or loss, there shall be taken into account Depreciation for such Fiscal Year or other period, computed in accordance with the definition of "Depreciation" herein; and

(e) Notwithstanding any other provision of this definition, any items which are specifically allocated pursuant to Code Section 704 and the Treasury Regulations promulgated thereunder shall not be taken into account in computing Profits and Losses.

**"Retirement"** means, with respect to a Physician Limited Partner, the voluntary cessation of the practice of medicine by a Physician Limited Partner.

**"Sharing Ratio"** means with respect to any Partner, the percentage assigned to such Partner in accordance with Section 3.6.

**"Treasury Regulations"** means the Income Tax Regulations promulgated under the Code, as such regulations may be amended from time to time (including corresponding provisions of succeeding regulations).

## ARTICLE II GENERAL PROVISIONS

2.1 **Formation of the Partnership.** Upon the filing of the Certificate of Formation and the execution of this Agreement, the parties hereto hereby form a Texas limited partnership under and pursuant to the provisions of the Partnership Law.



2.2 Name. The name of the Partnership is Wisconsin Fertility Institute, L.P. The business of the Partnership shall be conducted under its name, or any other name as determined by the General Partner to be in the best interest of the Partnership.

2.3 Principal Office, Registered Agent, Registered Office. The principal office of the Partnership shall be at 1300 Post Oak Boulevard, Suite 600, Houston, Texas 77056. The registered agent of the Partnership is J. R. Stevens, Jr. The General Partner may at any time change the location of the Partnership's office and may establish additional offices, if it deems advisable. The General Partner shall promptly give the Limited Partners written notice of any change of the registered agent or the location of the principal office of the Partnership.

2.4 Term. The Partnership shall commence business on the date of the original filing of the Certificate of Formation and its existence shall be perpetual unless terminated sooner as herein provided.

2.5 Other Acts and Filings. The Partners shall from time to time execute or cause to be executed all such certificates or other documents, and do or cause to be done all such filing, recording, publishing or other acts, as the General Partner may deem to be appropriate to comply with the requirements of law for the formation and/or operation of a limited partnership in the State of Texas and all other jurisdictions where the Partnership shall desire to conduct business and to preserve the limited liability of the Limited Partners to the fullest possible extent. The General Partner shall take such steps as are necessary to qualify the Partnership to conduct business in other states, as required by local law including, but not limited to, registering the Partnership as a foreign limited partnership with the Wisconsin Secretary of State.

2.6 Purposes and Character of Business; Powers.

(a) The purposes and character of the business of the Partnership are to (i) provide a fertility center (which would also be licensed as an ambulatory surgery center), including supporting facilities, equipment and staff for the performance of IVF, IUI, PGD, egg retrieval, embryo transfer, hormone and andrology lab and egg donor services, and (ii) transact all lawful business for which limited partnerships may be formed under the Partnership Law.

(b) The Partnership shall have any and all powers which are necessary or desirable to carry out the purposes and business of the Partnership. The Partnership shall carry out the foregoing activities pursuant to the arrangements set forth in this Agreement.

### ARTICLE III CAPITAL CONTRIBUTIONS

3.1 Capital Contributions of the Partners.

(a) Initial Capital Contributions. Upon formation of the Partnership, each of the Partners shall contribute cash or property to the Partnership in the amount and in the manner set forth as the Initial Capital Contribution of such Partner on Schedule 1 attached hereto and hereby made a part hereof. Such cash or property shall be the Initial

Capital Contributions of the Partners to the Partnership and, upon making such contribution, each Partner shall receive its Partnership Interest and its Sharing Ratio. The Partners agree to make their respective Initial Capital Contributions.

(b) Additional Capital Contributions. No Partner shall be required to make Additional Capital Contributions to the Partnership. However, at the direction of the General Partner, the Partnership may from time to time make an offering of additional Partnership Interests in exchange for Capital Contributions and/or Additional Capital Contributions to the Partnership. Prior to accepting any Capital Contributions and/or Additional Capital Contributions from any Person, the General Partner shall send to all Partners a notice (the "Section 3.1(b) Notice") (i) stating that the request for additional Capital Contributions is being made pursuant to Section 3.1(b), (ii) describing the terms on which Capital Contributions are being sought by the Partnership, and (iii) specifying the aggregate amount of new capital sought as of the date of the Section 3.1(b) Notice. Each Partner shall have thirty (30) days from the date of the Section 3.1(b) Notice to advise the General Partner in writing whether such Partner elects to contribute its pro rata portion of the Capital Contributions requested in the Section 3.1(b) Notice on the terms described therein. Any Partner electing to make a Capital Contribution following a Section 3.1(b) Notice may indicate in its reply that such Partner would be interested in contributing more than its pro rata share of the Capital Contributions sought (and the extent of such interest) and the General Partner may honor such requests if fewer than all the Partners elect to make Capital Contributions. Any Partner who fails to elect to contribute its pro rata portion of the Capital Contributions at the time requested in the Section 3.1(b) Notice shall be deemed to have elected not to participate. If the Partners do not elect to contribute their respective pro rata portions of the total amount of Capital Contributions described in the Section 3.1(b) Notice, the General Partner (x) shall accept contributions from electing Partners of their respective pro rata portions of the Capital Contributions requested in the Section 3.1(b) Notice and (y) may, if the total amount of the Capital Contributions being sought have not been contributed, take any reasonable steps to raise such Capital Contributions from Persons other than Partners ("Additional Limited Partners"); provided, however, that the terms upon which such Partnership Interests are offered to Additional Limited Partners may not be on more favorable terms than those offered in the Section 3.1(b) Notice, unless prior thereto a new Section 3.1(b) Notice shall be sent to the Partners on the same terms as proposed to be offered to Persons other than Partners. In the event that the Partners or Additional Limited Partners make Capital Contributions described in the Section 3.1(b) Notice, the General Partner is authorized to determine the Sharing Ratios and the interests of the Partners and/or to issue Sharing Ratios and Partnership Interests to Additional Limited Partners, thereby resulting in the Partnership Interests of all Partners being adjusted. If all Partners elect to contribute their respective pro rata portion of the total amount of Capital Contributions described in the Section 3.1(b) Notice, no adjustment of Partnership Interests of the Partners shall be necessary. The General Partner is hereby authorized to make any necessary amendments to this Agreement, including Schedule 1 attached hereto, to reflect the adjustments to the Sharing Ratios and adjustments of such Partnership Interests. The Capital Contributions made pursuant to a Section 3.1(b) Notice shall constitute Additional Capital Contributions, if made by an existing Partner, or an Initial Capital Contribution if made by an Additional Limited Partner.



(c) Payment of Partnership Obligations. If any Partner makes a payment directly to a creditor or another Partner in satisfaction of any indebtedness of the Partnership pursuant to any indemnity, guaranty or contribution obligation of such Partner which has been approved by the General Partner in respect of Partnership indebtedness, or if any collateral interest granted by such Partner to such creditor or other Partner which has been approved by the General Partner to secure any such indebtedness shall be foreclosed and the proceeds of such foreclosure shall be applied to reduce or satisfy such indebtedness and any foreclosure-related expenses, such Partner shall be deemed to have made an Additional Capital Contribution equal to such amount.

### 3.2 Partnership Capital.

(a) Except as may be otherwise specifically provided in this Agreement, no Partner shall be paid interest on any Capital Contribution to the Partnership.

(b) No Partner shall have the right to demand or withdraw all or any part of its Capital Contribution or to receive any return on any portion of its Capital Contribution, except as may be otherwise specifically provided in this Agreement.

(c) Under circumstances involving a return of any Capital Contribution, no Partner shall have the right to receive property other than cash.

(d) Except as otherwise expressly provided herein, no Partner shall have any priority over any other Partner as to the return of its contributions to capital or as to compensation by way of income.

### 3.3 Liability of Partners.

(a) No Limited Partner shall be liable for the debts, liabilities, contracts or any other obligation of the Partnership, except to the extent expressly provided herein or in the Partnership Law. No Partner shall be liable for the debts or liabilities of any other Partner.

(b) No Partner shall be required to contribute to the capital of, or loan, the Partnership any funds other than as expressly required in this Agreement.

(c) The General Partner shall not be liable for the return of all or any portion of the Capital Contributions of any Partner.

3.4 Loans by Partners or Affiliates. Subject to obtaining the approval of a Majority in Interest of the Advisory Committee, any Partner or Affiliate may (but shall not be obligated to) at any time loan money to the Partnership to finance Partnership operations, to finance or refinance the assets of the Partnership, to pay the debts and obligations of the Partnership, or for any other Partnership purpose. If any Partner or an Affiliate lends funds to the Partnership, such Partner or Affiliate shall be entitled to receive interest on such loan at an interest rate to be agreed upon by such Partner or Affiliate and a Majority in Interest of the Advisory Committee. Notwithstanding the foregoing or any other provision of this Agreement, no loans will be made by the Partnership or any Partner or Affiliate to a Physician Limited Partner for any purpose.

3.5 Capital Accounts. A Capital Account shall be established and maintained for each Partner in compliance with Code Section 704 and the Treasury Regulations promulgated thereunder.

3.6 Sharing Ratios. The Sharing Ratio of each Partner is set forth opposite its respective name on Schedule 1, attached hereto and hereby made a part of this Agreement. The Sharing Ratios set forth on Schedule 1 may be amended from time to time by the General Partner to reflect any adjustments to such Sharing Ratios as provided in this Agreement. All Partners will be provided written notice of any amendment to the Sharing Ratios within ten (10) days of any such amendment.

3.7 Partnership Debt. The Partnership will endeavor to obtain financing on a nonrecourse basis as to any individual Partner. However, in the event any debt obligation of the Partnership requires a guarantee of a Partner or the posting of a letter of credit, and all of the Partners do not agree upon request of the General Partner to guarantee such Partnership obligation and/or post such letter of credit in proportion to its Sharing Ratio, then any Partner guaranteeing such obligation or posting such letter of credit may receive a reasonable fee for such guarantee or letter of credit in an amount determined by such Partner and the General Partner.

#### ARTICLE IV ALLOCATIONS AND DISTRIBUTIONS

4.1 Distributions. Except as provided in Section 9.2, regarding liquidation proceeds, Distributable Cash Flow, if any, shall be distributed to the Partners, pro rata, in accordance with each Partner's respective Sharing Ratio, no less frequently than quarterly. The Partner's stipulate and agree that all distributions will be based solely on the Partner's Sharing Ratios and will in no way be based on previous or expected volume of referrals, services furnished or business generated by the Partner.

##### 4.2 Allocations of Profits and Losses.

(a) Profits. Except as the General Partner determines Code Section 704 and the Treasury Regulations promulgated thereunder otherwise require, Profits for any Fiscal Year will be allocated to the Partners in proportion to their respective Sharing Ratios, determined as of the date of such allocation.

(b) Losses. Except as the General Partner determines Code Section 704 and the Treasury Regulations promulgated thereunder otherwise require, Losses for any Fiscal Year will be allocated to the Partners in proportion to their respective Sharing Ratios, determined as of the date of such allocation.

(c) Partner Acknowledgment. The Partners agree to be bound by the provisions of this Section in reporting their shares of Partnership income and loss for income tax purposes.

4.3 Compliance with Code. The Partners intend for the allocation of Profits, Losses and other items for federal income tax purposes to comply with Code Section 704 and the

Treasury Regulations promulgated thereunder, and the allocations shall be applied in a manner consistent therewith. Notwithstanding anything to the contrary, nothing in this Article shall apply if it lacks "economic effect."

4.4 Allocations upon Transfer of Partnership Interest. Profits or Losses attributable to any Partnership Interest which has been transferred during any Partnership Fiscal Year shall be allocated between the transferor and the transferee as follows:

(a) For the days in such Fiscal Year prior to and including the date of the transfer, to the transferor.

(b) For the days in such Fiscal Year subsequent to the date of the transfer, to the transferee.

#### ARTICLE V RIGHTS AND OBLIGATIONS OF THE GENERAL PARTNER

5.1 Management and Control of the Partnership. Except as otherwise expressly provided in this Agreement, any Partnership action, decision, consent, approval, determination and election required or permitted to be made by the Partnership pursuant to this Agreement shall be made by the General Partner in consultation with the Advisory Committee (as defined in Section 5.8); provided, however, that except as set forth in Section 5.2, the General Partner shall have full, exclusive, and complete discretion in the management and control of the business operations and affairs of the Partnership, shall make all decisions regarding the management of the Partnership, and is hereby authorized to take any action of any kind and to do anything and everything necessary in connection with the business of the Partnership. Except as otherwise provided herein, any Partnership action permitted or required by this Agreement to be made or taken by the General Partner shall be binding on all the Partners.

#### 5.2 Restrictions on the Authority of the General Partner.

Notwithstanding anything to the contrary contained in Section 5.1, without the consent of a Majority in Interest of the Advisory Committee, the General Partner shall not have the power or authority to:

- (a) Dispose of all or substantially all of the assets of the Partnership, including its goodwill;
- (b) Merge, consolidate or combine with any other Entity;
- (c) Allow a non-partner physician to utilize the fertility center for IVF, IUI, egg retrieval, embryo transfer, hormone and andrology lab and egg donor services;
- (d) Change the character or purposes of the Partnership;
- (e) Incur any debt obligation or make any purchase with Partnership funds in excess of twenty thousand dollars (\$20,000.00); or

- (f) Dissolve and wind up the Partnership.

5.3 Authority of the General Partner as to Third Persons. Any Person dealing with the Partnership, the General Partner or any Partner may rely upon a certificate signed by the General Partner, thereunto duly authorized, concerning:

- (a) The identity of such Partner;
- (b) The existence or nonexistence of any fact or facts that constitute conditions precedent to acts by the General Partner or the Partners or in any other manner germane to the affairs of the Partnership;
- (c) The Person or Persons who are authorized to execute and deliver any instrument or document of the Partnership; or
- (d) Any act or failure to act by the Partnership or concerning any other matter whatsoever involving the Partnership, or any Partner as it regards Partnership business.

5.4 Management Fee and Reimbursement of Expenses of the General Partner.

(a) The General Partner shall be paid a monthly management fee equal to six percent (6%) of the Partnership's Net Revenues for the immediately preceding month (the "Management Fee") as compensation for providing the following services to the Partnership:

- (1) management, and administration of all non-medical functions and services related to the Partnership;
- (2) arrange, with the approval of a Majority in Interest of the Advisory Committee, for billing and collection of fees for services performed by the Partnership;
- (3) direct, supervise and control all business of Center, including, but not limited to, informing all patients or potential patients of the ownership interests of Physician Limited Partners but excluding the provision of professional medical services;
- (4) coordinate with the physicians on all billing and collection activities to maintain compliance with all applicable local, state and federal laws and regulations;
- (5) direction, supervision and control of non-medical personnel of the Partnership; and
- (6) insurance and risk management.

Notwithstanding the foregoing, it is the express intent of the Partners that the General Partner shall not be required to perform any act which would constitute the use of a

medical license or the practice of medicine by anyone other than a licensed physician, or would result in a violation of the Wisconsin Medical Practices Act (Wis. Stat. § 448.01 et seq.) or the Wisconsin Service Corporation Act (Wis. Stat. § 180.1901 et seq.). Without limiting the generality of the foregoing, the parties hereby agree and acknowledge that the Physician Limited Partners and the other medical personnel of the Partnership shall have sole responsibility for the diagnosis and treatment of patients and all other medical, professional and ethical affairs the Partnership.

(b) In addition to the Management Fee, the General Partner or its designated Affiliate shall be entitled to reimbursement by the Partnership from time to time for all reasonable out-of-pocket expenses which are approved by a Majority in Interest of the Advisory Committee and incurred by such Partner in connection with the business and affairs of the Partnership.

5.5 Devotion of Time. The General Partner shall devote such time, services and efforts as may be reasonably necessary for the proper furtherance, management, operation, maintenance and care of the Partnership business. The General Partner shall not be required to devote its entire time to the business of the Partnership.

5.6 Liability of the General Partner. It is the intent of this Section 5.6 to restrict the liability and fiduciary duties of the General Partner to the maximum extent permitted under applicable law and the Partnership Law. Neither the Partnership nor any Partner shall have any claim against the General Partner by reason of any act or omission of the General Partner, provided that such act or omission was performed by the General Partner in the belief that the General Partner was acting within the scope of its authority under this Agreement and that such act or omission did not involve the General Partner's bad faith, willful misconduct or fraud, REGARDLESS OF WHETHER SUCH ACT OR OMISSION CONSTITUTED THE SOLE, PARTIAL OR CONCURRENT NEGLIGENCE (WHETHER ACTIVE OR PASSIVE) OF THE GENERAL PARTNER. Notwithstanding the above, the General Partner shall have no liability hereunder for failing to act if such act required the consent of some or all of the Limited Partners and the required consent to such action was not granted. Any amendment, modification or repeal of this Section 5.6 or any provision in this Section 5.6 shall be prospective only and shall not in any way affect the limitations on the General Partner's liability to the Partnership and the Limited Partners under this Section 5.6 as in effect immediately prior to such amendment, modification or repeal with respect to matters occurring, in whole or in part, prior to such amendment, modification or repeal, regardless of when claims relating to such matters may arise or be asserted.

5.7 Indemnification and Exculpation of the General Partner. The Partnership shall indemnify the General Partner and each of its Affiliates, from and against any and all losses, claims, damages, liabilities, joint or several, expenses (including reasonable legal fees and expenses), judgments, fines, settlements, and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative, that relate to the operations of the Partnership as set forth in this Agreement in which the General Partner or any of its Affiliates, may be involved, or is threatened to be involved, as a party or otherwise, unless it is established that: (i) the act or omission of the General Partner, or any of its Affiliates, was material to the matter giving rise to the proceeding and either was committed in bad faith or



was the result of active and deliberate dishonesty; (ii) the General Partner did not reasonably believe that the General Partner, while acting as general partner, was acting in the best interests of the Limited Partners or, in all other cases, was acting in opposition of the Limited Partners' best interests; (iii) the General Partner or its Affiliates, actually received an improper personal benefit in money, property or services; or (iv) in the case of any criminal proceeding, the General Partner or its Affiliates, had reasonable cause to believe that the act or omission was unlawful. The termination of any proceeding by judgment, order or settlement does not create a presumption that the General Partner or its Affiliates did not meet the requisite standard of conduct set forth in this Section 5.7. The termination of any proceeding by conviction or upon a plea of nolo contendere or its equivalent, or an entry of an order of probation prior to judgment, creates a rebuttable presumption that the General Partner or its Affiliates acted in a manner contrary to that specified in this Section 5.7. Any indemnification pursuant to this Section 5.7 shall be made only out of the assets of the Partnership, including insurance proceeds, if any.

5.8 Advisory Committee. As soon as practical following execution of this Agreement, the Partners shall hold a meeting for the purpose of electing an advisory committee consisting of four (4) individuals (the "Advisory Committee"). The Advisory Committee shall consist of two (2) members selected by the General Partner (the "GP Representatives") and two (2) members selected by the Physician Limited Partners (the "Physician Representatives"). Members of the Advisory Committee shall be entitled to attend and vote in person or by proxy at any meeting of the Advisory Committee. The Advisory Committee shall meet as its members deem necessary, but in no event less often than quarterly, and shall make recommendations to the General Partner regarding the Partnership's operations. Such recommendations shall include, without being limited to, advice with respect to (i) the operational direction of the Partnership; (ii) cost containment measures to be implemented in the operations of the Partnership; (iii) capital expenditures of the Partnership; and (iv) the Partnership's operating and capital budgets. The Advisory Committee may consider and recommend such actions as may be required from time to time by federal, state or local laws, statutes, ordinances or regulations regarding the business operations and affairs of the Partnership. A quorum for purposes of Advisory Committee meetings shall be at least one (1) GP Representative and one (1) Physician Representative present in person. The concurrent approval of a majority of the members of the Advisory Committee present at a meeting shall be the act of the Advisory Committee. Notwithstanding anything in the preceding portions of this Section 5.8 to the contrary, the Advisory Committee shall not have any responsibility for, or control over, the operations of the Partnership, it being recognized and agreed by the parties hereto that except as provided in Section 5.2 the General Partner has full responsibility and control with respect to such matters.

## ARTICLE VI RIGHTS AND STATUS OF LIMITED PARTNER

6.1 General. The Limited Partners have the rights and status of limited partners as provided in the Partnership Law. The Limited Partners may not take part in the management or control of the Partnership business, or sign for or bind the Partnership, such power being vested exclusively in the General Partner as provided herein.

6.2 Limitation on Liability. Except as provided under the Partnership Law, no Limited Partner shall have any personal liability whatsoever, whether to the Partnership, the



General Partner or any creditor of the Partnership, for the debts of the Partnership, or any of its losses beyond the amount of the Limited Partners' Initial Capital Contribution and Additional Capital Contribution, if any. Accordingly, each Limited Partner's Partnership Interest shall be fully paid and nonassessable.

6.3 Bankruptcy, Death. Neither the Bankruptcy, death, Disability, dissolution, liquidation or declaration of incompetence of a Limited Partner shall dissolve the Partnership, but the rights of a Limited Partner to share in the Profits and Losses of the Partnership and to receive distributions of Partnership funds, shall, on the happening of such an event, devolve upon the Limited Partner's estate, legal representative, or successors in interest, as the case may be, subject to this Agreement, and the Partnership shall continue as a limited partnership. In no event shall the estate, representative or successors in interest become a substitute Limited Partner, except in accordance with Article VII.

6.4 Physician Limited Partners. In accordance with 42 C.F.R. §1001.952(r), each Physician Limited Partner will fully inform all patients or potential patients of their ownership interest in the Center prior to scheduling such persons for services at the Center and will treat patients receiving medical assistance or benefits from any federal health care program in a nondiscriminatory manner.

## ARTICLE VII TRANSFER OF PARTNERSHIP INTEREST

### 7.1 Restriction on Transfer.

(a) Except upon the written approval of the General Partner or as expressly permitted by Sections 7.2, 7.3 and 7.5, no Partner may Dispose of all or any portion of its Partnership Interest or any beneficial right or interest therein, or contract to do or permit any of the foregoing, whether voluntarily or by operation of law, and any attempt to do so shall be void.

(b) Notwithstanding anything to the contrary contained herein, unless the General Partner consents, no Partner may Dispose of all or any portion of its Partnership Interest if such Disposition:

(1) when added to the total of all other Dispositions of Partnership Interests within the preceding twelve (12) months, would result in the Partnership being considered to have terminated within the meaning of Code Section 708; or

(2) would violate any federal securities laws or any applicable state securities laws (including suitability standards).

### 7.2 Death; Bankruptcy; or Disability of a Physician Limited Partner.

(a) Upon the death, Bankruptcy or Disability of a Physician Limited Partner, the personal representative of the estate of the deceased, Bankrupt or Disabled Physician Limited Partner shall irrevocably offer in a written instrument to sell the entire

Partnership Interest of the deceased, Bankrupt or Disabled Partner to the remaining Physician Limited Partners for the price and on the terms and conditions specified in Section 7.4. The remaining Physician Limited Partners shall have thirty (30) days after actual receipt of such notice within which to advise the personal representative whether such Physician Limited Partners will so purchase such Partnership Interest and the personal representative shall sell such Partnership Interest to such Physician Limited Partners. Each such other Physician Limited Partner shall have the right to purchase such portion of the Partnership Interest offered for sale as the Sharing Ratio owned by such Physician Limited Partner at such time shall bear to the total Sharing Ratios owned by all the Physician Limited Partners, excluding the deceased, Bankrupt or Disabled Physician Limited Partner. If any Physician Limited Partner does not elect to purchase its full portion of such Partnership Interest, the remaining Partnership Interest may be purchased by the other Physician Limited Partners, pro rata, in the same manner.

(b) If the Physician Limited Partners fail to exercise such option to purchase the entire Partnership Interest of the deceased, Bankrupt or Disabled Physician Limited Partner, the personal representative of the estate of the deceased, Bankrupt or Disabled Physician Limited Partner shall offer to sell the Partnership Interest to the remaining Partners (other than the Physician Limited Partners) upon the terms and at the price specified in Section 7.4. The remaining Partners (other than the Physician Limited Partners) shall have thirty (30) days after actual receipt of such notification that the Physician Limited Partners declined to purchase such Partnership Interest within which to advise the personal representative of the estate of the deceased, Bankrupt or Disabled Physician Limited Partner whether such Partner will so purchase such Partnership Interest. Each such other Partner (other than the Physician Limited Partners) shall have the right to purchase such portion of the Partnership Interest offered for sale as the Sharing Ratio owned by such Partner (other than the Physician Limited Partners) at such time shall bear to the total Sharing Ratios owned by all the Partners, excluding the Physician Limited Partners. If any Partner (other than the Physician Limited Partners) does not elect to purchase its full portion of such Partnership Interest, the remaining Partnership Interest may be purchased by the other Partners (other than the Physician Limited Partners), pro rata, in the same manner.

(c) If the Physician Limited Partners and the other Partners decline to purchase all of the Partnership Interest in accordance with this Section 7.2, the option to purchase such Partnership Interest shall terminate. If the option under this Section 7.2 terminates, the personal representative of the estate of the deceased, Bankrupt or Disabled Partner may proceed to distribute such Partnership Interest to the successors in interest entitled to receive the same as a result of the deceased Partner's death, Bankruptcy or Disability and to the surviving spouse of such deceased Partner to the extent of the community property interest in the Partnership Interest of such surviving spouse. Any such successor or surviving spouse to a deceased Partner's Partnership Interest shall thereupon (by written supplement to this Agreement) become a party to this Agreement and shall hold all of the Partnership Interest transferred to such successor subject in all respects to the terms and provisions hereof.

(d) Notwithstanding anything to the contrary contained in this Section 7.2, upon the death, Bankruptcy or Disability of a Physician Limited Partner, the remaining Physician Limited Partners agree to use their best efforts, with the assistance of the Advisory Committee, to recruit an additional Physician Limited Partner to replace the deceased, bankrupt or disabled Physician Limited Partner.

### 7.3 Death or Divorce of Spouse of a Partner.

(a) In the event of the death of any spouse of a Physician Limited Partner, or in the event of the divorce of a Physician Limited Partner and any spouse of such Physician Limited Partner, the Physician Limited Partner whose spouse either died or was divorced shall have the right and option to acquire any and all interest in the Physician Limited Partner's Partnership Interest from the divorced spouse or from the estate of the deceased spouse upon the terms and conditions and for the price specified in Section 7.4. Such option may be exercised by the Physician Limited Partner by giving written notice to the divorced spouse or the personal representative of the estate of the deceased spouse within one hundred twenty (120) days after such death or divorce.

(b) If such Physician Limited Partner fails to exercise such option to purchase the entire Partnership Interest of the divorced spouse or deceased spouse's estate, such Physician Limited Partner shall notify the remaining Physician Limited Partners in writing that the remaining Physician Limited Partners have the right to purchase the Partnership Interest upon the terms and at the price specified in Section 7.4. The remaining Physician Limited Partners (other than the Physician Limited Partner whose spouse either died or was divorced) shall have thirty (30) days after actual receipt of notice from the Physician Limited Partner whose spouse either died or was divorced within which to advise the divorced spouse or the deceased spouse's estate whether such Physician Limited Partners will so purchase such Partnership Interest and the divorced spouse or deceased spouse's estate shall sell such Partnership Interest to such Physician Limited Partners. Each such other Physician Limited Partner shall have the right to purchase such portion of the Partnership Interest offered for sale as the Sharing Ratio owned by such Physician Limited Partner at such time shall bear to the total Sharing Ratios owned by all the Physician Limited Partners, excluding the divorced or surviving Partner and the Physician Limited Partner whose spouse either died or was divorced. If any Physician Limited Partner does not elect to purchase its full portion of such Partnership Interest, the remaining Partnership Interest may be purchased by the other Physician Limited Partners (other than the Physician Limited Partner whose spouse either died or was divorced), pro rata, in the same manner.

(c) If the Physician Limited Partners fail to exercise such option to purchase the entire Partnership Interest of the divorced or deceased spouse, the divorced spouse or the personal representative of the estate of the deceased spouse shall offer to sell the Partnership Interest to the Partnership upon the terms and at the price specified in Section 7.4. The Partnership shall have thirty (30) days after actual receipt of such notification that the Physician Limited Partners declined to purchase such Partnership Interest within which to advise the divorced spouse or the personal representative of the estate of the deceased spouse whether the Partnership will so purchase such Partnership Interest.

(d) In the event the Partnership declines to purchase the Partnership Interest, such Partnership Interest may be purchased by the remaining Partners (other than the Physician Limited Partners). The other Partners shall have thirty (30) days after actual receipt of such notification that the Partnership declined to purchase such Partnership Interest within which to advise the divorced spouse or the personal representative of the estate of the deceased spouse whether such Partner will so purchase such Partnership Interest. Each such other Partner shall have the right to purchase such portion of the Partnership Interest offered for sale as the Sharing Ratio owned by such Partner at such time shall bear to the total Sharing Ratios owned by all the Partners, excluding the divorced or surviving Partner and the Physician Limited Partners. If any Partner does not elect to purchase its full portion of such Partnership Interest, the remaining Partnership Interest may be purchased by the other Partners, pro rata, in the same manner. If the Physician Limited Partners, the Partnership and the other Partners decline to purchase all of the Partnership Interest in accordance with this Section 7.3, the option to purchase such Partnership Interest shall terminate and the Partnership Interest shall be held by the divorced spouse or estate, heirs or legatees of the deceased spouse but subsequently shall be offered for sale at the times and on the terms and conditions set forth in this Agreement as if such Partnership Interest were still wholly owned by the Partner. However, in the event of the subsequent sale of such Partnership Interest pursuant to another provision of Article VII, the Partner or the personal representative of the Partner's estate shall pay the divorced spouse or the estate of such deceased spouse the appropriate portion of the sale proceeds of any such Partnership Interest owned by such spouse or estate; but the purchaser of such Partnership Interest hereunder shall not be obligated to verify or assure payment to such spouse or estate and shall be protected by making payments to the registered owner of such Partnership Interest. Any successor to the Partnership Interest described in this Section 7.3 shall, upon receipt of such Partnership Interest, execute a written supplement to this Agreement and become a party to this Agreement and shall hold all of the Partnership Interest transferred to such successor subject in all respects to the terms and provisions hereof.

(e) Notwithstanding anything to the contrary contained herein, Section 7.3 shall not apply to David L. Olive, M.D. or Elizabeth A. Pritts, M.D.

#### 7.4 Sales Price and Terms of Sale.

(a) The sales price of each Partnership Interest to be sold for the price specified in this Section 7.4 shall be the Fair Market Value (as hereinafter defined) of such Partnership Interest. For purposes of this Section 7.4, "Fair Market Value" shall mean the amount of cash and fair market value of property which would be received by the holder of the Partnership Interest to be sold hereunder if the assets of the Partnership were sold for their fair market value as of the date of determination of the Fair Market Value, all debts, liabilities and obligations were fully paid and satisfied or adequate provision was made therefor, and all remaining assets of the Partnership were distributed to the Partners in accordance with Section 9.2. The Partner whose Partnership Interest is to be sold hereunder (the "Seller") and the party purchasing such Partnership Interest ("Purchaser") shall attempt to agree on the Fair Market Value of the Partnership Interest to be sold. If the Purchaser and the Seller are unable to agree on such Fair Market Value



within ten (10) days after notice is given by the Purchaser or the Seller requesting such an agreement as to Fair Market Value (the date on which such notice is given being referred to herein as the "Notice Date"), Fair Market Value shall be determined by a qualified independent appraiser, selected as follows: Within twenty (20) days after the Notice Date, the Purchaser shall designate one qualified independent appraiser and the Seller shall designate another qualified independent appraiser. The two qualified independent appraisers shall jointly appoint a third qualified independent appraiser, or if they cannot agree to such appointment within thirty (30) days after the Notice Date, then the American Arbitration Association (the "AAA") shall appoint such third qualified independent appraiser on written request made by any Partner. The third qualified independent appraiser shall determine the Fair Market Value the appraiser places on all the Partnership Interests of the Partnership (the "Enterprise Value"). The Fair Market Value of any Partnership Interest to be sold hereunder shall be the Enterprise Value multiplied by the Sharing Ratio of the Partner whose Partnership Interest is being sold. The fees and expenses of such third qualified independent appraiser shall be born equally by the Purchaser and the Seller. Fair Market Value shall be determined as of a date as near as reasonably practicable to the date of the occurrence of the event which results in the sale of the Partnership Interest hereunder.

(b) At the closing of any sale of a Partnership Interest to be sold on the terms and conditions specified in this Section 7.4, the Seller shall assign and deliver the Partnership Interest to the Purchaser, together with such documents of transfer as shall be reasonably requested by the Purchaser, and the Purchaser shall deliver to the Seller the full consideration therefor payable by wire transfer or other immediately available funds. The Purchaser shall use its reasonable efforts to release the Seller from all personal liability as a guarantor of any Partnership indebtedness to any third party. Any transfer or similar taxes involved in such sale shall be paid by the Seller, and the Seller shall provide the Purchaser with such evidence of the Seller's authority to sell hereunder and such tax lien waivers and similar instruments as the Purchaser may reasonably request. Any sale pursuant to this Section 7.4 shall be made within 120 days of the date the Partnership or the Partners, as the case may be, agree to purchase such Partnership Interest.

#### 7.5 Purchase of Partnership Interests of Physician Limited Partners.

(a) In the event of a Disqualifying Cessation of Practice or Retirement of a Physician Limited Partner, the remaining Physician Limited Partners shall have the option to purchase such Partner's Partnership Interest for a purchase price equal to Fair Market Value (as determined pursuant to Section 7.4). Such option may be exercised by the remaining Physician Limited Partners within thirty (30) days after actual receipt of notice by the General Partner of such Disqualifying Cessation of Practice or Retirement. Each Physician Limited Partner (other than the disqualified or retired Physician Limited Partner) shall have the right to purchase such portion of the Partnership Interest as the Sharing Ratio owned by such Physician Limited Partner at such time shall bear to the total Sharing Ratios owned by all the Physician Limited Partners, excluding the disqualified or retiring Partner. If any Physician Limited Partner does not elect to purchase its full portion of such Partnership Interest, the remaining Partnership Interest may be purchased by the other Physician Limited Partners, pro rata, in the same manner.

(b) If the remaining Physician Limited Partners fail to exercise such option to purchase the entire Partnership Interest of the disqualified or retired Physician Limited Partner, the remaining Physician Limited Partners shall notify the General Partner in writing that the Partnership has the right to purchase the Partnership Interest upon the terms and at the price equal to Fair Market Value (as determined pursuant to Section 7.4). The Partnership shall have thirty (30) days after actual receipt of such notification that the Physician Limited Partners declined to purchase such Partnership Interest within which to advise the retired or disqualified Physician Limited Partner whether the Partnership will so purchase such Partnership Interest.

(c) In the event the Partnership declines to purchase the Partnership Interest, such Partnership Interest may be purchased by the remaining Partners (other than the Physician Limited Partners). The other Partners shall have thirty (30) days after actual receipt of such notification that the Partnership declined to purchase such Partnership Interest within which to advise the retired or disqualified Physician Limited Partner whether such Partner will so purchase such Partnership Interest. Each such other Partner shall have the right to purchase such portion of the Partnership Interest as the Sharing Ratio owned by such Partner at such time shall bear to the total Sharing Ratios owned by all the Partners, excluding the disqualified or retiring Partner and the Physician Limited Partners. If any Partner does not elect to purchase its full portion of such Partnership Interest, the remaining Partnership Interest may be purchased by the other Partners, pro rata, in the same manner. If the other Partners decline to purchase all of the Partnership Interest in accordance with this Section 7.5, the disqualified or retiring Partner shall continue to hold the Partnership Interest subject to the Partnership's option to purchase the Partnership Interest in accordance with this Section, and subject in all respects to the terms and provisions of this Agreement.

(d) At the closing of any sale of a Partnership Interest to be sold on the terms and conditions specified in this Section 7.5, the disqualified or retiring Partner (referred to as the "Seller" for purposes hereof) shall assign and deliver the Partnership Interest to the General Partner and/or any other Partner(s) (referred to as the "Purchaser" for purposes hereof), together with such documents of transfer as shall be reasonably requested by the Purchaser. The Purchaser hereunder may pay the purchase price in cash or other immediately available funds, or, at its option, elect to deliver as consideration an unsecured promissory note with a maturity date of not more than twelve (12) months from the date of the closing. The Purchaser shall use its reasonable efforts to release the Seller from all personal liability as a guarantor of any Partnership indebtedness to any third party. Any transfer or similar taxes involved in such sale shall be paid by the Seller, and the Seller shall provide the Purchaser with such evidence of the Seller's authority to sell hereunder and such tax lien waivers and similar instruments as the Purchaser may reasonably request. Any sale pursuant to this Section 7.5 shall be made within 120 days of the date the Partnership or the Partners, as the case may be, agree to purchase such Partnership Interest.

(e) Notwithstanding anything to the contrary contained in this Section 7.5, upon the Disqualifying Cessation of Practice or Retirement of a Physician Limited Partner, the remaining Physician Limited Partners agree to use their best efforts, with the



assistance of the Advisory Committee, to recruit an additional Physician Limited Partner to replace the disqualified or retired Physician Limited Partner.

7.6 Assignees.

(a) The Partnership shall not recognize for any purpose any purported sale, assignment or transfer of all or any fraction of the interest of a Partner unless the provisions of this Article VII have been satisfied, all costs of such assignment have been paid by the assigning Partner, such Disposition is exempt from registration under the Act, the Texas Securities Act, as amended, and any other applicable state or federal securities act, such Disposition will not have any tax consequences to the Partnership or any Partner and there is delivered to all of the non-transferring Partners, upon request of all of the non-transferring Partners, an opinion of counsel acceptable to all of the non-transferring Partners with respect to such securities exemption and tax consequences, and there is filed with the Partnership a written and dated notification of such Disposition, in form satisfactory to the non-transferring Partners, executed by both the seller, assignor or transferor and the purchaser, Assignee or transferee and such notification (1) contains the acceptance by the purchaser, Assignee or transferee of and agreement to be bound by all the terms and provisions of this Agreement and (2) represents that such Disposition was made in accordance with all applicable securities laws and regulations (including suitability standards). Any Disposition shall be recognized by the Partnership as effective on the date of such notification if the date of such notification is within fifteen (15) days of the date on which such notification is filed with the Partnership, and otherwise shall be recognized as effective on the date such notification is filed with the Partnership.

(b) Any Partner who assigns all its interest in the Partnership shall cease to be a Partner, except that, unless and until a substituted Partner has been admitted into the Partnership, the assigning Partner shall retain the statutory rights of the assignor of a partner's interest under the Partnership Law.

(c) A Person who is the Assignee of all or any fraction of the interest of a Partner, but does not become a substituted Partner, and desires to make a further assignment of such interest, shall be subject to all the provisions of this Article to the same extent and in the same manner as any Partner desiring to make an assignment of its interest.

7.7 Substituted Partner.

(a) Except as otherwise provided in this Article VII, no Partner shall have the right to substitute in its place a purchaser, Assignee, transferee, donee, heir, legatee or other recipient of all or any portion of the Partnership Interest of such Partner. Any other such purchaser, Assignee, transferee, donee, legatee, distributee or other recipient of an interest shall be admitted to the Partnership as a substituted Partner only with the consent of all of the Partners, which consent may be granted or withheld by any Partner in its sole discretion.

(b) No Person shall become a substituted Partner until such Person has satisfied the requirements of this Article VII and until that time shall have no right to vote on, consent to or approve any matter or decision with respect to the Partnership; provided, however, that for the purpose of allocating Profits, Losses and other items and distributing Distributable Cash Flow, a Person shall be treated as having become, and as appearing in the records of the Partnership as a Partner on such date as the sale, assignment or transfer to such person was recognized by the Partnership pursuant to Section 7.6.

7.8 Basis Adjustment. Upon the transfer of all or part of an interest in the Partnership, at the request of the transferee of the interest, the General Partner with the consent of all of the Partners may cause the Partnership to elect, pursuant to Section 754 of the Code, to adjust the basis of the Partnership properties as provided in Section 734 and 743 of the Code. The Partnership may require the requesting transferee to bear all of the accounting and administrative costs as a condition to its consent.

## ARTICLE VIII

### BANK ACCOUNTS, BOOKS OF ACCOUNT, REPORTS AND FISCAL YEAR

8.1 Bank Accounts; Investments. The General Partner shall establish one or more bank accounts in the name of the Partnership into which all Partnership funds shall be deposited. No other funds shall be deposited into these accounts.

8.2 Books and Records. The General Partner shall cause to be kept complete and accurate books of account and records relative to the Partnership's business. The books and records of the Partnership shall be kept on the method of reporting for tax and financial reporting purposes as determined by the General Partner. The Partnership books and records shall at all times be maintained at the principal business office of the Partnership or its accountants and shall be available for examination at such office by any Partner or its duly authorized representatives during regular business hours. Any Partner, at its own expense, may cause an audit of the books and records of the Partnership during regular business hours and shall furnish a written report thereof to the other Partners.

#### 8.3 Reports.

(a) Within forty-five (45) days after the end of each quarter, the General Partner shall cause to be prepared and delivered to each Partner an unaudited financial report for such quarter setting forth: (1) a statement of earnings for such quarter; and (2) a statement of cash flows for such quarter.

(b) Within ninety (90) days after the end of each Fiscal Year, the General Partner shall cause to be prepared and delivered to each Partner an unaudited financial report for such year setting forth: (1) a statement of assets, liabilities, and Partners' equity of the Partnership as of the end of such Fiscal Year, (2) a statement of earnings for such Fiscal Year; and (3) a statement of cash flows for such Fiscal Year, and any other information which the General Partner shall deem necessary, desirable, or appropriate, together with a statement of each Partner's Capital Account.

(c) Within ninety (90) days after the end of each Partnership Fiscal Year, the General Partner shall cause to be prepared and delivered to each Partner a Schedule K-1 for such Fiscal Year and such other United States federal and state income tax reporting information, if any, as is required by law.

8.4 Tax Returns and Information. The Partners intend for the Partnership to be treated as a partnership for tax purposes. The General Partner shall prepare or cause to be prepared all federal, state and local income and other tax returns which the Partnership is required to file. The method of computing Depreciation for tax purposes, and the decision whether to exercise or to revoke any or all of the elections available to the Partnership under the Code, shall be made by all of the Partners. Each of the Partners shall supply to the Partnership the information necessary to properly give effect to any such election.

8.5 Tax Matters Partner. The General Partner will serve as the tax matters partner of the Partnership pursuant to Section 6231(a)(7) of the Code.

8.6 Fiscal Year. The Fiscal Year of the Partnership shall be the calendar year.

#### ARTICLE IX DISSOLUTION, LIQUIDATION AND TERMINATION OF THE PARTNERSHIP

##### 9.1 Events Causing Dissolution.

(a) The Partnership shall be dissolved upon the happening of any of the following events:

(1) The entry of a final judgment, order or decree of a court of competent jurisdiction adjudicating the Partnership to be Bankrupt, and the expiration without appeal of the period, if any, allowed by applicable law in which to appeal therefrom;

(2) The Bankruptcy, liquidation or dissolution of the General Partner or any other withdrawal event by the General Partner under the Partnership Law;

(3) The sale, condemnation or other Disposition of all or substantially all of the assets of the Partnership;

(4) The election to dissolve the Partnership by the General Partner and a Majority in Interest of the Physician Limited Partners; or

(5) The entry of a decree of judicial dissolution under the Partnership Law.

(b) Dissolution of the Partnership shall be effective as of the day on which the event occurs giving rise to the dissolution, but the Partnership shall not terminate until there has been a winding up of the Partnership's business and affairs, and the assets of the Partnership have been distributed as provided in Section 9.2.

(c) Notwithstanding anything contained to the contrary in Section 9.1(a), if a dissolution of the Partnership would otherwise occur due to the occurrence of an event of dissolution under Sections 9.1(a)(2) or 9.1(a)(3), the Partnership may be reconstituted if either (i) there remains at least one General Partner and such remaining General Partner or General Partners elect to continue the business of the Partnership or (ii) within ninety (90) days of such event of dissolution a Majority in Interest of the Partners agree in writing to continue the business of the Partnership and, to the extent they desire, or if there is no remaining General Partner, the Limited Partners agree to the appointment of one or more new General Partners effective as of the date of such event of dissolution.

9.2 Liquidation; Sale of Substantially all of the Assets.

(a) Upon dissolution of the Partnership, the General Partner may cause any part or all of the Partnership assets to be sold in such manner as the General Partner shall reasonably determine in an effort to obtain the best prices for such assets (provided, however, that the General Partner may distribute Partnership assets in kind to the Partners to the extent practicable). During the liquidation period, the General Partner shall have the right to continue to operate and otherwise to deal with Partnership property to the same extent the General Partner has such right prior to dissolution of the Partnership. In the event that the sole remaining General Partner has dissolved, withdrawn or becomes Bankrupt or legally incapacitated, all of the Limited Partners may, within thirty (30) days after any such occurrence, appoint a Person to perform the functions of the General Partner in liquidating the assets of the Partnership and winding up its affairs.

(b) In settling accounts after dissolution, the assets of the Partnership shall be paid or distributed in the following order:

- (1) To third party creditors, in the order of priority as provided by law;
- (2) Then, to the Partners for any unreimbursed costs and expenses owing to the Partners pursuant to this Agreement;
- (3) Then, to the repayment of any loans, with interest, made by any Partner to the Partnership, and if more than one Partner has any outstanding loans owing from the Partnership, such repayment shall be made, pro rata, in accordance with the total amount outstanding to each Partner;
- (4) Then, an amount equal to the then remaining positive balances in the Capital Accounts of the Partners shall be distributed to the Partners in proportion to the amount of such balances; and
- (5) Then, any remainder shall be distributed to the Partners, pro rata, in accordance with their respective Sharing Ratios.

9.3 Distributions in Kind. If any assets of the Partnership are distributed in kind pursuant to this Agreement, such assets shall be distributed to the Partners entitled thereto as tenants-in-common in the same proportions as the Partners would have been entitled to cash distributions if such property had been sold for cash at its fair market value and the net proceeds

thereof distributed to the Partners. In the event that distributions in kind are made to the Partners, the Capital Account balances of such Partners shall be adjusted to reflect the Partners' allocable share of gain or loss which would have resulted if the distributed property had been sold at its fair market value.

## ARTICLE X REPRESENTATIONS AND WARRANTIES OF THE PARTNERS

10.1 Acquisition of Interest for Investment. Each Partner hereby represents and warrants to the Partnership and each of the Partners that its Partnership Interest is held for its own account for investment purposes only and not with a view toward the resale or distribution of such Partnership Interest.

10.2 Access to Information. Each Partner has been afforded full opportunity to request any and all relevant information and ask questions concerning the proposed purposes and business of the Partnership, has been provided all information and copies of documents it has requested, and has received answers to such questions to its full satisfaction. Each Partner represents and warrants that it has not relied upon any information relating to the Partnership other than information supplied by any Partner.

10.3 No Registration. Each Partner recognizes that the Partnership Interests have not been registered under the Act or applicable state securities laws and are being issued pursuant to an exemption from registration under the Act and by applicable state law provisions. Each Partner recognizes that, as a consequence, its Partnership Interest must be held indefinitely unless it is subsequently registered under the Act and applicable state securities laws, or an exemption from such registration is available, so that such Partner must bear the economic risk of investment in its Partnership Interest for an indefinite period of time.

10.4 Accredited Investor. Each Partner represents and warrants that it is an "accredited investor" as such term is defined in Regulation D promulgated under the Act.

10.5 No Obligation to Register. Each Partner acknowledges that neither the Partnership nor any Partner is under any obligation to register the Partnership Interests under any securities laws, and neither of them has any present intention to do so. Each Partner understands that there is no established market for the Partnership Interests, and it is extremely unlikely that any public or private market will develop.

10.6 Suitability of Investment. Each Partner understands the nature of the investment being made and that it involves a high degree of risk. Each Partner recognizes that the Partnership is a newly organized Entity and has no operations or earnings for an entire fiscal year.

10.7 No Tax Representations. Each Partner represents and warrants that it has consulted its own tax advisor with respect to the tax aspects of such Partner's acquisition and ownership of its Partnership Interest. Each Partner represents and warrants that it is not relying upon any representations which may have been made by any Partner as to any tax projections or tax consequences of such Partner's acquisition and ownership of its Partnership Interest.



10.8 Representations and Warranties Regarding Non-Individual Partners. Each Partner which is an Entity represents and warrants to the other Partners as follows:

(a) Organization. The Partner is a limited liability company, partnership, corporation, or other Entity duly formed, validly existing and in good standing under the laws of the jurisdiction of its organization.

(b) Authorization. The execution and delivery of this Agreement by the Partner, the performance by the Partner of its obligations under this Agreement and the consummation of the transactions contemplated hereby and thereby have been duly authorized by all requisite corporate action or other action on the part of the Partner.

(c) No Conflicting Agreements. The execution and delivery by the Partner of, and the performance and compliance by the Partner with the terms and provisions of, this Agreement do not violate any of the terms, conditions or provisions of (1) the Partner's articles of incorporation, certificate of incorporation, certificate of formation or other certificate of organization that may apply to such Partner, as the case may be, or other applicable Entity agreements or governing instruments, (2) any judgment, order, injunction, decree, regulation or ruling of any court or other governmental authority to which the Partner is subject or by which any of the Partner's assets are bound, or (3) any agreement or contract to which the Partner is a party or to which it or its property is subject.

(d) Approvals. No authorization, consent, order, approval or license from filing with, or other act by any agency, bureau or department of any federal, state or local government authority or other Person is or will be necessary to permit the valid execution and delivery by the Partner of this Agreement or the performance by the Partner of the obligations to be performed by it under this Agreement, or if any such authorizations, consents, orders, approvals or licenses are required, they have been obtained.

10.9 Representations and Warranties Regarding Individual Partners. Each Partner that is an individual represents and warrants to the other Partners as follows:

(a) No Conflicting Agreements. The execution and delivery by the Partner of, and the performance and compliance by the Partner with the terms and provisions of, this Agreement do not violate any of the terms, conditions or provisions of (1) any judgment, order, injunction, decree, regulation or ruling of any court or other governmental authority to which the Partner is subject or by which any of the Partner's assets are bound; or (2) any agreement or contract to which the Partner is a party or to which it or its property is subject.

(b) Approvals. No authorization, consent, order, approval or license from filing with, or other act by any agency, bureau or department of any federal, state or local government authority or other Person is or will be necessary to permit the valid execution and delivery by the Partner of this Agreement or the performance by the Partner of the obligations to be performed by him under this Agreement, or if such authorizations, consents, orders, approvals or licenses are acquired, they have been obtained.



10.10 Representations and Warranties Regarding Physician Limited Partners. Each Physician Limited Partner represents and warrants to the other Partners that (a) such Physician Limited Partner is a physician duly licensed to practice medicine in the State of Wisconsin, and such Physician Limited Partner will maintain that licensure for so long as such Physician Limited Partner remains a Partner; (b) such Physician Limited Partner has, and will maintain for so long as such Physician Limited Partner remains a Partner, all necessary staff privileges, permits, and credentials necessary for such Physician Limited Partner to carry out the activities required of such Physician Limited Partner in the conduct of the Partnership's business; (c) such Physician Limited Partner is board certified or qualified for certification in the field of obstetrics and gynecology; and (d) such Physician Limited Partner has current controlled substances registrations issued by applicable state authorities and the United States Drug Enforcement Administration, which registrations have not been surrendered, suspended, revoked or restricted in any manner.

## ARTICLE XI POWER OF ATTORNEY

### 11.1 Appointment of the General Partner as Attorney-in-Fact.

(a) Each Limited Partner, by the execution of this Agreement, irrevocably constitutes and appoints the General Partner, its true and lawful agent and attorney-in-fact with full power and authority in its name, place and stead to execute, acknowledge, deliver, swear to, file and record at the appropriate public offices such documents, instruments and conveyances that may be necessary or appropriate to carry out the provisions or purposes of this Agreement, including without limitation:

(1) all certificates and other instruments, including, but not limited to, counterparts of this Agreement, and any amendment thereof that the General Partner deems appropriate to qualify or continue the Partnership as a partnership or a partnership in which the Limited Partner will have limited liability comparable to that provided by the Partnership Law, in the jurisdictions in which the Partnership may conduct business;

(2) any amendment, supplement or restatement of this Agreement approved by the Partners in accordance with Section 12.7;

(3) all instruments that the General Partner deems appropriate to reflect a change or modification of the Partnership in accordance with the terms of this Agreement; and

(4) all conveyances and other instruments that the General Partner deems appropriate to reflect the dissolution and termination of the Partnership.

(b) The appointment of the General Partner by each Limited Partner as agent and attorney-in-fact shall be deemed irrevocable and to be a power coupled with an interest and shall survive the legal incapacity of any Person hereby giving such power and the transfer or assignment of all or any part of the Partnership Interest of such Person; provided, however, that in the event of the transfer by a Limited Partner of all its interest,

the foregoing power of attorney shall survive such transfer only until such time as the transferee shall have been admitted to the Partnership as a Limited Partner, and all required documents and instruments shall have been duly executed, filed and recorded to effect such substitution.

## ARTICLE XII MISCELLANEOUS

12.1 Non-Competition. Each Physician Limited Partner hereby agrees that while such Physician Limited Partner is a Partner or, in the event of a Disqualifying Cessation of Practice or Retirement of a Physician Limited Partner, for a period of two (2) years following the date of the Disqualifying Cessation of Practice or Retirement (whether or not the departing Physician Limited Partner's Partnership Interest is purchased pursuant to Section 7.5), such Physician Limited Partner shall not, directly or indirectly, within 150 miles of the City of Madison, Wisconsin, (i) establish, operate, provide administrative services to, or provide physician services on behalf of any medical office, clinic, or outpatient and/or ambulatory treatment, surgical or diagnostic facility providing services substantially similar to those provided by the Partnership, including, without limitation, establishment or operation of a fertility center; or (ii) induce or attempt to influence any employee of the Partnership or any person employed by the General Partner or its Affiliates (the "FemPartners Parties"), or any person employed by any physician practice managed by a FemPartners Party to terminate his or her employment, or hire any such employee whether or not so induced or influenced, except that any such employee may be hired with the prior written consent of the General Partner. The Physician Limited Partners hereby acknowledge and agree that since a remedy at law for any breach or attempted breach of the provisions of this Section 12.1 shall be inadequate, the Partnership shall be entitled to specific performance and injunctive or other equitable relief in case of any such breach or attempted breach, in addition to whatever other remedies may exist by law. If any provision of this Section 12.1 relating to territory, scope of activity restricted, or time described shall be declared by a court of competent jurisdiction to exceed the maximum time period, scope of activity restricted, or geographical area such court deems reasonable and enforceable under applicable law, the time period, scope of activity restricted, and/or area of restriction deemed to be reasonable and enforceable by the court shall thereafter be the time period, scope of activity restricted, and/or area of restriction applicable to the restrictive covenant provisions in this Section 12.1. The invalidity or non-enforceability of any portion of this Section 12.1 in any respect shall not affect the validity or enforceability of the remainder of this Section 12.1 or of any other provisions of this Agreement. In addition, each Partner that is not a Physician Limited Partner agrees that during the term of this Agreement, such Partner will not (and shall cause its affiliates not to) acquire, establish, or commence the operation of any fertility center in the State of Wisconsin without the prior written consent of a Majority in Interest of the Physician Limited Partners.

12.2 Notices. All notices given pursuant to this Agreement shall be in writing and shall either be mailed by first class mail, postage prepaid, registered or certified with return receipt requested, or delivered in person to the intended addressee, or sent by telecopy followed by confirmatory letter. Notice so mailed shall be effective upon the expiration of three (3) business days after its deposit. Notice given in any other manner shall be effective only if and when received by the addressee. For purposes of notice, the address of the Partners shall be as

stated under their names on the attached Schedule 1; provided, however, that each Partner shall have the right to change its address for notice hereunder to any other location by the giving of ten (10) days notice to the General Partner (or in the case of the General Partner, to the other Partners) in the manner set forth above.

12.3 Governing Law. This Agreement shall be governed by and construed in accordance with the substantive federal laws of the United States and the internal laws of the State of Wisconsin.

12.4 Dispute Resolution and Arbitration.

(a) The Partners agree that any claim, controversy, dispute or disagreement between them arising out of or relating to this Agreement or the breach hereof will be settled by binding arbitration (other than claims involving any noncompetition covenant) and shall be governed exclusively by the terms and provisions of this Section 12.4; provided, however, that the terms and provisions of this Section 12.4 shall not preclude any party hereto from seeking, or a court of competent jurisdiction from granting, a temporary restraining order, temporary injunction or other equitable relief for any breach of (i) any noncompetition covenant herein or (ii) any duty, obligation, covenant, representation or warranty, the breach of which may cause irreparable harm or damage.

(b) In the event there is any claim, controversy, dispute or disagreement subject to this Section 12.4, then each aggrieved Partner shall select one arbitrator. The two arbitrators so chosen shall then select a third arbitrator who is experienced in the matter or action that is subject to such arbitration. If such matter or action involves health-care issues, then the third arbitrator shall have such qualifications as would satisfy the requirements of the American Health Lawyers Association Alternative Dispute Resolution Service. Each of the arbitrators chosen shall be impartial and independent of all parties to this Agreement. If either of the parties fails to select an arbitrator within twenty (20) days after notice from the other initiating arbitration and naming its arbitrator, or if the arbitrators chosen fail to select a third arbitrator within twenty (20) days, then any party may in writing request the judge of the United States District Court for the Eastern District of Wisconsin senior in term of service to appoint the arbitrator or arbitrators and, subject to this Section 12.4, such arbitrators shall hear all arbitration matters arising under this Section 12.4, and in default of such selection, may ask the AAA.

(c) Each arbitration hearing shall be held at a place in Milwaukee, Wisconsin acceptable to a majority of the arbitrators. The arbitration shall be conducted in accordance with the Commercial Arbitration Rules of the AAA to the extent such rules do not conflict with the terms hereof. The decision of a majority of the arbitrators shall be reduced to writing and shall be binding on the parties. Judgment upon the award(s) rendered by a majority of the arbitrators may be entered and execution had in any court of competent jurisdiction or application may be made to such court for judicial acceptance of the award and an order of enforcement. The charges and expenses of the arbitrators shall be shared equally by the parties to the hearing.

(d) The arbitration shall commence within thirty (30) days after the arbitrators are selected in accordance with the provisions of this Section 12.4. In fulfilling their duties with respect to determining the amount of a loss or liability, the arbitrators may consider such matters as, in the opinion of the arbitrators, are necessary or helpful to make a proper valuation. The arbitrators may add any interest factor reflecting the time value of money to the amount of a loss or liability and shall not award any punitive damages.

(e) If any of the arbitrators selected hereunder shall die, resign or be unable to perform his or her duties hereunder, the remaining arbitrators or such senior judge (or such judge's successor) shall select a replacement arbitrator. The procedure set forth in this Section 12.4 for selecting the arbitrators shall be followed from time to time as necessary.

(f) As to any determination of the amount of a loss or liability, or as to the resolution of any other claim, controversy, dispute or disagreement, that under the terms hereof is made subject to arbitration, no lawsuit based on such claimed loss or liability or such resolution shall be instituted by either of the parties hereto, other than to compel the arbitration proceedings or enforce the award of a majority of the arbitrators.

(g) All privileges under Wisconsin and federal law, including attorney-client and work-product privileges, shall be preserved and protected to the same extent that such privileges would be protected in a federal court proceeding applying Wisconsin law.

12.5 Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the Partners, and their respective heirs, legal representatives, successors and assigns; provided, however, that nothing contained herein shall negate or diminish the restrictions set forth in Article VII.

12.6 Entire Agreement. This Agreement, including the schedules and exhibits, if any, contains the entire agreement among the Partners relating to the subject matter hereof and all prior agreements relative hereto which are not contained herein are terminated.

12.7 Amendments. Amendments or modifications may be made to this Agreement only by setting the same forth in a document duly executed by all of the Partners, and any alleged amendment or modification herein which is not so documented shall not be effective as to any Partner.

12.8 Generally Accepted Accounting Principles (GAAP). All financial statements and calculations contemplated by this Agreement will be prepared or made in accordance with generally accepted accounting principles consistently applied unless the parties agree otherwise in writing.

12.9 Severability. This Agreement is intended to be performed in accordance with, and only to the extent permitted by, all applicable laws, ordinances, rules and regulations. If any provision of this Agreement or the application thereof to any Person or circumstance shall, for any reason and to any extent, be invalid or unenforceable, but the extent of such invalidity or unenforceability does not destroy the basis of the bargain among the Partners as expressed

herein, the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

12.10 Gender and Number. Whenever required by the context, as used in this Agreement, all personal pronouns shall include the other genders whether using the masculine, feminine or neuter gender, and the singular shall include the plural.

12.11 Exhibits and Schedules. Each exhibit and schedule to this Agreement is incorporated herein for all purposes.

12.12 Creditors Not Benefited. Nothing in this Agreement is intended to nor shall it benefit any creditor of the Partnership. No creditor of the Partnership will be entitled to require the General Partner to solicit or accept any loan or Additional Capital Contribution for the Partnership or to enforce any right which the Partnership or any Partner may have against a Partner, whether arising under this Agreement or otherwise.

12.13 Captions. The Article and Section headings appearing in this Agreement are for convenience of reference only and are not intended, to any extent or for any purpose, to limit or define the text of any Article or Section.

12.14 Counterparts. This Agreement may be executed in counterparts, each of which shall be an original but all of which shall constitute but one document.

[Signature Page Follows]



EXECUTED to be effective the day, month and year above first written.

General Partner:

FEMPARTNERS FERTILITY CENTER  
OF WISCONSIN, INC.

By: 


Jack T. Thompson, President


Limited Partners:

FEMPARTNERS OF WISCONSIN, INC.

By: 

Jack T. Thompson, President

  
David L. Olive, M.D., Individually

  
Elizabeth A. Pritts, M.D., Individually



**SCHEDULE 1**

Names, Address, Initial Capital Contributions and Sharing Ratios of the Partners

<b><u>Names and Addresses of Partners</u></b>	<b><u>Initial Capital Contributions</u></b>	<b><u>Sharing Ratios</u></b>
<i>General Partner:</i>		
FemPartners Fertility Center of Wisconsin, Inc. 1300 Post Oak Blvd. Suite 1300 Houston, Texas 77056 Attn: Jack T. Thompson	\$4,858.00	1.00%
<i>Limited Partners:</i>		
FemPartners of Wisconsin, Inc. 1300 Post Oak Blvd. Suite 1300 Houston, Texas 77056 Attn: Jack T. Thompson	\$213,743.00	44.00%
David L. Olive, M.D.	\$133,590	27.50%
Elizabeth A. Pritts, M.D.	\$133,590	27.50%
<b>TOTAL</b>	<b><u>\$485,781.00</u></b>	<b><u>100.00%</u></b>

**SCHEDULE 2**

Physician Limited Partners

(1) David L. Olive, M.D...

(2) Elizabeth A. Pritts, M.D.

AO 440 (Rev. 12/09) Summons in a Civil Action

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## UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

WI Fertility and Reproductive Surgery Associates,  
S.C., David L. Olive, M.D., and Elizabeth Pritts, M.D.

*Plaintiff*

v.

Jack Thompson

*Defendant*

)  
)  
)  
) Civil Action No. 3:14-cv-00168-slc  
)  
)  
)

### SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Jack Thompson  
FemPartners  
1300 Post Oak Boulevard  
Suite 600  
Houston, TX 77056

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney,

whose name and address are: Attorney Kevin J. Palmersheim  
Haley Palmersheim, S.C.  
P.O. Box 628005  
1424 N. High Point Road, Suite 202  
Middleton, WI 53562

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05/30/2014

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 12/09) Summons in a Civil Action

# UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

WI Fertility and Reproductive Surgery Associates,  
S.C., David L. Olive, M.D., and Elizabeth Pritts, M.D.

*Plaintiff*

v.

J.R. Stevens

*Defendant*

Civil Action No. 3:14-cv-00168-slc

## SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* J.R. Stevens  
FemPartners  
1300 Post Oak Boulevard  
Suite 600  
Houston, TX 77056

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Attorney Kevin J. Palmersheim  
Haley Palmersheim, S.C.  
P.O. Box 628005  
1424 N. High Point Road, Suite 202  
Middleton, WI 53562

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05/30/2014

*Signature of Clerk or Deputy Clerk*

AO 440 (Rev. 12/09) Summons in a Civil Action

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## UNITED STATES DISTRICT COURT

for the

Western District of Wisconsin

WI Fertility and Reproductive Surgery Associates,  
S.C., David L. Olive, M.D., and Elizabeth Pritts, M.D.

*Plaintiff*

v.

Arthur McClure

*Defendant*

)  
)  
)  
) Civil Action No. 3:14-cv-00168-slc  
)  
)  
)

### SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Arthur McClure  
FemPartners  
1300 Post Oak Boulevard  
Suite 600  
Houston, TX 77056

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Attorney Kevin J. Palmersheim  
Haley Palmersheim, S.C.  
P.O. Box 628005  
1424 N. High Point Road, Suite 202  
Middleton, WI 53562

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: 05/30/2014

\_\_\_\_\_  
*Signature of Clerk or Deputy Clerk*

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WISCONSIN**

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**WISCONSIN FERTILITY AND REPRODUCTIVE  
SURGERY ASSOCIATES, S.C., et al**

**Plaintiffs,**

**vs.**

**Case No. 14-cv-168-slc**

**FEMPARTNERS OF WISCONSIN, INC., et al**

**Defendants.**

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**CERTIFICATE OF SERVICE**

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I hereby certify that on May 30, 2014, I electronically filed the following document with the Clerk of the Western District of Wisconsin, using the ECF system:

- Summons for Jack Thompson
- Summons for J.R. Stevens
- Summons for Arthur McClure
- Amended Complaint and Exhibits

**HALEY PALMERSHEIM, S.C.**

/s/ Cathleen A. Dettmann

Kevin J. Palmersheim

Wisconsin State Bar #1020726

Cathleen A. Dettmann

Wisconsin State Bar #1048315

Attorneys for Plaintiffs and Counterclaim

Defendants

1424 N. High Point Road, Ste. 202

P.O. Box 628005

Middleton, WI 53562-8005

(608) 836-6400

[palmersheim@hplawoffice.com](mailto:palmersheim@hplawoffice.com)

[dettmann@hplawoffice.com](mailto:dettmann@hplawoffice.com)